

THE FACTS

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

The applicant is a German citizen, born in 1928 and at present residing at H., Germany.

Her application concerns the decisions of German courts to keep detained her husband in a lunatic asylum. She complains that this decision was wrong and that the consequences thereof also interfered with her own rights and freedoms, since the absence of her husband has made her life insupportable.

By judgment of .. December 1968, the Regional Court (Landgericht) at K. decided that the applicant's husband should be detained in a lunatic asylum. The court held that he suffered from paranoia which caused a form of pathological jealousy, for which he could not be held responsible. The court thus acquitted him of the criminal charges which were laid against him. It appears that the Public Prosecutor had accused the applicant's husband of having ill-treated the applicant by means of pushing a cudgel several times into her vagina. It appears that the applicant's husband suspected the applicant of having had intimate relations with other men. In the course of the criminal proceedings the applicant's husband was medically examined as to his criminal responsibility and thereupon an expert was heard at the trial. On the basis of the expert's opinion the court found that the applicant's husband was irresponsible for his offenses within the meaning of Article 51 (1) of the German Penal Code (Strafgesetzbuch).

The applicant's husband appealed against this judgment to the Federal Court (Bundesgerichtshof). He stated that even assuming that he had in fact ill-treated the applicant this would not suffice to order his detention in a lunatic asylum, since this offence did not constitute a threat to the public safety as required in Article 42 (b) of the Penal Code. He further stated that he had never been aggressive to third persons and that consequently his detention was not justified.

It appears that the District Court (Amtsgericht) at H. thereafter placed the applicant's children under the guardianship of the Youth Welfare Office (Kreisjugendamt) of F. On the applicant's husband's appeal the Regional Court of K. quashed this decision on the ground that the District Court had failed to hear the applicant in person and to enquire into her personal capacity to act as a guardian of her children. It appears, however, that the District Court, after having heard the applicant, again decided to appoint the above Youth Welfare Officer to act as a guardian of these children since it found that the unstable family situation was prejudicial to the well-being and education of the children. No more details are available as to the further development of these proceedings.

The applicant now complains:

- that the detention of her husband in a lunatic asylum was unjustified;
- that she suffered important financial and moral loss from the absence of her husband;
- and that she was deprived of her children in an unlawful manner and that this measure also was to the great disadvantage of her children.

The applicant alleges violations of the Convention.

THE LAW

Whereas, in regard to the applicant's complaint that her husband's detention in a lunatic asylum was unjustified and that the German

courts gave incorrect decisions in this respect, the Commission considered whether the applicant had made this complaint on behalf of her husband or of herself; whereas according to Article 25 (1) (Art. 25-1) of the Convention "the Commission may receive petitions addressed to the Secretary General of the Council of Europe from any person ... claiming to be a victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention ...";

Whereas, the Commission on several occasions has established that the term "victim" means not only the direct victim or victims of the alleged violation but also any person who would indirectly suffer prejudice as a result of such violation or who would have a valid personal interest in securing the cessation of such violation (see e.g. the decisions on the admissibility of Applications Nos. 282/57 (Yearbook, Vol. I, p. 166) and 1478/62 (Yearbook, Vol. VI, p. 590));

Whereas the applicant, who is the wife of the person who is detained in the lunatic asylum, can reasonably claim that she is, in the present circumstances, indirectly a victim, of the violations she complains of;

Whereas, however, 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's husband failed to lodge a constitutional appeal against the decision of the German Federal Court of .. May 1969; whereas, therefore, the remedies available to him under German law were not exhausted as regards this complaint; 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 (3) (Art. 26, 27-3) of the Convention has not been complied with by the applicant;

Whereas, further, the applicant complains that she suffered both morally and financially as a result of the absence of her husband; Whereas the Commission examined these complaints respectively under Art. 8 (1) (Art. 8-1) of the Convention and under Article 1 of the First Protocol (P1-1) of the Convention; whereas it is true that under Article 8 (1) (Art. 8-1) of the Convention "everyone has the right to respect for his private and family life, his home and his correspondence"; and whereas Article 1 of the above Protocol (P1-1) provides that "every natural or legal person is entitled to the peaceful enjoyment of his possessions";

Whereas, however, the Commission observes that it is an inherent feature of a lawful detention that the person detained should be restricted in his personal liberty including, as in the present case, separation from his family and his household; whereas the Commission finds that the above consequences of the detention of her husband do not therefore disclose any appearance of a breach of the above-mentioned Articles;

Whereas, further, as regards the applicant's complaints on the disruption of her family life as a result of her husband's detention and, in particular, that the custody of her children was removed from her, the Commission again had regard to the above Article 8 (Art. 8) of the Convention;

Whereas, however, (2) of this Article (Art. 8-2) provides that "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder

or crime, for the protection of health or morals"; whereas the Commission has noted that the German courts decided to put the children under the guardianship of the local Youth Welfare Officer on the ground that the family situation was so unstable as to be prejudicial to the upbringing of the children;

Whereas the Commission has noted that the applicant has not shown that this ground of the Court decisions was in any way unfounded; Whereas the Commission finds that, in the circumstances, the interference with the applicant's family life was lawfully taken and necessary for the protection of their health and their morals;

Whereas, therefore, an examination of these complaints does not disclose any appearance of a violation of the rights and freedoms set forth in Article 1 of the Protocol (P1-1) of the Convention;

Whereas it follows that these parts of the application must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention;

Now therefore the Commission **DECLARES THIS APPLICATION INADMISSIBLE**