In the case of B. v. Austria*,

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* Note by the Registrar. The case is numbered 8/1989/168/224. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr J. Cremona, President,
Mr Thór Vilhjálmsson,
Mr F. Matscher,
Mr B. Walsh,
Sir Vincent Evans,
Mr C. Russo,
Mrs E. Palm,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 25 November 1989 and 23 February 1990,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 16 March 1989, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 11968/86) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by Mr B., an Austrian national, on 10 January 1986.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 § 3 and Article 6 § 1 (art. 5-3, art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 § 3 (b)). On 30 March 1989, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr J. Cremona, Mr L.-E. Pettiti, Sir Vincent Evans, Mr C. Russo and Mr J.A. Carrillo Salcedo (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mrs E. Palm, Mr B. Walsh and Mr Thór Vilhjálmsson, substitute judges, replaced respectively Mr Ryssdal and Mr Pettiti, who were unable to take part

in the consideration of the case, and Mr Carrillo Salcedo, who had been exempted from sitting by the President (Rule 24 §§ 1 and 5).

4. Mr Cremona, Vice-President of the Court, assumed the office of President of the Chamber pursuant to Rule 21 §§ 3 (b) and 5. After consulting, through the Deputy Registrar, the Agent of the Austrian Government ("the Government"), the Delegate of the Commission and the lawyer for the applicant (Rules 37 § 1 and 38), he decided, on 13 October 1989, that there was no need at that stage for memorials to be filed and that the oral proceedings should open on 20 November 1989. On 12 October 1989 he had given the applicant's lawyer leave to plead in German (Rule 27 § 3).

5. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

(a) for the Government

Mr W. Okresek, Federal Chancellery, Agent,
Mrs I. Gartner, Ministry of Justice,
Mr S. Hammer, Ministry of Foreign Affairs, Counsel;

(b) for the Commission

Mr E. Busuttil, Delegate;

(c) for the applicant

Mr G. Stanonik, Rechtsanwalt, Counsel.

The Court heard their addresses, as well as their replies to its questions.

6. On the occasion of the hearing and then on various dates thereafter until and including 4 January 1990, the participants in the proceedings produced numerous documents and their observations on the application of Article 50 (art. 50) of the Convention.

7. By a letter received at the registry on 18 December 1989, the applicant indicated that he did not wish his name to appear in the judgment. When consulted, the Agent of the Government and the Delegate of the Commission did not raise any objection. After having considered the matter, the Court decided, on 23 February 1990, to accede to the applicant's request.

AS TO THE FACTS

I. Particular circumstances of the case

8. Mr B., an Austrian national, resided in Innsbruck before 1 July 1980 and pursued there the occupation of insurance broker.

In 1979 he and his wife set up and acquired several companies in Austria, Liechtenstein and Switzerland. From the autumn of that year until the end of 1980, he worked as a financial consultant and obtained from a number of persons sums amounting to approximately 10,000,000 Austrian schillings, which he purported to invest in such a way as to obtain for the persons concerned a return of from 17 to 35%. He transferred a considerable proportion of these funds to the Federal Republic of Germany and Switzerland and used them in connection with his own companies.

1. The criminal proceedings

9. On 26 June 1980 the police informed the Salzburg public prosecutor's office of their suspicions concerning the applicant. On 30 June the Salzburg Regional Court (Landesgericht) ordered a search to be made of Mr B.'s apartment and of the offices of one of his companies. He was arrested the following day, 1 July, and criminal proceedings were instituted against him. After having questioned him on 3 July, the Regional Court decided to extend his detention on remand (Untersuchungshaft) pursuant to Article 180 §§ 1 and 2, sub-paragraphs 1 to 3, of the Code of Criminal Procedure (see paragraphs 19 and 25 below).

10. The investigation was completed on 8 May 1981 and the indictment, seventeen pages long, was communicated to the applicant on 27 May. It became final on 21 June 1981 after the dismissal of his appeal by the Linz Court of Appeal (Oberlandesgericht). Mr B. was accused of the commission or attempted commission, as the case may be, of a number of offences of "professional" aggravated fraud (gewerbsmässiger schwerer Betrug) within the meaning of Articles 146 and 147 § 3 of the Criminal Code, and of various infringements of the exchange control legislation.

The investigation file comprised thirteen volumes, including more than one hundred pages of expert opinions. There were also thirty volumes of documentary evidence.

11. The trial (Hauptverhandlung) lasted several days, during which thirty witnesses gave evidence. The hearing began on 9 November 1981, but was adjourned on 12 November to allow for further inquiries requested, in particular, by the applicant. It did not re-open until 15 November 1982. The transcript ran to 357 pages.

On 16 November 1982 the court sentenced Mr B. to a term of eight years' imprisonment, from which the period of detention on remand was to be deducted. It found him guilty of 24 offences (Verbrechen) of "professional" aggravated fraud in respect of sums varying between 10,000 and 1,000,000 schillings, as well as on seven counts of infringing the exchange control legislation. The President stated briefly the grounds for this decision.

The accused immediately announced his intention of lodging an application for a declaration of nullity and filing an appeal (Nichtigkeitsbeschwerde and Berufung, see paragraph 30 below). His detention on remand was continued.

2. The drafting of the judgment

12. Under Article 270 of the Code of Criminal Procedure, the judgment must be drawn up within fourteen days (see paragraph 29 below). In this instance the task fell to Judge M.; he did not complete it until August 1985 (see paragraph 15 below).

13. As early as the beginning of 1983, the competent authority took steps to monitor the work of the judge in question and asked him to provide a detailed statement of all the cases pending before him. From 1 June 1983 measures were taken to lighten his workload - the volume of which was the subject of detailed information provided to the Court by the Government -, but, as the judgment had still not been drawn up, on 6 February 1984 the Linz Principal Public Prosecutor called for the institution of disciplinary proceedings.

On 4 March 1984 the Court of Appeal of Linz, sitting as a disciplinary board, issued to M. an admonition (Ermahnung), as an administrative penalty, for the delay in producing the written judgment (Urteilsausfertigung).

M. sought to explain the delay by referring to an excessive workload and personal problems - in particular the death of his father and

major surgery carried out on his son - and to the care with which he drafted his judgments.

14. As the text in question was still not ready, the Linz Court of Appeal decided, on 15 May 1985, to commence fresh disciplinary proceedings against M. On 1 July 1986 he was deprived of salary increments for a period of two years. He appealed to the Supreme Court, which dismissed his appeal on 27 October 1986.

In the meantime the Personalsenat of the Salzburg Regional Court had decided, on 4 June 1985, not to assign any new cases to him, in order to allow him to catch up on his backlog.

15. On 28 August 1985 the judgment of the Salzburg Regional Court was communicated to the applicant in writing. He had requested that it be sent to him on 5 June, when he had also applied for bail (see paragraph 23 below).

According to this judgment, which comprised 126 pages, the accused had, on 42 occasions and from 25 persons residing in various Austrian towns, obtained fraudulently a total of approximately 10,000,000 schillings. A substantial proportion of these funds had been transferred to the Federal Republic of Germany and to Switzerland, with the result that the exchange control legislation had also been infringed, on seven occasions and in respect of an amount of 8,500,000 schillings. On the other hand, the accused was acquitted on the other charges.

The judgment then recounted the facts of the case (see paragraph 8 above) and analysed in detail the various offences found to be proven.

3. The proceedings in the Supreme Court

16. Within the prescribed period of fourteen days, the applicant filed an application for a declaration of nullity with the Supreme Court (Oberster Gerichtshof). He contended that the Regional Court had failed to have regard to his objections to an expert and to his numerous applications for evidence to be taken. At the same time he appealed against his sentence, which he claimed was excessive.

17. On 14 November 1985 the Supreme Court dismissed his application for a declaration of nullity as unfounded. However, on 19 December 1985 it allowed the appeal and reduced the sentence from eight to six years' imprisonment.

4. Detention on remand

18. In accordance with Austrian law, the applicant remained in detention on remand from 1 July 1980, the date of his arrest (see paragraph 9 above), until the Supreme Court's decision on 19 December 1985 (Articles 397, 284 § 3 and 294 § 1 of the Code of Criminal Procedure - see paragraph 28 below).

19. The Salzburg Regional Court remanded him in custody for the first time on 3 July 1980 pursuant to Article 180 §§ 1 and 2, sub-paragraphs 1 to 3, of the Code of Criminal Procedure (see paragraph 25 below). It based its decision on the risk of his absconding (Fluchtgefahr), on the possibility of collusion (Verdunkelungsgefahr) and on the danger of repetition of the offences (Wiederholungsgefahr). Mr B. had reason to fear that he would receive a heavy sentence; he had good contacts abroad; there was a danger that he might obstruct the investigation and, when previously imprisoned for similar activities, he had committed new offences on his release.

20. On 10 September 1980 the Ratskammer (Regional Court sitting in chambers) reviewed of its own motion, in accordance with Article 194 § 3 of the Code of Criminal Procedure (see paragraph 27

below), the grounds for the applicant's detention. At the hearing (Haftprüfungsverhandlung), he applied unsuccessfully for release. The Ratskammer considered that there was a risk of his absconding because the accused was not well-integrated socially, because he had good contacts abroad and because he could expect a heavy sentence. It added that there was a danger that he might commit further offences since he had previously been convicted on similar charges and had committed new offences following his release on 9 March 1979. On the other hand, it felt that there was no longer any risk of collusion, as the investigation had sufficiently progressed in the two months for which he had been held on remand. In the light of all the relevant considerations, the Ratskammer took the view that the aims of the detention could not be attained by less severe measures.

The applicant was summonsed to appear before the court on 15 October 1980, but he stated that he did not wish to put forward his arguments until his lawyer had submitted to the court all the defence evidence, in the form of a memorial, accompanied by an application for his release.

21. On 5 January 1981 the Linz Court of Appeal decided to extend the detention on remand by one year, pursuant to Article 193 § 2 of the Code of Criminal Procedure (see paragraph 26 below). It referred to the very complex nature of the investigation resulting from the large number of offences and to the fact that inquiries were under way abroad in order to shed light on the destination of the funds transferred to Switzerland.

On 15 April, when he again appeared before the court, the applicant repeated his statements of 15 October 1980. It does not appear from the evidence that he applied for release before 1985 (see paragraph 22 below).

After 21 June 1981, when the indictment became final, the detention on remand was no longer subject to any limitation as regards its duration or to automatic periodical review by a court (Article 193 § 2 of the Code of Criminal Procedure, see paragraph 26 below).

22. On 19 May 1985 Mr B. applied to the Ratskammer of the Salzburg Regional Court for his release. However, on 4 June, after consulting his lawyer, he withdrew his application because he was unable to meet the bail requirements.

23. He submitted a further application on the following day, offering to put up bail of 250,000 schillings. He claimed that his detention was no longer justified because his wife and their child lived in Salzburg, where his training would enable him to find work.

On 17 July 1985 the Ratskammer allowed his application.

It observed that the conviction had not yet become final. As regards the grounds for the detention on remand (see paragraph 25 below, Article 180 of the Code of Criminal Procedure), it considered that the danger of a repetition of the offences had considerably diminished as a result of the length of the applicant's incarceration, which had already lasted five years. However, the risk of his absconding could not be completely ruled out. On his own admission, Mr B. had deposited silver ingots to a value of 10,000,000 schillings with a Zürich bank and he had contacts abroad. The risk of his absconding could however be removed by requiring him to put up bail, which the Ratskammer set at 2,000,000 schillings, having regard to the consequences of the offences attributed to the accused.

24. The public prosecutor's office and the applicant appealed to the Linz Court of Appeal, which on 14 August 1985 upheld the Ratskammer's decision, but as Mr B. was unable to find the necessary funds, he remained in prison.

II. The relevant domestic legislation

1. Detention on remand

25. Under Article 180 §§ 1 and 2 of the Code of Criminal Procedure, a person may be held in detention on remand if he is seriously suspected of having committed a criminal offence and if there is a risk of his absconding, of collusion or of repetition of the offences.

26. According to Article 193, detention may not last more than two months where its sole justification is the risk of collusion; it may not last more than six months where one of the other grounds is relied on. The second-instance court may, however, if so requested by the investigating judge or the public prosecutor and if the difficulty or the scope of the investigation makes it necessary, extend the detention. In such cases the maximum duration of detention is three months where the measure is based on a risk of collusion alone and one year, or even two years if the term of imprisonment which the accused risks is ten years or more, in the other circumstances provided for.

Until 30 June 1983, detention on remand based on a ground other than the risk of collusion alone was no longer subject to any limit as regards its duration once the indictment had become final or the order fixing the date for the opening of the trial had been made. The position now is that the above-mentioned periods cease to run as soon as the oral proceedings begin. It was and is open to the accused to submit an application for release at any time (Article 194 § 2).

27. By virtue of Articles 194 and 195, such an application and any appeal against a decision to remand in custody must be examined by the Ratskammer in a private hearing held in the presence of the accused or his lawyer. Where the accused does not avail himself of this procedure on his own initiative, the detention must be the subject of a review which is carried out automatically after two months of detention or when three months have elapsed since the last hearing and the accused does not have a lawyer.

The fact that an indictment has become final or that the date for the opening of the trial has been fixed means that no further review hearings are conducted. Decisions concerning the continuation of the accused's detention are taken by the Ratskammer in private (Article 194 § 4).

28. The detention on remand comes to an end, at the latest, when the accused begins to serve his sentence, the duration of which is reduced by the time spent on remand (Article 38 of the Criminal Code). Where he files an appeal to which the law attributes suspensory effect, for example an application for a declaration of nullity (Article 284 § 3) or an appeal against sentence (Article 294 § 1), he remains in detention on remand until the final decision (Article 397).

2. First-instance and appeal proceedings

29. Under the terms of Article 270 § 1 of the Code of Criminal Procedure, the judgment "must be issued in writing within fourteen days of its pronouncement and shall be signed by the President and the Registrar".

According to Austrian academic writing and judicial practice, failure to comply with this time-limit does not entail the nullity of the judgment.

30. The judgment may be challenged by means of an application for a declaration of nullity, an appeal against sentence or the damages awarded, or both remedies together (Articles 280 et seq.).

Notice of appeal, which must be given within three days of the pronouncement of the verdict (Articles 284 § 1 and 294 § 1), in principle has immediate suspensory effect (Articles 284 § 3 and 294 § 1). The grounds for such an appeal must be filed with the court within fourteen days of such notice or of the notification of the written judgment if this does not occur until after notice of appeal has been lodged (Articles 285 § 1 and 294 § 2).

PROCEEDINGS BEFORE THE COMMISSION

31. In his application of 10 January 1986 (no. 11968/86), Mr B. complained of the length of his detention on remand and the duration of the criminal proceedings brought against him in the Salzburg Regional Court. He relied on Articles 5 § 3 and 6 § 1 (art. 5-3, art. 6-1) of the Convention.

On 7 May 1987 the Commission found the application admissible. In its report of 14 December 1988 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 6 § 1 (art. 6-1) (unanimously), but not of Article 5 § 3 (art. 5-3) (eleven votes to five). The full text of the Commission's opinion and the separate opinion accompanying it is reproduced as an annex to this judgment*.

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* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 175 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS TO THE COURT

32. At the hearing on 20 November 1989, the applicant urged the Court to find a violation by the Republic of Austria of Articles 5 § 3 and 6 § 1 (art. 5-3, art. 6-1) of the Convention.

For their part, the Government invited the Court to declare that there had been no such breach.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 (art. 5-3)

33. According to Article 5 § 3 (art. 5-3):

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (art. 5-1-c) ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The applicant complained that the length of his detention on remand was contrary to this provision, a claim which was contested by the Government and rejected by the Commission.

A. Period to be taken into consideration

34. There is no disagreement as to the starting point of the period to be taken into consideration; it was 1 July 1980, the day of the applicant's arrest (see paragraph 9 above).

35. However, the precise date at which it ended gave rise to dispute.

According to the Government and the majority of the Commission, the period in question ended on 16 November 1982 with the pronouncement of the first-instance judgment (see paragraph 11 above).

In the applicant's opinion, on the other hand, his detention on remand lasted until 19 December 1985, the date of the Supreme Court's judgment (see paragraph 17 above) and therefore of his final sentencing. This view was accepted by the minority of the Commission.

36. In its judgment of 27 June 1968 in the Wemhoff case, the Court held that "a person convicted at first instance, whether or not he has been detained up to this moment, is in the position provided for by Article 5 § 1 (a) (art. 5-1-a) which authorises deprivation of liberty 'after conviction'. This last phrase cannot be interpreted as being restricted to the case of final conviction ...". It could not be overlooked that "the guilt of a person who is detained during the appeal or review proceedings has been established in the course of a trial conducted in accordance with the requirements of Article 6 (art. 6)" (Series A no. 7, pp. 23-24, § 9).

In view of the fact that Article 5 § 3 (art. 5-3) applies solely in the situation envisaged in Article 5 § 1 (c) (art. 5-1-c), with which it forms a whole (see, as the most recent authority, the Ciulla judgment of 22 February 1989, Series A no. 148, p. 16, § 38), what the Court said in the Wemhoff case points to 16 November 1982 as the closing date of the relevant period.

37. The minority of the Commission expressed the view that the Court should re-examine this ruling in the light of its subsequent interpretation of the scope of Article 5 § 1 (a) (art. 5-1-a) in the Van Droogenbroeck judgment of 24 June 1982 (Series A no. 50) and the Monnell and Morris judgment of 2 March 1987 (Series A no. 115). In their view, the detention after the pronouncement of the Salzburg Regional Court's judgment on 16 November 1982 was not the result of the conviction because, under Austrian law, it had not yet become final. The applicant was therefore in detention on remand until 19 December 1985 (Articles 284 § 3, 294 § 1 and 397 of the Code of Criminal Procedure - see paragraphs 28 and 30 above).

38. Having regard in particular to the French text, the word "conviction", for the purposes of Article 5 § 1 (a) (art. 5-1-a), has to be understood as signifying both a finding of guilt, after it has been established in accordance with the law that there has been an offence, and the imposition of a penalty or other measure involving deprivation of liberty (see the Van Droogenbroeck judgment, cited above, Series A no. 50, p. 19, § 35). The judgment of 16 November 1982 undoubtedly fits this definition.

However, in this context, "the word 'after' does not simply mean that the 'detention' must follow the 'conviction' in point of time: in addition, the 'detention' must result from, 'follow and depend upon' or occur 'by virtue of' the 'conviction'" (ibid.).

39. It is therefore necessary to determine whether the detention subsequent to 16 November 1982 satisfied the chronological and causal conditions inherent in the preposition "after".

On the first point, the Court notes that the detention clearly took place after the conviction for the purposes of Article 5 § 1 (a) (art. 5-1-a) (see paragraph 38 above).

As regards the second, it observes that, at the hearing on 16 November 1982, the court simultaneously found the accused guilty, sentenced him to eight years' imprisonment, indicated orally the principal grounds for the decision and stated that the applicant's detention on remand would continue (see paragraph 11 above). Looking beyond the appearances and the language used and having regard to the realities of the situation (see the Van Droogenbroeck judgment, cited above, Series A no. 50, p. 20, § 38), the Court finds that the "cause" of the continuation of the applicant's detention on remand lay in the

conviction which was pronounced at the same time. If there had been no conviction, the accused would have had to be released immediately.

Moreover, given the essential link between paragraph 3 and sub-paragraph 1 (c) of Article 5 (art. 5-3, art. 5-1-c), a person convicted at first instance and detained pending an appeal by him cannot be considered to be detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence" in respect of the offence of which he has been convicted.

It is also to be stressed that there exist important differences among the Contracting States on the question whether a person convicted at first instance has started serving his sentence while an appeal is pending. In this regard the Court, like the Commission, finds it reasonable that the important guarantees of Article 5 § 3 (art. 5-3) of the Convention should not be made dependent on any one particular national situation.

40. In conclusion, the period to be taken into consideration ran from 1 July 1980 to 16 November 1982; it therefore lasted two years, four months and fifteen days.

B. Reasonableness of the length of detention

41. In order to show that there had been no violation of Article 5 § 3 (art. 5-3), the Government stressed the suspicions existing in relation to the applicant, the grounds for the detention, the complexity of the case, the necessity of questioning numerous persons abroad and the length of the sentence which the applicant risked.

The Commission, for its part, based its position solely on the diligence of the judicial authorities and the complexity of the case.

42. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention of the person concerned (see the Stögmüller judgment of 10 November 1969, Series A no. 9, p. 40, § 4). However, after a certain lapse of time, it is no longer sufficient; in such circumstances the Court must examine "the grounds which persuaded the judicial authorities to decide" that the detention should be continued (ibid., and see the Wemhoff judgment, cited above, Series A no. 7, pp. 24-25, § 12, and the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 42, § 104).

Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see the Matznetter judgment of 10 November 1969, Series A no. 10, p. 34, § 12).

43. The reasons given by the Austrian courts to justify their decisions to continue the applicant's detention were, in addition to the gravity of the offences, the risk of his absconding, the possibility of collusion and the danger that he might commit other offences.

The Ratskammer excluded the risk of collusion on 10 September 1980, a little more than two months after the beginning of the detention, because the investigation had already progressed sufficiently (see paragraph 20 above).

44. As regards the risk of the applicant's absconding, the Court observes that the possibility of a severe sentence is not sufficient after a certain lapse of time to justify the length of detention (see the Wemhoff judgment, cited above, Series A no. 7, p. 25, § 14).

However, the national courts also relied on other relevant circumstances, including the applicant's lack of social integration and his contacts abroad; in addition, they had regard to the fact that Mr B., who had already been convicted for similar activities, had committed new offences following his release in March 1979 so that there was a danger of repetition (see paragraphs 19-20 above). The applicant had not submitted any cogent arguments on these points (see paragraphs 20 and 21 above).

Moreover, in the Court's view it is reasonable to infer from the Ratskammer's decision in 1985 that the risk of the applicant's absconding subsisted when the Regional Court pronounced its judgment on 16 November 1982 (see paragraph 23 above).

45. From the moment when the indictment became final (21 June 1981), the applicant's detention was no longer subject to an automatic periodical review by the judicial authorities (see paragraphs 21 and 27 above). For Mr B.'s part, he did not submit any application for release during the period under examination, although it was open to him to do so at any time. Nevertheless, the national authorities were under a duty to conduct the case with expedition.

As regards the investigation - of nearly one year -, the Court subscribes to the Commission's view that the judge displayed the necessary diligence. It was an especially complex case, concerning a series of frauds, which necessitated inquiries effected under rogatory commission abroad, involved a large number of witnesses and filled voluminous files.

The trial began on 9 November 1981. It was adjourned on 12 November to allow for further inquiries, requested, in particular, by the applicant. It did not re-open until 15 November 1982 (see paragraph 11 above). This delay of one year may at first sight appear excessive, but "it should not be overlooked that, while an accused person in detention is entitled to have his case given priority and conducted with particular expedition, this must not stand in the way of the efforts of the judges to clarify fully the facts in issue, to give both the defence and the prosecution all facilities for putting forward their evidence and stating their cases and to pronounce judgment only after reflection on whether the offences were in fact committed and on the sentence" (see the Wemhoff judgment, cited above, Series A no. 7, p. 26, § 17). It does not appear from the evidence that the Austrian courts failed to act with the necessary dispatch in their prosecution of the case.

46. Consequently, the Court concludes that the length of the applicant's detention (1 July 1980 - 16 November 1982) cannot be regarded as unreasonable for the purposes of Article 5 § 3 (art. 5-3).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 (art. 6-1)

47. Mr B. also complained of the total duration of the criminal proceedings instituted against him and in particular of the time taken by Judge M. to draft the judgment at first instance. He relied on Article 6 § 1 (art. 6-1) of the Convention, which is worded as follows:

"In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ... ."

According to the Commission, the length of the proceedings in question exceeded "a reasonable time". The Government contested this view.

A. Period to be taken into consideration

48. The period to be taken into consideration - which is not in dispute - ran from 1 July 1980, the day of the applicant's arrest, to

19 December 1985, the date of the Supreme Court's final decision (see paragraphs 9 and 17 above). It lasted a total of five years, five months and eighteen days.

B. Reasonableness of the length of the proceedings

49. The reasonableness of the length of proceedings must be assessed according to the circumstances of the case and in the light of the criteria laid down in the Court's case-law (see, amongst other authorities, the Milasi judgment of 25 June 1987, Series A no. 119, p. 46, § 15).

50. As regards the complexity of the case, the Court takes note, as did the Commission, of the difficulties encountered during the investigation and those derived from the nature of the accusations (see paragraphs 10-11 above). It observes nevertheless that by 16 November 1982 all the relevant evidence was in the file, the decision had already been taken and the principal grounds for the decision outlined; it remained for the judge responsible for drawing up the judgment only to expand upon these grounds, following careful study of the voluminous file, and to formulate them in writing.

51. No special problems arise in relation to the applicant's conduct; moreover, it was not criticised by the Government.

52. As regards the conduct of the Austrian judicial authorities, the Court does not find any shortcomings at the stage of the preliminary investigation, or during the proceedings before the Salzburg Regional Court, in any case until 16 November 1982, or in the proceedings before the Supreme Court. It remains to consider the time taken to draw up the judgment, which comprised 126 pages (see paragraph 15 above).

The drafting of the judgment may indeed have required a considerable effort, but the judge did not complete it until 28 August 1985, in other words 33 months after the pronouncement; according to the applicant, this constituted an infringement of Article 270 of the Code of Criminal Procedure (see paragraphs 12 and 29 above).

53. The Government themselves considered such a situation regrettable. They nevertheless stressed the excessive workload of Judge M. at the time. They also drew attention to the measures taken by the competent authority: lightening of the judge's workload from the beginning of 1983 and then institution of disciplinary proceedings against him (see paragraphs 13-14 above). They argued that they could not take more severe measures on account of the principles of the independence of the judiciary (Article 87 of the Constitution) and of the fixed allocation of cases within the courts.

54. Like the Commission, the Court cannot accept this view. It was not until June 1985 that it was decided to stop assigning new cases to Judge M., so as to enable him to catch up on his backlog (see paragraphs 13-14 above). Despite the admonition addressed to him on 4 March 1984, he did not produce the text of the judgment until 17 months later. The subsequent, more severe disciplinary measure was not imposed on him until 1986, after the conclusion of the proceedings in question (see paragraphs 13-14 above).

Having regard to its consistent case-law concerning the problems posed by the excessive workload of the courts (see, most recently, the Unión Alimentaria Sanders S.A. judgment of 7 July 1989, Series A no. 157, p. 15, § 40), the Court considers that the measures in question were insufficient and too belated to ensure that the proceedings against the applicant were concluded within a reasonable time. It does not however have to determine which authority was responsible for the delay in question because, in any event, what is in issue is the liability of the State (see, inter alia, the Foti and Others judgment

of 10 December 1982, Series A no. 56, p. 21, § 63).

55. There has therefore been a violation of Article 6 § 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

56. According to Article 50 (art. 50):

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicant claimed compensation for pecuniary and non-pecuniary damage, and the reimbursement of his costs and expenses.

A. Pecuniary and non-pecuniary damage

57. He maintained that the delay in producing the text of the judgment had deprived him of the possibility of securing his provisional release as early as 1983, which would have enabled him to earn his living. He assessed the resulting loss at 70,000 schillings per month.

In addition he affirmed that he had sustained non-pecuniary damage because for 142 weeks he had been unable either to lodge an appeal on a point of law or to apply for his provisional release pursuant to Article 46 § 1 of the Criminal Code. He left it to the Court to determine the extent of this damage.

58. The Government replied that, even if the judgment had been served on him earlier, the applicant would still have remained in prison to serve his sentence. There was therefore no causal connection between the alleged loss of earnings and the violations complained of. As regards the non-pecuniary damage claimed, in their view any finding of a violation would in itself constitute adequate just satisfaction.

On the other hand, the Delegate of the Commission took the view that Mr B. had sustained pecuniary and non-pecuniary damage. The delay in drawing up the grounds of the judgment of 16 November 1982 (thirty-three months) clearly harmed the applicant in so far as he had to remain in detention during this period, hoping that the Supreme Court would quash the judgment in question. The Delegate asked the Court to make an equitable assessment.

59. The Court cannot see any causal connection between the violation found (see paragraph 55 above) and the alleged loss of earnings. As regards any non-pecuniary damage, the finding of a violation in the present judgment constitutes adequate just satisfaction in this respect.

B. Costs and expenses

60. The applicant claimed the reimbursement of lawyers' fees (322,413 schillings, including turnover tax) and travelling and miscellaneous expenses (25,000 schillings), referable to the proceedings before the Convention organs.

The Government cited the Austrian fee scales and accepted certain of the sums sought, while contesting others. The Delegate of the Commission did not express an opinion.

61. Making an equitable assessment in accordance with Article 50 (art. 50) and having regard to the criteria which it applies in relation to that Article (art. 50), the Court awards Mr B. 150,000 schillings under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been no violation of Article 5 § 3 (art. 5-3);

2. Holds that there has been a violation of Article 6 § 1 (art. 6-1);

3. Holds that Austria is to pay to the applicant in respect of costs and expenses 150,000 (one hundred and fifty thousand) schillings;

4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 March 1990.

Signed: John CREMONA
President

Signed: Marc-André EISSEN
Registrar

In accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 52 § 2 of the Rules of Court, a separate concurring opinion by Mr Cremona is annexed to the present judgment.

Initialled: J.C.

Initialled: M.-A.E.

CONCURRING OPINION OF JUDGE CREMONA

I have had some hesitation as to the conclusion reached under Article 5 § 3 (art. 5-3) of the Convention, and I say this because the period of time involved was rather long.

But each case must be decided on its own merits. On the whole, considering that in this case danger of absconding was very real and subsisted up to the pronouncement of the Regional Court's judgment, during which period the authorities concerned did not fail to display the necessary diligence in the conduct of proceedings in this very complex case, and weighing up the other relevant circumstances referred to in the judgment, I have, along with my other colleagues, voted for non-violation under this head.