AS TO THE ADMISSIBILITY OF

Application No. 22172/93
by Georgi Lukov ROMANOV
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 13 April 1993 by Georgi Lukov ROMANOV against Hungary and registered on 6 July 1993 under file No. 22172/93;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the Commission's decision of 13 April 1994 to request specific information from the Government;

- the information submitted by the respondent Government on 20 May 1994 and the observations in reply submitted by the applicant on 31 July 1994;

- the Commission's decision of 6 April 1995 to communicate the application;

- the observations submitted by the respondent Government on 1 August 1995 and the observations in reply submitted by the applicant on 8 February 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Bulgarian citizen born in 1958 and living in Bulgaria. He is a car-dealer by profession. In the proceedings before the Commission, he was represented by his wife, Mrs. T.Y. Romanova.

A. Particular circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 27 February 1992 the applicant and other Bulgarian citizens were arrested at the Hungarian-Romanian border. The Békés Regional Police (Megyei Rendorfokapitányság) found that there was a strong suspicion that the applicant, acting as accomplice, had attempted illegally to export a car, a Lancia Delta, from Hungary and thereby committed a currency offence within the meaning of S. 309 para. 4 (a) of the Hungarian Penal Code (1978. évi IV. Törvény a Bünteto Törvénykönyvrol)). Moreover, taking into account that he was a foreigner and not resident in Hungary, the Police found that, in accordance with S. 91 para. 1 and S. 92 para. 1 (a) - (b) of the Code of Criminal Procedure (1973. évi I.Törvény a Büntetoeljárásról), there was a risk of the applicant's absconding or of collusion, if he were left at large.

On 28 February 1992 the applicant was questioned on the above charge against him, however, he chose to remain silent.

At the same day, the Investigation Department (Vizsgálati Osztály) of the Békés Regional Police opened preliminary investigations against the applicant and other suspects on the suspicion of having been involved in numerous offences, namely taking over cars in Budapest from at that time unknown persons and exporting them illegally with presumably forged documents. According to the results of the police investigations, one of the seized cars had been stolen in Italy. Moreover, forged banknotes had been found with the other suspects.

On 2 March 1992 the Békéscsaba District Court (Városi Bíróság) ordered the applicant's detention on remand until 2 April 1992.

The District Court found that the applicant was suspected of a currency offence under S. 309 of the Penal Code. The Court considered that, should the applicant be left at large, there was a serious risk that he would hide from the authorities, abscond or obstruct the proceedings by cooperating with his accomplices, within the meaning of S. 92 para. 1 (a) and (b) and S. 379/A para. 1 of the Code of Criminal Procedure.

The District Court, referring to the investigations carried out so far, stated that the applicant had travelled to Hungary by car on 23 February 1992 and had spent some time on a Budapest camping place, where also two other Bulgarian citizens had stayed. The two latter had come to Hungary in order to take over, from a third person, a car, and to pay this person DM 9,000 and US$ 2,700. The District Court continued that this third person, whose identity could not yet be established, had come to Hungary in the applicant's car, therefore they had presumably known each other closely. Upon delivery of the car concerned, which according to its papers belonged to a person residing in Germany, the applicant had received the above foreign currencies. The two other suspects had intended to leave the territory of Hungary at the Romanian-Hungarian border without possessing the necessary export permission for the car. The applicant had intended to cross the border at the same time.

On 5 March 1992 the Békéscsaba District Prosecutor's Office (Varosi Ügyészség) dismissed the applicant's complaint against the police. In its comments on the applicant's complaint, the Investigation Department of the Békés Regional Police noted that the suspicion against the applicant had been confirmed by the statements of two of the other suspects.

Moreover, in March 1992 the Hungarian investigation authorities obtained further information, inter alia, about the origin of the above-mentioned Lancia Delta car as well as a further car, which had been seized in the context of the proceedings. Furthermore, at the

Békéscsaba Police Station, letters were discovered, some addressed to the applicant by one of the other detainees and one drafted by the applicant, which contained information and advice with a view to coordinating the statements of all suspects.

On 27 March 1992 the Békéscsaba District Court decided to extend the duration of the applicant's detention until 2 June 1992, at the latest. The Court, referring to the relevant provisions of the Code of Criminal Procedure, considered that the reasons which had initially necessitated the order of detention on remand persisted. On 14 April 1992 the Békés Regional Court (Megyei Bíróság) dismissed the applicant's appeal against the decision of 27 March 1992, finding that the District Court's reasoning was correct.

Between 13 April and 5 May 1992 the Investigation Department heard various witnesses and suspects and also arranged for several confrontations, inter alia, between the applicant and two further suspects. The Department communicated with Interpol Rome and Wiesbaden regarding the persons suspected of being involved in the above offences, or about the cars concerned. The Department further cooperated with the Bulgarian authorities.

At a hearing on 12 May 1992, the applicant was informed that, according to the results of the investigations at that stage, the above cars type Lancia Delta and a further car seized in the context of the proceedings, respectively, had presumably been stolen and that there was a strong suspicion that he had participated in two counts of receiving of stolen goods. The applicant protested his innocence.

On 27 May 1992 a single judge at the Békés Regional Court extended the duration of the applicant's detention on remand until 2 August 1992, at the latest. The Regional Court, referring to the relevant legal provisions, stated that the reasons for detaining the applicant on remand persisted. The applicant's appeal was dismissed by a Chamber of the Regional Court on 11 June 1992.

On 3 June 1992 the Investigation Department of the Békés Regional Police ordered the search of the applicant's personal belongings which were deposited at the Police Station where he was detained on remand. The search was carried out by a police officer in the presence of the applicant, an interpreter and two witnesses. 9,000 DM and 2,700 US$ were found and seized. According to the reasons of the seizure order, there was a strong suspicion that the above sums had been given to the applicant in Budapest on 26 February 1992. The applicant refused to sign the protocol concerning the search and lodged a complaint about the seizure, stating that the money was his own and that he had an official permission for exporting it. His complaint was dismissed by the Békés Regional Prosecutor's Office on 16 June 1992.

On 24 July 1992 a single judge at the Békés Regional Court extended the duration of the applicant's detention on remand until 2 October 1992, at the latest. The decision again referred to the relevant legal provisions and stated that the initial reasons for detaining the applicant on remand persisted. The applicant's appeal was dismissed by a Chamber of the Regional Court on 4 August 1992.

On 30 September 1992 the Hungarian Supreme Court (Magyar Köztársaság Legfelsöbb Bírósága) extended the duration of the applicant's detention on remand until 2 March 1993. The Supreme Court found in particular that there was a strong suspicion that the applicant, together with an accomplice prosecuted in the same set of proceedings, had sold about sixty-eight cars, partly stolen, which they had imported from Italy and exported to Bulgaria. It also stated that the investigations, in particular in cooperation with Interpol, could not yet be terminated. The Supreme Court noted that in the course of his detention on remand the applicant had attempted to establish contact with other detainees with a view to harmonise their statements

on the charges against them. The Court considered that, having regard to the seriousness of the charges against the applicant, there was a serious risk of his absconding or obstructing the investigations.

On 16 October 1992 the applicant's lawyer complained to the Head of the Investigation Department of the Békés Regional Police that no decision prolonging the applicant's detention had been served on him or on the applicant, and he applied for the applicant's release. In his submissions, the lawyer stated that he had only been orally informed by the Békés Regional Prosecutor's Office about such a decision. The applicant's lawyer subsequently also raised this complaint with the Prosecutor General of the Region of Békés (Megye Foügyésze) and the Regional Prosecutor's Office. Moreover, he informed the authorities about the applicant's poor health and apparently also raised the question of the applicant's release on bail. He further complained about the delay of the investigations.

On 26 February 1993 the Supreme Court decided to extend the duration of the applicant's detention on remand until 24 July 1993. The Supreme Court found that the reasons justifying the applicant's detention on remand persisted. In particular, taking into account the result of the investigations, the applicant could reasonably be suspected of having committed the criminal offence of receiving stolen goods of an important value as well as of other offences. Moreover, considering the conduct of the applicant and of further suspects in the course of the investigations, there was a danger of the applicant's absconding or obstructing the investigations.

At that stage of the proceedings, the investigation authorities continued hearing numerous witnesses and also obtained expert evidence.

On 2 March 1993 the applicant's lawyer was informed orally that the Supreme Court had further prolonged the applicant's detention on remand.

On 30 March 1993 the Ministry of Foreign Affairs of the Hungarian Republic informed the Bulgarian Embassy in Budapest about the applicant's case and also explained that the investigations had been delayed due to the late replies by foreign investigation authorities.

On 6 May 1993 the Békéscsaba District Court dismissed the applicant's request for release. The District Court referred to the Supreme Court's decision of 26 February 1993, prolonging the applicant's detention on remand. The District Court noted the applicant's complaint about the length of his detention on remand, and his submissions that he was seriously suffering from his detention. Referring to the relevant legal provisions, the Court considered that the reasons which had necessitated the order and the prolongation of his detention on remand persisted. In this respect, the District Court stated that, taking into account the severity of the criminal offences committed by the applicant and his foreign nationality, there was a serious risk of his absconding or obstructing the proceedings.

On 12 May 1993 the preliminary investigations against the applicant were closed. The charges against him were amended to the effect that he had participated in two counts of receiving stolen cars.

On 26 May 1993 the Békéscsaba District Court rejected the applicant's renewed request for release on the ground that he had not presented any new arguments.

In his letter of 1 July 1993, the Deputy of the Prosecutor General (Legfobb Ügyéesz Helyettese) "offered" (felajánlás) the criminal proceedings against inter alia the applicant to the Prosecutor General of the Republic of Bulgaria, i.e. the latter was requested to initiate criminal proceedings against the applicant, pursuant to S. 80 para. 1 of the Treaty on Mutual Assistance on Civil, Family and

Criminal Matters of 1966. The Bulgarian authorities were informed about the charges against the applicant, and they were asked to inform the Hungarian authorities about the outcome of their proceedings.

On 21 July 1993 the Békés Regional Prosecutor's Office terminated the applicant's detention on remand on the ground that the criminal proceedings against him had been "offered" to the Prosecutor General of the Republic of Bulgaria. On the same day the Hungarian police authorities issued a decision on the transfer (kiutasítás) of the applicant to Bulgaria as well as a prohibition of entry into the territory of Hungary until 2003. Furthermore, they ordered the applicant's detention with a view to his transfer to Bulgaria. The transfer was effected either on 21 or 22 July 1993.

It appears that the applicant was subsequently released by the Bulgarian authorities, and he was allegedly not prosecuted for the above-mentioned offences. The Hungarian authorities have not been informed by the Bulgarian authorities about the outcome of the proceedings against the applicant.

On 22 June 1995 the Department Supervising Criminal Investigations (Nyomozásfelügyeleti Foosztálya) at the Prosecutor General's Office quashed the decision of the Békés Regional Prosecutor's Office of 16 June 1992 which had confirmed the seizure of DM 9,000 and US$ 2,700 belonging to the applicant. The Department ordered that these sums, deposited with the Hungarian National Bank, be paid back to the applicant.

B. Relevant domestic law

1. Detention on remand

Detention on remand is governed by SS. 92 to 97 and SS. 379/A to 380 of the Hungarian Code of Criminal Procedure (1973. évi I. Törvény a Büntetoeljárásról).

S. 92 para. 1 provides as follows:

"Detention on remand of a person charged with a criminal offence can take place for crimes punishable with imprisonment, if

a. the person absconded, hid from the authorities, or, because of the severity of the crime or for other reasons there is a risk of his or her absconding;

b. there is a serious risk that the person would obstruct or render more difficult or endanger the proceedings if released;

c. the person committed a further crime, also punishable with imprisonment, during the proceedings, or there is a serious risk that he or she might complete the crime which he or she prepared or attempted to commit or that the person would commit another crime."

According to S. 93 para. 1 detention on remand is ordered by a court. As regards the competence of the different levels of courts to decide on prolongations of detention on remand, S. 95 provides that detention on remand, when ordered prior to the indictment, may last until the decision of the court in the preliminary proceedings before trial, up to a maximum of one month. Detention on remand can be prolonged by the District Court on one occasion, for two months at the most. After three months, detention on remand can be prolonged by a single judge of the Regional Court, on up to two occasions, but may not continue beyond one year after the remand order. Thereafter, the duration of detention on remand can only be extended by the Supreme Court.

S. 96 para. 1 provides that the authorities must aim at keeping the length of detention on remand as short as possible. If the person charged with a criminal offence is detained on remand the proceedings have priority. According to S. 96 para. 2, detention on remand must be immediately terminated when the reasons for it are no longer valid or if the period of it expires without extension.

S. 379/A provides that the court orders detention on remand upon the request of the prosecutor. The latter brings the suspect before the court and informs the defence counsel. The court then holds a hearing at which the prosecutor presents the evidence supporting the motion in writing or orally. The suspect and the defence counsel may make oral statements. The hearing can take place in the absence of the defense counsel. The prosecutor may make a motion to the court for the extension of the detention on remand five days before the expiry of the deadline of the current detention order. A suspect's motion for release is sent to the court via the prosecutor. The court holds a hearing when there are new circumstances necessitating it; otherwise decides without a hearing.

S. 379/B para. 1 states that the general rules on appeals against court decisions apply to appeals against court decisions ordering coercive measures unless provided otherwise in paragraphs 2 - 6. According to paragraph 2, the prosecutor, the suspect and the defence counsel may appeal against the decision of the court. If counsel was not present at the hearing, he may announce the appeal within three days as from the hearing. If the decision was taken in camera, there is a time-limit of three days as from the service of the decision concerned. Furthermore, S. 379/B para. 6 provides that the decision on the appeal is taken, within a period of five days, by a single judge at the Regional Court, if a District Court decision is concerned, and by a chamber of the Regional Court, if a decision taken by a single judge of the Regional Court is at issue.

According to S. 380 para. 2, if the Supreme Court has jurisdiction pursuant to S. 95 para. 1 to decide on the prolongation of the detention on remand ordered prior to the indictment, the Prosecutor General applies for the prolongation. Paragraph 2 provides that if the period of detention on remand as fixed by the Supreme Court has expired without and indictment having been filed, the Prosecutor General lodges a further application for prolongation of the detention on remand.

S. 393/A para. 1 provides that, if an accused resides abroad, the court, or, at the early stage of the proceedings, the prosecutor may, on the accused's request, authorise the proceedings to continue in the accused's absence on payment of a security.

At all stages of the proceedings, the accused is entitled to lodge any requests and comments, to request information from the authorities about his rights and obligations as under criminal procedure law, and to ask questions from any person heard at a court session, in accordance with S. 44 para. 5.

2. Seizure

According to S. 101 para. 1 the authority can seize any item which is a material evidence or which can be confiscated under the law or the possession of which is unlawful. S. 102 para. 1 provides that the seizure must be terminated immediately if it is no longer necessary in the interest of the proceedings. Paragraph 5 provides that the object which should otherwise be returned to the person charged with a criminal offence can be withheld for securing a monetary order.

3. Treaty on mutual legal assistance

S. 80 para. 1 of the Treaty on Mutual Assistance on Civil, Family and Criminal Matters between Hungary and Bulgaria provides that the Contracting Parties shall institute, upon the offer or upon the request of the other Contracting Party, criminal proceedings according to the provisions of their own law against their citizens, if there is a strong suspicion against them of having committed an offence in the territory of the requesting Contracting Party. S. 80/B of the Treaty provides that, if at the time, when the criminal procedure was offered, the suspect is held in custody or arrest, measures shall be taken for his/her transfer to the territory of the requested Contracting Party.

COMPLAINTS

1. The applicant complains under Article 5 para. 1 (c) of the Convention that his detention on remand was unlawful and not based on any reasonable suspicion against him.

2. Moreover, he complains under Article 5 para. 3 about the length of his detention on remand. He submits in particular that he was not released on bail in spite of the existence of the Treaty on Mutual Legal Assistance between Bulgaria and Hungary and in spite of his requests to that effect.

3. The applicant also submits that no court decision ordering his continued detention on remand was served upon him or his counsel after the expiry of the period of detention ordered by the Békés Regional Court on 24 July 1992. He does not invoke any particular provision of the Convention.

4. Furthermore, the applicant complains, without invoking a provision of the Convention, that the money seized by the Hungarian authorities during the criminal proceedings against him has not been returned to him.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 21 June 1993 and registered on 6 January 1994.

On 13 April 1994 the Commission decided to request specific information from the Government, pursuant to Rule 48 para. 2 (a) of the Rules of Procedure. This information was submitted by the respondent Government on 20 May 1994 and the observations in reply submitted by the applicant on 31 July 1994.

On 6 April 1995 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

Following an extension of the time-limit, the Government's written observations were received on 1 August 1996.

Following reminders, observations in reply to the Government's observations were submitted by the applicant's wife on 8 February 1996.

THE LAW

1. The applicant complains under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention that his detention on remand was unlawful and not based on any reasonable suspicion against him.

Article 5 para. 1 (Art. 5-1), as far as relevant, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
..."

The Commission notes that the applicant was arrested on 27 February 1992. His detention on remand was ordered by the Békéscsaba District Court on 2 March 1992, and prolonged on 27 March 1992. The applicant's detention on remand was further prolonged by the Békés Regional Court on 27 May and 24 July 1992, as well as by the Supreme Court on 30 September 1992 and 26 February 1993. Moreover, on 6 May 1993 the Békéscsaba District Court, referring to the Supreme Court's decision of 26 February 1993, dismissed the applicant's request for release. The applicant's detention on remand terminated on 21 July 1993.

a. The Commission recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party (cf. No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146).

The Commission observes that the applicant's complaint partly relates to events, i.e. his arrest and the early period of his detention on remand, which took place prior to 5 November 1992, which is the date of the entry into force of the Convention and of Protocol No. 1 with respect to Hungary.

It follows that the Commission is not competent ratione temporis to examine this part of the application.

b. As regards the applicant's continued detention on remand subsequent to 5 November 1992, the Commission recalls that, for deprivation of liberty to be lawful under Article 5 para. 1 (Art. 5-1), it must at any given moment fall within the categories of arrest or detention set out in sub-paragraphs (a) to (f) of that Article (Eur. Court H.R. Winterwerp judgment of 24 October 1979, Series A no. 33, p. 16, para. 37).

As regards the conditions laid down in Article 5 para. 1 (c) (Art. 5-1-c), the Government maintain that the applicant's continued detention on remand was "lawful" and was ordered in accordance with the procedure prescribed by Hungarian law. Moreover, having regard to the results of the police investigations and also the applicant's conduct in the course of the proceedings, there were sufficient reasons justifying the applicant's continued detention.

The applicant contradicts this view and argues in particular that there was no serious reason to suspect him of having committed any criminal offence. He claims that he did not commit any criminal offence and, in support, he points out that he was not prosecuted following his transfer to Bulgaria.

The Commission recalls that although it is not normally the task of the Convention organs to review the observance of domestic law by the national authorities, it is otherwise in relation to matters where, as here, the Convention refers directly back to that law; for, in such matters, disregard of the domestic law entails breach of the Convention with the consequence that the Convention organs can and should exercise a certain power of review. However, the logic of the system of safeguard established by the Convention sets limits on the scope of this review. It is in the first place for the national authorities, notably the courts, to interpret and apply the domestic law, even in those fields where the Convention "incorporates" the rules of that law: the national authorities are, in the nature of things, particularly

qualified to settle the issues arising in this connection (cf. Eur. Court H.R., Winterwerp judgment, 24 October 1979, Series A no. 33, p. 20, para. 46, Kemmache (no. 3) judgment of 24 November 1994, Series A no. 296-C, p. 87, para. 37).

In the present case, the applicant was detained in accordance with S. 92 para. 1 (a) and (b) and S. 379/A para. 1 of the Hungarian Code of Criminal Procedure. The deprivation of liberty in question therefore had a legal basis under Hungarian law.

Lawfulness further implies conformity with the substantive and the procedural rules of domestic law and also with the purpose of Article 5 (Art. 5), namely to protect individuals from arbitrariness (cf., Eur. Court H.R., Winterwerp judgment, cited above, p. 18, para. 39).

The Hungarian Supreme Court, when deciding to prolong the applicant's detention on remand, considered that there was a strong suspicion that the applicant had been involved in committing a currency offence and also the offence of receiving stolen goods. Furthermore, the Supreme Court considered that, having regard to the seriousness of the charges against the applicant, there was a serious risk of the applicant's absconding or obstructing the investigations. In this respect, the Supreme Court had regard to the applicant's attempt, in the course of his detention on remand, to establish contact with the other suspects detained on remand with a view to harmonise their statements. The Commission finds that this reasoning disclose neither abuse of authority nor arbitrariness. Consequently, there is no appearance that the applicant's detention on remand was not "lawful" within the meaning of Article 5 para. 1 (Art. 5-1).

As a second condition, Article 5 para. 1 (c) (Art. 5-1-c) requires that there was a reasonable suspicion of the arrested person having committed the offence, or offences, in question. The persistence of reasonable suspicion is a conditio sine qua non for the validity of the continued detention (cf. Eur. Court H.R., Letellier judgment of 26 June 1991, Series A no. 207, p. 18, para. 35).

The Commission recalls that it is not necessary to justify detention on remand that the reality and nature of the charges laid against the prisoner should be definitely proved, since this is the purpose of the official powers of investigation, and detention is designed to allow this process to proceed unhindered (No. 8118/77, Dec. 19.3.81, D.R. 25 p. 120; No. 10803/84, Dec. 16.12.87, D.R. 54 p. 38).

In the present case, the Supreme Court, both in its decisions of 30 September 1992 and 26 February 1993, referred to the reasoning of the earlier court decisions ordering the applicant's detention on remand and its continuation, respectively. In this respect, the Commission notes that the District Court, in its decision of March 1992, had ordered the applicant's detention on remand pursuant to S. 92 para. 1 (a) and (b) and S. 379/A para. 1 of the Hungarian Code of Criminal Procedure on the ground that, according to the police investigation, the applicant was suspected of having been involved in the attempted illegal export of a car from Hungary. The Supreme Court further took the results of the ensuing investigations into account, according to which there was a strong suspicion that the applicant and a further suspect had sold about sixty-eight cars which, partly stolen, they had imported from Italy and exported to Bulgaria. At an early stage of these investigations, the suspicion against the applicant, who had been arrested with the other suspects in the attempt of illegally exporting a car, had been confirmed by the statements of two of the other suspects. The illegal origin of this as well as of other cars as well as details regarding the identity of the suspects was established in the ensuing proceedings, inter alia in cooperation with Interpol Rome and Wiesbaden.

In these circumstances, the Commission considers that the Hungarian courts could reasonably suspect the applicant of having committed the criminal offences in question.

The applicant's submissions do not, therefore, disclose any appearance of a violation of his right under Article 5 para. 1 (Art. 5-1) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant further complains under Article 5 para. 3 (Art. 5-3) of the Convention about the length of his detention on remand.

Article 5 para. 3 (Art. 5-3) provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The Commission notes that the applicant was arrested on 27 February 1992 and released on 21 July 1993. His detention thus lasted altogether almost one year and five months. However, the applicant spent a first period of eight and a half months in detention on remand prior to the ratification of the Convention by Hungary on 5 November 1992. This period would, if considered alone, fall outside the scope of the Commission's considerations ratione temporis. Nevertheless, it must be taken into account when assessing the reasonableness of the subsequent period of the applicant's detention on remand (cf. mutatis mutandis Eur. Court H.R., Neumeister judgment of 27 June 1968, Series A no. 7, p. 37, para. 6; Ringeisen judgment of 16 July 1971, Series A no. 13, pp. 41-42, para. 101; Foti and others judgment of 10 December 1982, Series A no. 56, p. 18, para. 53; Pretto and others judgment of 8 December 1983, Series A no. 71, p. 14, para. 30).

The Commission recalls that it falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must examine all the circumstances arguing for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty (Eur. Court H.R., Toth judgment of 12 December 1991, Series A no. 224, p. 18, para. 67).

The persistence of a reasonable suspicion that the person arrested has committed an offence is a conditio sine qua non for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices: the Convention Organs must then establish whether the other grounds cited by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Convention Organs must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (Eur. Court H.R., Toth judgment, loc. cit.).

The Government submit that, considering the number of suspects, witnesses and experts heard as well as the international implications of the case which required the Hungarian authorities to obtain further information from abroad, the length of the applicant's detention on remand did not exceed a reasonable time. In this respect, the

Government refers to the difficulties in combatting international, organised crime, and in particular the illegal trade of stolen cars, in Central and Eastern Europe.

The applicant claims in particular that he should have been released on bail.

The Commission notes that the Hungarian courts, when ordering the applicant's continued detention on remand, found that there was a risk of his absconding and a danger of collusion.

The competent courts, when considering the risk of the applicant's evading trial, had regard to his situation as a foreigner without residence in Hungary and the seriousness of the charges against him. The Commission finds that the applicant's submissions do not contain any element to show that there was no danger of his absconding, even if released on bail.

As regards the danger of collusion, the Hungarian courts based themselves not only on the severity of the charges against him, but in particular on his conduct while detained on remand, namely his attempt to contact other suspects involved in the investigations and detained on remand (cf., Eur. Court H.R., Letellier judgment, loc. cit., p. 19, para. 43). The Commission considers that, while the particular event referred to by the judicial authorities occurred in March 1992, i.e. at the very early stage of the applicant's detention, there was sufficient reason to assume that, given the complexity of the investigations involving several persons suspected of being involved in organised international crime, there was a danger of collusion throughout the investigation proceedings, if the applicant were released.

With regard to the conduct of the competent national authorities, the Commission observes that the applicant had been apprehended on the occasion of one count of a currency offence. However, the ensuing investigations related to numerous suspects and other offences, including receiving of stolen cars, committed on an international level. These investigations necessitated extensive taking of evidence and also cooperation with foreign investigation authorities. The Commission recalls that the right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the judicial authorities to carry out their tasks with proper care (cf. Eur. Court H.R., Toth judgment, loc. cit., para. 77). In the present case, there is no indication that the Hungarian authorities did not act with all the necessary dispatch.

The Commission, weighing all circumstances, finds no reason to conclude that the length of the applicant's detention on remand exceeded a reasonable time. Accordingly, there is no appearance of a violation of Article 5 para. 3 (Art. 5-3) of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

3. The applicant also submits that no court decision ordering his continued detention on remand was served upon him or his counsel after the expiry of the period of detention ordered by the Békés Regional Court on 24 July 1992. He does not invoke any particular provision of the Convention.

This complaint might raise an issue under Article 5 para. 4 (Art. 5-4) of the Convention, according to which:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Government submit that the provisions of Hungarian law are in accordance with the requirements under Article 5 para. 4 (Art. 5-4), in particular that the applicant could, and in fact did, apply for his release.

The Commission notes that the Supreme Court decided to prolong the applicant's detention on remand on two occasions, namely in its decisions of 30 September 1992 and 26 February 1993. Having regard to the date of entry into force of the Convention with respect to Hungary, the Commission is competent ratione temporis to examine the applicant's complaint relating to the second of the above decisions.

The Commission observes that the applicant availed himself of the possibility, under the Hungarian Code of Criminal Procedure, to lodge, at any stage, a request for his release from detention on remand. This request was decided upon by the Békéscsaba District Court on 6 May 1993, and the applicant could have lodged an appeal. He was thus "entitled to take proceedings" before a court in order to test the lawfulness of his confinement within the meaning of Article 5 para. 4 (Art. 5-4) of the Convention.

In the proceedings concerning the prolongation of the applicant's detention, the Supreme Court determined the maximum possible period of detention on remand. In these proceedings, the Supreme Court rules on a request from the Prosecutor General and confines itself to setting out a framework regarding the accused's continued detention on remand. It does not therefore itself decide on the appropriateness or the necessity of keeping the accused in prison or releasing him, because it does not substitute its own assessment for that of the authority which has taken the decision. Nor does it undertake a review of the "lawfulness of the detention", in other words a review wide enough to bear on each of those conditions which are essential for detention to be lawful (see, mutatis mutandis, Eur. Court H.R., Toth judgment, loc. cit., p. 24, para. 87). These proceedings were conducted separately from and in addition to the proceedings which the applicant was entitled to take within the meaning of Article 5 para. 4 (Art. 5-4) of the Convention.

The proceedings before the Supreme Court concerning the prolongation of the applicant's detention therefore fall outside the scope of Article 5 para. 4 (Art. 5-4).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

4. Furthermore, the applicant complains, without invoking a provision of the Convention, that the money seized by the Hungarian authorities during the criminal proceedings against him has not been returned to him.

The Commission notes that on 3 June 1992 the Department of Investigation of the Regional Police of Békés seized 9,000 DM and 2,700 US$ which were found with the applicant's personal belongings deposited in the police station where he was detained. On 22 June 1995 the Department Supervising Criminal Investigations at the Prosecutor General's Office quashed the decision of the Békés Regional Prosecutor's Office of 16 June 1992 which had confirmed the seizure of 9,000 DM and 2,700 US $ belonging to the applicant, and ordered that these sums, deposited with the Hungarian National Bank, be paid back to the applicant. The applicant meanwhile obtained repayment of the sums concerned.

In these circumstances, assuming that continued seizure of the money found with the applicant's belongings in June 1992 raised an issue under the Convention or its Protocols which could be examined by

the Commission, the applicant can no longer claim to be a victim of such an alleged violation following the decision of 22 June 1995.

It follows that this part of the application is also inadmissible under Article 27 (Art. 27) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)