

## 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 1923 and at present detained in prison at S..

From his statements and from documents submitted by him it appears that, on .. March 1969 he was convicted by the Regional Court (Landgericht) of M. for having committed fraud and sentenced to five years' imprisonment. It appears that the applicant wished to lodge with the Federal Court (Bundesgerichtshof) an appeal (Revision) against this decision, but that his lawyer who had been appointed by the Court under a grant of legal aid refused to submit the grounds of appeal (Revisionsbegründung) as he considered the appeal as having no prospects of success. Apparently, the applicant subsequently himself submitted the grounds of appeal, but his appeal was declared inadmissible by the Regional Court as not having been lodged by a lawyer. No further particulars have been given in this respect.

It appears that, in the meanwhile, the applicant had made an application to the Regional Court of M. for the appointment of another lawyer. This was refused on .. June 1969. The Court explained that, under the applicable provisions of the law, a lawyer is justified in refusing to submit the grounds of appeal where, after having given the case careful consideration, he is convinced that an appeal would not have any prospects of success. The Court found that, in the present case, there was no indication that the lawyer concerned had failed carefully to evaluate the prospects of success offered by the appeal.

The applicant considered that he was wrongly convicted and sentenced, in particular owing to the fact that the Regional Court had failed to summon or hear the evidence of witnesses on his behalf who had been nominated by him. No further explanations have been given by the applicant in this respect. He alleged that the presiding judge and certain members of the M.. prison staff had unlawfully intercepted letters which he had written and laid with the prosecuting authorities criminal charges against the judge and the prison authorities concerned. It appears, however, that the prosecuting authorities refused to prosecute on these charges.

It further appears that the applicant had also made an application for retrial (Wiederaufnahme des Verfahrens) which was rejected by final decision of the Court of Appeal dated .. March 1970. Further submissions concerning the application for retrial and also an application to prosecute the Regional Judge for perversion of justice (Rechtsbeugung), which was addressed to the Public Prosecutor's office at M. was returned by that office on .. March 1970, with the observation that it was not possible in the future to deal with applications that do not satisfy the formal requirements imposed by the law and thus do not offer the slightest prospects of success. Concerning the charges against the Regional Judge the Public Prosecutor's office (Staatsanwaltschaft) at M. apparently discontinued proceedings on .. May 1970 and this decision was confirmed by the Attorney General (Generalstaatsanwalt) in K. on .. November 1970.

Furthermore, it appears that on .. November, and .. December 1969 and .. January 1970, the applicant made various complaints to the judicial authorities in B. concerning his correspondence and criminal offenses which were allegedly committed or their committal concealed by the authorities. In its decision (Bescheid) of.. February 1970, the Ministry of Justice of B.. dealt with these allegations and found that they were without any foundation.

## Complaints

The applicant now complains that he was wrongly convicted and sentenced and that the Convention has been violated by reason of the court proceedings concerned. He explains that the Regional Court deliberately failed to hear certain witnesses on his behalf whom he had nominated. He does not indicate, however, the names of these witnesses and what evidence they were expected to give.

The applicant also seems to complain:

- that his right to respect for his correspondence has been violated in that the prison authorities refused him a sufficient quantity of stamps enabling him to keep up his necessary voluminous business correspondence;
- that he is a worshipper of light (Lichtanbeter) and that the prison authorities refused him the right to practice his religious belief;
- that the prison authorities refused him spectacles which the doctor had prescribed him with the consequence that he suffers pain and is unable to work and acquire any earnings.

The applicant alleges in these respects violations of Articles 6 (3) (d), 8 (1) and 9 (1) of the Convention.

Finally, the applicant alleges a violation of Article 1 of Protocol No. 4. In this respect he explains that, on .. October 1968 he was arrested at 2.30 a.m. for driving without permit. He was allegedly detained until the afternoon of the same day awaiting the result of an alcohol test which turned out to be negative. He alleges that, as a result of his detention he was unable to perform various short-term contracts which he had made in connection with the purchase and construction of a house. This apparently led to his conviction and sentence for fraud, but no further explanations have been given by the applicant in this respect.

#### THE LAW

1. The applicant has complained that he was wrongly convicted and sentenced by the Regional Court of M.. However, in regard to the judicial decisions of which the applicant complains, the Commission has frequently stated that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, the Commission is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. In this respect, the Commission refers to its constant jurisprudence (see e.g. decisions on the admissibility of applications No. 458/59, Yearbook, Vol. 3, pp. 222, 232 and No. 1140/61, Collection of Decisions, Vol. 8, pp. 57, 62). In the present case, the Commission finds that there is no appearance of any such violation in connection with the decisions complained of.

An examination by the Commission of this complaint as it has been submitted, including an examination made *ex officio*, does not therefore 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. It follows that, even assuming that the applicant has exhausted the remedies available to him under German law, this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

2. The applicant has further complained that his lawyer failed to act in accordance with his instructions in that he refused to submit to the Federal Court the grounds of appeal. However, under Article 25 (1) (Art. 25-1) of the Convention, the Commission may only admit an application from a person, non-governmental organisation or group of

individuals, where the applicant alleges a violation by one of the Contracting Parties of the rights and freedoms set forth in the Convention and where that Party has recognised this competence of the Commission. The Commission may not, therefore, admit applications directed against private individuals. In this respect the Commission refers to its constant jurisprudence (see e.g. the decisions on admissibility of applications No. 172/56, Yearbook, Vol. I, pp. 211, 215 and No. 1599/62, Yearbook, Vol. 6, pp. 348 356.)

It follows that this part of the application incompatible *ratione personae* with the Convention within the meaning of Article 27 (2) (Art. 27-2).

3. The Commission has also considered whether the alleged conduct of the lawyer concerned could have involved the responsibility of the Federal Republic of Germany under the Convention. In this connection, the Commission considered whether the courts failed, by reason of the alleged refusal on the part of the applicant's lawyer to submit the grounds of appeal, to ensure that the applicant had a fair hearing of his case within the meaning of Article 6, paragraph (1) (Art. 6-1), of the Convention.

Article 6 (1) (Art. 6-1) provides that "in the determination of any criminal charge against him ... everyone is entitled to a fair ... hearing ...".

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.

In the present case the applicant failed to submit this point to the Federal Constitutional Court by means of a constitutional appeal invoking Article 103 (1) of the German Basic Law, and has, therefore, not exhausted the remedies available to him under German law. 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.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must in this respect be rejected under Article 27 (3) (Art. 27-3), of the Convention.

4. The applicant has also complained that the M. Regional Court failed to hear certain witnesses on his behalf, contrary to the provisions of Article 6 (3) (d) (Art. 6-3-d) of the Convention. That Article provides that everyone charged with a criminal offence shall have the right "to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same condition as witnesses against him".

However, the Commission has consistently held that this provision does not give an accused person a general right to call witnesses on his behalf and, in particular, does not allow an accused to call persons who are not in a position to assist by their statements in elucidating the truth (see, for example, Decisions of the Commission on the admissibility of application No. 617/59, *Hopfinger v. Austria*, Yearbook, Vol. 3, p. 370).

The applicant in the present case has failed to give any particulars as to which witnesses he wished to call and what evidence they were expected to give.

An examination by the Commission of this complaint as it has been

submitted, including an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular in Article 6 (Art. 6).

It follows that, even assuming that the applicant had exhausted the domestic remedies available to him, this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

5. The applicant has furthermore complained that the prison authorities and the presiding judge at the Regional Court at M. interfered with his correspondence in that letters which he had written were intercepted and he was refused a sufficient quantity of stamps in prison enabling him to keep up his necessary and voluminous business correspondence.

However, in accordance with the Commission's constant jurisprudence, it is an inherent feature of lawful imprisonment that a prisoner should be restricted in his right of correspondence and a normal control of a prisoner's correspondence including, in certain circumstances, the stopping of letters sent by him has not been held to constitute a violation of the Convention and, in particular of Article 8 (Art. 8).

In the present case no facts have been adduced to show that the authorities concerned have in any way exceeded the discretion which they have in controlling a prisoner's correspondence and an examination by the Commission of the applicant's complaint in this regard as it has been submitted does not therefore disclose any appearance of a violation of the rights and freedoms set forth in the Convention.

Again even assuming that the applicant has exhausted the domestic remedies available to him, it follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention.

6. The applicant has then also complained that, contrary to the provisions of Article 9 (1) (Art. 9-1) of the Convention, the prison authorities have refused him the right to practice his religious belief as a light worshipper.

However, the applicant again failed to give any details regarding this complaint. In particular, he did not explain in what manner he wished to practice his religious belief and in what way the prison authorities refused him the right to do so.

Again, therefore, an examination by the Commission of the applicant's complaint in this respect, as it has been submitted, does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and, in particular, in Article 9 (Art. 9).

It follows that this part of the application is equally manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

7. Finally, the Commission has examined the applicant's remaining complaints as they have been submitted by him. However, after considering these complaints 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 these remaining parts of the application 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