

THE FACTS

Whereas the facts as presented by the Applicant in his numerous and partly illegible letters and as appearing from the documents submitted by him may be generally summarised as follows:

The Applicant is a German citizen born in 1941 in Sekic, Jugoslavia. He is at present detained in prison at Stein, Austria.

On .. October, 1963, he was arrested in Austria on several charges of fraud. The trial was ordered to be held on .. February, 1964, before the Regional Court (Kreisgericht) of Wiener-Neustadt.

By a letter dated .. January, 1964, the Court informed the Applicant that a lawyer, Dr. B, had been appointed as his counsel for the trial. But one day after receipt of this letter the Applicant was told that a different lawyer, Dr. A, would act as his counsel. He states that he had no time to get in touch with this lawyer except a minute before the opening of the trial on .. February, 1964, and that the lawyer simply relied on what he was about to hear in the course of the trial.

On the same day the Applicant was convicted and sentenced to five years' severe imprisonment (schwerer Kerker) with one day sleeping hard every 3 months.

He lodged an appeal (Berufung) and a plea of nullity (Nichtigkeitsbeschwerde) but the latter was subsequently withdrawn by his trial lawyer, Dr. A, allegedly without the Applicant's consent and knowledge. By a summons dated .. June, 1964, and handed to him on .. June, 1964, the Applicant was informed that his appeal would be heard by the Court of Appeal (Oberlandesgericht) of Vienna on .. July, 1964.

By a further letter also dated .. June, 1964, and handed to the Applicant on .. June, 1964 (Friday) he was informed that he would be defended before the Court of Appeal by Dr. K. He states that he wrote immediately to this lawyer demanding that the letter be sent by registered mail but when the Applicant appeared before the Court on .. July, 1964, his lawyer, Dr. H, who was acting for Dr. K, had not yet received the letter. The appeal was rejected on that same day.

The Applicant petitioned for a plea of nullity for the safeguard of the law (Nichtigkeitsbeschwerde zur Wahrung des Gesetzes) but the Public Prosecutor refused on .. October, 1964, to institute such proceedings. He also lodged several petitions for pardon, but without success.

After his conviction had become final, the City Council (Magistrate) of Krems, which was his last residence in Austria, banished him from Austrian territory by an order of .. October, 1964, which according to its terms took immediate effect. Basing himself on this order the Applicant asked for his immediate expulsion from Austria which would involve his release from prison but, by a letter of .. February, 1965, the City Council of Krems told him that the order could not be executed as long as he was serving his sentence.

After the hearing of his appeal in Vienna on .. July, 1964, the Applicant jumped off the train on his way back to the prison at Wiener-Neustadt allegedly with the intention of committing suicide after his conviction. A disciplinary punishment (Hausstrafe) of 10 days solitary confinement ("Keller") and of 4 days fasting and sleeping hard was imposed by the prison authority of Wiener-Neustadt which found that he had tried to escape. The punishment was executed at Stein where the Applicant had been taken in the meanwhile. On .. December, 1964, the Applicant complained of this fact in a letter to the Minister of Justice, but apparently without success. He also required compensation for the injuries he had suffered when he jumped off the train.

With respect to the letter to his lawyer, Dr. K, which had not arrived, the Applicant inquired at the prison authority of Wiener-Neustadt and he was told by a letter of .. November, 1964, that no proof of its expedition existed but that the letter, written according to the prison authority on .. or .. June, had been forwarded to the investigating judge on .. June, 1964, and posted subsequently by simple mail.

As to the Applicant's question what had become of the two stamps of 3 Austrian schillings which he had added for the expedition by registered mail he was told that one stamp of 3 schillings (postage for abroad) had been used. When the Applicant insisted further, comparing these facts to his own offence of fraud, another disciplinary punishment of 7 days without breakfast was imposed by the prison authority of Wiener-Neustadt.

He appealed against this decision to the Prosecution Officer of Krems supervising the prison of Stein (Staatsanwaltschaft, Hauskommissär) who rejected his appeal on .. November, 1964, on the ground that he could not examine the decisions taken at Wiener-Neustadt.

In his letter of .. December, 1964, to the Minister of Justice, the Applicant also complained of these facts, however, without success.

The Applicant complains of a second indecent, this time in the Stein prison, in which he allegedly was charged 5.50 Austrian Schillings too much for postage stamps. He had obtained permission to send a letter and a pawn ticket (Pfandschein) but contrary to his intentions they were posted by separate letters and he had to pay two times the postage of 5.50 Austrian Schillings.

On .. May, 1966, he lodged with the Court of Appeal in Vienna a request for the institution of criminal proceedings against the officials responsible for this and for the previous similar incident in the prison at Wiener-Neustadt. But apparently his charges were dismissed as being insignificant (niedergeschlagen wegen Geringfügigkeit). He also addressed a claim for compensation. He submits that he was informed that the second letter would be at the expense of the State but that he would get his money back only in 1999.

He further states that, during his detention in Stein prison, his health was ruined and in particular that, as the result of the work which he had to perform, he now suffers from an inguinal hernia.

With regard to these injuries and to those suffered on .. July, 1964, when he jumped off the train between Vienna and Wiener-Neustadt and with regard to the two cases in which he was charged for two stamps instead of one, he filed in 1965 with the Regional Court (Landesgericht für Zivilsachen) of Vienna an action for damages against the State, which according to him has not yet been determined by the Court.

The Court assigned a lawyer of Krems to represent him in these proceedings. This lawyer informed him, on .. March, 1966, that he had presented the claim first to the Office of the Attorney of the Treasury and that he would have to wait three months for its decision. In reply, the Applicant demanded a copy of the request lodged on his behalf with the Attorney of the Treasury, but without success. Instead he was informed on .. May, 1966, that the lawyer had asked the Court's permission to resign from this case (Enthebung beantragt). On .. June, 1966, the lawyer himself wrote to the Applicant that he could not act for him because the claims were exaggerated. On .. June, 1966, the Applicant was heard by the Court but no decision was taken. Subsequent letters to the Court remained without reply.

The Applicant states, without giving further details, that he has now brought an action on the ground of tardiness and a claim for damages (Säumnisklage verbunden mit einem Schadensersatzanspruch) against the lawyer.

He further alleges that the food in Stein prison is harmful to him because he is suffering from various diseases although he is given a special diet. Upon his complaint in this respect he was told on .. November, 1964, by the Supervising Prosecution Officer (Hauskommissär) that he should address himself first of all to the prison authority. Whether he did so and with what result is not clear.

The Applicant alleges violations of Articles 3, 5, 6, 8, 13, 14 and 15 of the Convention. He attacks the merits of all the decisions mentioned above and complains in particular of the fact that both in the trial and on appeal he has had no adequate time to prepare his defence together with his lawyer.

THE LAW

Whereas, in so far as the Applicant complains of inadequate time and facilities for the preparation of the defence due to the late appointment and the several changes of his lawyers and to the non-receipt of his letter by the lawyer who appeared for him on the hearing of the appeal, the Applicant has failed to show that either he or his lawyer raised this point before the Court of Appeal and asked for an adjournment; whereas further the question might arise whether such request for adjournment could be considered a remedy which the Applicant should have exhausted in order to satisfy the terms of Article 26 (Art. 26) of the Convention;

Whereas, however, the Commission decides to leave open the question whether or not in these circumstances the Applicant exhausted the domestic remedies in accordance with Article 26 (Art. 26);

Whereas, according to paragraph (3) (b) of Article 6 (Art. 6-3-b) of the Convention, everyone charged with a criminal offence has the right "to have adequate time and facilities for the preparation of his defence";

Whereas, furthermore, according to paragraph (3) (c) of the same Article (Art. 6-3-c), he has the right "to defend himself in person or through legal assistance of his own choosing", or in certain circumstances to have free legal assistance; whereas, in order to determine whether the right to have adequate time and facilities for the preparation of the defence has been respected, account must be taken of the general situation of the defence, whether such defence is carried out by the accused himself or through a lawyer;

Whereas the Applicant had been arrested on .. October, 1963, on several charges of fraud and had thus himself four months to prepare his defence before the opening of the proceedings before the trial court and a further period of four months to prepare his defence on appeal; whereas it is true that the defending counsel, both at the trial and at the appeal hearing, was only appointed shortly before the hearing; whereas, however, the Applicant has failed to show that as a result of inadequate time to instruct his lawyer on a particular point, he suffered a prejudice in the proceedings at the trial or on appeal; whereas it is to be observed in this context that the appeal concerned only the length of the sentence imposed and that the Applicant's plea of nullity concerning the conviction had been withdrawn; whereas therefore a relatively short period was sufficient for the preparation of the defence by the defending counsel;

Whereas, consequently, 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 in particular in Article 6, paragraphs (3) (b) and (c) (Art. 6-3-b, 6-3-c); whereas 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;

Whereas, in regard to the Applicant's complaints as to the incidents which occurred and the measures which were taken against him during his detention at Wiener-Neustadt and Stein, it is to be observed that, under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law; and whereas the Applicant failed to show that he has finally seized the Constitutional Court; whereas, therefore, he has not exhausted all remedies available to him under Austrian law; whereas, moreover, an examination of the case as it has been submitted, including an examination made *ex officio*, 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; whereas, therefore, the condition as to the exhaustion of domestic remedies laid down in Articles 26 and 27, paragraph (3) (Art. 26, 27-3) of that Convention has not been complied with by the Applicant;

Whereas, in so far as the Applicant's complaints are directed against his lawyer who represented him in subsequent civil proceedings for damages, it results from Article 19 (Art. 19) of the Convention that the sole task of the Commission is to ensure the observance of the engagements undertaken in the Convention by the High Contracting Parties, being those Members of the Council of Europe which have signed the Convention and deposited their instruments of ratification; whereas, moreover, it appears from Article 25, paragraph (1) (Art. 25-1), of the Convention that the Commission can properly admit an application from an individual only if that individual claims to be the victim of a violation of his rights under the Convention by one of the Parties which have accepted this competence of the Commission; whereas it results clearly from these Articles that the Commission has no competence *ratione personae* to admit applications directed against private individuals; whereas it follows that this part of the Application is incompatible with the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2) (see Application No. 1599/62, Yearbook of the European Convention on Human Rights, Volume 6, pages 348, 356);

Whereas, in so far as the above complaint gives rise to the question whether the Regional Court failed to ensure that the Applicant's defence was properly carried out with the consequence that he was not given a fair hearing within the meaning of Article 6 (Art. 6) of the Convention, 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 this right; whereas it follows that, in this respect, the Application is 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.