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COUR EUROPEENNE
DES
DROITS DE L'HOMME

CONSEIL DE L'EUROPE
STRASBOURG

EUROPEAN COURT
OF
HUMAN RIGHTS

COUNCIL OF EUROPE
STRASBOURG

Mr Piers GARDNER
Monckton Chambers
4 Raymond Buildings
Gray's Inn
GB - LONDON WC1R 5BP

THIRD SECTION

ECHR-LE3.2bR
IF/ir

14 May 2002

Application no. 74511/01
WEISS v. Austria



Dear Sir,

I write to inform you that the judge appointed as rapporteur under Rule 49 § 1 of the Rules of Court, has instructed me, under Rule 49 § 2 (a) of the Rules of Court, to request the Government to submit an unequivocal declaration from the United States Department of Justice whether their statement of 8 February 2002 means that, upon his extradition, the applicant will only have a re-sentencing procedure or whether he is guaranteed a full appeal against his conviction on points of fact and law.

Having regard to the urgency of the matter, the Government have been requested to submit this information by tomorrow, 15 May 2002, at 9.30 a.m.

Yours faithfully,


Wincent Berger
Section Registrar

84 B 923/02-6 .13
U.S. Department of Justice

Criminal Division

-1136



Washington, D.C. 20530

May 14, 2002

Dr. Stephan Benner
Abteilung für Internationale
Rechtshilfe und Auslieferung
Bundesministerium für Justiz
Museumstraße 7
A-1070 Wien
Austria

Dear Dr. Benner:

This is to confirm and restate the contents of my letter, dated 8 February 2002. The issue addressed therein was the effect of an Austrian finding of extraditability with a rule of specialty condition that, upon Weiss' surrender to the United States, he not be proceeded against for Count 93 of the Indictment.

If Weiss is extradited subject to the condition that he not be punished for offenses involving false statements to government officials or in judicial proceedings, the presiding United States judge would be required to re-sentence Weiss in order to give effect to the condition. In our opinion, this would result in Weiss being permitted to file a full appeal on all issues, including the guilty verdict, errors committed during the trial, constitutional issues, and his sentence. Under United States law, a defendant does not separately appeal his verdict and a sentence. Any appeal is from the final judgment, which contains both the finding of guilt and the imposition of punishment. Furthermore, in any proceedings before any United States court, the United States would take the position that the re-sentencing permits Weiss to appeal both the sentence and the guilty verdict.

Therefore, if the Austrian Court were to order Weiss extradited on all counts of conviction except Count 93, as indicated in the Order of the Vienna Regional High Court, it is our opinion that Weiss would be permitted to appeal the guilty verdict on Counts One through Ninety-Two, as well as the new sentence imposed on those Counts. The outcome of this re-sentencing, as well as the outcome of the appeal, cannot be predicted.