

## THE FACTS

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

The Applicant is a German citizen, born in 1926 and at present detained in prison at Düsseldorf.

1. The Applicant states that, on .. March, 1964, he was detained on remand (Untersuchungshaft) on suspicion of aggravated theft. When he wrote to the Commission on 17th July 1966, he stated that he was still in detention on remand and that an indictment had not yet been issued against him. By letter of 19th December, 1966, he confirmed that he was still in detention on remand but indicated at the same time that he had been convicted in respect of certain charges by a court which he considered to be prejudiced against him.

The Applicant has not submitted full information regarding the proceedings before the German courts in respect of his detention.

In his first letter to the Commission (21st May, 1965), he indicated that proceedings regarding his detention (Haftprüfung) had taken place, but he complained that he had not been allowed to express his views in these proceedings ("in keiner Fase der Haftprüfung hat man mich sprechen lassen, sondern man hat mir den Mund verboten"). In his application form (11th September, 1965) he also referred to his appeals against detention (Anträge auf Haftüberprüfung) but without providing any details about them.

In a subsequent letter to the Commission (17th July, 1966), he stated that he had repeatedly applied to the Regional Court (Landgericht) of Düsseldorf for an oral hearing regarding the continuation of his detention. This had not been granted until .. March, 1966, that is after two years' detention and, moreover, his lawyer had not been asked to appear at the hearing.

2. The Applicant states that he is innocent in respect of the offenses of which he is suspected and that there is evidence to prove his innocence. However, as the Public Prosecutor has failed to indicate the date of the alleged offence, the Applicant is unable to present a valid alibi and, if he should try to do this, the Public Prosecutor would only state that the offence might have been committed on another occasion.

The Applicant also complains that the authorities have tried to obtain a confession from him by using improper methods, such as blackmail and ill-treatment.

In particular, he alleges that he has been ill-treated during his detention both in connection with his interrogation by the police and otherwise in prison. As a result of this alleged ill-treatment, he suffered serious injuries. His left eye was so badly injured that he had to be treated at the prison hospital for six months and the sight of that eye has remained affected.

The Applicant further complains that, in order to aggravate his detention, the prison authorities have refused, contrary to general practice, to let him have books from the prison library or to give him permission to use a transistor radio. He also complains that he has not been allowed to be represented by a lawyer appointed by himself but only by a lawyer appointed ex officio in whom he has no confidence, and that the prison administration has interfered with his right of defence by suppressing his letters to lawyers and public authorities.

3. The Applicant alleges violations of Articles 3, 6, paragraphs (1), (2) and (3), 8 and 9 of the Convention.

## Proceedings before the Commission

Whereas the proceedings before the Commission may be summarised as follows:

### I. Questions of interference with the Applicant's right to correspond with the Commission (Article 25 of the Convention)

1. The Applicant first wrote to the Commission on 21st May, 1965, and he received in reply the usual information regarding the submission of an application to the Commission.

By letter of 21st October, 1965, he informed the Commission that he had tried to send his formal application to the Commission but that it had been seized by the German authorities. He also enclosed a copy of a decision of .. September, 1965, by which a letter written by the Applicant to the Council of Europe had been stopped ("von der Beförderung ausgeschlossen") by the Regional Court of Düsseldorf because of defamatory contents.

On 14th December, 1965, the Commission decided to request information from the Federal Government in regard to the seizure of his letter. On 10th February, 1966, the Government informed the Commission that the Regional Court of Düsseldorf had, after "a new examination", revised its decision of .. September, 1965, by which the Applicant's letter had been seized.

In the meanwhile, the Commission's Secretary had received, on 31st January, 1966, the Applicant's application form dated 11th September, 1965, and had duly registered it.

2. On 15th June, 1966, the Commission's Secretary received from the Applicant a letter containing further submissions in regard to the present Application. This letter seemed to have been originally dated 16th November, 1965 but this date had apparently been changed to 8th June, 1966.

In reply, the Secretary asked the Applicant when he had actually written and sent the letter which had been received on 15th June, 1966.

The Applicant replied that he had written and sent this letter on 16th November, 1965 but that it had then apparently not been forwarded and that, subsequently, the date had been changed.

3. The Applicant indicated that he could not in his letters give the Commission full information in regard to his complaints since he would then run the risk of being subjected to reprisals. He also stated that he did not find it advisable to enclose any documents with his letters to the Commission as he could not be certain as to whether such documents would ever reach the Commission.

The Applicant therefore requested that the Commission should appoint a "neutral" person to whom he could personally confide information and documents which he wished to submit to the Commission.

### II. Insulting language in the Applicant's submissions

On 6th October, 1966, the Commission observed, during its examination of the Application, that in some of his submissions the Applicant had made use of insulting and provocative language. The Commission, therefore, decided to inform the Applicant that, unless he was prepared to withdraw or amend certain passages of his submissions, it would reject the whole Application as being an abuse of the right of petition within the meaning of Article 27, paragraph (2), of the Convention.

The passage concerned were the following:

(a) In his application form of 11th September, 1965, he wrote: "They reproach me of having been an opponent of the Hitler Reich and call this a bad past. But I reproach the Court of working as Nazi judges in the German Courts" (Meine Widerstandsbewegung gegen das Hitlerreich wirft man mir als schlechte Vergangenheit vor. Ich dagegen werfe dem Gericht vor, dass sie als Nazi-Richter in den deutschen Gerichten walten).

(b) In his letter of 13th April, 1966, he wrote: "My opinion in this respect is that one can only obtain right here by means of money and that otherwise one is in a bad position" (Meine Auffassung zu diesen Dingen ist, dass man sich hier nur Recht durch Geld verschaffen kann oder sonst benachteiligt ist).

(c) In his letter which arrived on 15th June, 1966, he wrote: "I allege that the German Justice makes use of the meanest methods which are worse than those of the Hitler Reich in order to break my resistance. For this reason, I can have no respect for German Justice, since it suppresses in a horrible manner and with impermissible methods any better feelings of an individual ... They tell me that we live in a State founded on law, but I doubt this. I have more respect for a prostitute than for German Justice" (Ich mache der deutschen Justiz den Vorwurf, dass sie die gemeinsten Mittel, die das Hitlerreich übersteigen, anwendet um mich mürbe zu machen. Ich kann aus diesem Grunde keine Achtung vor der deutschen Justiz haben, weil sie mit unerlaubten Mitteln jede bessere Regung eines einzelnen Menschen grausam unterdrücken tut ... Sie sprechen mich an, wir leben in einem Rechtsstaat, aber ich stelle das in Zweifel. Achtung habe ich vor jeder Dirne [mehr] als vor der Justiz in Deutschland.)

By letter of 9th January, 1967, the Applicant replied in the following way:

"(a) The application form of 11th September, 1965 is changed so as to indicate that I only wanted to show the method used in this respect.

(b) The letter of 13th April, 1966 is changed so as to indicate that these are facts which can be proved by recent newspaper reports.

(c) The last sentence is deleted: 'I have more respect ...' The method of treating people in detention on remand is proved by the trials in Cologne and Hamburg. May complaints in this regard have had no effect."

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[(a) Beschwerdeformular vom 11.9.65 wird dahin geändert, dass ich nur die Methode wie man das macht, aufzeigen wollte.

(b) Brief vom 13. April 1966 wird dahin geändert, dass dieses Tatsachen sind, die man durch neueste Zeitungsberichte belegen kann.

(c) Der letzte Absatz wird gestrichen: "Achtung habe ich vor ..." Die Methode, wie man in U-Haft behandelt wird, beweisen die Prozesse in Köln und Hamburg. Meine Anzeigen hat man diesbezüglich fallen gelassen.]  
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## THE LAW

Whereas Article 27, paragraph (2) (Art. 27-2) of the Convention provides that "the Commission shall consider inadmissible any petition submitted under Article 25 (Art. 25), which it considers an abuse of the right of petition";

Whereas, in the present case, the Applicant's pleadings contained three passages which were provocative and insulting to the respondent Government; whereas, therefore, the Commission invited the Applicant

to withdraw or amend these passages; whereas the Commission also informed him that, unless he was prepared to withdraw or amend these passages, it would reject the whole Application as being an abuse of the right of petition within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas the Applicant has, by letter of 9th January, 1967, submitted his reply to this statement by the Commission;

Whereas the Commission considers that, in respect of the first two objectionable passages quoted above, the Applicant's reply cannot be considered to constitute a withdrawal or an acceptable amendment;

Whereas, in respect of the third passage, it is true that the Applicant has withdrawn the very last sentence but, on the other hand, he seems to confirm, rather than withdraw, the rest of his statements contained in that passage;

Whereas, consequently, the Applicant has not satisfied the conditions indicated to him by the Commission; and whereas in these circumstances the Commission considers that the Applicant has abused the right of petition within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas the Commission observes that in the present case the Applicant has also alleged that there had been certain interferences with his right to correspond with the Commission; whereas these allegations raise an issue under Article 25 (Art. 25) of the Convention and do not concern the admissibility of the Application itself;

Whereas, nevertheless, the Commission has had in mind the fact that the Application is to be declared inadmissible as being an abuse of the right of petition; whereas, in these particular circumstances, the Commission does not find it necessary to examine further the question whether or to what extent there has been undue interference with the Applicant's effective exercise of his right to present his case to the Commission.

Now therefore the Commission

1. declares the Application INADMISSIBLE.
2. decides to take no further action in regard to the allegations relating to the Applicant's correspondence with the Commission.