

Application No. 1611/62

X. against THE FEDERAL REPUBLIC OF GERMANY

Decision of 25th September 1965

(Translation)

THE FACTS

Whereas the facts of the case may be summarised as follows:

I.

The Applicant filed an earlier Application (No. 985/61) against the Federal Republic of Germany on ... 1961, which the Commission declared inadmissible on ... 1961. The following is quoted from that decision:

THE FACTS

Whereas the facts presented by the Applicant may be summarised as follows:

The Applicant was born in 1915 in Bohemia and was an Austrian citizen. In 1918 he acquired Czech nationality and, in 1938, German nationality. In 1945 he was expelled from Czechoslovakia and is now living in Tangiers in Morocco. The Applicant claims that he is a stateless person as the granting of German citizenship to the Sudeten Germans was null and void, the annexation of the Sudeten territories having never been recognised by the Allied powers. He is now in possession of a Spanish refugee passport. At the same time the Applicant states in his application form that, according to legislation passed by the Federal Republic of Germany, he possesses German nationality and that he is in fact recognised as a German citizen by the German diplomatic representative in Morocco.

The Applicant's complaints are directed against the German

consular and embassy officials in Morocco and against the German Ministry of Foreign Affairs which is, in his view, responsible for their acts.

The Applicant alleges that the consul in Casablanca and the secretary of the consulate in Tangiers have asked the Moroccan authorities to expel him from the country.

The Applicant's complaints relate, *inter alia*, to the following alleged facts:

1. In 1958 certain confidential papers were stolen from the German consulate, allegedly by agents of an Eastern European nation. The papers were traced and found by the Applicant who returned them to the Consul. He states that he was in serious danger when retrieving the documents and that, in spite of the exact information supplied by him as to the identity of the agents in question, no steps were taken to bring about their prosecution and punishment as one of the persons implicated was a close friend of the Consul.

2. In the beginning of 1960, the Applicant learned of certain statements derogatory to himself and which had been made by the secretary of the consulate to members of the German colony in Tangiers. The Applicant challenged the secretary to a duel and the latter feeling his life to be threatened, took steps to have the Applicant expelled from Morocco.

3. The secretary was supposed, in his statements, to have called the Applicant fraudulent in that he used a title of nobility. The Applicant has submitted to the Commission proof of the authenticity of his title. Furthermore, the secretary alleged that the Applicant was living in illicit liaison with his wife, as they had been married in Morocco according to Moslem rites although they were both German citizens and Christians. Before the wedding the Consul had allegedly warned the Applicant's wife against marrying the Applicant and in various ways attempted to discredit him.

4. By means of intrigues, the Consul and the consulate secretary engineered the dismissal in 1960 of the Applicant's wife from her employment in a German travel agency . . . , the owner of which was a friend of the Consul. The consular authorities thus failed in their duty to protect the interests of German nationals.

5. The Consul omitted to take any steps against the director of the above travel agency although he knew that he had bought a car stolen in Hamburg by young persons who had driven it to Tangiers.

6. The Consul refused to recognise the Applicant's true name and called him an 'imposter'.

On the . . . and . . . 1959 the Applicant sent complaints regarding certain of these allegations to the consulate in Casablanca and to the legation in Rabat. During the rest of 1959 and throughout 1960, he

sent letters of complaint to Mr. von Brentano, then Foreign Minister (on 4 occasions), to Mr. Gerhard Schröder, then Minister of the Interior, to the Federal Chancellor, to the Socialist members of Parliament and to Dr. Carlo Schmid, Socialist candidate for the Presidency. In these letters he accused the secretary of the consulate of violations of Articles 99, 100, 163-164, 186-187 and 344 of the German Criminal Code. On . . . 1959 he received a reply from the Foreign Ministry in which it was stated that the consular officials had performed their duties satisfactorily and that, in regard to the alleged defamation of the Applicant, the statements made to the Applicant's future wife were not insults but merely advice to a person under consular protection. The Ministry appreciated the assistance given by the Applicant in recovering the stolen documents but added that the question whether further steps should be taken in the matter was an international administrative decision which was of no concern to the Applicant. The other letters by the Applicant have apparently not been answered.

On . . . 1960 the Applicant lodged a constitutional complaint with the Federal Constitutional Court of Karlsruhe which was rejected on . . . 1961. In this, he protested against his imminent expulsion from Morocco, the general behaviour of the consulate personnel and against the non-recognition of his title. The Court held, in regard to the question of his proper name, that it had no jurisdiction and that, in regard to the expulsion order, the German Government was not responsible for sovereign acts effected by the Moroccan Government. The Applicant states that the domestic remedies available to him are thereby exhausted.

Whereas the Applicant, maintaining that the Federal Government is responsible for acts committed by its diplomatic and consular representatives, alleges violations of the following Articles of the Convention:

- Article 3, in that the consul and the consulate secretary without justification demanded his expulsion from Morocco; in that a passport was issued to him although not requested; in that he was not compensated for losses incurred;
- Article 5, in that his expulsion, which had been requested on false grounds, threatened the security of his person;
- Article 6, in that the reasons for his expulsion had not been examined by a court and that it was an administrative act which was carried out only on the establishment of a political or criminal crime;
- Article 8, in that his expulsion would interfere with his private and family life;

- Article 12, in that the Consulate refuses to recognise the validity of his marriage, although it was performed before the competent authorities of the country of which both parties were residents; in that all correspondence to his wife is addressed to her under her maiden name and styles her '*Fräulein*'; in that the aim of these acts is to bring the moral standing of the Applicant and his wife into general disrepute;
- Article 14, in that the words '...' are not recognised as part of his name.

Whereas, in regard to the last allegation, the Applicant has submitted that in 1713 his family was ennobled by the Austrian Emperor, that in 1918 all the titles were abolished by the Czech Government and their use made a criminal offence, that in 1938 Czech legislation was not changed in this respect; further, that Czech legislation is no longer applicable as he, as a Sudeten German, was expressly expelled from the Czech community and that German legislation is also not applicable to him as he is not a resident of that country. The Applicant adds that, as he is a stateless person, his name is decided by the legislation in force at the place and time of his birth, namely Austrian Imperial legislation, which gave him the name '...'. He has in this respect referred to decisions of the Prussian Chamber Court, the Reich Court and to several authors of private international law, in particular, von Savigny and Zitelmann.

THE LAW

.....

- (- Incompatibility with the Convention in respect of the Applicant's claim to use the name "...";
- manifest lack of foundation as regards the remainder) ...

II

In the present Application X. alleges the following "new facts":

His deportation from Morocco, which was brought about by the Embassy of the Federal Republic and was only postponed following intervention by a lawyer, is said to have taken place on ... 1962.

The Applicant says that on board the steamship "Mons Calpe", which was taking him to Gibraltar, he was handed a German passport by a British policeman. He states that he had to sign the passport before the Tangier Police in 1961 without ever having asked for it. In the passport he was described as ..., locksmith;

these incorrect details are said to have caused him a great deal of harm in Germany.

The Applicant also claims that the order for his deportation was notified to him on the eve of 'Aid el Kebir' and was executed immediately after the end of that festival, so that he was unable to contest it before the competent authorities. Neither was he granted leisure to liquidate his household, in particular, to ensure the safe-keeping (*Sicherstellung*) of certain objects of artistic value which he wished to sell in order to establish a riding school. His wife, who was seriously ill, had neither the time nor the strength to take the necessary steps.

In short, the deportation in question is said to have ruined X. and his wife completely.

The Applicant, who is now resident at Vienna (Austria), invokes Article 13 of the Convention and Article 1 of the Protocol. He asks that the Respondent Government shall:

- issue him with a passport showing his true name and his occupation as riding master (which he says he practised with the American Army of Occupation in Germany);
- make him an immediate grant pending full compensation for the damage he considers himself to have suffered.

THE LAW

Whereas, in so far as the Applicant asks that the Government of the Federal Republic of Germany shall issue him with a passport showing his "true" name, the present Application is substantially the same as No. 985/61, which in this respect was rejected on . . . 1961 as incompatible with the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms; whereas it is inadmissible in respect of the point in question by reason of Article 27 (1) (b) of the Convention, which provides that "the Commission shall not deal with any petition submitted under Article 25 which . . . is substantially the same as a matter that has already been examined by the Commission and . . . contains no relevant new information";

Whereas with regard to the remainder, that is to say the contested deportation, the Application is directed not so much against the Federal Republic of Germany as against the Kingdom of Morocco, a State which has neither signed nor ratified the Convention nor, *a fortiori*, recognised the right of individual application (Articles 19, 25 (1) and 66 of the Convention); whereas, to this extent, consideration of the Applicant's grievances is outside the Commission's competence *ratione personae*;

Whereas it is true that the Applicant attributes his deportation

to unwarranted intrigues against him conducted by the Federal Republic of Germany with the Moroccan authorities;

Whereas under Article 1 of the Convention "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of [the] Convention";

Whereas, in certain respects, the nationals of a Contracting State are within its "jurisdiction" even when domiciled or resident abroad; whereas, in particular, the diplomatic and consular representatives of their country of origin perform certain duties with regard to them which may, in certain circumstances, make that country liable in respect of the Convention;

Whereas, however, the Commission notes that the Applicant has not furnished sufficient proof in support of his allegations;

Whereas it will also be observed that deportation as such is not one of the matters governed by the Convention (see, among many others, the decision of 29th May 1961 on the admissibility of Application No. 984/61, Collection of Decisions VI, p. 40);

Whereas, furthermore, there is nothing in the case to suggest that in this instance the contested deportation may have indirectly infringed one of the rights or freedoms stated in the Convention or constituted – to take two examples – either inhuman or degrading treatment (Article 3) or unwarranted interference by the Federal Republic of Germany in the Applicant's private and family life (Article 8);

Whereas it therefore appears that the remainder of the Application is both incompatible with the provisions of the Convention and manifestly ill-founded (Article 27 (2));

Now therefore the Commission

DECLARES THE APPLICATION INADMISSIBLE