

## THE FACTS

Whereas the facts as presented by the Applicant and appearing from the documents submitted by him and his lawyers may be summarised as follows:

The Applicant is a German citizen, born in 1924 and living at Münster. He has degrees in political economy and styles himself "social attorney" (Sozialanwalt). When lodging his application he was detained in prison at Berlin.

In 1962 the Applicant has been charged with numerous acts of libel and slander, false accusation and similar offenses, amounting in all to about 30 separate charges. Most of his offenses relate, directly or indirectly, to the death of Dr. B, a lawyer of Münster, who was found shot dead in his home on .. August, 1961. The death certificate described his death as a "private accident" and later the authorities declared it to be a case of suicide. But certain circumstances aroused the suspicion of the father and brother of the deceased as well as that of the Applicant, who had been consulted by them.

After unsuccessfully attempting to have charges of murder brought against unknown persons, the Applicant expressed his suspicion in a series of pamphlets distributed since November, 1962. He alleged that Dr. B had been killed because he knew facts which, if revealed, would be damaging to his partner Dr. P who was Mayor (Oberbürgermeister) of Münster and also because of the relationships of Mrs. B with other men. He suggested that the authorities had been party to a conspiracy and had deliberately, and almost completely, veiled the truth, namely that B was murdered.

On .. December, 1962, the body of Dr. B was exhumed and a post-mortem carried out. On .. and .. January, 1963, the competent judge of the District Court (Amtsgericht) ordered the arrest of B's widow and of three other persons on suspicion of murder. This order was, however, set aside on the next day by the Regional Court (Landgericht) of Münster. In the meanwhile, the Public Prosecutor (Staatsanwaltschaft) of Münster had instituted criminal proceedings against the Applicant as a result of his allegations and the insulting expressions used by him. On the basis of an expert opinion given by an official psychiatrist (Landesmedizinalrat), Dr. A, after a conversation with the Applicant on .. and .. December, 1962, the Public Prosecutor obtained from the District Court an order for the Applicant's committal to a mental hospital. However, this order and four subsequent orders, which were based partly on Article 126a of the Code of Criminal Procedure (provisional detention of an insane person for reasons of public security), and partly on Article 81 of that Code (detention for the purpose of a psychiatric examination), were all set aside by the Regional Court of Münster on appeal (Beschwerde). On .. October, 1963, a sixth order was issued by the District Court providing for a psychiatric examination of the Applicant in a mental hospital over a period of 6 weeks. In addition, a warrant for arrest as issued on .. October, 1963, based on the assumption that the Applicant was found to be sane.

The warrant for arrest issued by the District Court of Münster mentioned 16 separate offenses, mainly libel and slander, of which the Applicant was said to be strongly suspected. The warrant then set out that the Applicant was likely to flee from justice since, up to that time, he had successfully evaded his psychiatric examination in a mental hospital. The Court, however, suspended the execution of the warrant on certain conditions which were intended to guarantee that the Applicant would be at the disposal of the Court at any time required. On .. October, 1963, the District Court ordered in addition that the Applicant should be brought before the judge in order to make the declarations which were the necessary conditions of the suspension of

the execution of the warrant.

On .. October, 1963, however, the Court revoked the conditional suspension of execution on the ground that the Applicant had fled. The Applicant submits that neither he nor his mother nor his lawyer had even been informed of the conditional suspension of execution. On .. October, 1963, the Regional Court of Münster rejected an appeal lodged by the Applicant's lawyer "against the warrant read in conjunction with the decision of .. October, 1963 (revocation of the conditional suspension of the execution of the warrant)".

In this decision the Regional Court stated that the Applicant would probably be sentenced to a considerable term of imprisonment or would be committed to a mental hospital if he should prove to be criminally irresponsible; furthermore on the general presumption that an adult person is criminally responsible, a warrant for arrest was necessary as the Applicant had fled from justice and was likely to do so again. A further appeal (weitere Beschwerde) was rejected by the Court of Appeal (Oberlandesgericht) of Hamm on .. December, 1963, in spite of certificates of 7 psychiatrists submitted by the Applicant on .. May and .. November, 1963 attesting to his sanity. These included, inter alia, an opinion of Prof. Dr. C of Cologne.

The Court held that the combination of a warrant for arrest and an order for an examination in a mental hospital was legally possible as, on the one hand, the circumstances and the preliminary expert opinion of the university lecturer (Dr. habil.) A pointed towards the conclusion that the Applicant had acted in a state of irresponsibility or reduced responsibility and, on the other hand, the medical certificates submitted by the Applicant together with the general presumption of the responsibility of adults supported by the hypothesis that he was of sound mind.

The Court also dismissed as being ill-founded the further grounds of appeal raised by the Applicant's lawyer.

The order for the Applicant's psychiatric examination in a mental hospital under Article 81 of the Code of Criminal Procedure had been issued by the District Court of Münster one day after the warrant for arrest, i.e. on .. October, 1963. It provided for an examination in the mental hospital of the University of Hamburg in view of the doubt expressed by the Applicant as to the objectivity of medical experts in North-Rhine Westphalia. This examination was not to exceed 6 weeks. The appeal lodged by the Applicant's lawyer against this order was equally rejected by the Regional Court on .. October, 1963.

The Court stated, as the grounds of its decision, that the great number of offenses suggested, in view of the Applicant's development, that he might have committed them in a state of irresponsibility or reduced responsibility and that, according to the opinion of the medical expert, the necessary examination could be carried out only during a period of detention in a mental hospital. It also found that, for this reason, the medical certificates submitted by the Applicant and attesting his soundness of mind made no difference.

A constitutional appeal (Verfassungsbeschwerde) lodged by the Applicant on .. November, 1963, was rejected by the Federal Constitutional Court on .. December, 1963 (file no. ...) as being manifestly ill-founded. In addition to the proceedings at Münster, a separate warrant for arrest against the Applicant was issued by the District Court of Trier. This warrant was, however, set aside on appeal but it is not clear whether this was before or after the actual arrest.

The Applicant, who had left Münster in order to prevent his committal to a mental hospital, was arrested in Berlin on .. April, 1964, and remanded in custody (Untersuchungshaft). Two applications for release (Haftbeschwerden) lodged by his lawyers were rejected by the Regional

Court of Münster on .. April, 1964, and on .. June, 1964. A further appeal (weitere Beschwerde) against the latter decision was dismissed by the Court of Appeal of Hamm on .. July, 1964. On .. August, 1964, the District Court of Münster re-examined and confirmed the warrant for arrest (Haftprüfung) and an appeal (Beschwerde) from this decision, and from several orders for the seizure of letters, was rejected by the Regional Court on .. September, 1964.

After his arrest in Berlin the Applicant himself lodged on .. July, 1964 his second constitutional appeal (file no. ...) which, according to him, was supplemented on .. and .. July, 1964 by written pleadings from his lawyers (not submitted by him).

In his appeal the Applicant referred to the first constitutional appeal and complained, in particular, that his arrest had been ordered under the false and defamatory pretext that he had the intention to flee from justice. He also complained that in this respect he had not been duly heard (kein rechtliches Gehör gewährt) either by the Regional Court or by the Court of Appeal before they had again confirmed, on .. June and .. July, 1964 respectively, the warrant for his arrest. The ground of these decisions was that the Applicant was still likely to flee, as he had previously done, in order to evade his medical examination in a mental hospital, whereas, in fact, after his examination in a mental hospital, this could no longer be an excuse.

The Applicant states that his second constitutional appeal has been declared admissible (zur Entscheidung angenommen) by the Federal Constitutional Court on .. March, 1966, but that, in spite of reiterated enquiries on his part, no date for the examination of the case has yet been fixed.

In the meanwhile, the Applicant had been examined over a period of six weeks in the Clinic of Psychiatry and Neurology of the Free University of Berlin. On the basis of this examination the Director of the Clinic, Professor Dr. S, concluded in an opinion of .. September, 1964, modified some days later, that the Applicant was criminally irresponsible (Article 51, paragraph 1, of the Penal Code) and that in his state of mind, he was liable to commit new offenses.

On the basis of this expert opinion, the District Court of Münster issued a new order on .. September, 1964, committing the Applicant, under Article 126a of the Code of Criminal Procedure, to a mental hospital for the period pending his trial and setting aside the warrant for arrest.

Under this order the Applicant, who had been taken from Berlin to Münster on .. September, 1964, was committed on .. October to the mental hospital of Eickelborn where he was kept until .. January, 1965.

The Applicant appealed against the order of the District Court of Münster of .. September, 1964 which committed him as a dangerous offender of unsound mind, to a mental hospital pending his trial (Article 126a of the Code of Criminal Procedure). The decision was confirmed by the Regional Court of Münster on .. October, 1964, and a further appeal was rejected on .. October, 1964 by the Court of Appeal of Hamm.

The Court referred in its decision to the expert opinion of Professor S of .. July, 1964 which it considered as being particularly thorough in spite of a "partly misleading legal qualification of the results of the examination".

The Applicant states that the expert had recommended in his case an order of preventive detention (Sicherungsverwahrung) but that this was a measure which can only be applied to dangerous habitual criminals after several convictions. He further alleges that the expert had first concluded that he had acted in a state of reduced responsibility but

that upon a demand of the competent judge made on .. September, 1964, by telephone, he changed his conclusion to criminal irresponsibility. Furthermore, this change, which enabled the Court to order the Applicant's provisional committal to a mental hospital had been explained by the expert on the ground that he had always misread during his 30 years of expert activity the text of the relevant provision, i.e. Article 51, paragraph 1, of the Penal Code. These allegations by the Applicant are, in part, corroborated by press reports submitted by him ("Der Spiegel", No. ..., and No. ..).

The order of .. September, 1964, for the Applicant's committal to a mental hospital was again upheld by the Regional Court of Münster on .. January, 1965, although, according to the Applicant, the expert Prof. Dr. S had, in the meanwhile, abandoned his point of view. The Applicant was then examined by two new experts, Prof. Dr. R and Prof. Dr. N of the University of Heidelberg. In a preliminary opinion these experts stated on .. February, 1965, that the Applicant was fully responsible for his acts. Having regard to this opinion, the Regional Court decided, on .. February, 1965, to set aside the order for his committal to a mental hospital but to order his detention on remand granting, however, at the same time his release on bail subject to certain conditions. After friends had paid the bail the Applicant was, in fact, released on .. February, 1965, after a total period of 324 days in detention.

On .. April, 1965, the Regional Court, having regard to a further written opinion by the experts Prof. Dr. R and Prof. Dr. N, informed the Applicant that he would be tried as being criminally responsible and not with a view to his committal to a mental hospital.

The trial took place before the Regional Court of Münster from .. May, 1965, to .. April, 1966 and almost 200 witnesses were heard. By a judgment of .. April, 1966, the Applicant was convicted and sentenced to two years' imprisonment. On .. April, 1966, he lodged an appeal (Revision) from this decision but this is still pending before the Federal Court of Justice (Bundesgerichtshof).

The judgment pronounced against the Applicant by the Regional Court of Münster on .. April, 1966, sentencing him to two years' imprisonment was given in writing on .. October, 1966. - The Applicant states, however, that in view of its length - 950 pages - he is unable to copy it for the Commission.

#### Complaints

The Applicant alleges that the judicial authorities of Münster, whom he had attacked on the ground of their hasty and negligent investigations in the B case, had tried to silence him by his arbitrary committal to a mental hospital in spite of the abundant evidence presented by him proving his full responsibility.

He complains of his detention on remand which he considers unjustified as, in his submission, he had always been prepared to stand trial in an ordinary procedure and, on going to Berlin, had only tried to prevent his committal to a mental hospital.

The Applicant further complains of the unreasonable length of the proceedings against him (four and a half years up to date) and, in particular, of the fact that his trial at Münster lasted almost a year. He submits that, by reason of these extensive proceedings and of his long detention, he has not been able to earn his living and is left without any means and is dependent on the financial assistance of friends. He considers the length of the proceedings as a deliberate attempt to break his resistance.

He submits that the authorities for this reason are now estopped from punishing him further (Bestrafungsrecht verwirkt).

The Applicant alleges violations of Articles 1, 5, 6, 8 and 10 of the Convention. When lodging his Application, he demanded his immediate release and an immediate trial as well as a compensation for the damages suffered.

#### THE LAW

Whereas, in regard to those parts of the Application, in which the Applicant complains both of the length of the criminal proceedings, instituted against him [issue under Article 6, paragraph (1) (Art. 6-1), of the Convention] and of his committal to, and his detention in a mental hospital [issue under Article 5, paragraph (1) (e) (Art. 5-1-e), of the Convention], the Commission finds that an examination of the file in its present state does not give the information required for determining the question of admissibility; whereas the Commission, in respect of the issue under Article 5, paragraph (1) (e) (Art. 5-1-e) had particular regard to the possible application of the rule regarding the exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention;

Whereas, therefore, the Commission decides, in accordance with Rule 45, paragraph (3) (b), of its Rules of Procedure, to give notice thereof to the Federal Government and to invite it to submit its observations on the question of admissibility; whereas, in the meanwhile, the Commission decides to adjourn its examination of these parts of the Application;

Whereas the Applicant further complains of his arrest and detention on remand; whereas Article 5, paragraph (1) (c) (Art. 5-1-c) of the Convention permits "the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence";

Whereas, in the present case, it appears that the competent German Courts, having found that the Applicant was strongly suspected of the offenses with which he had been charged and was likely to flee from justice, ordered the Applicant's arrest and detention on remand in accordance with the provisions of the German Code of Criminal Procedure;

Whereas the Applicant contests these findings of the German Courts and, in particular, the statement that he was likely to flee;

Whereas it must be observed that the Commission has no general competence to examine the question whether, in the proceedings before the domestic courts, the relevant provisions of the national law have been interpreted and applied correctly; whereas such an examination can only be made in an exceptional case where it appears that the domestic authorities, in interpreting and applying the provisions of the national law, have acted in bad faith since, in that case, the detention would not be "lawful" within the meaning of Article 5, paragraph (1) (c) (Art. 5-1-c), of the Convention (see the Commission's decision concerning Application No. 2621/65 X, against Netherlands, Collection of Decisions, Volume 19, page 102); whereas, in the present case, the Applicant has not furnished any evidence of the existence of such a situation;

Whereas it follows that his arrest and detention on remand were "lawful" within the meaning of Article 5, paragraph (1) (c) (Art. 5-1-c) of the Convention;

Whereas, therefore, his Application, in this respect, is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas the Applicant also appears to complain of the length of his

detention on remand; whereas Article 5, paragraph (3) (Art. 5-3) of the Convention provides that "everyone arrested or detained in accordance with the provisions of paragraph (1) (c) of this Article (Art. 5-1-c).. shall be entitled to trial within a reasonable time or to release pending trial";

Whereas the Applicant was arrested and remanded in custody on .. April, 1964; whereas his detention on remand was interrupted by the Court order of .. September, 1964, committing him provisionally to a mental hospital on the basis of Article 126a of the Code of Criminal Procedure; whereas this order was set aside and the Applicant again remanded in custody on .. February, 1965; whereas the Applicant was, however, released on bail on the next day;

Whereas during the period from .. September, 1964, to .. February, 1965, he was not kept in detention on remand but detained for psychiatric reasons under a different court order on the basis of a different legal provision; whereas the detention forms the subject of a separate complaint that will be examined under Article 5, paragraph (1) (e) (Art. 5-1-e), of the Convention and is at present communicated to the Federal Government for its observations on admissibility;

Whereas Article 5, paragraph (3) (Art. 5-3), expressly relates solely to the rights of persons deprived of their liberty in the circumstances described in Article 5, paragraph (1) (c) (Art. 5-1-c); whereas it follows that the period of detention for psychiatric reasons beginning on .. September, 1964, cannot be taken into consideration for the purpose of deciding whether or not the Applicant's detention on remand exceeded a reasonable time within the meaning of Article 5, paragraph (3) (Art. 5-3);

Whereas the Commission refers in this respect to its decision concerning Application No. 2219/64, X against the Federal Republic of Germany (Collection of Decisions, Volume 16, page 56);

Whereas it follows that the only period which is to be considered under Article 5, paragraph (3) (Art. 5-3), is the period of the Applicant's detention on remand from .. April until .. September, 1964, i.e. less than six months;

Whereas, according to the constant jurisprudence of the Commission, the question whether a period of detention pending trial is "reasonable" or not cannot be decided in abstracto but must be considered in the light of the particular circumstances of each case (see Application No. 2077/63, Yearbook VII, page 276; Application No. 2516/65, Collection of Decisions, Volume 20, page 35);

Whereas in the present case allowance must be made for the large number of offenses imputed to the Applicant as this could not fail to affect the time required to conduct the investigation; whereas, furthermore, the fact that the charges against the Applicant were closely connected with, and necessitated a new investigation of the cause of the death of Dr. B that had occurred in 1961, created additional difficulties in the investigation of the case and added to its complexity;

Whereas the Commission has also taken into account that the period of the Applicant's detention on remand includes six weeks during which the Applicant was examined in Berlin as to his criminal responsibility and that a further delay was created by his transfer from Berlin to Münster;

Whereas, in view of all these circumstances, the examination of the case does not disclose, in respect of this complaint, any appearance of a violation of Article 5, paragraph (3) (Art. 5-3); whereas it follows that this part of the Application is also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the Applicant further complains of a violation of Article 8 (Art. 8) of the Convention; whereas, in this respect, it appears from the decision of the Regional Court in Münster of .. September, 1964, which he has submitted, that in July and August, 1964, at least six letters were confiscated by the District Court; whereas the Applicant has failed to supply any details as to the addressees or the contents of these letters and as to the reasons why they had been confiscated;

Whereas the Commission observes that the ordinary control of a prisoner's correspondence is to be considered as an inherent feature of imprisonment (see decision on the admissibility of Application No. 2375/64); whereas this control by the prison authorities or by the competent court may also include the right under certain conditions to stop letters, for instance, if they tend to influence witnesses in a case still pending; whereas, in the present case, an examination of the file as it has been presented by the Applicant 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 Article 8, paragraph (1) (Art. 8-1); whereas it follows that this part of the Application is likewise manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas the Applicant finally complains of a violation of Article 10 (Art. 10);

Whereas the Applicant has failed to substantiate this complaint in any way; whereas 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 Article 10 (Art. 10);

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;

Now therefore the Commission

1. Adjourns the examination of the Applicant's complaints concerning both his committal to, and his detention in, a mental hospital [issue under Article 5, paragraph (1) (e) (Art. 5-1-e)] and the length of the criminal proceedings against him [issue under Article 6, paragraph (1) (Art. 6-1)].
2. Declares the remainder of the Application to be INADMISSIBLE.