

THE FACTS

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

The Applicant is an Austrian citizen born in 1928, presently serving a sentence of imprisonment in the Prison of Stein. He has several previous convictions.

The Applicant was arrested on .. January, 1965 and convicted on .. April, 1965 by the Regional Court (Landesgericht-Schöffengericht) Vienna of burglary (Einbruch) and extortion (Erpressung). He was sentenced to two and a half years' rigorous imprisonment (schwerer verschärfter Kerker).

The Applicant lodged an appeal (Berufung) and a plea of nullity (Nichtigkeitsbeschwerde), which were rejected by the Court of Appeal (Oberlandesgericht) and the Supreme Court (Oberster Gerichtshof) on .. May and .. June, 1965.

On .. June, 1965 the Attorney-General's Office (Generalprokuratur) decided that there was no ground for taking action on the Applicant's request of .. June, 1965 for a plea of nullity for safeguarding the law (Nichtigkeitsbeschwerde zur Wahrung des Gesetzes). Later in 1966 the Applicant also applied unsuccessfully for a retrial (Wiederaufnahme).

On .. July, 1965 the Regional Court (Kreisgericht) Ried revoked its order of .. August, 1962, by which order the Applicant had been conditionally released (bedingt entlassen) from a labour institution in respect of a previous sentence. A period of 3 years and 9 months of the previous sentence was still outstanding at the time of the revocation of this conditional release.

The Applicant has set out in detail the facts leading up to his arrest and conviction. He now affirms that at 3 a.m. on .. January, 1965 he had left his home to buy cigarettes. He saw two persons carrying sacks and acting in a suspicious manner. He realised that they were hiding the sacks and was later able to take one sack home. The sacks contained the proceeds of a burglary. Some days later the Applicant was arrested and accused of the burglary and of extortion (Erpressung) by having written a threatening letter after workmen had found the second sack with some of the stolen property hidden on a dump and delivered it to the police.

In relation to his trial, the Applicant states that he was convicted without evidence, only because he told lies to try to clear himself. He states that he falsely confessed to the offenses because of threats, to bring the "continual questioning" (das fortwährende Einvernehmen) to an end. He states that on the urging of the investigating judge he admitted the offence of writing the threatening letter. However, the handwriting experts report stated that the threatening letter was not definitely in the Applicant's handwriting.

The Applicant's view is that he ought only to have been convicted of being an accomplice to the offence of theft (Diebstahlteilnehmung) and not of the other offenses. He considers that the judge was prejudiced against him and objects to the fact that the judge disclosed details of the Applicant's previous convictions to the lay judges (Schöffen). He complains also that the judge described him as being of bad reputation (schlecht beleumdet). The Applicant admits that he had previous convictions but considers that as he had been in regular employment and of good behaviour for two and a half years it was unjustified to say that he was of bad reputation. The Applicant states that the judge tried to find a basis for this description of the Applicant by saying that the "X family" was of bad reputation. The Applicant states that this is also unjustified as he had not lived with

his family for two and a half years. The Applicant states that at the trial the judge frightened the Applicant's wife and shouted at her.

The Applicant complains that he was not properly defended by the lawyer officially provided to defend him (Pflichtverteidiger). This lawyer was unprepared for the defence, and did not discuss the case with the Applicant before trial. He gave the Applicant no legal advice (Rechtsbelehrung), only asked the Applicant one question during the whole hearing and left him in his difficulties (liess mich im Stich). The Applicant believes that the lawyer's final speech was a "farce". Moreover, because of lack of time, the Applicant's own final plea was cut short.

The Applicant complains that his appeal was rejected in his absence. Only his unprepared lawyer (Pflichtverteidiger) was present.

The Applicant states that while he was in custody a second threatening letter came to his wife. She took the letter to the police, who only disclosed it after the trial, although it would have served to exculpate him. He then made application for retrial (Wiederaufnahme) on the basis of the letter which was rejected both by the Regional Court and by the Court of Appeal on .. May and .. June, 1966, respectively.

The Applicant complains of the length of his sentence. He states that he had been working regularly before his arrest, so that it is now quite inappropriate to send him to a labour institution, the purpose of which is to teach prisoners to work. In addition the conditions in the labour institution resemble those of a prison. He states that he is now married and has children, who will suffer hardship in his absence. He cannot earn enough to support them, in the labour institution, no matter how hard he were to work. The National Assistance for them is inadequate. His wife and children have been evicted from their home since his arrest.

The Applicant further states that if a woman is sentenced to a detention in a labour institution, but then marries, she is not required to carry out her sentence. This does not apply to men, who have to serve the sentence even if they have families.

The Applicant alleges violations of Articles 4 and 6 of the Convention.

THE LAW

Whereas, as regards the complaint that the presiding judge disclosed details of the Applicant's previous convictions to the lay assessors before determining the issue of his guilt, the Commission considers that the Application gives rise to questions of the interpretation of Article 6, paragraphs (1) and (2) (Art. 6-1, 6-2), of the Convention;

Whereas, when interpreting such fundamental concepts as "fair hearing" within the meaning of Article 6, paragraph (1) (Art. 6-1), and "presumption of innocence" within the meaning of Article 6, paragraph (2) (Art. 6-2), the Commission finds it necessary to take into consideration the practice in different countries which are members of the Council of Europe; whereas it is clear that in a number of these countries information as to previous convictions is regularly given during the trial before the court has reached a decision as to the guilt of an accused; whereas the Commission is not prepared to consider such a procedure as violating any provision of Article 6 (Art. 6) of the Convention, not even in cases where a jury is to decide on the guilt of an accused (see Decision No. 2518/65, Collection of Decisions, Volume 18, page 44);

Whereas, in the present case, it is further to be observed that the Applicant had admitted his guilt to a certain extent and that the judge and the lay assessors had to decide together both as to the conviction

and as to the sentence to be imposed, and that in doing so they had to take into account the past record of the Applicant;

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 so far as the Applicant complains generally of his conviction and sentence, 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 manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, in so far as the Applicant complains that he was not allowed to be present in person at the hearing before the Court of Appeal of Vienna on .. May, 1965, it is true that, being in detention on remand, he was prevented from attending that hearing;

Whereas Article 6, paragraph (3) (c) (Art. 6-3-c), of the Convention provides that "everyone charged with a criminal offence has the ... right ... to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay legal assistance, to be given it free when the interests of justice so require"; whereas this provision guarantees to an accused person that the proceedings against him will not take place without an adequate representation of the case for the defence, but does not give an accused person the right to decide himself in what manner his defence should be assured;

Whereas the decision as to which of the two alternatives mentioned in the provision should be chosen, namely, the Applicant's right either to defend himself in person or to be represented by a lawyer of his own choosing or, in certain circumstances, one appointed by the Court, rests with the competent authorities concerned (see the Commission's decision of 24th November, 1962, concerning Application No. 1242/61, *W* against Austria);

Whereas, in the present case, the Applicant was represented by a lawyer appointed by the Court; whereas, consequently, his defence before the Court of Appeal of Vienna was assured in a manner not inconsistent with the requirements of Article 6, paragraph (3) (c) (Art. 6-3-c), of the Convention;

Whereas therefore the examination of this complaint does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular in Article 6 (Art. 6); 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, in so far as the Applicant's complaints concerning his conviction and sentence are directed against his lawyer, 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, page 348, 356);

Whereas, in so far as the above complaint gives rise to the question whether the 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;

Whereas, in so far as the Applicant complains of the rejection of his petition for retrial and of his request that the Attorney-General should lodge a plea of nullity for safeguarding the law, it is to be observed that the Convention, under the terms of Article 1 (Art. 1), guarantees only the rights and freedoms set forth in Section I of the Convention; and whereas, under Article 25, paragraph (1) (Art. 25-1), only the alleged violation of one of these rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals;

Whereas otherwise its examination is outside the competence of the Commission *ratione materiae*; whereas the right to the above mentioned proceedings is not as such included among the rights and freedoms guaranteed by the Convention; whereas in this respect the Commission refers to its previous decisions Nos. 864/60 (*X v. Austria* - Collection of Decisions Volume 9, page 17) and 1237/66 (*X v. Austria* - Yearbook V, page 96) as regards petitions for retrial, and Nos. 2123/64 and 2301/64 as regards requests that the Attorney-General should lodge a plea of nullity for safeguarding the law; whereas it follows that this part of the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, in so far as the Applicant complains of the hardship caused to his wife and children as a result of his detention, the Commission had regard to Article 8, paragraph (1) (Art. 8-1), of the Convention which guarantees to everyone the right to respect for his private and family life; whereas the separation of a prisoner from his family and the hardship resulting from it are inherent consequences of the execution of a sentence; whereas therefore an examination of this complaint does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular in Article 8, paragraph (1) (Art. 8-1); 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.

Now therefore the Commission declares this Application INADMISSIBLE.

