AS TO THE ADMISSIBILITY OF

Applications Nos. 20231/92,
20545/92, 23117/93 and 23223/94
by W. S.
against Switzerland

The European Commission of Human Rights (Second Chamber) sitting in private on 28 June 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Ms. M.-T. SCHOEPFER, 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 applications introduced on 14 May 1992, 18 August 1992, 20 September 1993 and 30 December 1993 by W. S. against Switzerland and registered on 26 June 1992, 25 August 1992, 17 December 1993 and 10 January 1994 under files Nos. 20231/92, 20545/92, 23117/93 and 23223/94;

Having regard to:

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

- the observations submitted by the respondent Government on 31 October 1994 and the observations in reply submitted by the applicant on 2 December 1994;

- the further observations submitted by the applicant on 13 April 1995 and the reply thereto by the Government on 22 May 1995;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant, born in 1942, is a Swiss national who was detained at the Etablissement de la Plaire de l'Orbe in Switzerland; currently, he is at large. He is represented by Ms. B. Hug, a lawyer practising in Zurich.

A. Particular circumstances of the case

Application No. 20231/92

On 2 November 1984 the investigating judge (Untersuchungsrichter) of the Ering and Gundis Districts in the Canton of Valais issued a warrant of arrest against the applicant on suspicion of theft of a car. The preliminary investigations against the applicant were eventually extended to over 100 offences, inter alia theft and robbery.

On 31 August 1985 a certain R. was arrested. Subsequently, R. incriminated the applicant as having been an accomplice. Following R.'s statements, investigations were undertaken in Italy which proved unsuccessful.

On 5 March 1986 the applicant was arrested in Lausanne in Switzerland. On 12 March 1986 the investigating judge of the Ering and Gundis Districts ordered his detention on remand. On the same day the investigating judge addressed a circular to all Swiss banks which referred to the offences of which the applicant and R. were suspected.

In the ensuing proceedings the applicant refused to express himself on the charges brought against him.

Upon the request of the District Prosecutor (Bezirksanwaltschaft) of the Canton of Zurich, the applicant was brought to Zurich on 5 November 1986 in order to be confronted with a witness. As from 6 November 1986 the applicant was detained at Regensdorf prison in the Canton of Zurich where he served the remainder of a sentence of initially eight and a half years' imprisonment pronounced by the Zurich Court of Appeal (Obergericht) in 1972.

On 22 February 1988 the applicant escaped from Regensdorf prison. He was later convicted of having committed armed robbery and other offences in the Canton of Jura. An international warrant of arrest was issued against him in respect of the proceedings in the Canton of Valais. On 30 June 1989 he was arrested in La Gomera on the Canary Islands, and on 23 January 1990 he was extradited to Switzerland where he was subsequently remanded in custody in the Canton of Valais.

On 1 March 1990 the applicant was confronted with the co-accused R. who denied having committed a criminal offence with the applicant. R.'s statements, made in Italian, were not translated. The applicant unsuccessfully filed two requests for a renewed confrontation in the presence of an interpreter.

On 29 May 1990 the authorities of the Canton of Jura instituted criminal proceedings against the applicant on suspicion inter alia of theft and robbery.

On 28 July 1990 the applicant filed with the investigating judge of the Ering and Gundis Districts an application for release from detention on remand. On 6 September 1990 he complained to the Valais Cantonal Court (Kantonsgericht) about the delay in the examination of his application. His application for release was dismissed by the investigating judge on 10 September 1990 and, upon appeal, by the Cantonal Court on 22 October 1990.

The applicant then filed a public law appeal (staatsrechtliche Beschwerde) with the Federal Court (Bundesgericht).

Meanwhile, on 22 November 1990 the investigating judge informed the Federal Court that the applicant had on the same day been transferred to the Canton of Jura. However, on 20 December 1990 the Indictment Chamber of the Cantonal Court of the Canton of Jura decided to adjourn the proceedings against the applicant in order to clarify issues arising from the applicant's extradition, in particular its extension to the proceedings in the Canton of Jura. On 29 December 1990 the applicant was again transferred to the Canton of Valais.

On 9 January 1991 the Federal Court partly dismissed the applicant's public law appeal insofar as it concerned the length of his detention on remand. The Court agreed in particular with the investigating judge and the Cantonal Court that there was a serious suspicion that the applicant had committed the offences at issue, and that the danger of his absconding had clearly been established as he had escaped seven times since 1972. Insofar as R. had stated that he had not committed the offences together with the applicant, the Court noted that the applicant was renowned for changing his appearances. The Federal Court further found that detention on remand of so far 25 months was not yet excessive if compared with the sentence which the applicant might expect. Nevertheless the Court advised the cantonal authorities to speed up the investigation.

On the other hand, the Court upheld the applicant's public law appeal in respect of his complaint under Article 5 para. 4 of the Convention, namely that whereas the applicant had filed his application for release from detention on 28 July 1990, the investigating judge had only dealt with it on 10 September 1990. However, this breach of Article 5 para. 4 of the Convention did not in the Court's view imply that the applicant's detention was unlawful, since it had just upheld the reasons therefor, namely the suspicion of having committed an offence and the danger of absconding.

On 15 February 1991 the investigating authorities questioned the applicant.

On 25 February 1991 the investigating judge of the Ering and Gundis Districts requested the Spanish authorities to extend the extradition of the applicant to further offences.

On 4 August 1991 the applicant filed his second application for release which the investigating judge of the Ering and Gundis Districts dismissed on 8 August 1991. The decision was served on the applicant on 20 August 1991. On 21 August 1991 the applicant filed an appeal with the Cantonal Court. While his appeal was pending, the applicant was transferred on 30 August 1991 to the Canton of Jura. On 13 September 1991 the Cantonal Court of the Canton of Valais dismissed the applicant's appeal as it was no longer competent to examine his applications for release from detention. The decision was served on the applicant on 27 September 1991.

On 28 October 1991 the applicant filed a public law appeal with the Federal Court in which he complained that there had been no speedy decision by a court on his application for release from detention, and of a breach of his right to be tried (Aburteilung) within a reasonable time.

While the public law appeal was pending, the investigating judge of the Canton of Jura decided on 12 November 1991 to suspend the applicant's detention on remand in the Canton of Jura, whereupon the applicant was again transferred to the Canton of Valais.

The Federal Court dismissed the applicant's public law appeal on 27 November 1991. It found that detention on remand of so far 33 months was justified and that a period of 22 days, i.e. from 22 August until 13 September 1991, for the examination of his application for release complied with the requirements under the Convention. In this respect the Court noted in particular that the applicant was himself responsible for the fact that the decision of 8 August 1991 was only served on him on 20 August 1991.

In its decision the Federal Court further admonished the authorities of the Canton of Valais that they should avoid any further delay, if necessary not await further information from the Spanish authorities, and conclude the criminal proceedings as soon as possible (die Behörden aber gleichwohl alles daran setzen sollten, damit das Strafverfahren im Kanton

Valais so rasch als möglich zum Abschluss gebracht werden könne).

Application No. 20545/92

On 24 December 1991 the investigating judge wrote to the Federal Office of Police Affairs (Bundesamt für Polizeiwesen), asking the Office to intervene with the Spanish authorities in respect of his request to extend the extradition to further offences. On 3 February 1992 the investigating judge wrote directly to the Swiss ambassador in Madrid who in his reply of 10 February referred to delays on the part of the Spanish authorities.

The applicant's third application for release, filed on 1 May 1992, was dismissed by the investigating judge of the Ering and Gundis Districts on 5 May 1992. On 22 May 1992 the Cantonal Court of the Canton of Valais dismissed the applicant's further appeal.

On 22 May 1992 the investigating judge fixed a time-limit of 60 days for the Public Prosecutor's Office and the applicant to provide supplementary evidence (Beweisergänzung); he referred in particular to delays on the part of the Spanish authorities, and recalled that the time-limit only concerned those 105 offences in respect of which extradition had been authorised.

The applicant filed a public law appeal in which he again complained that there had been no speedy decision by a court on his application for release from detention, and that his right to be tried within a reasonable time had been breached.

Meanwhile, on 1 June 1992 the applicant attempted to commit suicide; he also refused to drink and eat. On several occasions he was brought to the medical department of the prison.

On 31 July 1992 the Federal Court dismissed the applicant's public law appeal. The Court found that both the investigating judge and the Cantonal Court had examined his application for release with sufficient speed. The Federal Court noted in particular the steps undertaken by the investigating judge between 24 December 1991 and 22 May 1992. Moreover, the length of the applicant's detention on remand did not yet correspond to the expected length of sentence if the applicant was convicted. However, the Court noted a certain delay in respect of investigations conducted by the Spanish authorities. The decision continues:

<Translation>

> "At present it cannot yet be said that there is a breach of the right enshrined in Article 5 para. 3 and Article 6 para. 1 of the Convention to a trial within a reasonable time. However, it must be emphasised that the investigation must now be brought to an end without delay, and regardless of the decision of the Spanish authorities as to the extension of the extradition. ... Should the investigations not be concluded until the end of September 1992, the question could then be asked in the light of the obligation to accelerate proceedings whether the length of detention must not be considered as being excessive."

<German>

> "(Es) kann im heutigen Zeitpunkt noch nicht gesagt werden, der in Art. 5 Ziff. 3 und 6 Ziff. 1 EMRK vorgesehene Anspruch auf Aburteilung innerhalb einer angemessenen Frist sei verletzt. Es ist jedoch festzuhalten, dass die Untersuchung nun unverzüglich zum Abschluss gebracht werden muss, und zwar ohne Rücksicht auf den Entscheid der spanischen Behörde über die Ergänzung der Auslieferung. ... Sollte das Untersuchungsverfahren nicht bis Ende September 1992 abgeschlossen sein, so könnte sich dannzumal die Frage stellen, ob die Haftdauer unter dem Gesichtspunkt des

Beschleunigungsgebots nicht als übermässig bezeichnet werden müsste."

Meanwhile the Indictment Chamber (Anklagekammer) of the Cantonal Court of the Canton of Jura committed the applicant to trial. The applicant then filed a request (Gesuch), in the last resort before the Federal Court, to join the proceedings before the Cantons of Valais and of Jura and to conduct them before the authorities of the Canton of Jura.

The Federal Court dismissed the request on 1 September 1992, finding that a joinder would prolong the proceedings pending in the Canton of Jura.

Application No. 23117/93

On 10 September 1992 the investigating judge of the Ering and Gundis Districts terminated the investigations and on 16 September 1992 the Public Prosecutor filed the indictment.

On 22 September 1992 the President of the Ering and Gundis District Court invited the applicant to submit before 15 October 1992 any evidence which he wished to produce at the trial which was provisionally fixed for 16 and 17 November 1992.

On 4 October 1992 the applicant requested prolongation of the time-limit and adjournment of the trial in view of the trial in the Canton of Jura scheduled for November 1992. The applicant also filed his fourth application for release from detention. The application for release from detention was dismissed on 6 October 1992 by the President of the District Court and on 17 November 1992 by the Cantonal Court of the Canton of Valais.

The applicant then filed a public law appeal with the Federal Court, raising complaints under Articles 5 para. 1 and 6 para. 1 of the Convention.

Meanwhile, on 30 October 1992 the applicant was transferred to the Canton of Jura where on 30 November 1992 the Jura Criminal Court sentenced him to 12 years' imprisonment inter alia for robbery and theft. The applicant filed an appeal against this judgment to the Court of Cassation of the Cantonal Court. In his appeal he also challenged all the judges of the Court of Cassation as a result of which an extraordinary court was constituted.

As from 31 December 1992 the applicant was again remanded in custody in the Canton of Valais.

The trial before the Ering and Gundis District Court was eventually fixed for 29 March 1993.

On 9 February 1993 the Federal Court dismissed the applicant's public law appeal. It considered that so far the applicant's detention had lasted 45 months, if the seven months spent in detention in Spain awaiting extradition were included. On the other hand, it was not necessary to consider whether the further five months spent in detention in the Canton of Jura had to be taken into consideration, as claimed by the applicant, because even a period of 50 months was not yet excessive.

The Federal Court referred here in particular to the judgment of the European Court of Human Rights in the case of W. v. Switzerland (Eur. Court H.R., judgment of 26 January 1993, Series A No. 254), in which the opinion expressed by the Commission in its Report of 10 September 1991 (ibid. pp. 30 et seq.) had not been confirmed. It could not yet be said that the length of detention came close to the sentence to be expected. Moreover, the investigating judge had indeed complied with the time-limit of September 1992 fixed in the Federal Court's decision of 31 July 1992. While certain delays had occurred, these could be explained by the fact

that the investigating judge had awaited the decision of the Spanish authorities to deal with a request to extend the scope of the extradition before closing the investigation. The decision continued:

<Translation>

> "If it is considered that the case is complex, that the applicant refused from the beginning to make a statement, that particularly in the final stages the investigating judge very much tried to speed up the proceedings, and that the trial has meanwhile been fixed for 29 March 1993, it cannot be said that the detention at issue is excessive."

<German>

> "Wird berücksichtigt, dass es sich um eine komplexe Sache handelt, dass der Beschwerdeführer von Anfang an die Aussage verweigerte, dass sich der Instruktionsrichter vor allem in der letzten Phase sehr darum bemühte, das Verfahren speditiv voranzutreiben, und dass die Hauptverhandlung nun auf den 29. März 1993 angesetzt ist, so kann die hier in Frage stehende Haft nicht als übermässig bezeichnet werden."

The trial was held on 29 March 1993 and lasted six hours.

On 31 March 1993 the Ering and Gundis District Court convicted the applicant of over 100 offences, inter alia robbery, theft and damage to property, and sentenced him to 13 years' imprisonment. The judgment, mentioning 23 private parties, numbered 98 pages. In view of the conviction by the Jura Criminal Court which had not yet become final, the sentence was pronounced subject to Section 350 of the Penal Code. According to this provision, if a person is convicted of different offences by different courts, the court which has pronounced the most severe punishment shall determine the entire punishment (Gesamtstrafe).

The applicant appealed against this judgment to the Cantonal Court of the Canton of Valais.

On 24 June 1993 the applicant filed his fifth application for release from detention with the Cantonal Court. It was dismissed on 5 July 1993 by the President of the Cantonal Court.

Against this decision the applicant filed a public law appeal with the Federal Court on 4 August 1993. He contested in particular that there was a serious suspicion of his having committed the offences since the former co-accused and witness R. had clearly stated that he, R., had not committed any criminal offences together with the applicant.

On 24 August 1993 the Federal Court dismissed the applicant's appeal. It found that in view of the applicant's conviction the cantonal authorities could reasonably suspect the applicant of having committed the offences at issue. With reference to its decision of 9 February 1993 the Court found no indication that the Ering and Gundis District Court had delayed the proceedings, in particular the trial and the conviction.

Application No. 23223/94

On 29 October 1993 the applicant asked the Cantonal Court of the Canton of Valais to fix a date for the appeal hearing. On 2 November 1993 the Cantonal Court decided to adjourn the appeal hearing until the Court of Appeal of the Canton of Jura had ruled on the applicant's appeal against the conviction of 30 November 1992.

On 9 November 1993 the applicant filed his sixth application for release with the Cantonal Court. On 19 November 1993 he filed a complaint with the Federal Court about a delay in the decision of the Cantonal Court. On 24 November 1993 the Cantonal Court of the Canton of

Valais dismissed his request.

His public law appeal of 27 November 1993, in which he complained under Article 5 para. 3 of the Convention of the length of his detention, and under Article 6 para. 1 of the Convention of the length of the proceedings, was dismissed by the Federal Court on 21 December 1993. The Court noted that Article 5 para. 3 of the Convention no longer applied to the applicant's detention as he had been convicted in first instance. On the other hand, the Court found that the adjournment of the appeal proceedings before the Cantonal Court could make the length of the applicant's detention excessive and it held that detention would have to be terminated if no date for the appeal hearing was fixed ("dit que la détention préventive devra être levée si la date des débats de la Ire Cour pénale n'est pas fixée sans délai"). In respect of the applicant's complaint under Article 5 para. 4 of the Convention the Court found that the period of thirteen days, commencing on the day when the applicant's application for release of 9 November 1993 was received and ending on 24 November 1993 when the Cantonal Court decided, was not excessive.

Subsequent Developments

The appeal hearing before the Cantonal Court of the Canton of Valais took place on 30 May and 1 June 1994.

On 1 June 1994 the Cantonal Court pronounced its judgment. It partly upheld the applicant's appeal in that he was acquitted of certain offences, inter alia of damage to property. On the other hand, the Court convicted him of altogether 95 offences and sentenced him to 10 and a half years' imprisonment, the detention on remand to be deducted therefrom.

On 7 September 1994 the applicant filed a public law appeal (staatsrechtliche Beschwerde, recours en droit public) with the Federal Court in which he complained inter alia of a breach of his right to a fair hearing, of the arbitrary application of cantonal law, and of the arbitrary appreciation of evidence. He also requested his release from detention on remand. The applicant furthermore filed a plea of nullity (Nichtigkeitsbeschwerde, pourvoi en nullité).

On 17 November 1994 the Federal Court dismissed the public law appeal in a judgment numbering 33 pages. On the same day it also dismissed the applicant's plea of nullity.

The applicant's request for the reopening of the Federal Court proceedings was dismissed by the Federal Court on 7 March 1995.

COMPLAINTS

Application No. 20231/92

This application is directed against the decision of the Federal Court of 27 November 1991.

Under Article 5 para. 3 of the Convention the applicant complains of the length of his detention on remand. He points out that the last investigation undertaken in his case occurred on 1 March 1990.

Under Article 5 para. 4 of the Convention the applicant complains that his application for release from detention on remand, which was filed on 4 August 1991 with the investigating judge, was not dealt with by the Cantonal Court until 13 September 1991. This period was too long in view of the fact that the Cantonal Court received a copy of his request already on 4 August 1991, and that nothing had happened in the case after the Cantonal Court had dealt with it in 1990.

Under Article 5 para. 5 of the Convention the applicant requests damages.

Under Article 6 para. 1 of the Convention he complains about the length of the criminal proceedings instituted against him.

Application No. 20545/92

This application is directed against the Federal Court's decision of 31 July 1992.

The applicant reiterates his complaints under Article 5 para. 3 of the Convention of the length of his detention on remand, and under Article 6 para. 1 of the Convention of the length of the criminal proceedings instituted against him. He also requests damages under Article 5 para. 5 of the Convention.

Application No. 23117/93

This application is directed against the Federal Court's decision of 24 August 1993.

The applicant reiterates his complaints under Article 5 para. 3 of the Convention of the length of his detention on remand. He submits that there was no suspicion that he had committed the offences at issue as the witness R. had stated that he, R., had not committed any offence with the applicant. The applicant submits that the offences with which he was charged in the bill of indictment of 16 September 1992 dated back to the years 1984, 1985 and 1986. The case could not have been complex, as the investigating judge only conducted one act of investigation (Untersuchungshandlung) between 1986 and the trial in 1993, namely on 1 March 1990.

Under Article 5 para. 4 of the Convention, and with reference to the decision of the Cantonal Court of the Canton of Valais of 5 July 1993 "the question arises whether a period of ten days until the judges decided ... is not too long" ("stellt sich wiederum die Frage, ob die Dauer von 10 Tagen, bis die Richter sich entschieden, ... nicht zu lange ist").

Under Article 5 para. 5 of the Convention the applicant requests damages.

Under Article 6 para. 1 of the Convention the applicant complains of the length of the criminal proceedings instituted against him. He points out that, although he requested the joining of the proceedings in the Cantons of Jura and of Valais, they were conducted separately which led to delays.

Application No. 23223/94

This application is directed against the Federal Court's decision of 21 December 1993.

Under Article 5 para. 1 (c) of the Convention the applicant contests that there was a suspicion that he had committed a criminal offence.

Under Article 5 para. 3 of the Convention the applicant complains of the length of his detention on remand.

Under Article 5 para. 4 of the Convention the applicant complains that the Cantonal Court of the Canton of Valais did not determine his application for release of 9 November 1993 until 24 November 1993.

Under Article 5 para. 5 of the Convention the applicant requests damages.

Under Article 6 para. 1 of the Convention the applicant complains of the length of the proceedings.

PROCEEDINGS BEFORE THE COMMISSION

The applications were introduced on 14 May 1992, 18 August 1992, 20 September 1993 and 30 December 1993, and registered on 26 June 1992, 25 August 1992, 17 December 1993 and 10 January 1994.

On 29 June 1994 the Commission decided to join the applications and to communicate them to the respondent Government and invite them to submit observations on the complaints under Article 5 paras. 3 and 4 and Article 6 para. 1 of the Convention.

The Government's written observations were submitted on 31 October 1994. The applicant replied on 2 December 1994.

On 13 April 1995 the applicant submitted further observations. The Government replied thereto on 22 May 1995.

THE LAW

As to Article 5 (Art. 5) of the Convention

The applicant raises complaints under Article 5 paras. 3, 4 and 5 (Art. 5-3, 5-4, 5-5) of the Convention.

1. Under Article 5 para. 3 (Art. 5-3) of the Convention the applicant complains of the length of his detention. The applicant contests that the cases were complex as the investigating judge undertook only one investigative act between 1986 and the trial in 1993, namely on 1 March 1990. The applicant also submits that the offences with which he was charged in the bill of indictment of 16 September 1992 dated back to the years 1984, 1985 and 1986. The applicant also contests that there was a suspicion that he had committed a criminal offence within the meaning of Article 5 para. 1 (c) (Art. 5-1-c) of the Convention.

The Government submit that the applicant's detention on remand, lasting seven years and 26 days, commenced on 5 March 1986 and ended on 31 March 1993, the date of his first instance conviction. However, certain periods cannot be considered, in particular the period of one year, three months and 16 days when the applicant served his prison sentence in Regensdorf; the period of one year, four months and eight days after he fled on 22 February 1988; the periods when he was detained in the Canton of Jura, i.e. from 22 November to 20 December 1990 and from 30 August to 12 November 1991, i.e. altogether three months and eleven days. Effectively, the detention lasted three years, seven months and 18 days.

With reference to the W. case (Eur. Court H.R., Series A no. 254-A), the Government submit that the applicant's detention on remand complied with the requirements under Article 5 para. 3 (Art. 5-3) of the Convention. Undoubtedly the applicant was suspected of having committed many offences, and there was clearly a danger of fleeing. The case was extremely complex, involving over 100 offences. From the beginning the applicant refused to cooperate with the authorities. He contributed to the length of the proceedings by filing various appeals.

The Government also submit that the authorities pursued the case with particular diligence: the Federal Court carefully dealt on four occasions with the applicant's complaints. In its decision of 9 January 1991 it saw no indications that the proceedings would not be duly conducted, though it instructed the investigating authorities to terminate the investigations as soon as possible. In its decision of 27 November 1991 the Federal Court instructed the authorities to continue with the investigations if necessary without awaiting information from the Spanish authorities. On 31 July 1992 the Federal Court considered the conduct of the investigating judge.

The applicant contends that the period to be examined under Article 5 para. 3 (Art. 5-3) of the Convention does not end on the date when he was convicted in first instance. Rather, it lasted until 1 June 1994 when the Cantonal Court of the Canton of Valais dealt with his appeal. Moreover, while the applicant was detained at Regensdorf prison in the Canton of Zurich, he was actually at the disposal of the authorities of the Canton of Valais. As a result, the period to be examined under Article 5 para. 3 (Art. 5-3) of the Convention lasted five years, two months and fifteen days.

The applicant submits that the investigating judge stated in October/November 1986 that the investigations were about to be concluded. The applicant behaved correctly during the proceedings, doing nothing which would have complicated them. Lodging a remedy was a right which could not justify a delay.

2. Under Article 5 para. 4 (Art. 5-4) of the Convention the applicant complains of various delays of his applications for release from detention on remand. Thus, his application filed on 4 August 1991 was not dealt with by the Cantonal Court until 13 September 1991, i.e. after 39 days. His application of 24 June 1993 was only dealt with by the Cantonal Court of the Canton of Valais after ten days on 5 July 1993. The Cantonal Court did not determine his application for release of 9 November 1993 until 24 November 1993.

The Government submit in respect of the request filed on 4 August 1991 that the applicant is only complaining about the proceedings before the Cantonal Court, not the Federal Court. The applicant was responsible for the fact that the decision of the investigating judge of 8 August only reached him on 20 August 1991. The Cantonal Court, which received his appeal on 22 August, decided within 22 days on 13 September 1991. In fact, the applicant is complaining that the system established by the Code of Criminal Procedure of the Canton of Valais as such is contrary to Article 5 para. 4 (Art. 5-4) of the Convention. However, this provision does not exclude that administrative proceedings precede the judicial proceedings.

The applicant submits in respect of the request filed on 4 August 1991 that the first court decision was given one month and ten days later, i.e. on 13 September 1991. If the authorities employ a non-judicial body at a preliminary stage of the proceedings, they must nevertheless ensure that the proceedings are decided as speedily as possible by a court.

3. Under Article 5 para. 5 (Art. 5-5) of the Convention the applicant requests damages.

As to Article 6 para. 1 (Art. 6-1) of the Convention

Under Article 6 para. 1 (Art. 6-1) of the Convention the applicant complains of the length of the criminal proceedings instituted against him. He points out that, although he requested the joining of the proceedings in the Cantons of Jura and of Valais, they were conducted separately which led to delays.

a) The Government point out that the applicant is only complaining about the length of the proceedings insofar as they led to the Federal Court's decision of 17 November 1994 concerning his public law appeal. No complaint has been filed about the proceedings leading to the Federal Court's decision on his plea of nullity. However, the complaint about the length of the proceedings was not an issue in the applicant's public law appeal.

Insofar as the Government may be understood as contending that the applicant has not exhausted domestic remedies as required by Article 26 (Art. 26) of the Convention, the Commission recalls that in previous cases against Switzerland concerning the length of proceedings it found

that, in order to comply with the requirements under Article 26 (Art. 26) of the Convention, the applicant had to file with the authority concerned a complaint based on Article 4 of the Federal Constitution or Article 6 para. 1 (Art. 6-1) of the Convention. However, these cases concerned pending proceedings. The Commission also found that the situation would be different if the applicant complained about the length of proceedings which had been terminated, and where Swiss law provided no further remedy (see No. 17116/90, dec. 11.5.92, S. v. Switzerland, unpublished).

In the present case the Commission notes that while the criminal proceedings were pending the applicant complained under Article 6 para. 1 (Art. 6-1) of the Convention to the Federal Court about the length of the proceedings. The Commission refers here for instance to the applicant's public law appeal of 27 November 1993.

Insofar as the applicant is now complaining about the entire length of the proceedings, the Commission notes that, after the decisions of the Federal Court of 17 November 1994, there was no remedy available under Swiss law to complain about the undue length of the proceedings which had been terminated.

The applicant's complaints cannot therefore be rejected under Article 26 (Art. 26) of the Convention for non-exhaustion of domestic remedies.

b) The Government submit that the period to be examined under this provision commenced on 5 March 1986 when the applicant was arrested. It ended with the decision of the Cantonal Court of the Canton of Valais of 1 June 1994. The Government contend that this period complied with the requirements under Article 6 para. 1 (Art. 6-1) of the Convention.

The Government contend that the proceedings were of a certain complexity. There were 23 civil parties participating in the criminal proceedings against the applicant, and the decision of the Ering and Gundis District Court of 31 March 1993 numbered 98 pages. Moreover, separate criminal proceedings were conducted against the applicant in the Canton of Jura. Indeed, for nearly two years after he fled he was not at the disposal of the investigating authorities. The applicant contributed to the length of the proceedings by refusing to cooperate with the authorities and by employing all means to contest their decisions. On the other hand, the Federal Court confirmed that there was no indication that the authorities did not diligently pursue the case.

Even assuming that the period to be examined under Article 6 para. 1 (Art. 6-1) of the Convention ended on 17 November 1994 when the Federal Court dismissed the applicant's public law appeal and plea of nullity, the Government submit that the period was not unduly long. Thus, the Federal Court decided only a few months after the applicant had filed his appeals.

The applicant submits that the period to be examined commenced on 2 November 1984 when the warrant of arrest was issued against the applicant. The Federal Court's decisions dated from 17 November 1994. Thus, the entire proceedings lasted more than ten years. He can only be made responsible for the period of 16 months when he fled. He cannot be blamed for having made use of regular remedies.

The applicant contends that the proceedings could not have been complex, as the Public Prosecutor was able to file the indictment within six days after the investigating judge terminated the investigations on 10 September 1992. Moreover, only one private party actually turned up at the trial. The separate criminal proceedings in the Canton of Jura did not concern the proceedings in the Canton of Valais. Indeed, the investigating judge declared as early as October/November 1986 that the proceedings were about to be terminated. On the other hand, the proceedings in the Canton of Jura only commenced on 29 May 1990.

The findings of the Commission

Having examined these complaints the Commission finds that they raise serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The applications cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, and no other ground for declaring them inadmissible has been established.

For these reasons, the Commission, unanimously,

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

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)