

THE FACTS

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

The Applicant is a German national, born in 1916 and at present residing in Hanover.

I. From his statements and from the documents submitted by him, it appears that he is a Communist and was as such denied the right to become a candidate for the elections to the German Bundestag in 1961.

On ..., 1963, he was convicted by the High Criminal Chamber of the Regional Court (Grosse Strafkammer des Landgerichts) at Lüneburg on charges of contravening the law prescribing the Communist Party, instigating a subversive association as one of its leading members and engaging in a secret organisation with an intention hostile to the State. He was sentenced to one year's imprisonment as well as loss of the right to hold public office for four years. The Applicant lodged an appeal (Revision) from this decision with the Federal Court (Bundesgerichtshof) which was dismissed on ..., 1964. The decision was communicated to him on ..., 1964. On ..., 1964, the Applicant lodged a constitutional appeal with the Federal Constitutional Court (Bundesverfassungsgericht) which was rejected on ..., 1964, on the ground that the time-limit for lodging an appeal had expired.

The Applicant complains that he was wrongly convicted. He complains in particular:

- that certain documents tending to incriminate him were placed in his home by the police on the occasion of a search;
- that he was convicted by a Special Criminal Chamber (Sonderstrafkammer) whereas such chambers were supposed to have been abolished by the laws of the Control Council and Article 101 of the German Basic Law;
- that he was deprived of the possibility to lodge a constitutional appeal in time as the authorities had refused to grant him a suspension of the execution of his sentence or a leave of absence from prison for which he had repeatedly applied in order to collect the material to support his complaint, as is indicated in a letter from the Office of the Director of the prison at Oldenburg of ..., 1964; however, a suspension of the execution of his sentence was in fact granted from ... to ..., 1964; he also had the help of a friend in collecting material to support his constitutional appeal;
- that he had suffered discrimination by his conviction in that other German courts did not convict on these political charges;
- that there was no appeal (Berufung) from decisions by the High Criminal Chamber of the Regional Court and thus no instance to review such decisions on the facts;
- that he was treated as a political prisoner and, as such, more severely treated than other prisoners to the extent that he was transferred from the prison at Wolfenbüttel to the prison at Oldenburg, where he was kept in solitary confinement and strictly isolated from other prisoners, where there are no outside activities such as sports, television and radio, and where visits from friends and relatives are supervised.

The Applicant alleges a violation of the Preamble as well as Articles 1, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 17 and 18 of the Convention.

Following a preliminary examination of the Application by a group of

three members of the Commission on 23rd September, 1966, the Applicant was invited to inform the Commission as to whether he has raised his complaint concerning the planting of documents with any German court and to submit the relevant court decisions. The Applicant has not submitted any court decisions and states that the cost of having copies made was more than he could afford.

By letter of 7th January, 1967, however, the Applicant supplied the following additional and supplementary information:

1. On ..., 1961 a number of citizens in his electoral district presented a proposal to the competent local Electoral Board (Wahlamt) for his nomination as a candidate to the German Bundestag. Apparently this proposal was rejected by the Board on ..., 1961, on the basis of a circular (Erlass) of the Ministry of the Interior of Lower Saxony (Niedersächsisches Ministerium des Innern), dated ..., 1961. The Applicant maintains that he made several protests concerning this rejection and that he demanded to be supplied with the reasons for the rejection in writing, but that all his efforts simply led to the introduction of the criminal proceedings against him and to his conviction by the Regional Court (Landgericht) of Lüneburg on ..., 1963.

The Applicant alleges that the refusal of his candidature to the 1961 election constitutes a violation of Article 3 of the Protocol to the Convention.

2. With respect to the question of planting incriminating documents in his home, he states that, when returning home in the evening of ..., 1961, he found a plain envelope which had been pushed into the letter-box of the flat and not into the letter-box in the main hall of the building in which his mail was placed ordinarily. The envelope contained newspaper clippings, among others from an August edition of the "Neues Deutschland", a newspaper representing the official organ of the Communist Party in the Soviet-occupied Zone of Germany. He states that the next day two police officers appeared at his place of work and presented a search warrant which had been issued four weeks before this visit. Together with the police officers and a third person, one Mr. F, the Applicant returned to his home which was then searched by the police officers. Finally, the police confiscated only the above envelope and two pamphlets, taking nothing else although the Applicant had invited them to seize all the election material which had been prepared by him and which was lying around openly. The Applicant states that certain material was put in evidence at the trial, but it was impossible for him to tell whether this was the material confiscated.

The Applicant alleges that he had raised this point at his trial before the Regional Court at Lüneburg and had also pointed out to the Court that these documents had been planted by the police. In his appeal (Revision) to the Federal Court (Bundesgerichtshof) the Applicant simply alleged that it had not been established where these documents came from.

The Applicant finally states that his conviction was substantially based on evidence given by so-called "expert witnesses" who were employed by the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz) and who testified to events reported to them by third persons whose identity remained concealed (Vertrauensleute).

The Applicant complains that he was denied the right to a fair hearing in that, by the above practice, he was prevented from "examining or having examined witnesses against him".

In this regard he alleges a violation of Article 6, paragraph (3), sub-paragraph (d), of the Convention.

THE LAW

Whereas, in regard to the Applicant's complaint under Article 3 of the Protocol of 20th March, 1952 (P1-3) to the Convention, that the authorities refused to admit him as a candidate to the 1961 elections to the Federal Parliament, 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 lodge a constitutional appeal with the Federal Constitutional Court in accordance with Article 90 of the Act relating to the Federal Constitutional Court (Gesetz über das Bundesverfassungsgericht) in conjunction with Article 38 of the Basic Law (Grundgesetz) and Article 16 of the Act concerning Federal Elections (Bundeswahlgesetz) of 1956; whereas, therefore, he has not exhausted the remedies available to him under German law;

Whereas, in regard to the Applicant's complaints that he was wrongly convicted and sentenced by a Special Criminal Chamber of the Regional Court at Lüneburg, that he thereby suffered discrimination in relation to the decision of other German courts in similar cases, that documents were planted in his home by the police and that his treatment in prison was unlawful, it is also 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 lodge a constitutional appeal within the time-limit prescribed; whereas, therefore, he has again not exhausted the remedies available to him under German law; whereas, 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 in either case 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 relating to the authorities' refusal to grant a suspension from the execution of his sentence or leave of absence from prison for the preparation of his constitutional appeal, the Commission had regard to the fact that a suspension from the execution of his sentence was in fact granted from ... to ..., 1964 and that the Applicant also had the assistance of a friend in collecting material to support his constitutional appeal; whereas, therefore, 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 in particular in the Articles invoked by the Applicant; 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, finally, in regard to the Applicant's complaint as to the lack of any possibility to appeal (Berufung) from decisions taken by the High Criminal Chamber of the Regional Court, 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, paragraph (1) (Art. 25-1), 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 no right to appeal on the appreciation of facts in a criminal case is as such included among the rights and freedoms guaranteed by the Convention; whereas in this respect the Commission refers to its previous decisions, Nos. 277/57, Yearbook I,

page 219; 1850/63, Collection of Decisions, Volume 19, page 71; 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), of the Convention;

Now therefore the Commission declares this Application INADMISSIBLE.