A. THE FACTS

The facts presented by the Parties and apparently not in dispute between them may be summarised as follows:

The applicant is an Austrian citizen, born in 1914 and resident in Vienna.

He is one of several persons, including Lothar Rafael and Fritz Neumeister against whom criminal proceedings were instituted in Austria for having frauded the exchequer by fraudulently obtaining, between the years 1952 and 1958, reimbursement of turn-over tax to the extent of several million schillings, such reimbursement being designed to encourage exports.

Between 4 and 9 February 1959 the Internal Revenue Office (Finanzamt) of Vienna I started investigations against the applicant and other on the suspicion of having committed offenses under the Financial Criminal Code (Finanzstrafgesetz). Subsequently, under these proceedings, the applicant's premises were searched and the files and books of his import-export business were seized.

On 11 August 1959, the Public Prosecutor's Office (Staatsanwaltschaft) in Vienna made an application to the Regional Criminal Court (Landesgericht für Strafsachen) in Vienna for the opening of preliminary investigation (Voruntersuchung) against the applicant. It considered that the applicant was strongly suspected of having committed fraud (Betrug) by improperly obtaining the above reimbursement with regard to the export of optical instruments and textiles. On 17 August 1959 the Regional Court took a decision in accordance with the prosecuting authority's application, and the applicant was examined in respect of the above charge on 24 June 1960.

Subsequently the applicant went abroad, and on 10 February 1961 the Investigating Judge (Untersuchungsrichter) Dr. L. made an order (Steckbrief) to search for the applicant and arrest him.

The applicant was arrested on 13 February 1961 in Zürich and remanded in custody.

On 21 February 1961, the Investigating Judge issued a warrant for the applicant's arrest (Haftbefehl) on the ground that he was suspected of having been an accomplice in an offence of misuse of official power (Missbrauch der Amtsgewalt) within the meaning of Articles 5 and 101 of the Criminal Code (Strafgesetz), and of having committed fraud within the meaning of Articles 197, 200 and 203 of the Criminal Code. The Judge considered the fraud to consist in the obtaining of reimbursements with regard to the export of certain running gears and textiles, and the misuse of power in the attempt to bribe the competent tax officer at Salzburg.

On 23 February 1961 the Austrian authorities made an application to the Swiss Government for the extradition of the applicant.

On 28 February 1961, the Vienna Public Prosecutor's Office moved the Regional Court to extend the preliminary investigation against the applicant to cover also the alleged fraud with regard to export reimbursements for gym-shoes, mole-skins and running gears and the suspicion of having been involved in the misuse of official power as an accomplice. The Court took a decision, in accordance with the Prosecutor's request, on 1 March 1961.

On 26 May 1961, the applicant was released from detention pending extradition by the Swiss authorities for reason of his bad health. The applicant was rearrested in Switzerland on 23 January 1962 but released once more on 16 March 1962. On 15 April 1962 the Swiss authorities

granted the Austrian Government's request for the extradition of the applicant and on 27 September 1962 he was extradited to Austria. The applicant was remanded in custody at the Vienna Regional Court Hospital. He was examined again by the Investigating Judge on 19 October 1962 and on 22 October the Investigating Judge issued a supplementary warrant of arrest against the applicant. Under this warrant the applicant was suspected of having committed fraud (Articles 197 and 200 of the Criminal Code) in connection with the alleged improper obtaining of export reimbursements for optical instruments, cotton materials and again gym-shoes, mole-skins and ladies' blouses, and also of defamation as well as having aided and abetted this offence (Articles 5 and 209 of the Criminal Code).

In the course of the investigations, evidence was obtained in various foreign countries, partly by means of rogatory commissions. For example, requests for the examination of witnesses were addressed to the Dutch, German, Italian and Swiss judicial authorities as well as to those in the Duchy of Liechtenstein. As a result of these requests evidence was obtained in the Federal Republic of Germany between 15 June and 4 July 1962, in Italy between 18 February 1962 and 2 July 1963, and in Liechtenstein between March 1963 and June 1964. The Austrian authorities also communicated with the judicial authorities in the United States of America and Canada as well as with those in various countries in Central and South America, Africa and the Near East.

The indictment against the applicant and nine others was submitted on 17 March 1964. The applicant was accused of the following offenses:

1. Fraud within the meaning of Articles 197, 200 and 203 of the Criminal Code by improperly obtaining reimbursement for the sham export of:
(a) leather shoes, mole-skins and ladies' blouses (point I/6 of the indictment);
(b) running gears, between May and August 1956 (point I/7 of the indictment);
(c) running gears, between August and October 1956 and again February and June 1957 (point I/8a of the indictment);
(d) textiles, through the firm Benistex et al. (point I/8b of the indictment);
(e) optical instruments (point I/9 of the indictment).

2. Attempted fraud, within the meaning of Articles 197, 200, 201 Nos. (a) and (d), 203, and 8 of the Criminal Code, by attempting improperly to obtain reimbursement for the sham export of:

(a) textiles, concerning the firm Comtex - Centraco I Case (point II/1 of the indictment);
(b) textiles, between August 1959 and March 1960 - Centraco II Case (point II/2a of the indictment);
(c) textiles, between September and December 1959 - Centraco III Case (point II/2b of the indictment);
(d) electric engines - Filektra Case (point II/3 of the indictment).

3. Attempt to aid and abet defamation within the meaning of Articles 9 and 209 of the Criminal Code (point V of the indictment).

On 16 August 1964 the Regional Criminal Court of Vienna took a decision by which it provisionally discontinued, in accordance with Articles 34 (2) and 109 of the Code of Criminal Procedure, the proceedings against the applicant for having been involved in the misuse of official power as an accomplice. This charge had not been included in the indictment but had apparently been made the subject of preliminary investigations by decisions of 1 March 1961.

Similarly, on 28 September 1964, the same Court discontinued, in accordance with Articles 34 (2) and 363 (1) of the Code of Criminal

Procedure the proceedings against the applicant for having made defamatory remarks about a lawyer and Dr. Pittermann, then Vice-Chancellor of Austria. This charge had also been included in the indictment of 17 March 1964 but had apparently been made the subject of preliminary investigations. In any event, the applicant had been suspected of this offense as shown by the supplementary warrant of arrest of 22 October 1962.

On 16 October 1964 the applicant was summoned by the Regional Criminal Court of Vienna to appear for trial on 9 November 1964. It appears that the applicant made an application for an adjournment of the hearing but this was rejected by the said Regional Court on 28 October 1964.

Consequently, the trial started on 9 November 1964 but on 18 June 1965, after 102 days of the hearing, the Regional Criminal Court of Vienna postponed the completion thereof indefinitely so that the investigation might be completed.

The Court also decided that the applicant should be released from detention on remand and on 7 July 1965 the applicant was so released after having given a solemn undertaking not to leave his place of residence without authorization before final termination of the proceedings against him, nor to conceal himself or do anything which might impair the investigation of the case (Article 191 of the Code of Criminal Procedure).

Subsequently, on 8 March 1966, the Regional Criminal Court of Vienna decided that the proceedings against the applicant for fraud with regard to obtaining export reimbursements for leather shoes, mole-skins, etc., as set out under point I/6 of the indictment (point 1 (a) above), and for attempted fraud with regard to attempting to obtain export reimbursements for textiles and electric engines, as set out under points II/1, 2 (a) and 3 of the indictment (points 2 (a) to (d) above) should be provisionally discontinued in accordance with Articles 109, 227 and 34 (2) of the Code of Criminal Procedure.

On the other hand it appears that, insofar as the applicant had been charged under point V of the indictment (point 3 above) with having attempted to aid and abet defamation, the prosecuting authority in Vienna decided to make these facts the subject of separate proceedings and, on 22 February 1966, submitted an indictment in this respect. The matter came before the Regional Criminal Court of Vienna on 13 March 1967 which, after a hearing that lasted eleven days, decided on 26 April 1967, that the applicant and his two co-accused (L. Rafael and H. Fuchshuber) should be acquitted for lack of evidence against them. The Vienna Public Prosecutor's Office lodged with the Supreme Court (Oberster Gerichtshof) a plea of nullity (Nichtigkeitsbeschwerde) against Rafael's acquittal only, but this plea was rejected on 5 February 1970.

Therefore, as far as the applicant was concerned, the charges on which, by April 1967, he remained to be tried were fraud by improperly obtaining export reimbursements for running gear, textiles and optical instruments, as set out under points I/7, I/8 (a) and (b), and I/9 of the indictment. The trial on these remaining charges opened on 4 December 1967 and continued for 81 days until 2 July 1968.

However, on 10 June 1968 the Regional Criminal Court of Vienna decided, upon the application of the Public Prosecutor's Office, that two of the charges against the applicant, namely those concerning the export of textiles and of optical instruments, as set out under points 1/8 (b) and I/9 of the indictment should be separated from the other charges. Again, on 2 July 1968 the Court separated the proceedings on one of the two remaining charges, namely that relating to the export of running gears as set out under I/8 (a) of the indictment. These charges are presently still pending before the Regional Criminal Court of Vienna.

On the other hand, on 2 July 1968 the Court convicted the applicant of fraud with regard to the improper obtaining of reimbursements for the sham export, between May and August 1956, of running gears, as set out under point I/7 of the indictment of 14 March 1964. He was sentenced on the same day to three years' severe imprisonment with the additional penalty of "sleeping hard" (hartes Lager) once every three months.

The written judgment was communicated to the applicant's lawyer on 10 March 1969 and on 24 March 1969 the applicant lodged with the Supreme Court a plea of nullity against his conviction and an appeal (Berufung) against his sentence. In his plea of nullity (which comprised altogether 80 typewritten pages) the applicant first criticised generally the terms of the judgment and the manner in which it had been drafted, as well as the fact that, under the relevant provision of the Austrian Code of Criminal Procedure, he had only had two weeks to submit his plea whereas it had taken the Court more than eight months to prepare the judgment. In this connection the applicant also invoked Article 6 (3) (b) of the Convention.

The applicant then stated his grounds of nullity and first relied on Article 281 (1) Nos. 3 (and 4) of the Code of Criminal Procedure alleging that the Court should not have taken certain evidence under oath. He next challenged the Court's findings of fact invoking Article 281 (1), No. 5 of the Code of Criminal Procedure and pointing to altogether 172 passages in the judgment where the Court's findings, in his opinion, were either unclear or incomplete, or contradictory in themselves, or based on insufficient reasoning, or contrary to the contents of the case file.

Finally, relying on Article 281 (1), No. 4 of the Code of Criminal Procedure and Article 6 (2) and (3) (b), (c), and (d) of the Convention, the applicant criticised the Court's refusal to hear certain evidence offered by him. He alleged that this deprived him of his right to be presumed innocent until proved guilty, to obtain the attendance of witnesses on his behalf on the same terms as those against him and to have sufficient time for the preparation of his defence. In this connection the applicant referred to the final pages (pp. 344 to 367) of the judgment in which the Regional Criminal Court of Vienna had given the reasons for its refusal to sustain 34 applications made by the applicant in his final pleadings, to hear witnesses, and challenged these reasons.

On 16 June 1971 the Supreme Court rejected the plea of nullity insofar as the applicant had alleged violations of procedural law. The decision on the alleged violations of substantive law and on the appeal concerning sentence is expected in October 1971.

B. COMPLAINTS

In his original submissions, consisting of six bound volumes of altogether 1,004 typed pages, two folders containing some 260 documents, as well as various letters, copies of decisions and applications, the applicant complained under Article 5 of the Convention, of his detention pending trial and its length, and under Article 6 of the Convention of the Court proceedings against him and their length. He also made various allegations regarding his right to respect for his private and family life and his correspondence under Article 8, his right to freedom of thought, conscience and religion under Article 9, his right to freedom of expression under Article 10, his right to an effective remedy before a national authority under Article 13, and his right to be free from inhuman treatment under Article 3 of the Convention.

The applicant stated that his health and entire existence had been destroyed by reason of his long detention on remand, the criminal proceedings against him which resulted in one wrong conviction and sentence, one acquittal and the discontinuing of various proceedings,

for the sole purpose of covering up for crimes committed by the authorities, and the continuing limitations on his right of free movement both in Austria and Switzerland.

C. PROCEEDINGS BEFORE THE COMMISSION

The Commission considered the application on 19 December 1970 and, by partial decision, rejected all the applicant's complaints except that under Article 6 (1) of the Convention relating to the length of the criminal proceedings against him. It found that it had no competence ratione personae to deal with complaints pending extradition as the applicant was so detained in Switzerland and Switzerland was not a Contracting Party to the Convention (Article 27, paragraph (2), of the Convention); that with regard to the complaints concerning detention pending trial in Austria the six months' time-limit provided for in Article 26 had not been observed and that, with regard to the applicant's complaints concerning an alleged refusal of compensation for wrongful detention, the alleged deprival of his right to a fair hearing by an independent and impartial tribunal in accordance with Article 6 of the Convention, an alleged breach of his right to respect for private and family life and his correspondence, or an alleged inhuman treatment, domestic remedies had not been exhausted (Article 27 (3) of the Convention). The Commission further found that there was no appearance of a violation of the Convention with regard to the applicant's complaints concerning refusal on the part of the prosecuting authorities to institute criminal proceedings against judges or Government officials whom he had charged accordingly and in this connection, his allegations under Article 13 of the Convention were incompatible with its provisions ratione materiae (Article 27, paragraph (2), of the Convention).

The Commission finally found that, with regard to the applicant's complaint that the charges against him had not been determined within a reasonable time as guaranteed by Article 6 (1) of the Convention, the further examination of the case should be adjourned and the parties should submit observations on the admissibility of this part of the application in accordance with Rule 45, (3) (b) of the Commission's Rules of Procedure.

Written submissions were obtained from the respondent Government on 16 March 1971 and the applicant submitted on 19 April 1971 his observations in reply. In the meanwhile, on 1 April 1971, the Commission had decided, upon the Government's request, to communicate to them the complete submissions of the applicant; it had also decided to invite the parties to make further explanations at an oral hearing.

The applicant had been granted legal aid for his representation at the hearing.

At the beginning of the hearing which had been fixed to begin on 13 July 1971, the Agent of the respondent Government referred to various passages in the applicant's written submissions and maintained that these contained an abuse of the right of petition within the meaning of Article 27, paragraph (2), of the Convention. He requested a decision by the Commission on this point before continuing with the case.

After hearing the applicant's representatives on this point, the Commission deliberated and decided that the applicant should be required to withdraw all statements, made in the six volumes of his application and in his letters of 30 June 1970 and 19 April 1971;

(1) expressed in language which was offensive in itself, both as regards those persons whom it concerned and others, or

(2) which allege misconduct by the Austrian authorities, e.g. judges or officials, and are not relevant for the establishment of the facts

alleged under Article 6 (1) of the Convention.

The Commission also required that the applicant should express his apologies and regret for such statements.

The applicant's representatives, acting on behalf of the applicant, subsequently withdrew, in accordance with the Commission's decision, all the statements in his written submissions described above and expressed his apologies and regret therefor.

The respondent Government accepted this course of action and did not pursue their objections under Article 27, paragraph (2), of the Convention relating to an abuse by the applicant of his right of petition.

At the same time, the Government contended, however, that as a result of the withdrawal of the offensive and incriminating passages in the applicant's written submissions, the application itself had lost its substance.

In view of this allegation, the applicant's representative was invited to restate the facts which in his opinion gave rise to his complaint under Article 6 (1) of the Convention that the charges against him had not been determined within a reasonable time.

D. SUBMISSIONS OF THE PARTIES

1. The applicant, in restating his case, referred to certain of the criteria adopted by the Commission in its report on the Neumeister Case in regard to Article 5 (3) of the Convention and related them to Article 6 (1). In this connection he considered first the actual length of the proceedings concerned.

He submitted that the period started between 4 and 9 February 1959 when the financial authorities began investigations on the suspicion that the applicant had committed offenses under the Financial Criminal Code. These investigations had caused a search warrant to be issued against the applicant on the basis of which all the business files and records which were in the applicant's possession had been seized. This had the effect that the applicant's business operations were stopped completely and he was required to answer to criminal charges which were laid against him and which were not finally determined to this day. Consequently, the actual length of the proceedings was by now more than twelve years and the end of the period was not foreseeable as even the charges which had been discontinued could be taken up again at any time.

The applicant then turned to the complexity and the extent of the present case. He conceded that it was indeed a complex and voluminous case, the files of which comprised 32 volumes at 1,000 pages each. However, he could not be held responsible for the fact that the case had become so voluminous, but this was rather the responsibility of the investigation authorities.

Above all, the case against the applicant should have been separated from that against the other accused persons, and also the charges themselves should have been dealt with separately. In fact, this was provided for in Article 57 of the Code of Criminal Procedure which states that the competent court may decide upon an application or proprio motu that criminal proceedings should be conducted separately with regard to several charges or against several accused persons where this appears suitable in order to avoid delays etc. The applicant submitted that the judicial authorities prolonged the proceedings by not applying this provision in his case at the stage of the investigations.

In this connection the applicant referred to the judgment of the

European Court of Human Rights in the Neumeister Case (European Court of Human Rights "Neumeister Case" judgment of 27 June 1968) but pointed out that all the charges against Neumeister, except one, had been different from those against him and that, consequently, it would have been very easy to separate them. It was true that the European Court of Human Rights had found no violation of Article 6 (1) in this respect in its above judgment, but the facts were different in his case and, furthermore, the proceedings against the present applicant had lasted now for another four years since the Neumeister judgment had been given.

The applicant further submitted that, at a later stage of the proceedings against him, certain charges were provisionally discontinued in accordance with Article 34 (2), Sec. 1 of the Code of Criminal Procedure. Under Article 363 (1), Sec. 3 of the Code the Public Prosecutor's Office may, however, continue the prosecution of such discontinued charges within three months of the date on which one or more of the remaining charged have been finally determined. Consequently, it could not have prejudiced the prosecution's case against the applicant, if this procedural step had been taken at an early stage with regard to all the charges against him except that one charge under which he and Neumeister had been accused together as being accomplices.

The applicant then made further submissions with regard to the conduct of his case by the authorities and courts. He alleged that the judges concerned were not sufficiently specialised to deal with cases of this sort and that, in particular, the methods adopted in the investigation of the case caused the proceedings to grow to such an enormous extent and make the whole matter rather obscure.

In this respect the applicant referred to the fact that, at the beginning the criminal investigations were conducted by a tax officer, Mr. Besau, and not by the Investigation Judge, Dr. Leonhardt. The presence, during the investigations, of Mr. Besau, who was later at the trial and the principal witness for the prosecution, was not only improper under Articles 162 and 198 of the Code of Criminal Procedure where it is stated that every witness or accused person is to be examined by the Investigating Judge in the absence of the Public Prosecutor or any other person who is not authorised by law to be present. The fact that Mr. Besau conducted these investigations also caused a certain duplication of the proceedings insofar as the Investigating Judge was subsequently obliged himself to investigate and ascertain the facts provisionally established by the tax investigator.

Furthermore, the investigations had been insufficient so that the court had been required to adjourn the first trial in order to allow the prosecution authorities to complete the investigations. As a consequence of this it had been necessary to conduct three separate trials before three different divisions of the Vienna Regional Court, the first between 9 November 1964 and 17 June 1965, the second between 13 March 1967 and 26 April 1967, and the third between 4 December 1967 and 2 July 1968.

Moreover, there had been delays in the investigations by reason of the fact that requests for examination of witnesses by rogatory commissions had been made which were, in fact, not necessary and that there had been long intervals in the examination of the accused persons. Thus, the principal accused person, L. Rafael, had been questioned first on 22 December 1961 and then not again until 15 January 1963; similarly there had been no interrogation of F. Neumeister between 12 July 1962 and 4 November 1963.

Finally, even the time limits expressly provided for in the Austrian Code of Criminal Procedure had not been observed. Thus, under Article 210 of the Code, when the indictment has not been challenged by the accused, the Investigating Judge must submit the case files to the

court of first instance which is obliged at once to fix a date for trial. This rule had not been observed as it had taken months, after the submission of the files, before the Regional Criminal Court had fixed a date.

Similarly, under Article 270 (1) of the Code of Criminal Procedure, any judgment must be completed and signed within three days. In the present case this had taken eight months.

Finally, under Article 271 (4) of the Code stenographic notes must be transferred into longhand record within 48 hours; but this rule was never observed by the Austrian courts and in the applicant's case it had taken months before the record had been completed, hence the delay also in the completion of the judgment.

On the other hand, counsel for the defence was obliged to submit an appeal or plea of nullity within a period of 14 days, otherwise the case would be dismissed as being out of time (Articles 294 and 285 of the Code of Criminal Procedure).

The applicant concluded that, even assuming that the case was very complicated, voluminous and complex, the fact that the charges against him had not been determined after more than twelve years amounted to a breach of Article 6 (1) of the Convention.

2. The respondent Government first contended that, as a result of the applicant's withdrawal of all the offensive and incriminating statements in his previous written submissions, his application had lost its substance. In fact, the applicant's original complaint about the length of the criminal proceedings against him had been based on allegations of misconduct amounting to criminal offenses on the part of the Austrian authorities and courts. As these allegations had not been withdrawn there was no longer any basis or ground for this complaint. The above restatement of his case, therefore, constituted a new complaint which in no way satisfied the procedural requirements under the Convention.

The respondent Government then submitted that the applicant had failed to exhaust the domestic remedies. The burden of proof was on him in this respect, as had been established by the Commission's case law. Consequently, the applicant could have challenged, under the Code of Criminal Procedure, all the individual decisions or acts of the investigating or trial judges of which he had complained. In that respect, Article 13 of the Convention which requires that everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority had been observed in the Austrian legal system.

It was true that there was no special remedy with regard to the right to a hearing within a reasonable time by a court. But any action or inaction on the part of a judge or other judicial organ could have been challenged by means of a hierarchical appeal (Dienstaufsichtsbeschwerde) or, where damages have arisen, by means of a complaint under the Official Liability Act (Amtshaftungsgesetz). This, according to the Government, applied in particular to the applicant's complaints regarding the failure to separate the proceedings or to complete the judgment and the minutes of the hearing within the time limits prescribed by the Code of Criminal Procedures well as to the complaints concerning the investigations.

The respondent Government then made submissions concerning the period involved in the present case. They contended that the starting date was in August 1959 as it was only then that preliminary judicial investigations had been introduced against the applicant. The investigations made under the Financial Criminal Code could not be taken into consideration because they related to a quite separate procedure which was not the subject matter of the present application.

Furthermore, the end of the period was, in the Government's submissions, 19 November 1964, being the date on which the first trial opened. The Government referred to the text of Article 6 (1) of the Convention and explained that this provisionally granted the right to an accused person to receive a hearing (rechtliches Gehör) within a reasonable time. This was achieved when the accused person was brought before the tribunal competent to try his case and the period ended there. The situation might be different when the court, acting in bad faith, fixed a date for hearing in order to stop the running of the period and then adjourned the case during a long period of time. However, there was no indication that these special circumstances prevailed in the present case. Consequently, the period which was under examination in this case was the period from August 1959, being the date of the opening of preliminary judicial investigations, to 19 November 1964, being the date of the opening of the first trial.

The Government then submitted that it was well possible that certain acts by the investigating authorities and courts might have been inconsistent with the provisions of the Code of Criminal Procedure but either these inconsistencies had been unavoidable or they had no influence on the length of the proceedings concerned.

Thus it was true that a hearing had not been fixed immediately after the files had been submitted to the Regional Court, but a preparatory period of 71/2 months must be considered as being reasonable in a case which is as complex and difficult as the present case. Similarly, it had been impossible to complete the judgment and the minutes within the time limits envisaged by the Code in so voluminous a case as the present. Moreover, the presence of a tax investigator during the investigations could not have prolonged the proceedings and there was certainly no proof of any duplication of the investigation proceedings concerned. The fact that in the minutes reference had been made to evidence given on a previous occasion could not be regarded as proof for the allegation that the proceedings had been duplicated as this was rather a normal process.

It is true that the adjournment of the trial for the completion of the investigations caused a delay, but the reasons for this adjournment were justified as was clear from the relevant court decisions. The applicant himself had refused to make any statements between October 1962 and the first trial, and when he had finally given evidence the statements by him had not always been true. Consequently, it was to a large extent his own conduct that had required the court to adjourn the trial.

As regards the length of the preliminary investigations the Government submitted that this was to a considerable extent caused by the length of the extradition proceedings and the manner in which the requests for the taking of evidence abroad by rogatory commission had been dealt with by the judicial authorities in those countries. Thus the request for the applicant's extradition, made on 23 February 1961 had been granted by the Swiss authorities only on 15 April 1962 and the applicant had, in fact, been extradited only on 27 September 1962. Similarly, the taking of evidence abroad had, in some cases, only been accomplished nearly a year and a half after the request had been made by the Austrian authorities.

Moreover, this whole process of obtaining evidence from abroad had been extremely complicated and time consuming. For instance, it had been necessary to follow the course of 160 railway carriages from Salzburg through several European countries and to examine numerous witnesses as well as railway and other records abroad, including several non-European countries. The Austrian authorities had done everything in their power to expedite these investigations, had repeatedly reminded the foreign authorities of the urgency of the matter and had even obtained the assistance of Interpol. In retrospect, perhaps, certain of these steps might be considered as having been unnecessary,

but at the time that they were taken they had appeared fully justified.

The respondent Government then made submissions in regard to the question of separation. They first pointed out that Article 57 of the Code of Criminal Procedure which had been invoked by the applicant, was the exception to the rule stated in Article 56 of the Code. Article 56 provided that, as a rule, the proceedings should be joined where several charges are preferred against one person or where several persons are charged with the same offence.

Apart from this, there had been separations as early as 1962, and again in 1963 and in 1964. In fact, originally the investigations had been conducted against 23 suspects but, in the end, only ten had been charged with criminal offenses. It was true that the proceedings relating to the Beinstex textiles had been discontinued in the Neumeister Case already in 1964 whereas in the applicant's case they had been separated only in 1968. The reason for this was the conduct of the applicant who had originally refused to make any statements at all and had made substantial applications for the taking of further evidence only at the end of the second trial. Furthermore, it was somewhat inconsistent on the part of the applicant to complaint on the one hand that certain charges had not been separated and on the other hand that they had been separated, as for instance the charges relating to running gears (point I/8 of the indictment) where he had challenged the lawfulness of the separation in his plea of nullity.

The respondent Government further explained that, in principle, separation was not really in the interest of an accused person because he is obliged to give evidence as a witness when he is no longer an accused person, whereas he is otherwise entitled to refuse to make any statement whatsoever.

The respondent Government finally raised the question whether in a case where the proceedings relating to a particular charge have been discontinued in accordance with Article 34 (2) of the Code of Criminal Procedure the person could still be considered as being charged with a criminal offense within the meaning of Article 6 of the Convention. The Government submitted that this question related particularly to those charges which had been discontinued in March 1966 but added that it was not really relevant in support of their case as, in their submissions the period under examination had terminated in November 1964.

The Government concluded that, in these circumstances, the applicant's complaint, under Article 6 (1) of the Convention relating to the length of the criminal proceedings against him, even assuming that it was at all properly before the Commission at this stage, was inadmissible for failure to exhaust domestic remedies and, in any event, as being manifestly ill-founded.

3. The applicant replied by submitting first that his withdrawal of the offensive and incriminating statements of his written submissions could not possibly affect the substance of his complaint concerning the length of the criminal proceedings against him. He points out that the facts as they had been submitted by him remained; what he had presented during the oral hearing was not a new application but simply the restatement of the facts which, in his opinion, constituted a violation of his right to a hearing within a reasonable time under Article 6 (1) of the Convention. Moreover, the Commission had the power to examine ex officio whether particular facts alleged constituted a violation of the Convention and it was not necessary that the reasons which the applicant had submitted in support of his allegations lead to this conclusion, as long as the facts as such gave rise to a question in this respect.

The applicant then made submissions with regard to the exhaustion of remedies and contended that there had not been any effective remedies

at his disposal which he could have exhausted. In the first place the complaint that the criminal charges against him had not been determined within a reasonable time, constituted a complaint against a continuing situation in respect of which no remedies are available under Austrian law. The alleged violations of Austrian procedural law in the course of the investigations which had only been raised by him in order to show that, even under Austrian law, fixed time limits had been exceeded in his case, had not been known to him at the time they were committed. Consequently, it had not been possible for him to challenge these acts by means of a hierarchical appeal at that time. Subsequently, after the indictment had been filed, the Investigating Judge had no jurisdiction any more. The orders of the trial judge could only be challenged by means of a plea of nullity and an appeal and that had been done. On the other hand, it would appear that by reason of the fact that no immediate remedy was available against the orders or delays caused by the trial judge, Article 13 of the Convention was not observed by the Austrian legal system.

Moreover, a complaint under the Official Liability Act was not an adequate remedy to expedite criminal proceedings. This procedure only envisaged civil proceedings where damages have arisen as a result of an unlawful act committed by the authorities in the execution of the law. Besides, any deficiencies in the conduct of the investigation and criminal proceedings had been removed in the course of the proceedings, except the length as such.

The applicant then made submissions concerning his own conduct during the proceedings. He explained that his refusal to make any statements during the investigations and prior to the trial had been his reaction to a demand on the part of the authorities to sign depositions which in his opinion were not correct. He stated that such refusal was permissible under Articles 199 and 200 of the Code of Criminal Procedure.

Furthermore, he had requested an adjournment of the trial in 1964 because at that time he had not had sufficient opportunity to examine the case file and prepare himself for his defence. As he had been ill at the time and as only one copy of the file had been available for all of the ten co-accused persons it had not been possible for him to examine the file sufficiently in advance.

Similarly, it had been necessary for his counsel to make various applications to examine further evidence on the last day of the second trial as he had not known until that time what charges would be determined at the trial and what charges would be separated.

As regards the separation, the applicant submitted that the effect of discontinuing certain charges was not that the person concerned was no longer charged with a criminal offence in this respect. Under Article 207 of the Code of Criminal Procedure a person is accused (Versetzung in den Anklagestand) when the indictment is filed. This situation could only be changed by means of a withdrawal either in accordance with Article 227 or under Article 259, Sec. 2 of the Code. Neither of these withdrawals having been made in the present case the applicant was still charged with the criminal offenses set forth in the indictment, although certain of these had subsequently been provisionally discontinued and prosecution thereof might never be resumed.

The applicant finally submitted that, as regards the period under examination, the proceedings under the Financial Criminal Code and those under the Criminal Code constitute a unity. Consequently, the period started on 4 February 1959 when the financial proceedings were instituted against him. It still continues today.

In these circumstances the applicant submitted that his complaint under Article 6 (1) of the Convention was both admissible and well founded.

THE LAW

1. The Commission first considered the respondent Government's objection to the admissibility of the application on the ground that it constituted an abuse of the right of petition within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention in that it contained certain objectionable statements. Such statements either were expressed in language which was offensive in itself or they alleged misconduct by the Austrian authorities and were not relevant for the establishment of the facts alleged under Article 6 (1) (Art. 6-1) of the Convention.

The Commission noted that during the oral hearing the applicant had withdrawn all such statements and had expressed his apologies. These statements will thus be deemed to be struck out of the record. The Commission further noted that the respondent Government had declared, in view of the applicant's withdrawals and apology, that they did not pursue their objection to admissibility on this ground.

In these circumstances the Commission finds that it is not necessary to consider any further the question whether or not the application was inadmissible under Article 27, paragraph (2) (Art. 27-2), of the Convention as constituting an abuse of the right of petition.

2. The Commission next considered the question whether or not, as a result of the withdrawal of the offensive and incriminating statements in the applicant's written application, his application had, in fact, lost its substance and whether his submissions at the oral hearing constituted a new application which did not satisfy the formal and procedural requirements under the Convention and the Commission's Rules of Procedure.

The respondent Government had made allegations to this effect following the applicant's withdrawal of the offensive and incriminating statements made by him. The Government argued that the application had been based solely on allegations that the Austrian authorities had committed criminal offenses in the course of the investigations and criminal proceedings against the applicant and, as these allegations had subsequently been withdrawn, the entire application originally made by him ad lost its substance. He had now restated his case and this constituted a new application which did not satisfy the formal and procedural requirements under the Convention and the Rules of Procedure.

The applicant alleged in this respect that, in withdrawing the statements concerned he had not intended to withdraw his entire application. He had simply withdrawn statements considered objectionable. This implied that the facts, as they had originally been submitted by him, remained to be examined. Moreover, when restating his case at the oral hearing he had in no way submitted a new application, but had simply presented these facts again in terms which could not lead to any further objection under Article 27, paragraph (2) (Art. 27-2), of the Convention as constituting an abuse of the right of petition.

The Commission first finds that it is not necessary, at this stage of the proceedings on admissibility, to examine in detail the applicant's written submissions in order to ascertain which of the statements made by him shall be deemed to be struck out of the record. It suffices to state that all those statements expressed in a language which is offensive in itself or which allege misconduct by the authorities and are not relevant for the establishment of the facts alleged under Article 6 (1) (Art. 6-1) of the Convention shall be deemed to be struck out.

In the Commission's opinion, this does not, however, affect the facts of the case as they had originally been submitted by the applicant. It

is true that the respondent Government does not contend that the facts of the case are not before the Commission. What the Government submits is that the original application which was the subject matter of these proceedings had been based exclusively on allegations that the Austrian authorities had committed criminal offenses. This allegation had now been withdrawn by the applicant leaving only an unfounded complaint that Article 6 (1) (Art. 6-1) of the Convention had been violated. In the Government's submissions, an unfounded complaint cannot constitute an application under Article 25 (Art. 25) of the Convention, as an applicant must submit reasons (Gründe) to show that his rights have been violated.

However, in the Commission's opinion, this view of the respondent Government is not supported by the provisions of the Convention or the Rules of Procedure or otherwise. Under Article 25 (Art. 25) of the Convention, the Commission may receive petitions from any person etc. "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention", and Rule 41 of the Rules of Procedure of the Commission sets out the elements that should be mentioned in an application. None of these provisions requires that, in order to establish his case before the Commission, an applicant should have to make, and even has to substantiate, allegations of criminal acts or negligence on the part of the Government. It suffices that he submits the facts of his case and alleges that these facts amount, in his opinion, to a violation by the respondent Government of rights set forth in the Convention. In that case the Commission must decide, at the stage of admissibility, whether or not the facts referred to it disclose an appearance of such a violation; indeed, it may even consider ex officio whether violations other than those which the applicant alleges have been disclosed.

In the present case the applicant has not withdrawn any of the facts originally submitted by him, nor his allegations that these facts amount to a violation by the Austrian Government of Article 6 (1) (Art. 6-1) of the Convention. He has, however, withdrawn his allegations qualifying the Government's conduct as amounting to criminal offenses. Such allegations were quite irrelevant for the establishment of the facts of his case, or for a determination by the Commission of the issue of violation, and their withdrawal did not in any way affect the substance of his complaint under Article 6 (1) (Art. 6-1) of the Convention.

In these circumstances the Commission finds that it was, and still is, called upon to examine whether or not, on the facts originally submitted by the applicant his right to a hearing within a reasonable time, as guaranteed by Article 6 (1) (Art. 6-1) of the Convention, has been violated. The Commission does not find, therefore, that a restatement of the facts by the applicant at the hearing amounted in any way to a new application as was also suggested by the Government.

3. The Commission next considered the respondent Government's objections under Article 26 (Art. 26) of the Convention. That provision states:

"The Commission may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

(a) The respondent Government has submitted that, although there was no special remedy under Austrian law with regard to the right to a hearing by a court, within a reasonable time, it was possible to challenge any action or inaction on the part of a judge or other judicial organ by means of a hierarchical appeal (Dienstaufsichtsbeschwerde) or, where damages have arisen by means of a complaint under the Official Liability Act (Amtshaftungsgesetz). As the applicant had relied, in his application, on numerous individual

incidents allegedly showing an undue prolongation of the criminal proceedings against him, he should have availed himself of the above remedies.

The applicant has alleged that there were no effective remedies at his disposal under Austrian law and that those remedies that were available had been employed by him. The applicant explained that during the investigations he had not been aware of the procedural violations which had actually occurred and that those violations which had arisen during the trial and had been challenged in his plea of nullity and appeal to the Supreme Court. Moreover, both the hierarchical appeal and the complaint under the Official Liability Act were not designed to expedite proceedings whose undue length was his only complaint before the Commission at this stage.

The Commission refers in this respect, in particular, to its decision on the admissibility of application No. 4459/70, Kaiser against Austria. In that case the Commission had been called upon to examine whether or not the two remedies mentioned above by the respondent Government were, in fact, effective and sufficient remedies where the applicant had complained that the provisions of Article 270 (1) of the Code of Criminal Procedure, requiring the completion of the drafting of the judgment within a period of three days, had not been observed and that his right under Article 6 (1) (Art. 6-1) of the Convention had therefore been violated. The Commission found that neither remedy was, in the circumstances, an effective remedy to redress the situation of which the applicant had complained, but concluded that, for other reasons, the complaint was manifestly ill-founded.

In the present case the Commission comes to the same conclusion as regards the question of exhaustion of domestic remedies. Having regard to the hierarchical appeal, it finds that, even if that disciplinary procedure constituted under Austrian law a remedy against certain lapses in the administration of justice it was not, in the circumstances of the present case, designed to redress the situation of which the applicant complains, namely that the criminal charges against him have not been determined within a reasonable time and that this situation still continues.

In this connection the Commission had again due regard to the uncertain position in which the applicant found himself at the time to the extent that he was not fully aware of the procedural decisions taken against him.

Moreover, an accused person could perhaps hardly be expected to start such disciplinary procedure against a judge who will then proceed to decide the question of his guilt and of the sentence to be imposed on him.

Similarly, a complaint under the Official Liability Act is limited to a claim for actual liquidated damages and is not designed to accelerate criminal proceedings.

The Commission finds, therefore, that with regard to the applicant's complaint under Article 6 (1) (Art. 6-1) of the Convention relating to the length of the criminal proceedings against him, no effective remedies within the meaning of Article 26 (Art. 26) of the Convention was available to him under Austrian law.

The Commission further finds that it cannot decide upon the applicant's complaint under Article 13 (Art. 13) of the Convention as that provision is applicable only where the "rights and freedoms set forth in the Convention are violated" and no such findings has been made or is required at the present stage of the proceedings.

(b) Article 26 (Art. 26) of the Convention further requires that an application to the Commission should be introduced not later than six

months after the final decision relating to the complaint concerned. In this connection the Commission is called upon to examine what period is under consideration in the present case.

The respondent Government has alleged that the criminal proceedings against the applicant, which began in August 1959 with the opening of preliminary investigations against him, ended on 9 November 1964 when the first trial started before the Regional Criminal Court of Vienna. The Government explained that, under Article 6 (1) (Art. 6-1) of the Convention, the applicant was entitled to receive within a reasonable time a "hearing" by a court. This simply required that the applicant should be brought within a reasonable time before a court where he should have an opportunity to defend his case, but it did not require that the charges against him should be finally determined within a reasonable time. The only exception would be where a court acted in bad faith in fixing an early hearing in order to comply with this requirement under Article 6 (1) (Art. 6-1) of the Convention and then adjourned the hearing in order to complete the case against the accused person concerned. However, there was no indication that this exception would be applicable in the present case, so that the period under examination had ended on 9 November 1964, being the date on which the first trial opened.

The applicant had relied on the judgment of the European Court of Human Rights in the Neumeister Case (European Court of Human Rights "Neumeister Case" judgment of 27 June 1969, paragraph 19 of THE LAW) which found that Article 6 (1) (Art. 6-1) of the Convention indicated as the terminating date the judgment determining the charge, the period thus lasting until conviction or acquittal, even if this decision was reached on appeal. Since the appeal and plea of nullity made by him were, at least partly, still pending before the Supreme Court the period under examination in his case which had started in February 1959 with the opening of investigations by the financial authorities, is still continuing.

The Commission considers that it is not necessary to determine, at this stage of the proceedings before it, the exact dates at which the period under examination in the present case, started or ended. What it must, nevertheless, decide is whether or not the application has been lodged within the six months' time-limit laid down in Article 26 (Art. 26).

The Commission finds that, with regard to the criminal charges, now under consideration, the situation complained of by him continued in February 1970, i.e. during the period of six months preceding 16 June 1970, being the date on which the application was lodged with the Commission. In this connection, the Commission refers to its own jurisprudence and to that of the European Court of Human Rights and concludes that the application is not inadmissible for non-observance of the six months' time-limit laid down in Article 26 (Art. 26) of the Convention.

4. The Commission finally considered the question whether or not the applicant's complaint under Article 6 (1) (Art. 6-1) of the Convention relating to the length of the criminal proceedings against him was manifestly ill-founded.

The applicant has alleged that the failure finally to determine certain of the charges against him during a period of 121/2 years deprived him of a hearing of his case within a reasonable time within the meaning of that provision.

The respondent Government has here maintained that the case against the applicant, which was as a whole extremely voluminous and complex, had been handled by the Austrian authorities and courts with the greatest possible speed and care. Those delays which had in fact occurred, however, had been unavoidable or had been caused by the applicant's own conduct.

The applicant conceded that his case was voluminous and complex but maintained that this was the result of the manner in which it had been conducted by the authorities and courts in Austria. In fact, on numerous occasions the Austrian Code of Criminal Procedure had been violated causing a protraction of the proceedings for which he himself was in no way responsible.

Both the European Commission and Court of Human Rights have held repeatedly that the reasonableness of the period within which a person is entitled to a hearing of his case under Article 6 (1) (Art. 6-1) of the Convention must not be assessed in abstracto but in the light of the particular circumstances of the case concerned (see, for example, the decision in the Neumeister, Wemhoff and Ringeisen Cases).

Article 27, paragraph (2) (Art. 27-2), of the Convention in requiring the Commission to declare inadmissible any application from an individual which it considers to be "manifestly ill-founded" does not permit the Commission, at the stage of considering the admissibility, to reject a complaint whose lack of foundation cannot be so described.

In the present case the Commission has carried out a preliminary examination of the information and arguments submitted by the parties. The Commission finds that the complaint made by the applicant under Article 6 (1) (Art. 6-1) of the Convention is of such complexity that its determination should depend upon an examination of its merits. It follows that it cannot be regarded as manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention and no other ground for declaring this part of the application inadmissible has been found.

For these reasons the Commission,

Declares admissible and retains, without in any way prejudging the merits of the case, the allegation made by the application in respect of Article 6 (1) (Art. 6-1) of the Convention that, in the determination of the criminal charges against him, he did not receive a hearing within a reasonable time by a tribunal established by law.