

## AS TO THE ADMISSIBILITY OF

Application No. 16038/90  
by H.W.  
against Austria

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The European Commission of Human Rights (Second Chamber), sitting in private on 13 January 1992, the following members being present:

MM.S. TRECHSEL, President of the Second Chamber  
G. JÖRUNDSSON  
A. WEITZEL  
J.-C. SOYER  
H.G. SCHERMERS  
H. DANELIUS  
Mrs.G. H. THUNE  
MM.F. MARTINEZ  
L. LOUCAIDES  
J.-C. GEUS  
Mr. K. ROGGE, Secretary to the Second Chamber

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

Having regard to the application introduced on 29 November 1989 by H.W. against Austria and registered on 22 January 1990 under file

No. 16038/90;

Having regard to the observations submitted by the respondent

Government on 15 May 1991 and the applicant's observations in reply submitted on 12 July 1991;

Having regard to the Commission's decision of 27 May 1991 to

refer the case to the Second Chamber;

Having regard to the report provided for in Rule 47 of the

Commission's Rules of Procedure;

Having deliberated,

Decides as follows:

#### THE FACTS

The applicant, born in 1922, is an Austrian national and resident

in Vienna. He is a professor at Vienna University.

Before the

Commission, he is represented by Mr. K. Bernhauser, a lawyer practising in Vienna.

The applicant complains under Article 6 para. 1 of the Convention

about the length of criminal proceedings against him.

The course of the criminal proceedings may be

summarised as follows:

In 1979 criminal investigations were started against the applicant who was suspected of having, as chairman of a private association supporting a particular research institute at the Vienna University, committed fraudulent conversion within the meaning of S. 153 of the Austrian Criminal Code (Strafgesetzbuch). The proceedings were also conducted against the Secretary to the Association.

On 3 August 1979 the Vienna Regional Court (Landesgericht), upon request of the Vienna Public Prosecutor's Office (Staatsanwaltschaft), ordered that all documents of the above association relating to credits, expenses etc. be seized.

On 25 April 1980, an accountant expert opinion was ordered. The opinion was submitted on 16 June 1981 and received by the Regional Court on 6 July 1981. The co-accused was heard by the Investigating Judge (Untersuchungsrichter) on 22 November 1981 and 12 February 1982. On 1 December 1982 the co-accused unsuccessfully requested that the

criminal proceedings be discontinued. The co-accused was again heard by the Investigating Judge on 22 June 1983 and 22 November 1984.

On 3 July 1986 the Vienna Public Prosecutor's Office preferred an indictment (Anklageerhebung). The applicant was charged with fraudulent conversion in the period from March 1979 until February 1982 for having made unjustified payments to the co-accused.

On 26 January 1988 the Vienna Regional Court convicted the applicant of fraudulent conversion and sentenced him to six months' imprisonment on probation. The co-accused was convicted of fraudulent conversion and false evidence. In these and the following proceedings the applicant was represented by counsel.

On 27 October 1988 the Supreme Court (Oberster Gerichtshof), upon the applicant's plea of nullity (Nichtigkeitsbeschwerde), quashed the Regional Court's judgment with regard to his conviction. With regard to his conviction of fraudulent conversion, the co-accused's plea of nullity was also successful. The case was sent back to the Regional

Court.

On 27 June 1989, the Vienna Regional Court, upon a further hearing, acquitted the applicant and the co-accused of the charges of fraudulent conversion.

THE LAW

The applicant's complaint relates to the length of the criminal proceedings against him. These proceedings began in 1979 and terminated on 27 June 1989.

According to the applicant, the length of these proceedings - a period of about ten years - is in breach of the "reasonable time" requirement (Article 6 para. 1 (Art. 6-1) of the Convention). The Government take the opposite view.

The Commission considers, in the light of the criteria established by the case-law of the Convention institutions on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that a thorough examination of this complaint is required, both as to the law and as

to the facts.

For these reasons, the Commission, unanimously,

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

Secretary to the Second Chamber  
President of the  
Second Chamber

(K. ROGGE)      (S. TRECHSEL)