

## THE FACTS

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

The Applicant is a Lithuanian citizen born in ... . He has been convicted seven times by various courts in Germany and since 1959 has been detained in the prison of A., serving a sentence of four years' imprisonment following a conviction for theft. He was released from prison on ... 1963.

The Applicant states that while detained in the prison of B in 1953, he contracted tuberculosis and that the prison doctor refused to give him adequate medical treatment, that his complaints to the authorities were either suppressed or unsuccessful and that it was not until after intervention by the International Red Cross (with whom he communicated by a letter smuggled out of the prison) that he was transferred to a hospital, that a subsequent examination confirmed that he was suffering from tuberculosis. In respect of these statements, the Respondent Government has, in its observations, given an explanation which the Commission does not deem necessary to reproduce for the purpose of the present decision.

The present Application concerns the treatment given to him in the prison of A., and he alleges violations of the following Articles of the Convention:

1. Article 3. He states that he still suffers from tuberculosis and has constant pains in the vertebral column. On 30th May 1961 the prison doctor cancelled his special food ration and refused to give him proper medical treatment. As the Applicant, for his part, refused to undertake strenuous work on the ground that it would impair his health, he was on 26th September 1961 subjected to disciplinary punishment of solitary confinement with a ration of dry bread for a period of two weeks. On the thirteenth day he was given a supplementary ration of a quarter of a litre of milk and 30 grams of margarine. He states that he contracted a painful stomach ailment during this period and lost ten kilos in weight, weighing 72 kilos when he entered prison, but only 61.5 kilos at the end of his solitary confinement.

He states that, on 19th October 1961, the Public Prosecutor of C rejected a complaint by the Applicant against this treatment on the ground of lack of proof, although he had asked for an interview with a representative of the Prosecutor's Office in order to explain his complaint in detail, that further complaints to the Minister of Justice, to the Petitions' Committee of the Parliament of Nord Rhein/Westphalia and to the Public Prosecutor of D were never forwarded by the prison administration, and that his request to the local Public Prosecutor that criminal proceedings should be initiated against prison officials for inflicting corporal injury and for suppression of letters was similarly withheld by the Documentation Officer on 14th November 1961.

In respect of these allegations, the Respondent Government in its observations of 24th May 1963, submitted with medical evidence that the Applicant does not suffer from an active tuberculosis. It was stated, in particular, that during the years 1960 - 63, he was X-rayed at regular intervals and examined in the observation ward of the prison; that these examinations revealed only an insignificant, inactive and healed tuberculosis which did not require treatment; that, on his discharge from the observation ward, he was declared fit for light or moderately heavy work and that it was not considered necessary to continue the practice of giving him supplementary rations. It was further submitted that he had never been ordered to do strenuous work but, nevertheless, on 8th September 1961, he declined to carry out the light work assigned to him. The prison doctor had declared him fit to

undergo the above sentence (during his detention in solitary confinement the prisoner receives only bread and water except on the fourth and the eighth day and every successive third day when he receives a normal diet); at the end of the two weeks' confinement the Applicant's weight was 61.5 kilos as compared to 65 kilos on the day he entered prison. Finally, it was submitted that the Applicant's complaints had not been suppressed. His letter of complaint of 28th September 1961 resulted in the opening of an investigation which was suspended on 6th October 1961, re-opened on 26th October 1961 but again suspended on 10th April 1962. Further action taken by the Applicant and his lawyer did not result in a re-opening of the investigation. The letter of 14th November 1961 had, according to the recollection of the documentation officer in question, not been withheld but, in any event, this letter should have been given to the competent prison official and not to the documentation officer.

2. Articles 8 and 10. The Applicant states that the following letters have been suppressed by the prison authorities who have thereby violated the provisions of these two Articles:

- (a) a letter of 8th February 1961 to the Lithuanian legation in London (the exiled government of that country having no representation in Bonn);
- (b) a letter of 6th June 1961 to his lawyer;
- (c) a letter of 23rd October 1961 to his lawyer;
- (d) letters of 20th June, 9th and 11th July 1962 to his lawyer;
- (e) a letter of 22nd August 1961 to the Petitions' Committee of the Parliament of Nord Rhein-Westphalia;
- (f) a letter of 29th January 1962 to the Petitions' Committee;
- (g) a letter of 31st October 1961 to the Public Prosecutor of C;
- (h) a letter of 8th January 1962 to the Public Prosecutor of D;
- (i) a letter of 21st November 1961 to the Federal Minister of Justice;
- (j) a letter of 23rd October 1961 to the European Commission of Human Rights.

He adds that such suppression of correspondence is common in the above prison and that other prisoners are also prevented from contacting official persons and organisations in order to expose their grievances and complaints against the prison administration. The Applicant disputes the statements made by the Respondent Government and states that the records are not accurate. In his counter-observations, he mentions other examples of suppressed letters and adds that on a number of occasions his requests for authorization to write letters was left unanswered.

In respect of these allegations the Respondent Government, in its observations of 24th May 1963, submitted that the prison records, in which all letters emanating from detainees must be entered, show no mention of a letter addressed to the Lithuanian legation in London (see (a) above).

As regards the correspondence with the Applicant's lawyer (see (b) - (d) above), the records show that in the period from August 1960 until March 1963 he sent eleven letters without interference; his letter of 6th June 1961 concerning the discontinuation of his supplementary rations was replied to by the prison doctor two days later and he did not complain that his letter was not forwarded, that his letters of 23rd October 1961, 9th and 11th July 1962 all contained statements reported to be manifestly untrue. On one of these occasions he was informed that he was authorised to write another letter in place of the one withheld but he declined to avail himself of this offer. The holding of these letters was authorised under Article 155 (2) of official prison regulations. The letter of 20th June 1962 was duly dispatched.

As regards the letters addressed to the Petitions' Committee of the Parliament of Nord Rhein-Westphalia (see (e) - (f) above), it was

submitted that on 22nd August 1961 the Applicant requested authorization to write a letter in order to obtain a transfer to another prison, inter alia, on the ground that he intended to complain against the prison doctor. An investigation proved that his complaints were unfounded but, on 7th September 1961 he received, nevertheless, the necessary paper and his letter was duly dispatched on the following day. It was further submitted that there was nothing in the prison records to show that the Applicant on 29th January 1962 handed in for dispatch a letter addressed to the above Committee.

As regards the letter addressed to the Public Prosecutor of C (see (g) above), the records show that on 21st October 1961 he was authorised to write a letter which was dispatched on 23rd October 1961. They show no mention of a second letter dated 31st October 1961.

As regards the letter addressed to the Public Prosecutor of D (see (h) above), the records do not confirm that any such letter was handed in for dispatch on 8th January 1962.

As regards the letter addressed to the Federal Ministry of Justice (see (i) above), it was stated that on 17th October 1961 the Applicant requested permission to write a letter complaining of the "theft" of his passport (see below); having been informed that the competent authority was the District Administrative President of C, he addressed the letter to this authority and handed it in for dispatch on 23rd October 1961. After an investigation as to the truth of the assertions made by the Applicant, which proved unfounded, it was forwarded to the addressee on 2nd January 1962 with a correction by the prison director.

As regards the letter addressed to the Commission of Human Rights, it was submitted that the prison regulations then in force stipulated that correspondence should be written in German unless there were compelling grounds to the contrary. As the Applicant knew the German language, the prison director held that no grounds justified the use of English. The Applicant refused to rewrite his complaints in German. The regulations were changed as from 1st July 1962 and in the future, applications to the Commission cannot be withheld under any circumstances.

3. Article 13. The Applicant alleges that the above interferences with his freedom of correspondence have deprived him of an effective remedy before the national authorities.

In general, it was submitted by the Government that, since his committal to prison, the Applicant has continually addressed complaints to many authorities, generally without interference from the prison administration. His assertion that he was deprived of an effective remedy against the national authorities in Germany does not correspond to the facts.

4. Articles 17, 25, 26 and 60. The Applicant alleges violations of these Articles in respect of the same facts mentioned above.

5. Article 1 of the First Protocol. When the Applicant was transferred to prison in 1960 he realised that his Lithuanian passport was missing.

After several complaints which were left unanswered, he was finally informed in writing that his passport had been forwarded to the Mayor of E and, later, informed orally that it had been lost "when going through official channels". In February 1961 he was refused permission to contact the Legation in London in order to ask it to raise the matter with the German Government. He alleges that he has been intentionally deprived of his passport, particularly because, at his arrest, doubts were raised as to whether he was a Lithuanian citizen. He has also been informed that the official document ordering his transfer to prison indicated his nationality as German.

On four occasions he has been refused permission to send letters on

this matter to the Federal Minister of Justice. On 23rd October 1961 he was, however, as stated above, granted permission to complain to the District Administrative President of C who was stated by the prison authorities to be the competent authority. His letter was, however, not dispatched until 2nd January 1962 and, on 10th January 1962, the Applicant was informed that the President was not competent and eight days later his complaint was rejected by the Public Prosecutor of F, who thereby confirmed his previous decision of 8th June 1961. Other attempts to obtain prosecutions against responsible authorities were also unsuccessful.

In respect of these allegations, the Respondent Government, in its observations of 24th May 1963, submitted that, when the Applicant was committed to prison in August 1959, his passport was taken away from him for safe keeping. After he had succeeded in escaping from prison in 1960, his passport was handed to the police of E in order to facilitate the search for him. He was in no way prevented from subsequently addressing complaints to the competent authorities and he conducted, indeed, a voluminous correspondence on the subject. In a letter of 28th January 1961, the Chief of Police of E admitted that his passport, which was invalid, had been lost but that, in accordance with the new international provisions, X will receive a new passport. The new passport will be issued to X at the place where he settles after his release. Should he take up residence in the Federal Republic, every German Aliens Office is competent to issue a passport.

The inquiries made in the matter as a result of the Applicant's complaints were discontinued as it was not possible to establish proof of any criminal act on the part of the authorities.

It was officially acknowledged, on the cover of his personal file, and in the papers dealing with his admission to prison that he was a Lithuanian and not a German subject.

In respect of all the above allegations, the Respondent Government submitted that the Applicant had not availed himself of the remedies open to him under Articles 23 et seq. of the Introductory Law to the Law on Constitution of Courts of 27th January 1877 as amended on 21st January 1960.

#### Claims made by the Applicant

Whereas the Applicant alleges violations of the Articles mentioned above and asks for the cessation of inhuman and brutal treatment in the prison in which he is detained, proper medical treatment, dispatch of the suppressed letters and restitution of his passport.

#### THE LAW

Whereas, in respect of the alleged violations of Article 3 (Art. 3) of the Convention, the Commission has taken note of the medical evidence submitted by the Respondent Government to the effect that the Applicant does not suffer from an active tuberculosis and that no special medical treatment was required; whereas the Commission has also taken note of the statement made by the prison doctor that the Applicant's health would in no way be impaired by his serving the disciplinary sentence imposed upon him resulting from his refusal to carry out the work assigned to him; whereas, in these circumstances, the Commission finds that the treatment to which the Applicant was subjected during his detention in prison and, in particular, the above punishment, do not in any way constitute inhuman or degrading treatment within the meaning of Article 3 (Art. 3) of the Convention; whereas, therefore, in regard to these complaints, an examination of the case as it has been submitted by the Parties does not disclose any appearance of a violation of this Article of the Convention; whereas 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;

Whereas, in respect of the alleged violation of Articles 8 and 10 (Art. 8, 10) of the Convention, the Commission has taken note of the fact that in general the Applicant appears to have been able to carry on a regular and, indeed, voluminous correspondence with various authorities in regard to his complaints against the Prison administration; whereas it is true that on several occasions the director of the prison in which the Applicant was detained, withheld, in pursuance of valid prison regulations, letters written by the Applicant on the ground that they contained statements and accusations which, after enquiry, proved devoid of foundation; whereas it appears that at least on one occasion the Applicant was given the possibility of rewriting the letter which had been withheld, but refused to do so;

Whereas, in any event, it should be noted that although Article 8 (Art. 8) of the Convention in its first paragraph provides that everyone has the right to respect for his correspondence, and Article 10 in its first paragraph (Art. 10-1) guarantees to everyone the right to freedom of expression, paragraph (2) of each of these Articles (Art. 8-2, 10-2) authorised interference by a public authority with the exercise of these rights if such interference is in accordance with the law and is necessary in a democratic society, inter alia, for the protection of the rights and freedoms of others and the reputation of others; whereas, in respect of Article 8 (Art. 8), the Commission refers to its decision on the admissibility of Application Number 793/60 (H. v. Belgium - Yearbook III, page 444);

Whereas, in cases in which the rights guaranteed in Articles 8 (Art. 8) and/or 10 (Art. 10) are at issue, the Commission has the right, and indeed the duty, to appreciate whether or not interference by a public authority fulfils the conditions laid down in paragraph (2) of these Articles (Art. 8-2, 10-2) whereas the Commission has frequently held (see Application Number 753/60 (E. v. Austria - ibidem page 312)) that these Articles leave the Contracting Parties a certain margin of appreciation in determining the limits that may be placed on the exercise of the rights in question;

Whereas, in the present case, it appears that the letters withheld by the prison administration contained statements and accusations against third persons which, after a careful enquiry, proved groundless;

Whereas the action taken by the prison authorities was based upon valid prison regulations and obviously taken in pursuance of aims recognised as legitimate under the paragraphs (2) of the Articles mentioned (Art. 8-2, 10-2); whereas, an examination of the submissions of the Parties does not show that the interference with the Applicant's right to freedom of correspondence or of expression was in any way an abuse of the Respondent Government's right to impose such limitations or had been carried out in a manner contrary to the Convention;

Whereas, in particular, with respect to the Applicant's correspondence with the Secretariat of the Commission, the Commission has considered this question in relation to Article 25 (Art. 25) of the Convention; whereas it has noted with satisfaction that, independently of the present Application, the Respondent Government has taken the initiative of amending the above prison regulations so as to avoid in the future any interference with applicants' right to address themselves to the Commission in its official languages; whereas, apart from the suppression of the letter written on 23rd October 1961 in English, no further interference with the Applicant's correspondence seems to have occurred, and he has been able to bring his complaints fully before the Commission; whereas, on these grounds, and with particular regard to the fact that on the above date the Applicant was informed that he was authorised to rewrite his Application in German, in which language the Secretariat is authorised to deal with correspondence, the Commission finds that an examination of the case as it has been submitted does not

disclose any appearance of a violation of the provisions of the Convention; whereas 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;

Whereas the same objection applies to the alleged violations of Articles 13, 17, 26 and 60 (Art. 13, 17, 26, 60) of the Convention;

Whereas, in respect of the alleged violation of Article 1 of the First Protocol (P1-1), the Commission has taken note of the contents of the letter of 28th January 1961 from the Chief of Police of E according to which the Applicant, on his release from prison and application to any Aliens Office in Germany, will receive a new and valid passport recognising his Lithuanian origin; whereas, consequently, the disappearance of his old passport has not in any way been prejudicial to him or to the recognition of his status as a Lithuanian citizen; whereas it follows that an examination of the case as it has been submitted does not disclose any appearance of a violation of the Convention and, in particular, of Article 1 of the First Protocol (P1-1); whereas, therefore, 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;

Whereas, in these circumstances, the Commission does not consider it necessary to examine the question whether or not the Applicant was obliged to avail himself of the remedies offered to him under German law;

Now therefore the Commission declares this Application INADMISSIBLE