

THE FACTS

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

The Applicant is a British subject, born in 1924 and at present detained in the prison of Straubing (Federal Republic of Germany). He has a number of previous convictions in England.

On ... 1964, he was convicted by the Regional Court (Grosse Strafkammer des Landgerichts) of Würzburg of seven offences of indecent assault, theft, fraud, forgery and unauthorised wearing of a uniform. He was sentenced to a total of three and a half years' imprisonment. It appears from the Applicant's statement that, before his arrest, the German Police had launched an intensive search for him. They informed the Press that he was wanted for offences of murder, rape and kidnapping. As a result there were reports in newspapers, on radio and television that the Applicant was a dangerous criminal, a sex maniac and killer of women and children. He was called the "phantom murderer".

He was arrested on ... 1964, on a charge of attempted rape. After his arrest, detailed press reports made public the prosecution case against him.

The Applicant has made numerous complaints about this publicity. On ... 1964, his lawyer wrote to the Bavarian Ministry of Justice complaining that the defence had been prejudiced. This complaint was apparently rejected on ... 1964.

On ... 1964, the Applicant complained to a member of the United Kingdom Parliament. He received the reply that the complaint had been sent to the Home Secretary, who had no authority to intervene.

On ... 1964, the Applicant lodged another complaint with the Bavarian Ministry of Internal Affairs, accusing a police official, named D, of making prejudicial disclosures to the press. It appears that the complaint was rejected.

On ... 1965, he brought criminal charges (Strafanzeige) concerning an article in the "8 Uhr Blatt". On ... 1965, he was informed by the Office of the Public Prosecutor at the Regional Court of Nuremberg that the proceedings had been discontinued (eingestellt) because the limitation period for a prosecution had expired.

It appears that the Applicant also brought criminal charges on ... and ... 1965, against the same police official and against the publication "Bild Zeitung" for contravention of the Press Laws (Pressegesetz) and insults (Beleidigung). These proceedings were also discontinued (eingestellt) by the Senior Public Prosecutor (Leitender Oberstaatsanwalt) of the Regional Court of Hamburg because the limitation period had expired.

The Applicant complains that the press publicity before the trial, instigated by the police, violated Article 6, paragraphs (1) and (2), in conjunction with Articles 14, 17 and 18 of the Convention. He states that he has no legal redress and has been unable to clear his name. His family and fiancée left him on account of the publicity.

He complains that on ... 1964, the Regional Court of Flensburg refused to translate an indictment against him into English. As he could not read German, he alleges a violation of Article 5, paragraph (2), and Article 6, paragraph (3) (a), of the Convention. No further details have been given of these proceedings.

The Applicant makes a large number of complaints about the conditions in the prison of Straubing. He states that there is no church or

minister of the Church of England in the area of Straubing. He therefore has no opportunity to worship in his faith and is deprived of spiritual comfort. His request to be transferred to Celle, where there is a Church of England minister, has been refused. It seems that this matter was the subject of an unsuccessful application to the Bavarian Ministry of Justice. The Applicant alleges a continuing violation of Article 9, paragraph (1), in conjunction with Articles 16, 17 and 18 of the Convention.

The Applicant states that his treatment in prison amounts to humiliation, torture and degradation. He has to live together with war criminals and murderers.

He further states that the conditions in the prison are a mental and physical punishment designed for the destruction of criminals. He states that there has been press comment about brutality in the prison. On ... 1965, he brought charges of manslaughter arising from the death of prisoners to the attention of the Public Prosecutor's Office in Nuremberg. On ... 1965, he was informed that there was no indication of any criminal conduct and the proceedings were discontinued.

The Applicant states that he is an "85 % war pensioned epileptic paralytic". He had been successfully undergoing treatment by drugs. In prison he received no drugs and his condition is getting worse and his epileptic fits are more frequent. He has to spend 23 hours a day in a stone cell, sleeping only on an old mattress on the floor, and has no protection against injuring himself in a fit. On eight occasions he has been punished by being placed in the "bunker", a steel cage in the punishment cell in which one can only stand or sit. On one occasion his hands were fastened behind his back. He accuses the prison guards of enjoying his suffering and states that the torture resembles that in Nazi concentration camps.

He claims that the prison authorities take no account of his history of ill-health. On ... 1966, he was found fit for bunker punishment by the prison doctor without being seen by the doctor on that day. On another occasion, after he had been on hunger strike for six days, he was found fit for further punishment. In his letter of ... 1966, to the Bavarian Minister of Justice he complains of these matters and states that on a visit to the prison the Minister saw him undergoing "bunker" punishment.

On ... 1965, after a fit, he was sent to the psychiatric section. He states that "strait jackets, padded cells, violence and drug sedation are the order of the day" and that the guards exercised their brutality on the prisoners. He was treated as though he was insane and subjected to a degrading physical search. He complained in writing to the prison director who refused to read his letter.

He complains that the prison diet is poor, amounting to only 1.000 calories a day. On this prisoners have to work eight hours a day. On ... 1965, he started a hunger strike in protest against the poor food. On ... he was placed on report (Strafreport) for going on hunger strike and for insulting the prison food. He states that there is no appeal against this treatment. He gives the names of witnesses who support his allegations but states that the other prisoners do not complain for fear of punishment.

He alleges that the treatment he has to suffer in the prison is inhuman and degrading and violates Article 3 in conjunction with Articles 14, 17 and 18 of the Convention.

The Applicant states that he and other prisoners are forced to work 42 hours a week for private industries but have no right to wages. The private industries pay normal wages to the Bavarian State for the work done by the prisoners but the latter only receive between 0.30 DM and 0.80 DM a day. Over and above their normal task they can only earn up

to 20 DM a month. The Applicant has unsuccessfully brought an indictment against the Management Committee (Vorstand) and the Bavarian State, accusing them of slavery and exploitation of prisoners. This exploitation arises in the sale of articles made by the prisoners. The prisoners are also charged admission fees to see films which are provided to the prison free of charge. He asks the Commission not to decide these complaints without investigating them and hearing the witnesses named in his letter of ... 1965.

He alleges violations of Article 4, in conjunction with Articles 14, 17 and 18 of the Convention in this respect.

The Applicant complains that there is no freedom of opinion or expression in the prison. Letters in which he expressed his opinion of the prison and its staff were suppressed. For one expression in a letter he was punished by loss of correspondence with his family for three months.

He alleges that these restrictions violate Articles 8, 9 and 10 in conjunction with Articles 14, 17 and 18 of the Convention.

The Applicant states that he was not permitted to write a letter "in pursuit of a law action against a newspaper". He therefore made a demonstration and went on hunger strike. For this he was punished but was later permitted to write the letter. Other letters are suppressed or destroyed. The Applicant complained of this to the Minister of Justice on ... and ... 1965.

The Applicant makes a general complaint of the length of detention pending trial in the Federal Republic, alleging violation of Articles 5 and 6 of the Convention. He does not state that these complaints relate to his own case.

In his letter of ... 1965, the Applicant states that the disciplinary procedure for putting prisoners on "report" is unjust. Not only are the reports made by the prison guards false and the prisoners given no time to prepare a defence but the decision is taken regardless of the evidence. He alleges that Article 6, paragraph (3) (a) and (b), which apply to such proceedings, are violated. On ... 1966, he brought charges for causing bodily harm (Körperverletzung im Amt) against four persons. He complained that he had been punished without investigation, in a manner dangerous to health. The Public Prosecutor's Office at the Regional Court of Regensburg rejected the charges on ... 1966.

With regard to Article 26 of the Convention, the Applicant states that in practice a prisoner has no right to appeal. The Bavarian Ministry of Justice has rejected all the complaints he has made. These have dealt with all the allegations made in his complaint to the Commission.

On ... 1966, he was able to raise his complaints again in an interview with members of the Bavarian Parliament but without success.

The Applicant complains of interference with his communications with the Commission. He has been prevented from obtaining further evidence from a newspaper, the "8 Uhr Blatt". In ... 1966 letters to other persons were not sent because he could not pay postage. His supply of writing paper is restricted in contravention of a decision of the Court of Appeal of Munich. The fact that all letters are censored violates Articles 25 and 33 of the Convention, in the Applicant's view.

The Applicant has asked the Commission to send a delegation to investigate his allegations and was originally willing to contribute £ 100 for the cost. The Applicant stated in ... 1966 that a lawyer, Dr. B, had taken up his case. This lawyer has not communicated with the Commission.

In all, the Applicant complains of violations of Articles 3, 4, 5, 6,

8, 9, 10, 14, 16, 17, 18, 25 and 33 of the Convention.

On 11th August, 1965, the Applicant stated that he would "cancel" his Application unless he was assured that it would be fairly investigated. On 7th July, 1966, he wrote "in view of your refusal to assist me in these exceptional circumstances and the inordinate length of time involved and money wasted in dealing with my Application, I herewith cancel my Application ...".

On 24th August, 1966, the Applicant asked for the return of all his documents, for the purpose of evidence in other court actions.

On 10th November, 1966, the Applicant wrote to the Commission stating that, on the advice of his solicitor, he wished not to abandon his previous request to withdraw his Application. He asked the Commission to realise that the degrading and demoralising conditions of his imprisonment caused him to write his letter withdrawing his Application. He apologised for its impolite terms.

THE LAW

Whereas, in so far as the Applicant's complaints are directed against press, radio or television enterprises and relate to alleged defamatory reports made before or during his trial in the Regional Court of Würzburg, it results from Article 19 (Art. 19) of the Convention that the sole task of the Commission is to ensure the observance of the engagements undertaken in the Convention by the High Contracting Parties, being those members of the Council of Europe which have signed the Convention and deposited their instruments of ratification; whereas, moreover, it appears from Article 25, paragraph (1) (Art. 25-1), of the Convention that the Commission can properly admit an application from an individual only if that individual claims to be the victim of a violation of the rights set forth in the Convention provided that the Party in question has accepted this competence of the Commission; whereas it results clearly from these Articles that the Commission has no competence *ratione personae* to admit applications directed against private individuals or enterprises;

Whereas, in this respect, the Commission refers to its previous decisions Nos. 172/56 (*S. v. Sweden* - Yearbook I, page 211) and 852/60 (*S. v. Federal Republic of Germany* - *ibid.* IV, page 346); whereas, in any event, the right to reputation is not as such guaranteed by the Convention;

Whereas an examination of the case as it has been submitted does not disclose any grounds on which the alleged conduct of the press, radio or television enterprises concerned could exceptionally entail the responsibility of the Government of the Federal Republic of Germany under the Convention; whereas it follows that this part of the Application is incompatible within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, in regard to the Applicant's complaints that he was prejudiced at this trial in the Regional Court of Würzburg as a result of press, radio or television reports, 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 appeal against his conviction; whereas, therefore, he has not exhausted the remedies available to him under German law; whereas, moreover, an examination of the case as it has been submitted 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, paragraph (3) (Art. 26, 27-3), of the Convention has not been complied

with by the Applicant;

Whereas, in regard to the Applicant's complaint that on ... 1964, the Regional Court of Flensburg refused to translate into English an indictment against him, he has failed to supply any details of these proceedings or to show that he lodged an appeal in respect of them; whereas, therefore, he has again not exhausted the remedies available to him under German law and has not complied with the condition laid down in Articles 26 and 27, paragraph (3) (Art. 26, 27-3), of the Convention;

Whereas the same ground of inadmissibility also applies in regard to the Applicant's complaints concerning his treatment in prison and relating to his detention in a so-called 'steel cage', as he failed to seize the competent courts of these complaints;

Whereas, in regard to the Applicant's complaints concerning the standard of food in the prison of Straubing and to the alleged obligation of prisoners to work for low wages, an examination of the case 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 Articles 3 and 4 (Art. 3, 4); 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 complaints concerning the absence of a priest of the Church of England or of facilities for worship according to the rites of the Church of England in the prison of Straubing, it is to be observed that there is no evidence that a Protestant pastor or facilities for worship in the Protestant religion are not available to the Applicant; whereas, therefore, an examination of the case 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); 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 complaints concerning the allegedly unfair system of dealing with disciplinary offenses in the prison of Straubing and in so far as the Applicant alleges violations of Article 6, paragraph 3 (a) and (b) (Art. 6-3-a, 6-3-b), in relation to such proceedings against him, it is to be observed that these two provisions guarantee certain procedural rights to 'everyone charged with a criminal offence'; whereas the Applicant was clearly not a person "charged with a criminal offence"; whereas it follows that the rights set out in Article 6, paragraph 3 (a) and (b) (Art. 6-3-a, 6-3-b), are not applicable to the proceedings of which the Applicant complains; whereas, therefore, this part of the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, in regard to the Applicant's complaints of interference by the prison authorities with his correspondence, by censoring his letters and restricting his correspondence to third persons, it is to be observed that, although Article 8 of the Convention, in paragraph (1) (Art. 8-1), provides that everyone has the right to respect for his correspondence, paragraph (2) of the same Article (Art. 8-2) permits interference by a public authority with the exercise of these rights where such interference is in accordance with the law and is necessary in a democratic society, inter alia, for the prevention of disorder or crime;

Whereas, in cases in which the rights guaranteed in Article 8 (Art. 8) are at issue, the Commission has the right and indeed the ability to appreciate whether or not interference by a public authority fulfils the conditions laid down in paragraph (2) of the Article (Art. 8-2); whereas the Commission has frequently held that this Article leaves the

Contracting Parties a certain margin of appreciation in determining the limits which may be placed on the right in question; whereas an examination of the case as it has been submitted does not show that any interference with the Applicant's freedom of correspondence was in any way an abuse of the Respondent Government's right to impose such limitations or was carried out in a manner contrary to the Convention; whereas it follows that no appearance of a violation of the rights and freedoms guaranteed by Article 8 (Art. 8) of the Convention has been disclosed;

Whereas, therefore, 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 complaints of interference with his correspondence with the Commission, as a result of the restriction or censorship of his letters, the Commission has examined this allegation in the light of Article 25 (Art. 25); whereas it is to be observed that the Applicant has been able to write frequently and at length to the Commission;

Whereas the Commission does not find any reason to believe that the Applicant has been in any way hindered in the effective exercise of his right of petition under Article 25 (Art. 25) of the Convention;

Now therefore the Commission declares this Application INADMISSIBLE.