

THE FACTS

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

The Applicant, a German citizen, is at present detained in prison at Bielefeld. From his lengthy statements and the numerous documents submitted by him, the facts of his case appear as follows:

The Applicant was born in 1915 near Magdeburg and grew up in Germany until his parents moved to Poland about 1930. Later he served both in the Polish Army (1937 - 1939) and in the German Navy (1944 - 1945). After the war the Applicant remained in Germany and, in 1962, he married Y.

In 1964, the Applicant's wife instituted divorce proceedings and, on .. April, a hearing of the parties took place before the Regional Court (Landgericht) of Bielefeld. After the hearing the Applicant left the Court together with his wife and, on the street, he hit her on the head and she fell on the pavement. He then stabbed her with a paper knife and wounded her with some 18 stabs in the head, neck, shoulder, breast, arm, thigh and foot. By the intervention of other persons he was prevented from doing further injury.

The Applicant was arrested on the same day and on .. April 1964, a warrant for his arrest was issued in which it was stated that he was suspected of attempted murder. In October 1965, the Applicant was formally charged (angeklagt) with attempted murder and, on .. November 1965, he was sentenced by the Regional Court of Bielefeld to three years' imprisonment for dangerous assault and battery. His appeal (Revision) from this judgement was dismissed by the Federal Court (Bundesgerichtshof) on .. April 1966.

The Applicant's complaints and the corresponding facts appear as follows:

I. Length of detention pending trial and pending appeal

1. A warrant for the Applicant's arrest (Haftbefehl) was issued by the District Court (Amtsgericht) of Bielefeld on .. April 1964. It was stated that the Applicant was strongly suspected of attempted murder and that there was a danger that he might escape unless remanded into custody; reasons were given for these findings.

2. On .. 1965, the Applicant's lawyer, Rechtsanwalt Z. applied for the cancellation of the detention order. He submitted that the Applicant would probably not be convicted on a charge of attempted murder (Mord) under Article 211 or attempted manslaughter (Totschlag) under Article 212 of the Criminal Code (Strafgesetzbuch). He further pointed out that, under Article 223a of the Code the minimum sentence for dangerous assault and battery was two months' imprisonment.

This application was refused by the Regional Court on .. 1965 and, on appeal (Beschwerde) by the Court of Appeal (Oberlandesgericht) of Hamm on .. 1965. The Court of Appeal confirmed the finding of the Regional Court that the Applicant was strongly suspected of having attacked his wife with an intention to kill her and stated with reference to Article 120 (new version) of the Code of Criminal Procedure (Strafprozessordnung) that the length of the Applicant's detention pending trial (at that time 13 months) was not out of proportion to the sentence which he might receive if convicted on a charge of attempted murder or manslaughter.

The Applicant then instructed his lawyer to lodge a further appeal against the decision of the Court of Appeal. On .. 1965, Mr. Z replied that no further appeal lay under Article 304, paragraph (4), of the

Code of Criminal Procedure. Nevertheless, the Applicant addressed several petitions to the Federal Court, which by letters of ... and ... 1965, informed him that it was not competent to deal with these complaints.

3. In the meanwhile, the Applicant had, without success:

(a) brought criminal charges of "breach of trust in the exercise of his duties" ("Untreue im Amt") against the investigating judge (Untersuchungsrichter), Dr. A;

(b) challenged the judges of the Regional Court including the investigating judge on the ground of partiality and requested the transfer of his case to another court;

(c) brought criminal charges of defamation against the judges of the Regional Court and the Court of Appeal.

4. On ... 1965, the investigating judge declared the preliminary investigation (Voruntersuchung) closed. He stated that the investigation had been particularly difficult and that it had been delayed by several petitions of the Applicant which had necessitated the transmission of the case-file to other authorities.

5. On ... 1965, the Court of Appeal made a new order for the continued detention of the Applicant. This decision was taken under Article 121 (new version) of the Code of Criminal Procedure which states as follows:

"(1) As long as no sentence imposing imprisonment or some preventive and rehabilitation measure involving a deprivation of liberty has been passed, a period of remand in custody for the same offence may exceed six months only in cases where the special difficulty or extent of the investigations or some other important reason renders the passing of judgement temporarily impossible and justifies such prolongation.

(2) In the cases mentioned in paragraph (1), the warrant of arrest shall be withdrawn at the expiry of six months unless its execution is suspended under Article 116 or the Court of Appeal orders the continuance of the remand in custody.

..."

("1) Solange kein Urteil ergangen ist, das auf Freiheitsstrafe oder eine freiheitsentziehende Massregel der Sicherung und Besserung erkennt, darf der Vollzug der Untersuchungshaft wegen derselben Tat über sechs Monate hinaus nur aufrechterhalten werden, wenn die besondere Schwierigkeit oder der besondere Umfang der Ermittlungen oder ein anderer wichtiger Grund das Urteil noch nicht zulassen und die Fortdauer der Haft rechtfertigen.

(2) In den Fällen des Absatzes 1 ist der Haftbefehl nach Ablauf der sechs Monate aufzuheben, wenn nicht der Vollzug des Haftbefehls nach Paragraph 116 ausgesetzt wird oder das Oberlandesgericht die Fortdauer der Untersuchungshaft anordnet.

...")

The Court of Appeal, considering the result of the preliminary investigation and, in particular, the Applicant's own statements, found that he was strongly suspected of attempted manslaughter. Having regard to the sentence which he might receive and pointing out that he had no fixed address and that his marriage was ruined, the Court further found that there was a danger that he might escape unless remanded in custody. With regard to the length of the Applicant's detention (at that time 16 months), the Court held that it was not out of proportion to the sentence which he might receive; in this connection, the Court observed that the minimum sentence for attempted manslaughter was one year and three months penal servitude, but that there was no reason to

assume that the alleged crime of the Applicant was a particularly light case. Finally, the Court found that there were certain "important reasons" within the meaning of the above Article 121, paragraph (1), of the Code of Criminal Procedure which rendered the passing of judgment temporarily impossible and justified the prolongation of the Applicant's detention on remand. These reasons were: the delay caused by the preparation of an expert opinion on the question of the Applicant's criminal responsibility and, secondly, the introduction by the Applicant of several unfounded petitions.

6. the indictment (Anklageschrift) was completed on ... 1965 and, on ... the Applicant was committed for trial.

7. The trial lasted from .. to .. November 1965.

8. In its judgement of .. November 1965, the Regional Court decided that the period spent by the Applicant in detention pending trial should be counted as part of his sentence.

9. New orders for the continued detention (pending appeal) of the Applicant were made by the Regional Court on ... 1965, ... and ... 1966, and by the Court of Appeal on ... 1966.

10. The Federal Court decided on .. April 1966, in respect of the period which the Applicant had spent in detention during his appeal proceedings (. November 1965, until .. April 1966) that the part of this period which exceeded three months should be counted as part of his sentence.

With regard to his detention pending trial and pending appeal, the Applicant now alleges violations of Article 5, paragraph (4), and Article 13 of the Convention.

II. Conviction and sentence

On .. November 1965, the Regional Court convicted the Applicant on a charge of dangerous assault and battery. Taking into account his previous convictions on similar charges, the Court sentenced him to three years' imprisonment.

The Applicant introduced both an appeal (Revision) and a constitutional appeal (Verfassungsbeschwerde) from this judgement. His appeal was dismissed by the Federal Court on .. April 1966, and his constitutional appeal was declared inadmissible by the Federal Constitutional Court (Bundesverfassungsgericht) on ... 1966.

With regard to his conviction and sentence by the Regional Court, the Applicant admits that he attacked and wounded his wife in the way described above. He states, however, that he was provoked by her and complains:

1. that the Regional Court failed to summons certain witnesses as to the character and general behaviour of his wife;
2. that his sentence was excessive;
3. that the judgement is the result of a conspiracy against him which was motivated by his Polish origin; and
4. that Rechtsanwalt Z, who had been appointed by the Court to defend him, failed in the exercise of his duties.

The Applicant alleges violations of Article 6, paragraphs (1) and (3), sub-paragraph (d), and Articles 7 and 14 of the Convention.

III. Divorce proceedings

On ... 1965, the Applicant's wife was granted a divorce by the Regional Court of Bielefeld. The Applicant's appeal (Berufung) from this decision is pending before the Court of Appeal. His constitutional appeal against the judgement of the Regional Court was declared inadmissible by the Federal Constitutional Court on ... 1966.

The Applicant complains that the judges of the Regional Court refused to summons certain witnesses on his behalf and that various lawyers who represented him in the divorce proceedings, failed in the exercise of their duties.

He alleges violations of Article 6, paragraphs (1) and (3), sub-paragraph (d), and Article 8 of the Convention.

IV. Criminal charges brought by the Applicant

Various criminal charges were brought by the Applicant against:

1. the judges of the Regional Court and the Court of Appeal who were concerned with the criminal proceedings against the Applicant (see Parts I and II above);
2. the judges of the Regional Court in the divorce proceedings (see Part III above);
3. a judge of the District Court (Amtsgericht) of Bielefeld (who had refused the Applicant's petition that his wife should be put under guardianship);
4. the Public Prosecutor who participated in the trial of the Applicant;
5. another Public Prosecutor (who had refused to deal with a petition of the Applicant on the ground that it had been drafted in improper terms);
6. Mr. Z, the lawyer who defended the Applicant at his trial;
7. one of the lawyers who represented the Applicant in his divorce case;
8. the Applicant's wife;
9. his stepson; and
10. several witnesses who had given evidence in the above proceedings before the Regional Court.

In all these cases, the Public Prosecutor refused to institute proceedings and the Applicant's appeals (Beschwerden) to the Attorney-General (Generalstaatsanwalt) remained unsuccessful.

V. Correspondence (Article 8 of the Convention)

1. On ... 1965, the Regional Court, finding that the Applicant's correspondence had become too voluminous, decided that he should only be permitted to write one letter per week. This limitation did not apply to his correspondence with his lawyer, the Office of the Public Prosecutor and the Court.

With reference to its above decision, the Regional Court refused to forward 31 letters of the Applicant which were consequently returned to him. These letters were addressed to: an uncle of the Applicant in Poland, the Federal Railways (Bundesbahn), Cardinal Jäger, the Jewish Religious Community (Jüdische Kultusgemeinde), two lawyers in Düsseldorf, Countess Rosen, Mr. Mikolajewski of Düsseldorf, and 22 witnesses whom the Applicant wished to call.

2. In respect of three letters written by the Applicant to his uncle in Poland, the Court found that they contained offensive and defamatory statements and decided that they should consequently not be forwarded (decision of the investigating judge dated ... 1965, and decisions of the Criminal Chamber dated ... 1965, and ... 1966).

3. Two letters which the Applicant addressed to witnesses, who had been summonsed to give evidence at his trial, were stopped by the Regional Court on the ground that they might influence these witnesses (decision of --- 1965).

The Applicant alleges violations of Articles 6, 8 and 10 of the Convention.

VI. Complaints concerning treatment in prison

1. A petition by the Applicant for his transfer to another remand prison was refused by the Regional Court on --- 1965.

2. Several petitions by the Applicant, in which he objected to his cell-mates and requested to be housed with other remand prisoners, were granted by the prison administration. Two further applications of the same kind were dismissed by the Regional Court on --- and --- 1965.

3. The Applicant's requests that arrangements should be made for his son Peter (aged 3 years) to visit him in prison were refused by the Regional Court on --- and --- and by the District Court on --- 1965.

4. On --- 1965 the Regional Court rejected as ill-founded the Applicant's complaint that the competent Social Officer (Fürsorger) had failed in the exercise of his duties.

5. The Applicant's objections against the prison physician and his request to be treated by another doctor were dismissed by the Regional Court on --- 1966.

With respect to the above decisions of the District Court and the Regional Court, the Applicant alleges violations of Articles 3 and 8 of the Convention.

THE LAW

Whereas, with regard to the Applicant's complaints concerning the length of his detention pending trial, Article 5, paragraph (3) (Art. 5-3), of the Convention states that everyone arrested or detained in accordance with paragraph (1), sub-paragraph (c) of that Article (Art. 5-1-c) "shall be entitled to trial within a reasonable time or to release pending trial"; and whereas the Applicant was arrested on .. April 1964, and detained pending trial until .. November, 1965, that is for a period of over one year and seven months; whereas, according to the constant jurisprudence of the Commission, the question whether a period of detention pending trial is "reasonable" or not cannot be decided in abstracto but must be considered in the light of the particular circumstances of each case (see Application No. 2077/63, Yearbook of the European Convention on Human Rights, Volume 7, pages 268, 276 and 278);

Whereas, in the present case, the Commission has taken into account that the Applicant was arrested and detained on reasonable suspicion of having committed a crime for which a heavy sentence might be imposed; that a justifiable delay in the investigation against him was caused by the preparation of an expert opinion on the question of his criminal responsibility; and that the introduction by the Applicant of several unfounded petitions, in particular his challenge of all judges of the Regional Court including the investigating judge, resulted in further delay; whereas, therefore, an examination of the case does not

reveal that the detention of the Applicant was unduly prolonged by the authorities; whereas, consequently, it does not disclose any appearance of a violation of Article 5, paragraph (3) (Art. 5-3), of the Convention;

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, with regard to the Applicant's complaints concerning the duration of the criminal proceedings against him, Article 6, paragraph (1) (Art. 6-1), of the Convention provides that, in the determination of any criminal charge against him, everyone is entitled to a "hearing within a reasonable time"; whereas the Commission has considered the question whether the period referred to in Article 6, paragraph (1) (Art. 6-1), should be calculated from the date of the Applicant's arrest (.. April 1964) or only from the date on which he was formally charged (... 1965), and, further, whether this period includes both the Applicant's trial at first instance up to the Regional Court's judgement of .. November 1965 and his appeal proceedings before the Federal Court, which lasted until .. April 1966; whereas the Commission does not consider it necessary to decide this question in the present case; whereas it finds that, even if the period concerned was calculated as running from .. April 1964, until .. April 1966, Article 6, paragraph (1) (Art. 6-1), has not been violated in regard to the time taken up by the criminal proceedings against the Applicant;

Whereas, in this respect, the Commission has again taken into consideration the grounds set out above in its finding regarding Article 5, paragraph () (Art. 5); whereas it follows that this part of the Application is also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the Applicant also complains of his conviction and sentence and of his divorce proceedings; whereas, in so far as these complaints are directed against his lawyers, 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 complaints give rise to the question whether the Regional Court failed to ensure that, in the criminal proceedings against the Applicant, his defence was properly carried out by his lawyer 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 regard to the Applicant's further complaints concerning his conviction and sentence and his divorce proceedings, 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 No. 458/59 (*X. v. Belgium* - Yearbook Volume 3, page 233) and 1140/61 (*X. v. Austria* - Collection of Decisions of the Commission, 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 also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, in regard to the Applicant's complaint that the numerous criminal charges brought by him both against judges and public prosecutors and against third persons were not proceeded with by the Public Prosecutor, 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 those 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 neither the right to have criminal proceedings instituted against judges and public prosecutors nor the right to have such proceedings brought against third persons is as such included among the rights and freedoms guaranteed by the Convention; 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, it results from part V of the statement of facts that the Applicant also complains of certain court decisions concerning his correspondence; whereas, in this respect, the Commission has had regard to Article 8 (Art. 8) of the Convention which guarantees to everyone the right to respect for his correspondence; whereas, however, paragraph (2) of this provision (Art. 8-2) authorises interference by a public authority with the exercise of this right where such interference is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others; whereas the Commission has examined the court decisions mentioned in Part V of the statement of facts; and whereas it finds that these decisions, which interfered with the Applicant's freedom of correspondence, were justified under paragraph (2) of Article 8 (Art. 8-2);

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 further complaint that the Regional Court refused his petition for transfer to another remand prison, it is to be observed that the right claimed is not as such included among the rights and freedoms guaranteed by the Convention;

Whereas it follows that this complaint is incompatible with the provisions of the Convention within the meaning of Article 27,

paragraph (2) (Art. 27-2), of the Convention;

Whereas, in regard to the Applicant's complaints concerning the Prison Doctor, the Social Officer and the cell-mates of the Applicant, 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 3 (Art. 3); 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, finally, the Applicant also complains of several court decisions refusing his request to arrange for his son Peter, aged 3 years, to visit him in prison; whereas, in this respect, the Commission has had regard to Article 8 (Art. 8) of the Convention which guarantees to everyone the right to respect for his family life; whereas, however, paragraph (2) of this provision (Art. 8-2) authorises interference by a public authority with the exercise of this right under certain conditions; whereas, in particular, such interference is permitted where it is in accordance with the law and is necessary in a democratic society for the protection of health or morals; and whereas the Commission has already held in a previous case that the term "protection of health or morals" covers not only the protection of the general health or morals of the community as a whole but also the protection of the health or morals of individual members of the community; that, further, the term "health or morals" includes the psychological as well as physical well-being of individuals; and that, consequently a court, when determining a parent's right of access to his child, may properly take into account the need to keep the child free from serious psychic disturbance (Application No. 911/60, Yearbook Volume 4, pages 198, 216, 218; see also Application No. 1449/62, Yearbook Volume 6, pages 262, 266); whereas the Commission finds that, in the circumstances of the present case, the refusal of the German courts to arrange for the Applicant's son to visit him in prison was justified under paragraph (2) of Article 8 (Art. 8-2) by the need to keep this child free from serious psychic disturbance; whereas it follows that the remainder of the Application is also 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.