

THE FACTS

The facts of the case, as presented by the applicant, may be summarised as follows:

I. The applicant is a German citizen, born in 1924 and at present detained in prison in Hamburg. He is involved in two cases of alleged fraud and usury which occurred in 1963/64 and 1970 respectively.

1. The first case concerns a firm in Hamburg, which undertook to assist debtors in the liquidation of their debts. The offenses - fraud and usury - are alleged to have been committed in 1963 and 1964, involving some 2,000 victims in 1963 and numerous others in 1964.

In December 1973 the applicant was extradited by Switzerland to the Federal Republic of Germany. After four months' detention he was released in 1964. In 1966 he was again arrested and detained for two months. In 1969 he was permitted to leave the country; he moved to Liechtenstein.

However, on .. October 1970 a new warrant of arrest was issued against the applicant and his trial was fixed to open before the Regional Court (Landgericht) of Hamburg on .. November 1970. The applicant did not appear at this trial. He states that two co-accused were convicted and sentenced and that they appealed from the judgment.

The applicant further states that he himself was to be arrested in Liechtenstein on .. November 1970 but fled via Italy and the United Kingdom to Panama. On .. November his case was given wide publicity in the series "XY ungelöst" on the second German television channel. This programme features unsolved criminal cases. A picture of the applicant was shown and a reward of 2,000 DM was offered for information leading to his arrest. The applicant's description was also circulated by Interpol and on .. February 1971 he was arrested at Trieste in Italy.

2. With regard to the second case of alleged fraud, the applicant states that, while in Liechtenstein, he was employed by an American corporation. Early in the 1970 this corporation established a new company, AG. The German public prosecutor qualified the prospectus issued by the company as fraudulent and opened a new investigation against the applicant. It was stated that shares of the AG had been sold to some 600 people who thereby suffered a damage of altogether over 1,000,000 DM; the applicant was said to have made a profit of about 600,000 S.Fr.

II. On .. March 1971 the Federal Republic of Germany, referring to a warrant of arrest issued in the R. case by the Regional Court of Hamburg on .. February and to a further warrant issued in the D. case by the District Court (Amtsgericht) of Hamburg on .. March, requested the applicant's extradition from Italy. On .. July 1971 the Court of Appeal (Corte di Appello) of Trieste acceded to this request. The applicant's appeal (ricorso) was dismissed by the Court of Cassation (Corte Suprema di Cassazione) on .. February 1972 and in May 1972 he was extradited to Germany.

III. From the numerous documents submitted by him, it appears that the applicant has addressed himself to various courts and other authorities in the Federal Republic of Germany. In particular:

1. While in Italy, he made a petition to the Regional Court of Hamburg for the warrant of .. February 1971 to be set aside, but this was refused by the Regional Court on .. January and, on appeal, by the Court of Appeal on .. March 1972. His third appeal to the Court of Appeal was dismissed on .. April 1972.

Early in May 1972 the applicant was extradited from Italy and the

Regional Court decided on .. May that his detention in the Federal Republic of Germany should continue. His appeal from this decision was dismissed by the Court of Appeal on .. May 1972. The Court of Appeal stated that the applicant was strongly suspected of having committed the offenses concerned, that there was a danger of his absconding and that his continued detention would not be out of proportion to the importance of the case and the sentence to be expected. The Federal Constitutional Court decided on .. July 1972 that the applicant's constitutional appeal should not be accepted for decision on the ground that it did not offer a sufficient prospect of success.

2. While in Italy, the applicant also made various petitions for the warrant of arrest of .. March 1971 (issued by the District Court of Hamburg) to be set aside. These were refused:

- by the Regional Court on .. November 1971 and, on appeal, by the Court of Appeal on .. January 1972;
- by the Regional Court on .. February and, on appeal, by the Court of Appeal on .. March 1972; and
- by the Regional Court on .. March 1972.

Both before and after his extradition from Italy, the applicant requested the District Court to examine the grounds of his detention (Haftprüfung). The Court refused these petitions on .. April and .. May 1972, stating that the applicant was not detained under the Court's warrant of arrest. The applicant's appeal from the decision of .. May was dismissed by the Regional Court on .. June 1973.

IV. With regard to the television broadcast of .. November 1970 (mentioned under I, 1 above), the applicant has submitted a statement dated .. September 1971 by Rechtsanwalt H., a lawyer practising in Hamburg, showing the possibility of instituting civil proceedings before the Regional Court in order to obtain compensation for the damage suffered as a result of such publicity. The applicant has not availed himself of this remedy.

Complaints

The applicant alleges violations of Articles 3, 5, 6 (2), 7, 8, 9, 10 and 14 of the Convention and of Article 1 of Protocol No. 4. He complains in particular:

- that the television broadcast of .. November 1970 violated his right to a fair trial and adversely affected his family life;
- that the Federal Republic of Germany unlawfully requested his extradition from Italy and that he was wrongly detained in, and extradited from, Italy in 1972;
- that his present detention pending trial in Germany was unlawful, there being no legal basis for a continuation of the criminal proceedings against him;
- that, during his detention, he was escorted to his home in Hamburg in handcuffs and that he had to go to the toilet handcuffed to a guard and to compile the documents which his wife then mailed to the Commission;
- that the criminal proceedings against him in the R. case, which were opened in 1963, are still pending.

THE LAW

1. The applicant complains that the television broadcast of .. November 1970 violated his right to a fair hearing and adversely affected his family life.

The Commission does not find it necessary to examine whether the rights and freedoms guaranteed by the Convention can under the Convention be

held responsible for this broadcast. It notes that the question of the responsibility of another Contracting State for broadcasts emanating from its territory was raised, but not pursued, in Application No. 3059/67 (X against the United Kingdom, Collection of Decisions, Vol. 28, 89-93).

The Commission finds that, even if one assumes such a responsibility in the present case, the complaint is inadmissible for non-exhaustion of domestic remedies.

It is true that Article 6 (1) (Art. 6-1) of the Convention secures to everyone charged with a criminal offence the right to a fair hearing and further that, under Article 8 (1) (Art. 8-1), everyone has the right to respect for his family life. However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In this respect the Commission notes that the applicant has submitted a statement dated .. September 1971 by Rechtsanwalt H., a lawyer practising in Hamburg, showing the possibility of instituting civil proceedings before the Regional Court in order to obtain compensation for the damage suffered as a result of a television broadcast such as that of .. November 1970. The applicant has not availed himself of this remedy.

The Commission further observes that, following such proceedings, the applicant could have lodged a constitutional appeal with the Federal Constitutional Court concerning the said broadcast. He failed to do this, however, and has, therefore, not exhausted the remedies available to him under German law.

Moreover, an examination of the case does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must in this respect be rejected under Article 27 (3) (Art. 27-3) of the Convention.

2. The applicant further complains that the Federal Republic of Germany unlawfully requested his extradition from Italy and that he was wrongly extradited by the Italian authorities in 1972.

The Commission has examined this complaint, insofar as it is directed against the Federal Republic of Germany, under Article 5 (1) (Art. 5-1) of the Convention which reads as follows:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
.... (f) the lawful arrest or detention of a person against whom action is taken with a view to deportation or extradition."

The Commission considers that this provision implicitly accepts extradition. An examination of this complaint, insofar as it is directed against the Federal Republic of Germany, does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the above Article.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

3. Insofar as the applicant's complaint concerning his extradition is directed against Italy, the Commission observes that this State has signed and ratified the Convention but has not yet recognised the competence of the Commission to receive applications lodged by individuals under Article 25 (Art. 25). (1) The rights and freedoms guaranteed by the Convention can therefore not be invoked before the Commission by a private individual with regard to Italy. It follows that the application is in this respect incompatible *ratione personae* with the provisions of the Convention in the sense of Article 27 (2) (Art. 27-2).

4. The same ground of inadmissibility applies to the applicant's complaint concerning his detention pending deportation in Italy.

5. The applicant further complains of his detention as such, pending trial in the Federal Republic of Germany and of the length of this detention. The Commission has examined this complaint under Article 5 (1) and (3) (Art. 5-1, 5-3) of the Convention.

It is true that paragraph (1) of Article 5 (Art. 5-1) secures to everyone the right to liberty and security of person. However, under sub-paragraph (c) (Art. 5-1-c), a person may be detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent this ... fleeing after having done so". The Commission, having regard both to the applicant's own statements and to the court decisions submitted by him, is satisfied that these conditions are fulfilled as regards his present detention pending trial.

Under paragraph 3 of Article 5 (Art. 5-3), a person detained in accordance with paragraph 1 (c) (Art. 5-1-c) is entitled to trial within a reasonable time or to release pending trial. The Commission notes that the applicant is detained in the R. case, that he was detained in that case in 1963/64 for four months and in 1966 for two months, and that his present detention pending trial in the same case, which began in May 1972, has so far lasted seven months.

(1) Italy made such a declaration on 20 June 1973 with effect from 1 August 1973.

The Commission first observes in this connection that, as the German authorities can not be held liable under the Convention for the applicant's detention in Italy pending his extradition, the period so spent by him cannot be taken into consideration by the Commission under Article 5 (3) (Art. 5-3).

The Commission next finds that the period of seven months which he has so far spent in detention in Germany following his extradition from Italy, whether considered separately or together with the former periods of detention pending trial in 1963/64 and 1966, is not unreasonably long in the circumstances of this case. In accordance with the jurisprudence of the European Court of Human Rights ("Neumeister", Case and "Wemhoff" Case, judgments of 27 June 1968, The Law, paragraphs 5 and 12 respectively) the Commission has in this connection had regard to the decisions of the domestic courts, and the applicant's pleadings, in the proceedings concerning his present detention - insofar as these have been submitted by the Commission. It concludes from the decision given by the Court of Appeal of Hamburg on .. May 1972 that the applicant is strongly suspected of having committed the offenses concerned, that there is a danger of his absconding, and that the length of his present detention is so far not out of proportion to the importance of the case and to the sentence to be expected in the case of conviction. The Commission is satisfied that these considerations are relevant and sufficient to justify the applicant's present detention under Article 5 (3) (Art. 5-3).

6. The applicant further complains that, during his detention, he was escorted to his home in Hamburg in handcuffs and that he had to go to the toilet handcuffed to a guard and to compile the documents which his wife then mailed to the Commission.

It is true that Article 3 (Art. 3) of the Convention prohibits inhuman or degrading treatment or punishment. However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case the applicant failed to seize the competent German courts, including the Federal Constitutional Court, and has, therefore, not exhausted the remedies available to him under German law. Moreover, an examination of the case does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must in this respect be rejected under Article 27 (3) (Art. 27-3) of the Convention.

The Commission further observes that, in any case, the above security measures were clearly not so serious as to amount to inhuman or degrading treatment in the sense of Article 3 (Art. 3). It refers in this connection to its decision on the admissibility of Application No. 2291/64 (*X. v. Austria*, Collection of Decisions, Vol. 24, pages 20, 31).

An examination by the Commission of this complaint as it has been submitted, including an examination made *ex officio*, does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the above Article.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

7. The applicant finally complains of the length of the criminal proceedings against him in the R. case. The Commission has examined this complaint under Article 6 (1) (Art. 6-1) of the Convention which provides that, in the determination of any criminal charge against him, everyone is entitled to a hearing within a reasonable time. It notes that the proceedings concerned were apparently opened in 1963 and that they are not yet concluded. Although a certain delay was caused by the applicant's escape in 1970 and his subsequent refusal to return to the Federal Republic of Germany to stand trial, it is not in the present state of the file clear whether his right under Article 6 (1) (Art. 6-1) of the Convention to be heard within a reasonable time has been respected by the German authorities, in particular, as regards the period of seven years between 1963 and 1970.

The Commission finds, therefore, that an examination of the case as it has been submitted by the applicant does not give the information required for determining the question of the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 45, 3 b) of the Commission's Rules of Procedure, to give notice of this complaint to the Government of the Federal Republic of Germany and to invite the Government to submit its written observations on this question.

For these reasons the Commission:

1. decides to give notice to the Government of the Federal Republic of Germany of the applicant's complaint concerning the length of the criminal proceedings against him in the R. case and to invite the Government to submit its written observations on the admissibility of this complaint;
2. decides in the meanwhile to adjourn its further examination of this complaint;
3. declares the remainder of the application inadmissible.