

## THE FACTS

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

The applicant is a German citizen, born in 1941 and at present detained in prison at B..

The applicant complains that on 20 June 1968 he was beaten by the prison warden S. when he was detained in an isolation cell (Arrestzelle).

He states that on 20 June 1968 several prisoners were taken to isolation cells by eight officers led by Mr. S.. He heard these prisoners cry for help and admits that he therefore started to shout loudly in order to protest against, as he believed, the ill-treatment of his co-detainees.

He was consequently also taken to an isolation cell. In this cell he had an altercation with Mr. S., whom he reproached for acting like an SS-man. He alleges that thereupon Mr. S. attacked him, pushed him brutally against the protective railing of the cell and started to beat him with his fists, in one of which he held a heavy key. In order to protect himself, the applicant states that he ran out of the cell into the corridor of the cellar where he cried loudly for help so that the other prisoners could at least take notice of the way he was ill-treated. In the corridor he held fast to a pipe since otherwise, as he pretends, Mr. S. would have pushed him to the floor and kicked him. He alleges that although he offered no active resistance, Mr. S. hit him several times on his neck and shoulders.

He further alleges that after this occurrence he requested to see the prison doctor, since the beating had caused some cuts (Risse) on his shoulders, but only a first-aid man (Sanitäter) was sent to take care of him. Allegedly the prison authorities later pretended that they could not find out who this first-aid man was. The applicant states that he knows this man by sight, but it does not appear that he requested the German authorities to be given the possibility to find him.

The applicant has submitted a handwritten statement dated 1 July 1968, signed by three co-detainees, called W., F. and K., who declare in lieu of an oath (eidesstattlich) that on 20 June 1968 they observed from their isolation cells that Mr. S. beat the applicant with his fists.

The applicant states that in the meantime, F. has been released after having served his sentence while the two other witnesses were not only freed from serving a punishment of four and two weeks confinement in an isolation cell respectively, but they were even favoured in that, contrary to the prison rules, they were given an interesting employment. The applicant is of the opinion that this was done in order to influence these two prisoners not to give evidence before the Commission corroborating his complaint.

The applicant addressed several complaints to the Office for the execution of sentences (Justizvollzugsamt) in B., which were all rejected by the President of this office. The applicant was so informed by letter of 30 August 1968. With regard to the incident of 20 June 1968 it is stated in this letter that, contrary to his allegation, the applicant had not complained to the prison director of the alleged ill-treatment and that the prison officials concerned had strongly refuted the accusations which the applicant had made against them. It is further stated in the letter that according to the applicant's own declaration which was taken down at the prison on 21 June 1968, he had not been beaten.

The applicant explains that when he made this declaration he only meant that on his way to the isolation cell he was not beaten.

The applicant repeated his accusation against Mr. S. to the Office of the Public Prosecutor. By letter of 23 October 1968 from the Attorney General (Generalstaatsanwalt) at the Regional Court (Landgericht) he was informed that the proceedings had been discontinued (Verfahren eingestellt), since there was not sufficient evidence to prove that Mr. S. had committed any criminal offence. The Attorney General points out that the applicant himself had admitted to having insulted Mr. S. and to having been in a state of excitement (Erregungszustand) due to an overactivity of his thyroid gland, while on the other hand Mr. S. had denied having treated the applicant incorrectly.

Insofar as the applicant alleged that he had been attacked by Mr. S. in the isolation cell the Attorney General notes that no witnesses were available to corroborate this allegation. He goes on to state that even assuming that Mr. S. had pushed the applicant against the protective railing, this action would have been justified or was at least excusable in view of the applicant's aggressive conduct, which might have given the impression that he was prepared to use violence or to flee from the isolation cell as he in fact did a little later.

As regards the applicant's allegation that Mr. S. had hit him several times when he was running up and down the corridor in front of the isolation cell, the Attorney General states that the witnesses heard in this respect, had given a different account of what had happened in the corridor. According to the witnesses, Mr. S. had struck him several blows on his neck and shoulders while he held on to a pipe.

The Attorney General states that although the witnesses had spoken of blows it might as well be possible that Mr. S. only seized the applicant several times on his shoulders in order to tear him away from the pipe. But even if he hit the applicant he was, in the circumstances justified, since it was his duty as a warder to break the resistance of the applicant and bring him back to the isolation cell.

By letter of 27 February 1970 the applicant was requested to inform the Commission's Secretary whether he had lodged an appeal against the decision of the Attorney General of the Regional Court dated 23 October 1968.

In reply, by letter 2 March 1970, he alleged that he had, on 10 November 1968, addressed a letter to the Attorney General at the Court of Appeal appealing against the above-mentioned decision but that this letter did not arrive and, as he later found out, had not been registered in the prison office controlling the outgoing correspondence. He stated that when he discovered that his letter had been lost it was too late to lodge the appeal in time and he assumed that his earlier letter containing the appeal had been withheld.

The applicant is of the opinion that the Attorney General covers the prison officer. He alleges a violation of Article 3 of the Convention and requests the Commission to admit his application.

#### THE LAW

Whereas, in regard to the applicant's complaint that he was a victim of a violation of Article 3 (Art. 3) of the Convention in that he was struck several times by a prison guard, the Commission notes that the applicant has himself admitted that he was over-excited and insulted the guard and even ran out of the isolation cell where he was detained;

Whereas the Commission finds that under these circumstances, the force used by the guard to pull the applicant away from the pipe to which he was clinging in order to take him back to the isolation cell did not amount to inhuman treatment within the meaning of Article 3 (Art. 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, in regard to the applicant's complaint that a letter containing his appeal against the decision of the Attorney General at the Regional Court was withheld by the prison authorities, 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 complain to the competent court of the alleged failure of the prison authorities to forward his letter;

Whereas, therefore, he had not exhausted the remedies available to him under German 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 (3) (Art. 26, 27-3), of the Convention has not been complied with by the applicant;

Now therefore the Commission DECLARES THIS APPLICATION INADMISSIBLE