

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 1912 in Leipzig and at present serving a life sentence for murder in prison in Munster.

From the voluminous statements and numerous documents submitted by the applicant it seems that in 1949 he was convicted for having murdered his wife and sentenced to life imprisonment. Although at first he confessed to this crime, he revoked his confession later during his trial; finally, he was convicted on the basis of circumstantial evidence. Since then he has tried to obtain a retrial, but he has refused to make a petition for pardon for what he calls fundamental reasons which he does not disclose.

1. On .. July and .. August 1968 the applicant filed several petitions and made proposals to various people and agencies regarding working conditions and employment of prisoners. He proposed that working groups of five or six prisoners should be formed within the prison which would work preferably during normal working hours, as in free enterprise and sell their products to merchants and people outside the prison. Furthermore, the applicant proposed that any profit made by a working group should be used by an individual member to pay his debts, counsel fees and the cost of the criminal proceedings, a part of the profits going to the prisoner's family.

The part of the petition concerning the applicant's proposal to allow these groups to work during the normal working hours of the prison was rejected by the Ministry of Justice of North-Rhine-Westphalia on .. July 1968. A decision on the possibility of performing the work in the inmates' spare time was left open. On .. February 1969, however, this part of the petition was also refused by the Attorney General. In the meantime the applicant had requested the Hamm Court of Appeal to decide by "Beschuß" on his claims since the Attorney General had not replied formally to this request. He also applied for legal aid. During that time no steps were taken by the applicant to promote his projects. On .. June 1969 the Hamm Court of Appeal refused the applicant's request for legal aid and the request for a decision by the Court (Antrag auf gerichtliche Entscheidung). The applicant's request to work during his leisure time was also refused by the Court since the Attorney General's decision was within his discretion and no abuse thereof was found by the Court.

On .. November 1969 the applicant lodged a constitutional complaint (Verfassungsbeschwerde) against this decision to the Constitutional Court of North-Rhine-Westphalia (Verfassungsgerichtshof) alleging violations of his basic and human rights. Moreover, the applicant challenged the integrity of the judges in general. This constitutional complaint was declared inadmissible on .. June 1970 because the Constitution of North-Rhine-Westphalia does not provide for individual appeals. The Court could not refer this matter to another court since no relevant legal provision existed.

The applicant lodged a constitutional complaint (Verfassungsbeschwerde) with the Federal Constitutional Court (Bundesverfassungsgericht) against this decision and against the above decision of the Hamm Court of Appeal. By decision of .. November 1970, however, the complaint was declared inadmissible; as regards the decision of the Hamm Court of Appeal, on the ground that the applicant had failed to complain within the statutory period of one month against this decision: with regard to the decision of the Constitutional Court of North-Rhine-Westphalia it was declared manifestly ill-founded since the applicant did not explain how his right under Article 103 of the Basic Law had been violated.

2. In July 1968 the applicant filed a petition to the prison authorities to receive 150 DM from his private money. He indicated that it was senseless for him, under a sentence of life imprisonment, to save his money in a reserve fund for his release, and he intended to use this money to obtain new evidence for his retrial, to provide some financial help for his sick sister in Leipzig, to obtain legal assistance in connection with an invention he had made and in other legal matters. This was refused by the prison authorities. On .. August 1970 the Hamm Court of Appeal confirmed this decision of the prison authorities and the Attorney General. The Court stated that according to No. 97 of the Standing Order concerning the execution of sentences (Dienst- und Vollzugsordnung) the reserve fund saved by a prisoner was intended to ensure that the prisoner had some funds at his disposal after his release in order to prevent his falling into misery. In the case of the applicant, the Court continued, this fund amounted only to 130 DM and even the fact of his life sentence did not justify the applicant spending all this money. The Appeal Court finally held that no indications could be found of the Prison Governor's abusing his discretion when refusing the applicant's request. A constitutional appeal (Verfassungsbeschwerde) to the Federal Constitutional Court, in which the applicant alleged violation of his human rights, was rejected as being manifestly ill-founded on .. November 1970.

3. On .. June 1970, during the proceedings before the Hamm Court of Appeal the applicant challenged the judges on grounds of bias and presumptive partiality. He alleged that since the Minister of Justice is the "employer" both of the prison authorities and the judges, it followed that the latter could not reach an impartial and unbiased judgment on matters concerning the prison authorities. On .. July 1970, this challenge was rejected by other judges of the Hamm Court of Appeal.

A further constitutional complaint to the Federal Constitutional Court alleging that his right to independent, unbiased and impartial judges had been violated and that he had not had an oral hearing, was rejected by this Court on .. November 1970.

4. On .. June 1970 the applicant filed an application for legal aid for his application for retrial. The Regional Court (Landgericht) of Dortmund rejected it on legal grounds on .. December 1970. An appeal (Beschwerde) to the Hamm Court of Appeal was also rejected, since German law does not provide for legal aid to be granted for such proceedings.

5. In proceedings before the Administrative Court (Verwaltungsgericht) in Düsseldorf and the Administrative Court of Appeal (Oberverwaltungsgericht) in Münster the applicant filed an application for legal aid. He wished to have examined the question whether his human rights were respected during his detention by the court. Legal aid was not granted because his claim had no reasonable chance of success.

6. On .. September 1970 the applicant filed a petition to the Minister of Justice of North-Rhine-Westphalia to commute his life sentence to a shorter sentence. He also wanted to be transferred to an open prison where he could work outside the prison walls. He intended to pay for the surgery of his sister in Leipzig with the money thus earned and to save the rest of it for his own social welfare. In addition, he wanted to have the opportunity of performing fully paid work in prison in order to achieve the above-mentioned aims. This was rejected by the Minister of Justice and the President of the prison authorities.

7. In June 1970 the applicant wanted to take part in the general elections of North-Rhine-Westphalia which were held on 14 June 1970. (A modification of the General Criminal Law -

Strafrechtsänderungsgesetz, Article 90 - granted the right to vote to prisoners with effect from 1 April 1970). His application for a voting permit (Wahlschein) was nevertheless refused by the corresponding authorities on .. May 1970. (The file does not indicate the reasons given by the authorities, but it appears that they misinterpreted the law). On .. June 1970 the applicant filed a constitutional complaint with the Constitutional Court of North-Rhine-Westphalia with regard to this matter but it was declared inadmissible by decision of .. June 1970, .. days after the elections.

On .. June 1970 the applicant filed a petition to the prison authorities to obtain permission for fifty fellow prisoners who were also prevented from voting, to sign a petition in order to challenge the elections. According to the law in North-Rhine-Westphalia , this had to be done within one month of the official declaration of the election results.

On .. July 1970 the applicant made a formal complaint to the Hamm Court of Appeal, since his petition was not answered by the prison authorities and the matter was urgent in view of the expiring time limit. This was rejected by the Hamm Court of Appeal on .. July 1970 because the applicant had failed to obtain a formal decision by the prison authorities. This formal complaint to the prison administration, dated .. July 1970, could not be taken into account by the Court. The subsequent constitutional complaint to the Federal Constitutional Court was declared manifestly ill-founded on .. November 1970.

At length, on .. July 1970, the President of the prison Administration rejected the applicant's petition to collect the fifty signatures. He held that this procedure would endanger the security and order (Sicherheit und Ordnung) in the prison. The consequent decision of the Hamm Court of Appeal given on the applicant's appeal has not been submitted, and his constitutional complaint to the Federal Constitutional Court is apparently still pending.

The applicant also filed an election petition and challenged the lawfulness of the election. This was examined by the Parliamentary Committee for Election Petitions (Wahlprüfungsausschuß) and declared inadmissible since the applicant had failed to provide the necessary fifty signatures supporting his objections. Moreover, the Committee ruled that although the prison Administration acted unlawfully the exclusion of the applicant and other prisoners could have no influence on the election results. The ballot was therefore correct. The applicant lodged a constitutional complaint to the Constitutional Court of North-Rhine-Westphalia. During the proceedings he applied to the Court to provide a lawyer for him and challenged the judges on grounds of bias, since they took part in the above decision of .. June 1970. This was rejected by the Court on .. February 1971. The Court's final decision concerning his challenge of the election has not, however, been submitted by the applicant.

8. Numerous petitions by the applicant to receive social welfare benefits during his detention were refused on different legal grounds.

Complaints

The applicant alleges violation of the following Articles of the Convention:

Article 1 of the Convention because the Federal Republic of Germany is not willing to secure the human rights set out in the Convention.

Article 2 because his right to live was denied, which he considers to be more than a mere physical condition.

Article 3 because of his detention and since he was not allowed to help his sister.

Article 4 in connection with the Social Charter because his right to work had been violated.

Article 6 because no impartial and independent court acted in his case and since he was not granted an oral hearing. Furthermore, he alleges violation of Article 6 of the Convention because, in the proceedings concerning his request to spend 150 DM from his private money, the Court's decision was not given within a reasonable time (see above, point 2).

Article 8 because he was not allowed to help his sick sister.

Article 10 because he was not allowed to listen to radio programmes of his choice in prison.

Article 11 because he was not allowed to collect the signatures to challenge the election and since he was not allowed to form working groups within the prison.

Article 13 because the Constitution of North-Rhine-Westphalia does not provide for an individual constitutional complaint against the violation of human and basic rights, and the court did not refer the matter to another court at his request.

Article 14 because the Hamm Court of Appeal did not reach a swift decision on his request of .. July 1970 with regard to the challenge of the elections (see above, point 7) although the matter was urgent. He alleged that discrimination was thus a consequence of his detention.

Articles 1 and 2 of the First Protocol because he could not promote his invention and because his educational standard, a part of his possessions, is suppressed by the authorities. Article 3 because he could not participate and cast his vote in the above-mentioned elections.

He further alleges violations of Articles 15, 17 and 18 of the Convention.

THE LAW

1. The applicant has complained that his right to work has been violated by the German authorities who refused him permission to organise group-work of prisoners according to his ideas and suggestions. In this respect, and in respect of the applicant's complaints mentioned under paragraphs 2, 3, 4, 7 and 8 below, Article 25 (1) (Art. 25-1) of the Convention provides that it is only the alleged violation of one of the rights and freedoms set forth in the Convention that can be subject of an application presented by a person, non-governmental organisation or group of individuals. The right to work, as invoked by the applicant, is not included among the rights and freedoms guaranteed by the Convention and in this respect the Commission refers to its previous decision on the admissibility of Application No. 1028/61, Collection of Decisions, Vol. 6, p. 69. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

2. The applicant has further complained that he was not given an oral hearing on his request concerning his right to work in prison and he has complained about other procedural aspects of these proceedings, namely that the courts were biased against him, and thereby violated his rights under Article 6 (Art. 6) of the Convention. The provisions of this Article, however, apply exclusively to proceedings which deal with "the determination of .. civil rights and obligations or .. any criminal charge". Accordingly, they do not apply to the above mentioned proceedings instituted by the applicant, since they determine neither

any criminal charge brought against him nor his civil rights and obligations. As regards the latter, the Commission notes that in the proceedings concerned the applicant requested the privilege not only of working in prison but of having this work organised according to his personal plans and ideas. These proceedings, therefore, are of an essentially public law nature in view of the situation of the prisoner who is subordinated to the prison administration and since all privileges concerning prisoners are granted by the State in the course of carrying out its duty to provide, in the public interest, adequate forms of the execution of sentences which have been imposed under criminal law on the persons concerned.

In this respect the Commission refers *mutatis mutandis* to its previous decision on the admissibility of application No. 3959/69, Collection of Decisions, Vol. 35, p. 109. This complaint is, therefore, also incompatible *ratione materiae* with the provisions of the Convention.

3. The applicant has further complained that in respect of his above-mentioned proceedings the German authorities refused to grant him legal aid. He also complained that he was not granted such aid in proceedings which he instituted in order to obtain a retrial and in proceedings before the administrative courts.

It is true that, under Article 6 (3) (c) (Art. 6-3-c) of the Convention, everyone charged with a criminal offense has the right, subject to certain conditions, to be granted free legal assistance. In the proceedings mentioned by the applicant, the latter was, however, not a person "charged with a criminal offense" within the meaning of the above-mentioned provision. Article 6 (3) (c) (Art. 6-3-c) of the Convention is, therefore, not applicable in regard to his present complaints. Furthermore the right to free legal aid in retrial proceedings, administrative proceedings, and in proceedings such as instituted by the applicant in respect to his work in prison, is not elsewhere included among the rights and freedoms guaranteed by the Convention. It follows that these complaints are also incompatible *ratione materiae* with the provisions of the Convention.

4. The same reasoning applies to the applicant's complaint that his request that his life sentence should be commuted into a shorter sentence with the Commission's established case-law, the right to a similar measure of clemency is not as such guaranteed in the Convention (see *mutatis mutandis* decision on the admissibility of application No. 2749/66, Collection of Decisions, Vol. 24, p. 85).

5. The applicant further complained that he was not granted permission by the prison authorities to spend 150 DM from his private money for the purposes of assisting his sick sister, or of obtaining new evidence for his retrial or for other legal matters. The Commission has examined this complaint under Article 1 of Protocol No. 1 (P1-1) which guarantees to everybody "the peaceful enjoyment of his possessions". The same Article, however, also provides for the rights of the State "to enforce such laws as it deems necessary to control the use of property in accordance with the general interest". In this regard the Commission took note of the reasons given by the German courts for the above refusal, namely that the applicant should not be allowed to spend all his savings since he should have some funds at his disposal at the time of his release. It also noted that the Court of Appeal had carefully examined the case and had found that the prison governor had not used his discretion unreasonably or arbitrarily when he refused the applicant's request. The Commission is of the same opinion and therefore considers that this complaint of the applicant is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention, since the restriction complained of by the applicant was imposed upon him "in order to control the use of his property in accordance with the general interest".

6. The applicant has also complained that he was not allowed to

participate in the general elections held in the German Land North-Rhine-Westphalia on 14 June 1970. He alleges thereby a violation of Article 3 of Protocol No. 1 (P1-3). The Commission has examined this complaint under this Article which provides that "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature". In the circumstances of this particular case, however, the Commission is of the opinion that the exclusion of the applicant from the vote did not affect the election result nor thereby the free expression of the opinion of the people generally, consequently, this complaint is also manifestly ill-founded under Article 27 (2) (Art. 27-2), of the Convention, since there is not appearance of a violation of the above-mentioned Article 3 of Protocol No. 1 (P1-3).

7. The applicant has next complained that the judges were biased against him in the proceedings which he had instituted before various German courts and other authorities in order to challenge the lawfulness of the above elections. In this respect, however, the same reasoning applies as stated above in paragraph 2. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention since these proceedings are of an essentially public law nature and do not determine the applicant's civil rights or obligations nor any criminal charge against him. Consequently, the procedural guarantees of Article 6 (Art. 6), which provides for a "fair and public hearing", are not applicable.

8. The applicant's further complaint that on numerous occasions he was refused social welfare benefits by the German authorities is also incompatible *ratione materiae* with the provisions of the Convention, since no right to such benefits is, according to the Commission's established case-law, guaranteed thereby (see decision on the admissibility of application No. 1241/61 of 8 May 1962.).

9. The Commission has finally examined the applicant's various remaining complaints as they have been submitted by him. However, after considering them as a whole, the Commission finds that they do not generally disclose any appearance of a violation of the rights and freedoms set forth in the Convention.

It follows that they are as a whole manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

For these reasons, the Commission DECLARES THIS APPLICATION INADMISSIBLE