

THE FACTS

The facts of the case as submitted by the applicant may be summarised as follows:

The applicant is a German citizen, born in 1934 and at present detained in prison at C..

From his statements and documents submitted by the applicant it appears that he was arrested on .. August 1967 on the suspicion of having committed theft. The warrant of arrest was issued by the District Court (Amtsgericht) at C..

1. On .. April 1968 the applicant was convicted by the Regional Court (Landgericht) at C. of three counts of thefts as being a recidivist and sentenced to six and a half years' severe imprisonment. The applicant lodged an appeal and on .. January 1969, the Federal Court (Bundesgerichtshof) quashed the Regional Court's decision and remanded the case back for a new trial on the ground that the trial court had had a witness examined at his home and only read out his deposition at the trial instead of hearing him personally.

It appears that after the second trial the Regional Court on .. May 1969 convicted the applicant of two counts of theft and sentenced him to four years' severe imprisonment.

Another appeal lodged by the applicant was on .. March 1970 rejected by the Federal Court as being unfounded.

2. Since his arrest on .. August 1967 the applicant has in vain tried to be released. The Regional Court and the Court of Appeal at C. examined his case on several occasions either ex officio or at the request or appeals of the applicant and always found that there were sufficient reasons to keep him in detention on remand (Untersuchungshaft).

The applicant submitted copies of decisions of the Regional Court dated .. October and .. November 1967, .. May, .. June and .. September 1969 and of the Court of Appeal dated .. November 1967, .. February 1968, .. June 1969 and .. October 1969. The courts always held that there was well-founded suspicion that the applicant was guilty and that he might abscond after release. They pointed out that before his arrest he had neither a permanent job nor domicile, that he has no family, and that his numerous prior convictions never prevented him for a long time from committing new offenses.

By letter of .. August 1969 the applicant lodged a constitutional appeal against the decision of the C. Court of Appeal dated .. June 1969. It appears that this appeal was rejected as being lodged out of time. In a letter from the C. Regional Court dated .. October 1969 the applicant was informed that his letter containing the constitutional appeal had, after control by a judge, been forwarded to the Constitutional Court on .. August 1969. The Court pointed out that the .. August was a Friday and that, consequently, the applicant's letter could not have reached the Regional Court before Monday, .. August when the delay for the constitutional appeal had already expired.

The applicant lodged another constitutional appeal against the last decision of the Court of Appeal refusing his release, dated .. October 1969. This appeal was declared inadmissible as being clearly ill-founded, by three judges of the Federal Constitutional Court on .. December 1969.

3. The applicant laid criminal charges against three officials of the criminal police, the Public Prosecutor and the judges who were sitting at his first trial. It appears that all proceedings instituted upon the

applicant's charges were discontinued.

The applicant petitioned the Assembly of N.-W. complaining of his conviction and sentence. By letter of .. April 1969 he was informed that his petition had been rejected.

4. On .. May 1969 the applicant smashed to pieces the furniture in his cell. As a consequence the Regional Court at the request of the prison governor, imposed on him a penalty of seven days' arrest after having invited the applicant to submit his observations. The applicant appealed against this decision, which was given on .. July 1969. The Court of Appeal (Oberlandesgericht) at C. rejected the appeal on .. August 1969 stating that although the applicant had acted in a state of excitement he was, according to a medical expert opinion, nevertheless responsible for his behaviour since he was capable of making a distinction between objects belonging to the prison and his own objects which he did not destroy.

The applicant lodged a constitutional appeal against the Court of Appeal's decision. The appeal was declared inadmissible as being clearly ill-founded, by three judges of the Federal Constitutional Court on .. October 1969.

On July 1969 the Regional Court rejected the objections raised by the applicant against his prison sentence and refused to suspend the execution of this penalty. The Court stated that the applicant's right to be heard had been respected as he was given the opportunity to submit his observations in writing. Insofar as the applicant had complained that he had not been informed of the result of the medical expert opinion before .. July 1969, the Court stated that the applicant was informed of this expert opinion by the order of .. July 1969 but had not submitted any valid objections against it in his grounds of appeal.

5. (a) The applicant first complains of his conviction and sentence. He alleges that before his trial he was not completely informed by the police and the Public Prosecutor of the result of the investigation and therefore he could not properly prepare his defence. He further alleges that he was not given the text of the Penal Code and other Acts which he needed to prepare his defence. Apparently he was referred to his defence counsel. Finally, he alleges that his conviction was, inter alia, based on the evidence given by a criminal. He points out that at his second trial his request to replace his defence counsel and the Public Prosecutor was rejected.

(b) As regards the penalty imposed on him for his conduct in prison the applicant complains that he was not heard orally by the Court and was not given the opportunity to comment on the expert opinion. He states that he had lost his mind after he had heard on the radio that an innocent person had been convicted of murder and had served 20 years in prison before it was found out that he had been wrongly convicted. He pretends that under these circumstances, he could not have been held responsible for what he did in his frenzy.

(c) The applicant finally complains of the length of his detention on remand. He alleges that the police made a false report in order to obtain a court order remanding him to prison.

Alleging a violation of Articles 3, 5, 6 and 8 (1) of the Convention, he requests the Commission to declare his application admissible.

THE LAW

Whereas, in regard to the applicant's complaints relating to 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, Vol. III, p. 233) and 1140/61 (X. v. Austria - Collection of Decisions, Vol. 8, p. 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 regard to the applicant's complaint that the Regional Court at C. imposed on him a prison sentence of seven days arrest as a penalty for his misconduct in prison although he was given no adequate opportunity to justify his action, 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 (1) (Art. 25), 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 the right to a fair hearing as guaranteed by Article 6 (1) (Art. 6-1) of the Convention does not apply to disciplinary proceedings as such proceedings are not concerned with the determination of criminal charges;

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), thereof;

Whereas in regard to the applicant's complaint relating to the length of his detention pending trial and his subsequent appeal, such complaint is to be considered in relation to the requirement that a detained person is entitled to trial "within a reasonable time" under Article 5 (3) (Art. 5-3) of the Convention and, in accordance with the jurisprudence of the Court of Human Rights ("Wemhoff" case, judgement of 23 June 1968, p. 23), the period which is relevant in this respect is only that from the applicant's arrest on .. August 1967 until his conviction at first instance by the C. Regional Court on .. April 1968;

Whereas, therefore, a distinction should be made between this period and the period from the latter date until .. March 1970 when the Federal Court rejected his second appeal and his conviction became therefore final;

Whereas the Commission finds that the first period of approximately eight months was unreasonably long in view of the reasons given by the Regional Court rejecting the applicant's requests for release, namely that, if released, he might abscond as in particular he had no family ties, employment or place of residence;

Whereas the second period has been considered *ex officio* by the Commission in relation to the requirement that a person is entitled, in the determination of a criminal charge, to a hearing "within a reasonable time" under Article 6 (1) (Art. 6-1) of the Convention;

whereas the second period also does not, in the opinion of the Commission, appear to be excessively long;

Whereas the Federal Court quashed the applicant's first conviction and referred the case back for another trial and these proceedings inevitably caused some delay; whereas, furthermore, during this period there were numerous proceedings at all instances relating to the applicant's request for release and there were also disciplinary proceedings against him at all instances; whereas presumably the conduct of these other simultaneous proceedings must have caused further delay in the conduct of the main proceedings complained of;

Whereas it follows that the application in these respects 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