

THE FACTS

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

The Applicant is an Austrian citizen, born in 1929 and residing at Salzburg. He has lodged a previous Application (No 1128/61) with the Commission in which he complained about his conviction and sentence by the Regional Court (Landesgericht) at Salzburg in 1956 and also about the subsequent refusal of a retrial and the dismissal of his petition for clemency by the said court. This Application was declared inadmissible by the Commission's decision of 19 September 1961.

From the Applicant's statements and from documents submitted by him in support of his present Application, it appears that while he was serving his sentence from the above conviction, his 2 children - a son, Franz, born in 1949 and a daughter, Rosa, born in 1950 - were taken charge of by the public authorities (Fürsorgeerziehung) in accordance with an order made by the District Court (Bezirksgericht) of Salzburg on .. March 1956. Both children were committed to the care of a family at G.

The Applicant states that the children were neglected by their foster-parents and that he considered it necessary to make an application to the authorities that Rosa should be sent to an approved school (Erziehungsheim). Consequently, his daughter was sent to such a school, while Franz remained with the foster-parents.

On .. February 1962, the Applicant was released from detention. He married in December 1964 and now wished to regain charge of his children. He states that his son had been convicted of a minor offence and had also stolen money from his foster-parents who were no longer willing to keep him in their care. Thual Youth Office (Landesjugendamt) decided in 1965 that Franz should stay with the Applicant until .. January 1966 and should subsequently be committed to an approved school. In March 1966 Franz apparently escaped from this school after having committed several criminal offenses. The Applicant states that the authorities had not informed him of his son's escape and that it was only 2 weeks later that his son called him on the telephone, asking him for help. According to the Applicant he immediately informed the authorities of the contact which he had established with Franz, and asked them to search for him and commit him to his care. The authorities allegedly refused to take any action. The Applicant states that he searched for his son on his own and that, having found him, Franz agreed to go with him only after he (the Applicant) had promised not to deliver him to the authorities, which promise he made. It appears that 3 weeks later Franz, whose whereabouts had been reported by his sister Rosa, was returned to the school by the authorities. However, on .. May 1966, the day of his return, he escaped again and the Applicant allegedly found him 4 days later starved and exhausted. The Applicant states that he immediately informed the Regional Youth Office at Salzburg. In the meanwhile, on .. May 1966, the District Court at Salzburg had taken a decision to the effect that the order of .. March 1956, committing Franz to the charge of the authorities, should be repealed.

However, the Regional Youth Office laid charges against the Applicant of having assisted his son in his efforts to elude the directions for his education which had been given by the authorities, in that he had concealed his son's whereabouts after his escape from the approved school.

The Applicant was brought to trial on these charges before the District Court at Salzburg. He was convicted on .. June 1966, and sentenced to a fine of 500 Schillings. The Applicant lodged an appeal (Berufung) against his conviction and sentence with the Regional Court of Salzburg

and, at the same time, the Office of the Public Prosecutor (Staatsanwaltschaft) appealed (Berufung) to that Court against the sentence. The above Regional Court decided on .. November 1966 that the Applicant's appeal should be dismissed but that the prosecution's appeal be allowed to the extent that the sentence should be increased to one week's arrest (Arrest). The Court further ordered that the execution of this sentence should be suspended for a probationary period of 3 years.

The Applicant complains:

- a. The Convention was violated by the authorities' failure to take proper care of his son and to return him to his care.
- b. He was wrongly convicted and sentenced. He alleges that he should not have been convicted of the charge preferred against him because he was acting under an irresistible force to save his son from becoming a criminal.

He alleges a violation of Articles 7 and 12 of the Convention.

THE LAW

Whereas the Applicant complains that the Convention was violated by the authorities' failure to take proper care of his son and to return him to his care subsequent to his release from prison;

Whereas it is true that Article 8 (Art. 8) of the Convention guarantees generally the right to respect for private and family life; whereas, however, paragraph (2) of Article 8 (Art. 8-2) provides that "there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society ... for the protection of health or morals"; whereas the Commission finds that, even assuming that in the circumstances of the present case a question might arise under Article 8, paragraph (1) (Art. 8-1) of the Convention, the measures taken by the authorities in regard to his son were necessary to protect his health or morals within the meaning of paragraph (2) of Article 8 (Art. 8-2) of the Convention; whereas it follows that this part of the Application is manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas the Applicant further complains that he should not have been convicted for having assisted his son in his efforts to elude the directions for his education as he was acting under an irresistible force to save his son from becoming a criminal; whereas it has already been stated that Article 8 (Art. 8) of the Convention guarantees generally the right to respect for private and family life subject to the restrictions set out in paragraph (2) (Art. 8-2) of this provision; whereas under Article 8, paragraph (2) (Art. 8-2) of the Convention the interference by a public authority with the exercise of the right to respect for private and family life is also justified when such is necessary for the prevention of disorder or crime; whereas the Commission finds that, again assuming that in the circumstances of the present case a question might arise under Article 8, paragraph (1) (Art. 8-1) of the Convention, the action taken against the Applicant was necessary to prevent disorder or crime within the meaning of paragraph (2) of Article 8 (Art. 8-2); whereas it follows that this part of the Application is also manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas finally in regard to the Applicant's complaint that his conviction and sentence was wrong having regard to the facts of the case an examination of the case as it has been submitted, including an examination made ex officio, does not disclose any appearance of a

violation of the rights and freedoms set forth in the Convention and especially in the Articles invoked by the Applicant; whereas, in respect of the judicial decisions complained of, the Commission has frequently stated that in accordance with Article 19 (Art. 19) of the Convention its only task is to ensure observance of the obligations undertaken by the Parties in the Convention; whereas, in particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where the Commission considers that such errors might have involved a possible violation of any of the rights and freedoms limitatively listed in the Convention; whereas, in this respect, the Commission refers to its decisions Nos 458/59 (X v. Belgium - Yearbook III, page 233) and 1140/61 (X v. Austria - Collection of Decisions, Volume 8, page 57); and whereas there is no appearance of a violation in the proceedings complained of;

Whereas it follows that this part of the Application is again manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Now therefore the Commission declares this Application inadmissible.