AS TO THE ADMISSIBILITY OF
Application No. 16704/90
by S.T.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 9 December 1991, the following members being present:

MM. J. A. FROWEIN, President of the First Chamber
F. ERMACORA
E. BUSUTTIL
A. S. GÖZÜBÜYÜK
H. DANELIUS
Sir Basil HALL
MM. C.L. ROZAKIS
L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
B. MARXER

Mr. M. de SALVIA, Secretary to the First 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 10 April 1990 by S.T. against Austria and registered on 11 June 1990 under file No. 16704/90;

Having regard to the observations submitted by the respondent Government on 11 January 1991 and the observations in reply submitted by the applicants on 18 April 1991;

Having regard to the Commission's decision of 9 April 1991 to refer the case to the First Chamber;

Having regard to the report provided for in Rule 47 of the Commisison's Rules of Procedure;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant, an Austrian citizen born in 1953, is a tap room assistant residing at Graz in Austria. Before the Commission he is represented by Dr. K. Hermann, a lawyer practising in Graz.

On 12 October 1985 the applicant introduced Application No. 11894/85 with the Commission in which he raised various complaints about the criminal proceedings in which he was involved. Under Article 6 para. 1 of the Convention the applicant complained inter alia of the length of these proceedings.

On 8 May 1989 the Commission declared admissible the applicant's complaints under Article 5 para. 3 of the Convention concerning the length of his detention on remand, and under Article 5 para. 4 of the Convention concerning proceedings before the Linz Court of Appeal. The remainder of the application was declared inadmissible. With regard to the complaint concerning the length of the proceedings, the Commission found that the length of the proceedings had not then exceeded the

notion of "reasonable" within the meaning of Article 6 para. 1 of the Convention.

On 3 July 1990 the Commission adopted its Article 31 Report on the case, finding violations of Article 5 paras. 3 and 4 of the Convention.

After the Commission's decision on the admissibility of Application No. 11894/85, the criminal proceedings in which the applicant was involved continued. The present application concerns the entire length of these proceedings.

I.

On 1 June 1984 the Salzburg Regional Court (Landesgericht) issued a warrant of arrest (Haftbefehl) against the applicant, who was then of unknown abode, on suspicion of having committed, inter alia, the offence of aggravated fraud (schwerer Betrug) according to Section 147 para. 3 of the Austrian Criminal Code (Strafgesetzbuch), together with a certain J. M. On 19 July 1984 the applicant was remanded in custody though he was released on 20 July 1984. On 24 August 1984, the Salzburg Regional Court issued an international search warrant (Steckbrief) against the applicant.

On 11 January 1985 at 23h00 the applicant was arrested at Graz airport where he was awaiting the arrival of a friend. The applicant was brought to the Feldkirchen constabulary. On 12 January 1985 he was heard by the investigating judge at the Graz Regional Court. On 17 January 1985 the applicant was transferred to Vienna and on 22 January 1985 to Salzburg. The co-accused J. M. was arrested on 17 December 1984.

On 23 January 1985 a judge at the Salzburg Regional Court heard the applicant. The applicant was informed that his detention on remand had been ordered on the grounds of a danger of absconding and of repetition according to Section 180 paras. 1 and 2 of the Code of Criminal Procedure.

In its decision of 23 January 1985 the Salzburg Regional Court ordered the applicant's detention on remand, inter alia, on suspicion of attempted and completed fraud according to Section 147 para. 3 of the Criminal Code. The Court stated that the applicant had previously attempted to avoid prosecution by changing his residence for which reason there was a danger that, if he remained at liberty, he would abscond or hide in view of the prospective punishment. The Court also saw a danger of repetition as the applicant was not socially integrated and without employment. For this reason, it was to be feared that he would commit further offences, with severe consequences, of the same kind as the ones in respect of which he had twice been convicted previously.

This decision was handed over to the applicant on 24 January 1985. He was heard by the investigating judge as to the reported facts (Anzeigetatbestände) on 25, 28, 29, 30 and 31 January and 1 February 1985. On 7 February 1985 the Swiss authorities announced their intention to prosecute the applicant.

On 15 February 1985 the applicant filed an application for his release from detention which the Review Chamber (Ratskammer) at the Salzburg Regional Court refused on 27 February 1985.

Meanwhile, on 19 February 1985, further investigations were instituted with regard to offences allegedly committed by the applicant in Switzerland. On 1 March 1985 the case-file was sent back from the Review Chamber to the investigating judge who was, however, on holiday until 15 April 1985. On 30 April 1985 the investigating judge heard the applicant with regard to the co-accused J. M. From 26 April to 1

May 1985 the applicant served a prison sentence relating to a different offence. On 15 May and 24 June 1985 the investigating judge requested information from two German banks.

On 19 June 1985, upon application of the investigating judge, the Linz Court of Appeal (Oberlandesgericht) decided in camera to allow an extension of the applicant's detention on remand for up to eight months as from 23 January 1985. The applicant filed an appeal against this decision which the Supreme Court (Oberster Gerichtshof) rejected as being inadmissible on 22 August 1985. The case-file was returned to the investigating judge on 11 September 1985.

On 12 September 1985 the applicant again applied for his release.

On 18 September 1985 the Linz Court of Appeal, upon application of the investigating judge, decided in camera that the applicant's detention on remand could be prolonged for up to 11 months.

On 24 September 1985 the Regional Court decided that the preliminary investigations instituted against the applicant should be extended also to the offence of arson (Brandstiftung) committed in Switzerland. The applicant's appeal (Beschwerde) against this decision was rejected on 2 October 1985 by the Review Chamber which found, inter alia, that the applicant had failed to motivate his appeal.

Upon termination of the preliminary investigations the case-file was sent to the Public Prosecutor's Office (Staatsanwalt- schaft) on 2 October 1985. The latter applied on 31 October 1985 for the continuation of the preliminary investigations in order to complete the case-file. These applications were granted on 7, 15 and 19 November 1985. The case-file was then transmitted to the Linz Court of Appeal on 3 December 1985 for decision on the prolongation of the applicant's detention.

On 11 December 1985, upon application of the investigating judge and the Public Prosecutor's Office, the Linz Court of Appeal extended in camera the applicant's detention on remand for up to fifteen months.

Following the requests of the applicant and J. M. for release from detention on remand the case-file was transmitted to the Review Chamber at the Salzburg Regional Court. On 2 January 1986 the Review Chamber dismissed the requests. The applicant's further appeal against this decision was dismissed in camera on 22 January 1986 by the Linz Court of Appeal.

Also on 2 January 1986 the applicant was heard by an investigating judge and confronted with a certain S. R. A final interrogation of the applicant took place on 22 January 1986.

A petition for release, which the applicant addressed to the Constitutional Court (Verfassungsgerichtshof), was dismissed by that Court as inadmissible in a decision issued on 28 February 1986.

II.

Meanwhile, on 26 February 1986 the preliminary investigations were closed and on 12 March 1986 the Salzburg Public Prosecutor's Office indicted the applicant on the grounds of partly attempted and partly completed aggravated professional fraud according to Section 147 para. 3 of the Criminal Code, as well as of having forged a particularly protected document.

According to the bill of indictment, which numbered seventeen pages, the applicant had drawn a number of cheques on various banks in Germany and Austria and given them to Ch.B. and J.M. to cash them in other banks in these countries. The bill of indictment mentioned the

applicant's previous two convictions on charges of fraud and of receiving stolen goods, respectively, and stated that he was being sought in the Federal Republic of Germany for nineteen instances of cheque fraud. It referred to damages of 950,000 AS concerning completed fraud and 1,250,000 AS concerning attempted fraud. In the bill of indictment the Public Prosecutor's Office stated that further investigations would be pursued in respect of the suspicion of arson and other instances of aggravated professional fraud.

The applicant's objection against the bill of indictment was dismissed, on 11 April 1986, by the Linz Court of Appeal which found that the results of the investigations sufficed to suspect the applicant of having committed the alleged offences, and it therefore committed the applicant for trial.

In a separate decision of 11 April 1986, upon application of the investigating judge, the Court of Appeal extended in camera the applicant's detention on remand for up to seventeen months in view of the volume and difficulties of the investigations.

On 30 April 1986 the case-file was transferred to the trial judge who on 23 May 1986 ordered the hearing to take place on 11 June 1986. On 5 June 1986 the applicant's lawyer stated that he would no longer represent the applicant after 11 June 1986.

The applicant's trial commenced, and a first hearing took place on 11 June 1986. Thereafter, the hearing was adjourned. Also on 11 June 1986, an official defence counsel was appointed.

On 16 June 1986 the applicant requested his release from detention, claiming that he had permanent residence in Austria and confirmation of secure employment. This request was dismissed on 25 June 1986 by the Salzburg Regional Court and upon appeal on 9 July 1986 by the Linz Court of Appeal.

On 24 July 1986 the Salzburg Regional Court contacted the Vienna Regional Court as to the date of release of Ch. B. On 29 July 1986 a German court was requested to transmit a decision which arrived on 18 August 1986.

Meanwhile, on 25 July 1986 the applicant filed a further request to be released from detention which was dismissed by the Salzburg Regional Court on 30 July 1986 and, upon the applicant's appeal, by the Linz Court of Appeal on 20 August 1986.

On 22 September 1986 letters rogatory (Rechtshilfeersuchen) were transmitted to the Swiss Federal Office for the Police and to a German court in respect of the witness D. The file was then sent to a forensic expert who prepared an expert opinion in respect of J. M. on 8 October 1986.

The Salzburg Regional Court again decided in camera on 12 November 1986 not to release the applicant. On 26 November 1986 the Linz Court of Appeal rejected the applicant's appeal.

Meanwhile, on 12 November 1986 the applicant unsuccessfully attempted to discharge his officially appointed lawyer. On 17 November 1986 the applicant complained that no date had been fixed for a hearing. This complaint was to no avail, as the authorities were awaiting evidence from Germany. On 3 December 1986 a German court transmitted further evidence to the Austrian authorities as to the witness D.

Following the applicant's complaints about his officially appointed lawyer, the Bar Association stated on 16 December 1986 that they saw no reason to appoint a new lawyer.

On 12 and 16 December 1986 the trial judge requested the Dornbirn and Bregenz Constabularies to provide the addresses of Ch.B. and S. R. A similar request in respect of Ch. B. was filed with the Salzburg Federal Police Direction on 22 January 1987.

On 31 December 1986 the applicant filed a request to be released from detention on remand. This was refused by the Review Chamber at the Salzburg Regional Court on 21 January 1989.

On 28 January 1987 the Review Chamber refused the applicant's further request of 21 January for release from detention. However, upon the applicant's appeal the Linz Court of Appeal decided on 18 February 1987 to release the applicant on conditions, inter alia, that he reported every two days to the police. The applicant was released on the same day and not remanded in custody again during these proceedings.

On 4 March 1987 the Linz Court of Appeal dismissed the request of the Salzburg Regional Court to prolong J. M.'s detention on remand up to eight months. J. M. was released from detention on 12 March 1987.

On 6 April 1987 the Graz Federal Police Direction informed the Salzburg Regional Court that the applicant was complying with the obligation regularly to report to the police.

On 19 June 1987 the applicant filed a request no longer to have to report to the police. On 23 June 1987 the request was transmitted for observations to the Salzburg Public Prosecutor's Office which on 26 June 1987 stated that it opposed complete termination of the obligation to report, though it agreed to an obligation to report once a week only.

On 2 July 1987 the investigating authorities obtained further information concerning the applicant.

On 23 July 1987 the President of the Salzburg Regional Court decided that the applicant now had to report weekly to the police. The applicant's appeal against this decision was declared inadmissible by the Linz Court of Appeal on 9 September 1987. Nevertheless the Court found that the decision of 23 July 1987 had not been passed by the correct body for which reason it quashed the decision while ordering a bench of three judges to take the decision.

On 30 September 1987 a bench of three judges at the Salzburg Regional Court again reached the same conclusion as in the decision of 23 July 1987. The applicant's appeal was declared inadmissible on 4 November 1987 by the Linz Court of Appeal.

Meanwhile, on 9 July 1987 the Salzburg Public Prosecutor's Office indicted the applicant in respect of further instances of fraud. The bill of indictment which numbered nine pages stated that the applicant had, together with a certain S. R., attempted fraudulently to cash uncovered cheques, whereby the damages amounted to approximately 800,000 AS. The offences concerned banks in Germany, Austria and Switzerland. The bill of indictment was sent to the applicant on 17 July 1987. The applicant's appeal against the indictment of 9 July 1987 was dismissed by the Linz Court of Appeal on 30 September 1987. On 27 October 1987 these proceedings were joined to the main proceedings.

On 2 November 1987 the Salzburg Public Prosecutor's Office requested the trial to be fixed as soon as possible.

On 12 February 1988 the applicant requested photocopies of certain documents.

On 22 February 1988 further trial hearings before the Salzburg Regional Court were fixed for 25 and 26 May 1988. The photocopies were sent to the applicant.

On 24 February 1988 the Court was informed that the summons to the trial of the witnesses Ch. B. and S. R could not be served. On 10 March 1988 the Court asked the Feldkirch authorities whether Ch. B. had an address. On 14 March 1988 the Court was informed that Ch. B.'s address was unknown.

On 15 March 1988 the further witness M. D. informed the Salzburg Regional Court that she would be abroad and could therefore not be present at the trial hearing.
On 17 March 1988 the Bregenz authorities informed the Salzburg Regional Court of the new address of S. R. The Court was further informed that the witness Ch. B. was detained in Feldkirch awaiting extradition to, and that another witness G.D. was remanded in custody in, the Federal Republic of Germany.

Upon the Salzburg Regional Court's further inquiry of 18 March 1988 information was received by telephone on 18 April 1988 that Ch. B. was now detained at Feldkirch prison. The Salzburg Regional Court then requested Ch. B.'s presence (Vorführung) at the trial hearing.

On 18 May 1988 the Salzburg Regional Court filed a letter rogatory with the Aschaffenburg District Court (Amtsgericht) in the Federal Republic of Germany as to whether the witness G.D. would agree to come to Salzburg for questioning. The District Court replied that G. D. would not agree.

The hearing took place on 25 and 26 May 1988, the minutes of the hearing eventually comprising 87 pages.

On 26 May 1988 the Salzburg Regional Court convicted the applicant of aggravated fraud and of forgery and sentenced him to four and a half years' imprisonment. The periods of time which the applicant had spent in detention in connection with the present proceedings were deducted from the sentence, namely the period from 19 to 20 July 1984, from 11 January to 26 April 1985, and from 1 May 1985 to 18 February 1987. In the same decision, the Court sentenced J. M. conditionally to three years' imprisonment. Following the judgment the applicant announced that he would file a plea of nullity (Nichtigkeitsbeschwerde) and an appeal (Berufung). The Public Prosecutor's Office also announced that it would file an appeal.

On 17 June 1988 the applicant announced his representation by the present lawyer.

On 18 July 1988 the applicant requested the transmission of the case-file to the Graz District Court (Bezirksgericht) for consultation. He also requested a copy of the minutes of the hearing to be sent to his lawyer. The applicant repeated this request on 16 September 1988.

On 19 September 1988 the case-file was transmitted to the Graz District Court. It was returned to the Salzburg Regional Court on 7 October 1988.

On 14 March 1989 the applicant filed a request temporarily to suspend the obligation to report weekly to the police in order to participate in the hearing before the Commission in Strasbourg in Application No. 11894/85. Following a first examination of the request by the Public Prosecutor's Office on 23 March 1989, the applicant's lawyer was requested on 30 March 1989 to submit a copy of the Commission's invitation for the hearing, and to explain whether the applicant's personal appearance before the Commission would be necessary.

The applicant's lawyer submitted the necessary documents on 3 April 1989; she also stated that the applicant's presence at the hearing would be desirable but was not imperative.

On 5 April 1989 the case-file was transmitted to the Federal Ministry of Justice for the preparation of the hearing on 8 May 1989. It was returned to the Salzburg Regional Court on 14 April 1989.
On 21 April 1989 the Salzburg Regional Court temporarily suspended the applicant's obligation to report to the police in order to enable him to participate in the hearing before the Commission in Strasbourg.

On 23 May 1989 the Graz Federal Police Direction informed the Salzburg Regional Court that after the hearing the applicant had immediately returned to Graz and reported to the police on 9 May 1989.

The reasons of the judgment, numbering 69 pages, were served on the applicant on 1 June 1989.

III.

On 15 June 1989 the applicant filed a plea of nullity and an appeal to the Austrian Supreme Court (Oberster Gerichtshof). In his plea of nullity, the applicant complained, inter alia, that certain witnesses had not been heard, that the reasons of the judgment of 26 May 1988 were incomplete and contradictory, and that the evidence compiled had been incorrectly assessed. In his appeal he requested a reduction of the sentence.

On 4 July 1989 a bank acting as private party to the proceedings filed a statement on the applicant's appeal and plea of nullity. On 5 July 1989 the various remedies were brought before the Supreme Court.

The Supreme Court dismissed the applicant's plea of nullity on 14 September 1989 and transferred the appeal for decision to the Linz Court of Appeal.

On 3 October 1989 the applicant requested termination of the obligation to report to the police. On 9 October 1989 the Public Prosecutor's Office opposed this request in view of the prison sentence imposed on the applicant.

On 18 October 1989 the Salzburg Regional Court dismissed the applicant's request.

On 23 October 1989 the Linz Court of Appeal, after conducting an appeal hearing, partly upheld the applicant's appeal. It considered mitigating circumstances and also "the long period of time since the offence" ("die lange Zeit seit der Tat") and the applicant's good conduct since his release and reduced his previous sentence to four years. The reasons of the appeal decision, numbering five pages, were served on the applicant on 22 November 1989.

IV.

On 17 November 1989 the Salzburg Regional Court ordered the applicant within a month to commence serving the remaining prison sentence amounting to one year, ten months, twenty seven days and seventeen hours.

Upon the applicant's further request, the Regional Court on 16 May 1990 changed this prison sentence for a probation period of three years into a conditional one in view of the fact that the applicant had already served half the sentence.

COMPLAINTS

The applicant now complains under Article 6 para. 1 of the Convention of the length of the entire proceedings. He refers in particular to the preliminary investigations which lasted one year, to the trial which on 11 June 1986 was adjourned for two years, and to the delay of one year for the preparation of the written reasons of the judgment of 26 May 1988.

With regard to the delay in the preparation of the written reasons of the judgment, the applicant also relies on Article 5 para. 3 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 10 April 1990 and registered on 11 June 1991.

On 10 October 1990 the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits of the application.

The Government's observations were received by letter dated 11 January 1991 and the applicant's observations were dated 18 April 1991.

On 9 April 1991 the Commission decided to refer the application to the First Chamber.

THE LAW

1.The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention of the length of the criminal proceedings in which he was involved, in particular of the delay in the preparation of the written reasons of the judgment.

The Commission has examined these complaints under Article 6 para. 1 (Art. 6-1) of the Convention which states, insofar as relevant:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

2. The applicant submits that he can claim to be a victim of a violation of the Convention as regards the length of the proceedings. In his view, it cannot be said that the violation has been redressed on the national level.

The Government submit that the applicant cannot claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention. Reference is made to the fact that on 23 October 1989 the Linz Court of Appeal reduced the applicant's sentence, and that eventually the remaining prison sentence was changed for a probation period of three years to a conditional one.

Under Article 25 para. 1 (Art. 25-1) of the Convention the Commission may only deal with an application where a person "(claims) to be the victim of a violation by one of the High Contracting Parties of the rights set forth in (the) Convention". The Commission recalls that in cases such as the present one the person aggrieved ceases to be a victim when the national authorities admit a breach of Article 6 para. 1 (Art. 6-1) of the Convention and furthermore grant redress therefor (see Eur. Court H.R., Eckle judgment of 15 July 1982, Series

A no. 51, p. 31, para. 67).

In the present case the Commission notes that the Linz Regional Court in its decision of 23 October 1989 justified reduction of the applicant's prison sentence by referring to "the long period of time since the offence". However, in the Commission's opinion this cannot be taken as amounting to a finding that the Regional Court acknowledged a breach of Article 6 para. 1 (Art. 6-1) of the Convention. The Commission need not therefore further examine whether adequate redress was granted.

It follows that the applicant can still claim to be a victim within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention.

3. The applicant submits that the present application differs from Application No. 11894/85 which concerned primarily the length of his detention on remand and the fairness of proceedings before the Linz Court of Appeal.

The applicant further submits that the remedies which he filed in order to make use of his rights of defence cannot be regarded as the reason for the length of the proceedings. It would have been possible for the authorities to prepare photocopies of the file. The fact that the case-file was transferred to Graz from 19 September until 7 October 1988 can also not explain the length of the proceedings.

The Government submit that the applicant's present complaint concerning the length of criminal proceedings has already been dealt with by the Commission in its decision of 8 May 1989 as to the admissibility of Application No. 11894/85. In the Government's opinion, therefore, the application is substantially the same as Application No. 11894/85 within the meaning of Article 27 para. 1 (b) (Art. 26-1-b) of the Convention. The Government further submit that the Linz Court of Appeal gave its decision on 23 October 1989, i.e. six months after the Commission's decision on 8 May 1989, and seventeen months after the judgment of the Salzburg Regional Court of 26 May 1988. It cannot therefore be said that the period under examination became substantially longer.

The Government further recall that in its previous decision concerning Application No. 11894/85 the Commission considered that the case raised complex issues. In this respect the Government emphasise that the judgment of 26 May 1988 comprised 69 pages. With regard to the period after 26 May 1988 the Government submit that delays occurred as the case-file had to be transmitted to Graz for consultation by the applicant's lawyer. Moreover, the applicant's request provisionally to suspend his obligation to report to the police in order to participate in the hearing before the Commission in Strasbourg also contributed to the delay.

The Commission recalls that in its previous decision concerning Application No. 11894/85 it examined the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention concerning the length of the criminal proceedings in which the applicant was involved. At that time the proceedings were still pending before the Austrian courts. As a result the Commission on 8 May 1989 declared that part of the application inadmissible as at that stage being manifestly ill-founded. Insofar as the present application concerns the same period it would therefore be substantially the same as the previous application within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Although the facts of the present application partly relate to the period taken into consideration in the previous application, the Commission is now confronted with a different period of time. In particular, the Commission is called upon to examine whether the entire set of the criminal proceedings instituted against the applicant,

including the delivery of the judgment and the plea of nullity and appeal proceedings, complied with the requirements under Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission, having regard to the parties' submissions under Article 6 para. 1 (Art. 6-1) of the Convention, considers that these complaints raise serious issues of fact and law which require an examination of the merits. The application cannot now be declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the First Chamber — President of the First Chamber

(M. de Salvia) — (J.A. FROWEIN)