AS TO THE ADMISSIBILITY OF

Application No. 29742/96
by Lutz KUCHE
against Germany

The European Commission of Human Rights sitting in private on 24 June 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL
E. BIELIUNAS

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 November 1995 by Lutz KUCHE against Germany and registered on 8 January 1996 under file No. 29742/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1943, is a German national and resident in Bonn. He is a journalist by profession. When lodging his application, he was detained in a prison in Remscheid.

A. Particular circumstances of the case

The facts of the case, as they have been submitted by the applicant, may be summarised as follows.

In 1993 criminal proceedings were initiated against the applicant on suspicion of having committed espionage (geheimdienstliche Agententätigkeit).

The trial against the applicant was held before the Düsseldorf Court of Appeal (Oberlandesgericht) sitting as a court of first instance on several days in April and May 1995. In these proceedings, the applicant was assisted by defence counsel.

On 3 May 1995 the Court of Appeal convicted the applicant of espionage on behalf of the former German Democratic Republic, pursuant to S. 99 para. 1 (1) of the German Penal Code (Strafgesetzbuch). The applicant was sentenced to two years and six months' imprisonment. The forfeiture of a sum of money amounting to DM 200,000 was ordered. The applicant was also, for a period of three years, deprived of the rights to hold a public office, to vote and to be elected.

The Court found that in 1966 the applicant had been contacted by agents of the Ministry for State Security (Ministerium für Staats-Sicherheit), the secret service of the former German Democratic Republic, and he had agreed to work for the Ministry concerned. He informed the Ministry about the structures, tendencies and activities of the German National Party (NPD), and later about the German Christian Democrats (CDU). The Court of Appeal found that the applicant had thereby committed espionage.

In fixing the applicant's sentence, the Court of Appeal considered that he had got involved in his criminal conduct due to his friendship with a citizen of the former German Democratic Republic, that his activities had not caused any measurable prejudice and also the other consequences of his conviction. In view of the aggravating circumstances, in particular the lengthy period of the applicant's involvement in espionage, the volume of information forwarded as well as his merely financial motives, the Court of Appeal regarded a prison sentence of two years and six months as appropriate.

B. Domestic law and practice

I. Acts of Espionage

a. Under the criminal law of the Federal Republic of Germany, treason (Landesverrat) is punishable under S. 94 and espionage (geheimdienstliche Agententätigkeit) under S. 99 of the Penal Code (Strafgesetzbuch), respectively.

S. 94 of the Penal Code provides as follows:

<German>

"1. Wer ein Staatsgeheimnis

(1) einer fremden Macht oder einer ihrer Mittelsmänner mitteilt oder

(2) sonst an einen Unbefugten gelangen läßt oder öffentlich bekannt macht, um die Bundesrepublik Deutschland zu benachteiligen oder eine fremde Macht zu begünstigen,

und dadurch die Gefahr eines schweren Nachteils für die äußere Sicherheit des Bundesrepublik Deutschland herbeiführt, wird mit Freiheitsstrafe nicht unter einem Jahr bestraft.

2. In besonders schweren Fällen ist die Strafe lebenslange Freiheitsstrafe oder Freiheitsstrafe nicht under fünf Jahren. Ein besonders schwerer Fall liegt in

der Regel vor, wenn der Täter

(1) eine verantwortliche Stellung mißbraucht, die ihn zur Wahrung von Staatsgeheimnissen besonders verpflichtet, oder

(2) durch die Tat die Gefahr eines besonders schweren Nachteils für die äußere Sicherheit der Bundesrepublik Deutschland herbeiführt."

<Translation>

"1. Anybody who

(1) communicates a State secret to a foreign power or one of its agents or

(2) otherwise puts a State secret at the disposal of a person not authorised to have knowledge of it, or discloses it to the public, in order to prejudice the Federal Republic of Germany or to favour a foreign power,

and thereby creates a risk of a serious prejudice to the external security of the Federal Republic of Germany, shall be liable to imprisonment for a period of not less than one year.

2. In particularly serious cases, the punishment shall be life imprisonment or imprisonment for a period of not less than five years. In general, a case had to be regarded as a particularly serious one if the offender

(1) abuses a responsible post where he was under a particular duty to keep State secrets, or

(2) as a consequence of the offence, creates a risk of a particularly serious prejudice to the external security of the Federal Republic of Germany."

S. 99 of the Penal Code, as far as relevant, provides as follows:

<German>

"1. Wer

(1) für den Geheimdienst einer fremden Macht eine geheimdienstliche Tätigkeit gegen die Bundesrepublik Deutschland ausübt, die auf die Mitteilung oder Lieferung von Tatsachen, Gegenständen oder Erkenntnissen gerichtet ist, oder

(2) gegenüber dem Geheimdienst einer fremden Macht oder einem seiner Mittelsmänner sich zu einer solchen Tätigkeit bereit erklärt,

wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft, wenn die Tat nicht in § 94 oder ... mit Strafe bedroht ist.

2. In besonders schweren Fällen ist die Strafe Freiheitsstrafe von einem Jahr bis zu zehn Jahren. Ein besonders schwerer Fall liegt in der Regel vor, wenn der Täter Tatsachen, Gegenstände oder Erkenntnisse, die von einer amtlichen Stelle oder auf deren Veranlassung geheimgehalten werden, mitteilt oder liefert und wenn er

(1) eine verantwortliche Stellung mißbraucht, die ihn zur Wahrung solcher Geheimnisse besonders verpflichtet, oder

(2) durch die Tat die Gefahr eines schweren Nachteils für die Bundesrepublik Deutschland herbeiführt.
..."

<Translation>

"1. Anybody who

(1) commits, on behalf of a secret service of a foreign power, espionage against the Federal Republic of Germany, aiming at communicating or forwarding facts, objects or findings, or

(2) agrees with the secret service of a foreign power or one of its agents to pursue such an activity,

shall be liable to imprisonment for a period not exceeding five years or a fine, unless the offence is punishable under S. 94 ...

2. In particularly serious cases, the punishment shall be imprisonment for a period of from one to ten years. In general, a case had to be regarded as a particularly serious one if the offender communicates or forwards facts, objects or findings, which are kept secret by a public authority or upon the instruction by a public authority, and if he

(1) abuses a responsible post where he was under a particular duty to keep such secrets, or

(2) as a consequence of his offence, creates a risk of a serious prejudice to the Federal Republic of Germany.
..."

The provisions of the Penal Code are applicable to offences committed within the territory of the Federal Republic of Germany (Inlandstaten), pursuant to S. 3 of the Penal Code. According to S. 5 (4), SS. 94 and 99 are also applicable to offences committed abroad (Auslandstaten).

b. The Penal Code of the former German Democratic Republic also contained provisions regarding the punishment of espionage and treason to the disadvantage of the former German Democratic Republic or one of its allies. These provisions extended to espionage on behalf of the Federal Republic of Germany.

II. The German Unification Treaty of 31 August 1990

The Treaty between the Federal Republic of Germany and the former German Democratic Republic on the German Unification (Einigungsvertrag) of 31 August 1990 abolished, with effect as from 3 October 1990, the Penal Code of the German Democratic Republic and extended the applicability of the criminal law of the Federal Republic of Germany to the territory of the former German Democratic Republic (with some exceptions irrelevant in the present context).

In the course of the negotiations on the above Treaty, an amnesty for persons having committed acts of espionage on behalf of the German Democratic Republic was considered. However, this matter was not pursued on account of hesitations in the general public and of envisaged difficulties in the Federal Diet. Further attempts to introduce such an amnesty in 1990 and 1993, respectively, remained unsuccessful.

III. Procedure before the Federal Constitutional Court

According to Article 93 para. 1 (4a) of the Basic Law (Grundgesetz), the Federal Constitutional Court (Bundesverfassungsgericht) shall decide on complaints of unconstitutionality, which may be entered by any person who claims that one of his basic rights or one of his rights under paragraph 4 of Article 20, under Articles 33, 101, 103, or 104 has been violated by a public authority.

Article 100 para. 1 of the Basic Law provides inter alia that, if a court considers unconstitutional a law the validity of which is relevant to its decision, the proceedings shall be stayed, and a decision shall be obtained from the Federal Constitutional Court if the Basic Law is held to be violated. According to paragraph 2 of this provision, the court shall obtain a decision from the Federal Constitutional Court if, in the course of litigation, doubt exists whether a rule of public international law is an integral part of federal law and whether such rule directly creates rights and duties for the individual.

According to S. 93a and S. 93b of the Federal Constitutional Court Act (Bundesverfassungsgerichtsgesetz), a constitutional complaint is not admitted for an examination on its merits, if it raises no constitutional issue of fundamental importance and if its examination is not necessary for the protection of the complainant's constitutional rights.

IV. Federal Constitutional Court decision of 15 May 1995

On 22 July 1991 the Berlin Court of Appeal (Kammergericht) suspended criminal proceedings relating to charges of espionage, treason and corruption in order to obtain a decision by the Federal Constitutional Court on the question whether persons who had been living in the former German Democratic Republic and had committed the above offences from the territory of the former German Democratic Republic, could be punished. Furthermore, numerous persons convicted of such offences lodged constitutional complaints with the Federal Constitutional Court, claiming that their respective convictions violated in particular their rights of liberty, as guaranteed under Article 2 para. 2 of the Basic Law, as well as their right to equality, as guaranteed under Article 3 of the Basic Law.

On 15 May 1995 the Federal Constitutional Court rendered a leading decision on the request submitted by the Berlin Court of Appeal and three constitutional complaints.

In its decision, the Federal Constitutional Court recalled its case-law according to which the prosecution for treason and espionage as provided for under SS. 94 and 99 of the Penal Code amounted to an interference with the rights to liberty under Article 2 of the Basic Law which was justified from a constitutional point of view. This finding also applied to the extent that secret agents of the former German Democratic Republic were liable to punishment even if they had only acted within the territory of the former German Democratic Republic or abroad. In this respect, the Constitutional Court considered that the relevant provisions of the Penal Code aimed at protecting the external security of the Federal Republic of Germany, and took into account that the offences in question had been committed at a time when the Federal Republic of Germany was particularly exposed to secret service operations of its enemies.

However, according to the Constitutional Court, the question arose whether or not the accession of the German Democratic Republic to the Federal Republic of Germany required a new appraisal of the constitutional issues, in particular with regard to acts of espionage

within the meaning of SS. 94 and 99 of the Penal Code, committed from the territory of the German Democratic Republic by persons who were citizens of the German Democratic Republic and living there.

The Constitutional Court found that the fact that espionage on behalf of the former German Democratic Republic was prosecuted as a criminal offence whereas the penal provisions of the former German Democratic Republic regarding espionage committed by agents of the Federal Intelligence Service had been repealed in the context of the Unification Treaty did not amount to discrimination. Rather, such difference in treatment resulted from the particularities of national security rules (Staatsschutzrecht), which protected the State against espionage by foreign powers. Thus, espionage against the Federal Republic of Germany on behalf of the German Democratic Republic remained a punishable act even after the accession of that State.

Moreover, the punishment of espionage on behalf of the former German Democratic Republic following the unification of Germany did not breach any general rules of public international law, contrary to Article 25 of the Basic Law. The Constitutional Court, having regard to a legal opinion of the Heidelberg Max-Planck-Institute for foreign public law and public international law of 1 July 1994, observed that, under public international law, a State was entitled to enact legislation relating to criminal offences committed within its territory as well as to offences committed by foreigners abroad to the extent that its existence or important interests were at risk. There was no justification for espionage under public international law and there were no rules on the punishment of espionage by a State following the accession of another State.

Furthermore, the punishment of espionage on behalf of the former German Democratic Republic on the basis of the penal laws in force in the Federal Republic of Germany at the time of the offences concerned did not amount to a violation of the rule that no act could be punished if it was not a criminal offence under the relevant law at the time when it was committed. The Constitutional Court noted that the scope of the provisions on treason and espionage was determined by SS. 3, 5 and 9 of the Penal Code, which had been in force before the time of the offences in question. The extension of the jurisdiction of the Federal Republic of Germany regarding such offences was a consequence of the accession and the Unification Treaty.

The Constitutional Court next examined whether or not the results of this extension of the jurisdiction of the Federal Republic of Germany amounted to a breach of the rule of law (Rechtsstaatsprinzip), and, in particular, the principle of proportionality.

The Constitutional Court found that, in the unique situation of the unification of Germany, the punishment of citizens of the former German Democratic Republic, who had been living in the former German Democratic Republic and had acted solely within the territory of the German Democratic Republic or of other States where they were safe from extradition or punishment, violated the principle of proportionality. Consequently, there was a technical bar to prosecution (Verfolgungs-hindernis) regarding this group of persons. Criminal prosecution and punishment as a means of protecting legal interests should not result in a disproportionate interference with the rights of the persons concerned.

In this context, the Constitutional Court considered the difference between the punishment for espionage and for other criminal offences. Public international law did not prohibit espionage, but also allowed the State spied on to punish spies even if this person had only acted abroad. There was no differentiation between espionage on behalf of a totalitarian State or espionage on behalf of a State with a free democratic basic order. Thus, espionage had an ambivalent nature: it served the interests of the observing State where it was

accordingly regarded as lawful, and prejudiced the interests of the State being spied on where it was therefore regarded as a punishable offence. Punishment of foreign spies was not, therefore, justified on account of a general moral value-judgment of reproach (Unwerturteil) regarding the espionage act, but only for the purpose of protecting the State spied on.

According to the Federal Constitutional Court, the fall of the German Democratic Republic, and thereby the termination of any protection for its spies, together with the replacement of its legal order by that of the Federal Republic of Germany which rendered prosecution possible, resulted in a disproportionate prejudice to the group of offenders who had committed espionage on behalf of the German Democratic Republic solely within the latter's territory and had not left the sphere of its protection, or had only been within the territory of other States where they had not risked extradition or punishment in respect of such acts. The unification had at the same time repealed the punishment of espionage activities on behalf of the Federal Republic of Germany. The Court further found that any punishment of this group of persons would counteract the process of creating the German unity.

With regard to other citizens of the former German Democratic Republic who had committed espionage within the territory of the Federal Republic of Germany or one of its allies, or in a third State where they had risked extradition or punishment, there was no general bar to prosecution as the above conditions were not necessarily all met. However, those persons had, as a consequence of the fall of the German Democratic Republic, also lost the protection of that State, if only the expectation to be exchanged in case of their arrest. Moreover, even if they knew about the legal order of the Federal Republic of Germany, these persons possibly mainly adjusted their sense of culpability (Unrechtsbewußtsein) to the legal order of the former German Democratic Republic. Above all, they were meanwhile prosecuted by their own State in respect of espionage activities committed at a time when they regarded that State as a foreign State. In such cases all relevant circumstances had to be weighed in the light of the above considerations with a view to determining whether or not prosecution should be continued, or in fixing the sentence.

In their separate opinion to the Federal Constitutional Court's judgment, three judges of the Second Senate explained that they disagreed with the judgment as far as the finding of a technical bar to the prosecution of a group of persons having committed espionage was concerned.

COMPLAINTS

1. The applicant complains under Article 5 of the Convention that his detention is unlawful on the ground that, following the German unification, there was no legal basis for his conviction and subsequent detention in respect of espionage on behalf of the former German Democratic Republic. He considers that, on the occasion of the German unification, both the former German Democratic Republic and the Federal Republic of Germany ceased to exist and a new State came into existence: the unified Germany. The reciprocal rules on espionage were, therefore, no longer applicable.

2. The applicant further complains under Article 14, in conjunction with Article 5, of the Convention that his conviction of espionage amounted to discrimination on political grounds. He submits that citizens of the former German Democratic Republic having committed espionage on behalf of the Federal Republic of Germany or its allies were not prosecuted or, to the extent that they had been convicted by the courts of the former German Democratic Republic, they had been rehabilitated or could be rehabilitated. Moreover, the punishment of citizens of the former German Democratic Republic was less severe, or

in particular circumstances, there was even a technical bar to their prosecution.

3. The applicant further complains under Article 10 of the Convention that due to his allegedly unlawful conviction and detention, he cannot participate in an open discussion on questions relating to his conduct.

THE LAW

1. The applicant complains under Article 5 para. 1 (Art. 5-1) of the Convention that his conviction of espionage, and consequently his subsequent detention, was unlawful.

Article 5 para. 1 (Art. 5-1), so far as relevant, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> a. the lawful detention of a person after conviction by a competent court;
> ..."

As regards the question of exhaustion of domestic remedies, as required by Article 26 (Art. 26) of the Convention, the applicant submits that he did not lodge an appeal on points of law (Revision) with the Federal Court of Justice (Bundesgerichtshof) or a constitutional complaint with the Federal Constitutional Court in the light of the Federal Constitutional Court's leading decision of 15 May 1995.

According to Article 26 (Art. 26) of the Convention, the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

The Commission recalls that under international law, to which Article 26 (Art. 26) makes express reference, the rule of exhaustion of domestic remedies demands the use of such remedies as are available and sufficient and relate to the breaches alleged (see, Eur. Court H.R., Ciulla judgment of 22 February 1989, Series A no. 148, p. 15, para. 31; Brozicek judgment of 19 December 1989, Series A no. 167, pp. 16-17, para. 34).

The Commission finds that following the decision of the Federal Constitutional Court of 15 May 1995, there was no further remedy available to the applicant under German law whereby he could have effectively raised the complaint which he now makes before the Commission (cf. No. 13134/87, Dec. 13.12.90, D.R. 67 p. 214). The applicant therefore complied with Article 26 (Art. 26).

The Commission recalls that the terms "in accordance with a procedure prescribed by law" and "lawful detention" in Article 5 para. 1 (Art. 5-1) refer to the applicable domestic law, and it follows that disregard of the domestic law may entail a breach of the Convention. However, the scope of review by the Convention organs is limited and it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A no. 33, p. 18, para. 39, p. 20, paras. 45-46; Eur. Comm. H.R., No. 9997/82, Dec. 7.12.82, D.R. 31 p. 245).

In the present case, the Düsseldorf Court of Appeal held that the applicant's conduct constituted the offence of espionage within the

meaning of S. 99 of the Penal Code of the Federal Republic of Germany. In its decision of 15 May 1995, the Federal Constitutional Court confirmed that espionage committed by citizens of the Federal Republic of Germany remained punishable after the German unification.

The Commission considers that the applicant's submissions, in particular his views regarding the consequences of the German unification on the applicability of the penal laws of the Federal Republic of Germany in the field of espionage, do not disclose any element which could render his detention not "lawful" within the meaning of Article 5 para. 1 (a) (Art. 5-1-a) of the Convention.

The Commission concludes that the applicant was deprived of his liberty "in accordance with a procedure prescribed by law" and that he was lawfully detained "after conviction by a competent court".

It follows that the applicant's complaint under Article 5 para. 1 (Art. 5-1) of the Convention is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains under Article 14, in conjunction with Article 5 (Art. 14+5), of the Convention that his conviction of espionage amounted to discrimination on political grounds.

According to Article 14 (Art. 14), the "enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

The Commission recalls that Article 14 (Art. 14) complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by those provisions. There can be no room for application of Article 14 (Art. 14) unless the facts of the case fall within the ambit of one or more of such provisions (Eur. Court H.R., Inze judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

The Commission considers that the applicant's complaint about discrimination relates in substance to his detention after conviction for espionage within the meaning of Article 5 para. 1 (Art. 5-1). His complaint therefore falls within the ambit of Article 14 (Art. 14).

Article 14 (Art. 14) safeguards individuals, placed in similar situations, from discrimination in the enjoyment of the rights and freedoms set forth in the Convention and its Protocols. A distinction is discriminatory if it "has no objective and reasonable justification". The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law (Eur. Court H.R., Stjerna judgment of 25 November 1994, Series A no. 299-B, pp. 63-64, para. 48).

The applicant submits that citizens of the former German Democratic Republic having committed espionage on behalf of the Federal Republic of Germany or its allies were not prosecuted or, to the extent that they had been convicted by the courts of the former German Democratic Republic, they had been rehabilitated or could be rehabilitated. Moreover, the punishment of citizens of the former German Democratic Republic was less severe, or in particular circumstances, there was even a technical bar to their prosecution.

As regards the applicant's first argument, the Commission notes that the applicant, a citizen of the Federal Republic of Germany, was convicted of espionage pursuant to S. 99 of the Penal Code of the Federal Republic of Germany, i.e. of having committed, on behalf of a

foreign power, espionage against the Federal Republic of Germany. The Federal Constitutional Court, considering the possible consequences of the accession of the German Democratic Republic to the Federal Republic of Germany, found that the fact that espionage on behalf of the former German Democratic Republic was prosecuted as a criminal offence whereas the penal provisions of the former German Democratic Republic regarding espionage committed by agents of the Federal Intelligence Service had been repealed in the context of the Unification Treaty did not amount to discrimination. According to the Federal Constitutional Court, such difference in treatment resulted from the particularities of national security rules which the States were entitled to enact under public international law. Thus, acts of espionage were of an ambivalent nature: they served the interests of the observing State where they were accordingly regarded as lawful, and prejudiced the interests of the State being spied on where they were therefore regarded as punishable offences.

The Commission finds that the difference in treatment complained of followed from the fact that the applicant, having committed espionage against the Federal Republic of Germany, was convicted under S. 99 of the Penal Code of the Federal Republic of Germany, which continued to exist as in force at the time of the offence committed by him, whereas the relevant provisions of the penal law of the former German Democratic Republic on the punishment of espionage against the former German Democratic Republic had been repealed upon its accession to the Federal Republic of Germany. The Commission considers that apart from the question whether individuals in these two groups were in analogous situations, the difference of treatment between them, in the application of the laws in force, had an objective and reasonable justification. The Commission, referring to the findings of the Federal Constitutional Court, observes that the Federal Republic of Germany, in prosecuting espionage, sought to protect its own security interests against, from its point of view, unlawful acts of espionage on behalf of foreign powers. Having also regard to the margin of appreciation left to the Contracting States, the Federal Republic of Germany did not discriminate, on political grounds, against the applicant when prosecuting him for espionage.

As regards the applicant's complaint about discrimination as compared to citizens of the former German Democratic Republic, the Commission had regard to the findings of the Federal Constitutional Court according to which the accession of the German Democratic Republic to the Federal Republic of Germany had repercussions on the prosecution of citizens of the former German Democratic Republic for espionage against the Federal Republic of Germany. The Commission finds that the explanations given by the Federal Constitutional Court, relating in particular to the fall of the German Democratic Republic together with the replacement of its legal order by that of the Federal Republic of Germany, can be regarded as an objective and reasonable justification in this respect.

It follows that there is no appearance of a violation of Article 14, taken in conjunction with Article 5 (Art. 14+5) of the Convention.

Consequently, this part of the application is likewise manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. As regards the applicant's complaint under Article 10 (Art. 10) of the Convention, the Commission, referring to its above findings, considers that, to the extent that the applicant's detention after conviction for espionage entails restrictions of his freedom of expression, such interference can be considered to be justified under paragraph 2 of Article 10 (Art. 10-2) as being prescribed by law and necessary in a democratic society for the national security. The applicant's submissions do not, therefore, disclose any appearance of

a violation of his right under Article 10 (Art. 10). Consequently, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)