

THE FACTS

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

The applicant is a German citizen born in 1941 at S., Yugoslavia. When last heard of he was detained in prison at Stein/Danube (Austria) serving a sentence of five years' severe imprisonment (schwerer Kerker)

for fraud; his term was due to end in October 1968.

He has lodged two previous applications (Nos. 2370/64 and 3011/67) which were declared inadmissible by the Commission's decisions of 11th February (1) and 20th December, 1967 (2).

The applicant generally attacks the Commission's decisions on his previous applications and alleges that the Commission violated all the articles of the Convention ("ihre eigenen Artikel auf der ganzen Linie verletzt"). In particular he complains of the fact that the Commission decided too early and did not wait until domestic proceedings had come to an end.

He raises a number of new complaints which are, however, largely connected with facts forming already the subject of the previous applications.

A. Complaints against Austria

I. One part of the applicant's present application relates to certain facts already presented in Application No. 2370/64 against Austria which were summarised as follows in the Commission's decision of 11th February, 1967;

- (1) Published in Collection of Decisions, Vol. 22, p. 96
(2) Published in Collection of Decisions, Vol. 25, p. 70

"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 regard to these injuries ... suffered on .. July, 1964, when he jumped off the train between Vienna and Wiener-Neustadt ... 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 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 3 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 (Säumisklage verbunden mit einem Schadensersatzanspruch) against the lawyer.

Insofar as the applicant's complaints were directed against his lawyer who represented him in subsequent civil proceedings for damages, the Commission rejected his previous application as being incompatible with the Convention *ratione personae* and added that there was no appearance of a violation of the Convention. Insofar 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 of the Convention.

Although the applicant, in a letter to the Commission dated 3rd October, 1964, and concerning his previous application, had stated expressly that he deliberately jumped off the train ("Ich wollte sterben und sprang kurzerhand aus dem fahrenden Zug ..."), he now alleges that he did not intend to commit suicide but fell off the train. When reminded of the previous statement, he explains that he had made those in a state of confusion ("Sinnverwirrung"). He now affirms that, because of the hot weather on the day in question he did not feel well and had to go to the lavatory. While he did so the prison officer who accompanied him, sat in a corner of the compartment sleeping or otherwise not paying attention. On his way back from the lavatory the applicant - according to his present allegations - broke down tried to find hold but did not succeed. So he fell through the door which he might have opened while on the platform between two wagons and off the train because the grid was not closed. The applicant alleges that the prison officer according to the Rules on the escorting of prisoners by prison officers (Vorschriften über die Eskortierung von Gefangenen durch Justizwachbeamte) should have accompanied him to and waited at the lavatory door.

With regard to the applicant's subsequent action for compensation - in the amount of 700,000 Austrian Schillings - it appears from his present allegations that, by decision from .. April, 1967, the Regional Court released the lawyer from the case and withdrew the legal aid which had been granted to the applicant. After having consulted the file kept in the prison the Court held that his action had no chance of success as there was nothing to show that the applicant had in fact fallen from the train as a result of any negligence of the prison guard or the railway administration.

The applicant's appeal was rejected by the Court of Appeal (Oberlandesgericht) of Vienna on .. September, 1967, on the ground that under Austrian law the applicant, as a foreigner, could not bring an action for damages against the State, since no reciprocity is guaranteed in relation to his home country; i.e. the Federal Republic of Germany.

A further appeal lodged by the applicant was rejected as being inadmissible by the Regional Court on .. November and by the Court of Appeal on .. December. 1967.

The applicant complains both of the court's and his lawyer's conduct in the case. He further complains that the Court of Appeal did not transmit his appeal to the Constitutional Court (Verfassungsgerichtshof) as requested by him. On .. February, 1968, he applied directly to the Constitutional Court but apparently without success.

The applicant also laid criminal charges against the persons who were responsible that, according to his allegations, the grid of the platform was not closed. The Public Prosecutor's Office

(Staatsanwaltschaft) of Wiener-Neustadt discontinued the proceedings on .. May, 1967, on the ground that there was no sign of negligence and this was confirmed on .. October, 1967, by the Judges' Chamber of the Regional Court (Ratskammer des Kreisgerichts).

II. The applicant further complains about another incident during his detention in Austria. He states that on .. April, 1967, he had undergone an operation in a hospital in Krems. In the night from .. to .. April, 1967, he received some medicine because he had pains. In the morning he was apparently given a purgative. One hour later he had to go to the lavatory but he could not get up because after having got so much medicine he was too weak. When he tried to get up he allegedly fell and hurt himself. Finally he had to relieve himself in the bed while two prison officers stood in the room laughing and insulting him.

The applicant complains that the prison officers watched the whole indigent without helping or assisting him in any way. He lodged against the officers charges of having endangered his personal safety (Gefährdung der Sicherheit des Lebens). The charges were dismissed on .. August, 1967, and this decision was confirmed on .. October, 1967, by the Judges' Chamber of the Regional Court at Krems.

III. The applicant further complains that during this medical treatment in the hospital in Krems he had for 7 days to stay in a bed for which the bedclothes of a fellow prisoner who had died were used without being cleaned.

IV. As in his first application (No. 2370/64) he complains of the fact that during his detention in Stein prison his health was ruined and as a result of the work which he had to perform he now suffers from an angingal hernia.

The applicant alleges violations of Articles 3, 6, paragraphs (1) and (3) (a), (c) and (d), 7, paragraph (1), 8, paragraph (2), 9, paragraph (2), 11, paragraph (2), 13 and 14 of the Convention. He also invokes Articles 25, 26, 27, paragraph (1) (b), 28, paragraph (b), 31, paragraphs (1) and (3), 44, 47, 49 and 50 of the Convention.

B. Complaints against the Federal Republic of Germany

The complaints made by the applicant against the Federal Republic of Germany relate to certain facts already presented in Application No. 3011/67 which were summarised as follows in the Commission's decision of 20th December, 1967:

"From his statements and from documents submitted by him in support of his present application against the Federal Republic of Germany it appears that, since September, 1954, his mother had rented a flat at Magstadt which he also inhabited and where he kept his belongings. Owing to the applicant's frequent absence, his mother let part of the flat to a subtenant. On .. October, 1964, upon the initiative taken by the authorities at Magstadt, the applicant's mother was first committed to an institution for aged people and later to a mental institution. Subsequently, the lessor gave notice to the applicant to vacate the flat in view of the fact that his mother was unlikely to return and he himself was faced with a long-term imprisonment imposed upon him in Austria.

The applicant, whose furniture, household and other goods were still in this flat, objected to the notice to both the authorities at Magstadt and the lessor. It appears that he also addressed himself repeatedly to the District Court (Amtsgericht) at Böblingen asking for protection. By letters from the District Court, dated .. February, 1965 and .. April, 1965, and from the authorities at Magstadt, dated .. January, 1965, he was informed that, in the circumstances, no action could be taken on his behalf. He apparently did not listen, however, to the advice given to him by the authorities at Magstadt and the

District Court at Böblingen to the effect that he should apply for a guardian (Pfleger) who would attend to his affairs. In any event, the lessor took possession of the flat on .. July, 1965, after having evicted the subtenants.

It appears that, in the meanwhile, the applicant's brother had come over from America to take possession of the applicant's belongings. He sold them and obtained a purchase price of DM 1065.- which he took with him to America.

The applicant maintained that the goods stored away in the flat had a much higher value than the price realised by his brother. He concluded that the subtenant had taken them in his possession when his mother was committed to the mental institution. He held the authorities at Magstadt and the lessor responsible for the damage done to him owing to their failure to protect his mother from the subtenants and to the fact that they had allowed them (the subtenants) to remain in the flat after his mother had left it.

Thus he intended to bring an action for damages in the courts and, for this purpose, lodged an application for free legal aid (Armenrechtsgesuch) with the Regional Court (Landgericht) at Stuttgart. This Court refused the application by decision (Beschluss) of .. August, 1966, on the ground that the proceedings proposed did not offer any reasonable prospects of success. The applicant appealed (Beschwerde) against this decision to the Court of Appeal (Oberlandesgericht) at Stuttgart which dismissed the appeal on .. January, 1967. The Court held that insofar as the claim was directed against the lessor, there was no cause of action, because the lessor owed no duty to the lessee in respect of the lessee's belongings. The Court continued that there was also no cause of action against the authorities of Magstadt; even if it were assumed that a duty existed owing to the fact that this defendant caused the mother to be committed to an institution for aged people, there was no breach of this duty (Amtspflichtverletzung) because she herself had taken steps to safeguard her own and the applicant's belongings.

The applicant made a further appeal (weitere Beschwerde) against this decision to the Federal Court (Bundesgerichtshof) which was declared inadmissible on .. September, 1967, on the ground that a further appeal did not lie in these cases."

These complaints were declared inadmissible by the Commission's decision of 20th December, 1967, both as regards the alleged deprivation of property and the subsequent court proceedings.

The applicant now alleges that during these Court proceedings he was insulted and defamed in a letter submitted by the lessor to the Regional Court on .. June, 1966. In this letter it was stated that the applicant served a long term of imprisonment, that the applicant's mother had let part of the flat to a subtenant without the lessor's permission and that one could not expect from the lessor to let the flat to the applicant and his mother any longer because they would not be able to pay the rent.

The applicant requested legal aid in order to institute private criminal prosecution ("Privatklage") against the lessor to the District Court of Stuttgart. The District Court refused the request by decision of .. September, 1967, on the grounds that the intended private criminal prosecution had no reasonable chance of success. This decision was confirmed on appeal by the Regional Court on .. September, 1967.

It appears that the applicant also lodged two constitutional appeals which were rejected as being inadmissible by decisions of the Federal Constitutional Court (Bundesverfassungsgericht) of .. January and .. February, 1968. The applicant gives no clear details in this respect.

The applicant complains that he did not really want to apply for private criminal prosecution but wanted to bring a civil action.

Although speaking of a "Privatklage" he apparently wished to bring a civil action for damages and for a statement that he was still tenant of the flat. He complains that no decision was given in this respect.

Furthermore the applicant complains of the fact that the Court had put the expenses at his charge. He alleges - as he did in his previous application (No. 3011/67) - that the authorities at Magstadt and the lessor are responsible for the damage done to him and now complains that he has even to pay the court's expenses resulting from this case.

The applicant alleges violations of Articles 6, paragraphs (1) and (3), (c) and (d), 8, 13 and 14 of the Convention and Article 1 of the First Protocol. He also invokes Articles 25, 26, 31, paragraph (1), 44, 47, 49 and 50 of the Convention.

THE LAW

Whereas Article 27, paragraph (2) (Art. 27-2), of the Convention provides that "the Commission shall consider inadmissible any petition submitted under Article 25 (Art. 25), which it considers ... an abuse of the right of petition";

Whereas in this respect it is first to be observed that the applicant has already seized the Commission twice with applications generally concerning the same facts as his present complaints; whereas both those previous applications were found to be inadmissible; whereas the applicant nevertheless repeats in part his previous complaints although adding certain new elements; whereas therefore the Commission, in examining the present application, has taken into account that this application constitutes to a certain extent a repetition of the previous ones, even if it cannot strictly be said to be "substantially the same" within the meaning of Article 27, paragraph (1) (b) (Art. 27-1-b) of the Convention;

Whereas in his submission on one of those facts already raised in his first application (No. 2370/53), the applicant has made deliberately false statements and tried to mislead the Commission with regard to the incident on the train between Vienna and Wiener-Neustadt, in that he claimed in his first application that he jumped off the train to commit suicide and - obviously no longer being aware of that statement - now claims that he fell off the train as a result of a sudden fainting and contributory negligence on the part of the escorting officer;

Whereas the Commission has already held in the past in similar cases that such conduct of an applicant constitutes an abuse of the right of petition; whereas reference is made to the decisions on the admissibility of Applications Nos. 2169/64, 2204/64, 2326/64; Collection of Decisions, Vol. 14, p. 76, and Nos. 2364/64, 2584/65, 2662/65 and 2748/66, Collection of Decisions, Vol. 22, p. 103; whereas also in the present case the Commission finds in view of all circumstances that the applicant's new application amounts to an abuse of the right to petition within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Now therefore the Commission DECLARES THIS APPLICATION INADMISSIBLE