COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF LIETZOW v. GERMANY

(Application no. 24479/94)

JUDGMENT

STRASBOURG

13 February 2001

In the case of Lietzow v. Germany,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr L. FERRARI BRAVO,
Mr J. CASADEVALL,
Mr B. ZUPANČIČ,
Mr T. PANȚÎRU, *judges*,
Mr H. JUNG, ad hoc *judge*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 23 January 2001,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 December 1998. It originated in an application (no. 24479/94) against the Federal Republic of Germany lodged with the Commission under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Hugo Lietzow ("the applicant"), on 4 March 1994.

2. The applicant was represented by Mr E. Kempf, a lawyer practising in Frankfurt am Main (Germany). The German Government ("the Government") were represented by their Agent, Mrs H. Voelskow-Thies, *Ministerialdirigentin*, Federal Ministry of Justice.

3. The case concerns the applicant's complaint that, in the proceedings for the review of his detention on remand, his defence counsel had no access to the criminal files. The applicant relied on Article 5 § 4 of the Convention.

4. On 14 January 1999 a panel of the Grand Chamber decided, in accordance with Article 5 § 4 of Protocol No. 11 to the Convention taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently the President of the Court assigned the case to the First Section. Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr G. Ress, the judge elected in respect of Germany, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr H. Jung to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

5. The applicant and the Government each filed written observations on the merits (Rule 59 § 1).

6. On 12 October 1999 the Chamber decided, pursuant to Rule 59 § 2 *in fine*, not to hold a hearing in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a German national born in 1925 and living in Schwalbach.

8. On 30 January 1992 the Frankfurt am Main District Court (*Amtsgericht*) issued a warrant for the applicant's arrest on suspicion of fraud (*Betrug*) and corruption (*Bestechlichkeit*).

According to the District Court, there was a strong suspicion that, between 1981 and 1989, the applicant, in his position as director of the Vordertaunus Sewage Disposal Department (*Abwasserverband*), had regularly accepted payments by the owner of an engineering company, Mr N., and his deputy, Mr W., and that these amounts, increased by at least 100%, were subsequently included in bills for public construction works financed by the Vordertaunus Sewage Disposal Department. Moreover, the applicant had also received a jacuzzi. Mr N. and Mr W. were the subject of separate investigations. There was an agreement between them and the applicant to the effect that the applicant ensured that contracts were regularly given to the engineering company by the Sewage Disposal Department. The District Court added that the account of the facts given in the arrest warrant resulted from statements made by Mr N. and Mr W. as well as from the investigations; no further details were given about their precise content.

The District Court further considered that there was a risk of collusion (*Verdunkelungsgefahr*) within the meaning of Article 112 of the German Code of Criminal Procedure (*Strafprozeßordnung*), on the ground that if the applicant remained free he might try to contact other accomplices or witnesses, in particular officials of the Sewage Disposal Department or employees of the engineering company, with a view to coordinating their statements or changing or destroying written evidence, thereby hindering the establishment of the facts.

9. The applicant was arrested on 6 February 1992.

10. On 7 February 1992 Mr Kempf, counsel for the applicant, requested the Frankfurt District Court to hold an oral hearing on the applicant's detention on remand (*Haftprüfung*). With reference to this request, he also

applied to the Frankfurt public prosecutor (*Staatsanwalt*) for leave to consult the investigation file, or at least the statements made by Mr N. and Mr W., since the arrest warrant made reference to them.

11. On the same day, the public prosecutor, referring to Article 147 § 2 of the Code of Criminal Procedure, refused counsel's request, including the request to consult only Mr N.'s and Mr W.'s statements, on the ground that to decide otherwise would endanger the purpose of the ongoing investigations, which formed part of very complex proceedings concerning economic offences (*Wirtschaftsstrafverfahren*), including corruption, and involving a large number of public officials and employees. In addition, the investigation against the applicant could not be separated from the other issues with which they were concerned.

12. In view of the hearing to be held before the District Court (see paragraph 10 above), on 10 February 1992 the public prosecutor forwarded to that court six volumes of a special file relating to the applicant's detention, which was composed of copies taken from the general investigation file relating to all the accused.

13. In written submissions of 12 February 1992, the applicant, through his counsel, commented on the charges.

14. On 17 February 1992 the applicant asked the Frankfurt Court of Appeal (*Oberlandesgericht*) for a judicial review (*Antrag auf gerichtliche Entscheidung*) of the public prosecutor's decision of 7 February 1992 (see paragraph 11 above).

15. On 19 February 1992 the applicant, when questioned by the public prosecutor, mainly referred to his submissions of 12 February 1992 (see paragraph 13 above).

16. On 24 February 1992 the Frankfurt District Court, following the applicant's request of 7 February 1992, held a hearing for the review of his detention on remand. On questioning, the applicant clarified some statements contained in his submissions of 12 February 1992 regarding the venue of his meetings with Mr W. He further explained his general position in relation to the Sewage Disposal Department and the circumstances in which he had contacted Mr W. shortly before his arrest.

At the end of the hearing, the District Court ordered the applicant's continued detention on remand. As regards the strong suspicion against the applicant, the court confined itself to confirming in one sentence that it still existed as stated in the arrest warrant. Furthermore, the court found that there remained a risk of collusion, having regard in particular to the applicant's statement at the hearing that he had contacted Mr W. shortly before his own arrest. The court therefore considered that the applicant had already at that stage attempted to influence another suspect and to induce him to make a favourable statement if questioned by the public prosecutor's office. In that context, particular weight was to be given to the fact that all of this had occurred before the applicant knew the concrete charges against

him, the nature of the relevant evidence or the content of the statements made by witnesses or other suspects. The District Court also noted that the public prosecutor's office had made progress in the investigations, which might therefore be completed soon.

17. The applicant filed further written comments on the charges against him on 5 and 13 March 1992. On 18 March 1992 he was again heard by the police in the presence of his counsel.

18. On 27 March 1992 the applicant appealed (*Beschwerde*) against the decision of 24 February 1992. As a consequence, the Frankfurt District Court decided on 3 April 1992 to suspend the execution of the arrest warrant on condition that the applicant did not change residence – or notified any change to the Frankfurt public prosecutor's office –, that he complied with any summons in the case, that he refrained from any conversation about the criminal proceedings with officials of the Vordertaunus Sewage Disposal Department or with the employees of the engineering company concerned and that he deposited 200,000 German marks (DEM) as security. The applicant was released the same day.

19. On 24 April 1992 the Frankfurt Court of Appeal declared the applicant's request for judicial review of the public prosecutor's decision of 7 February 1992 inadmissible.

The court first considered that the impugned decision was a measure of judicial administration (*Justizverwaltungsakt*) which could in principle be the subject of a judicial review under sections 23 et seq. of the Introductory Act to the Courts Organisation Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*). However, that remedy was of a subsidiary nature and could therefore not be used here, as other remedies were available to the applicant for the purposes of challenging the lawfulness of the decision denying him access to the investigation file.

The Court of Appeal found that it was for the trial judge to decide on the applicant's access to the file, once the public prosecutor's investigations had been completed. This decision would then be open to an appeal by the applicant. This kind of subsequent judicial review fulfilled the constitutional requirements regarding judicial protection, and the temporary absence of a remedy until the preliminary investigation was over had to be accepted in the interest of the efficiency of criminal justice. The Court of Appeal added that the constitutional right to a court remedy ensures a right to judicial review within a reasonable time, rather than an immediate judicial review.

Furthermore, the fact that the applicant was detained on remand could not be regarded as a special circumstance calling – as in the case of an arbitrary prosecution – for a judicial remedy before the end of the preliminary investigation. In the Court of Appeal's view, the applicant's rights were sufficiently secured by the judicial review of his continued detention on remand, under Articles 120 et seq. of the Code of Criminal Procedure. Of course, courts reviewing an accused's detention on remand

were prevented in principle from deciding whether or not to grant access to the file, that being a matter within the sole competence of the public prosecutor's office. However, the absence of such immediate judicial supervision did not amount to a denial of judicial protection, since the competent court had also to examine whether the denial of access to the file to a remand prisoner was in breach of procedural safeguards such as those laid down in Article 5 § 4 of the Convention and, if so, to order his release.

The Court of Appeal's decision was served on the applicant on 6 May 1992.

20. On 13 May 1992 the applicant, noting that Mr W. had died in the meantime, applied to the public prosecutor's office for leave to consult the statements made by him in the course of the criminal proceedings.

21. On 19 May 1992 the public prosecutor's office rejected the request pursuant to Article 147 § 2 of the Code of Criminal Procedure, on the ground that access to the file would still endanger the purpose of the investigations.

22. On 3 June 1992 the applicant lodged a constitutional complaint (*Verfassungsbeschwerde*) against the decisions of 7 February and 24 April 1992.

23. On 27 April 1993 the applicant's counsel renewed his request for access to the file. The public prosecutor, referring to his previous decision, rejected the request on 3 May 1993.

24. On 29 October 1993 the Federal Constitutional Court (*Bundesverfassungsgericht*) decided not to entertain the applicant's constitutional complaint. The decision was served on 5 November 1993.

25. On 8 July 1994 the Frankfurt District Court set aside the arrest warrant against the applicant.

26. On 31 August 1994 the applicant's counsel was granted access to the file.

27. On 25 January 1995 the applicant's counsel requested the public prosecutor to discontinue the proceedings against his client, arguing that there were insufficient grounds for suspecting him. In this connection, he referred to the result of the investigations thus far and discussed in detail the statements of the co-accused, including their wording and later amendments.

28. On 18 December 1995 the Frankfurt public prosecutor discontinued the proceedings in respect of events prior to February 1987, which had become time-barred, and issued an indictment against the applicant, charging him with two counts of corruption.

29. On 8 July 1996 the Frankfurt District Court convicted the applicant of corruption on two counts and imposed on him a fine of DEM 40,000. The applicant lodged an appeal, which he subsequently withdrew for personal reasons.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. Articles 112 et seq. of the Code of Criminal Procedure (*Strafprozeßordnung*) concern the arrest and detention of a person on reasonable suspicion of having committed an offence. According to Article 112, a person may be detained on remand if there is a strong suspicion that he or she has committed a criminal offence and if there is a reason for arrest, such as the risk of absconding or the risk of collusion. Article 116 regulates the suspension of the execution of an arrest warrant.

31. Under Article 117 of the Code of Criminal Procedure, remand prisoners can ask at any time for judicial review of the arrest warrant. An oral hearing will be held at the request of the remand prisoner, or if the court so decides of its own motion (Article 118 § 1). If the arrest warrant is held to be valid following the hearing, the remand prisoner is entitled to a new oral hearing only if the detention has lasted for three months altogether and if two months have elapsed since the last oral hearing (Article 118 § 3). Article 120 provides that an arrest warrant has to be quashed if reasons justifying the detention on remand no longer persist or if the continued detention appears disproportionate. Any prolongation of detention on remand beyond an initial six months is to be decided by the Court of Appeal (Articles 121-22).

32. Articles 137 et seq. of the Code of Criminal Procedure concern the defence of a person charged with having committed a criminal offence, in particular the choice of defence counsel or appointment of official defence counsel. According to Article 147 § 1, defence counsel is entitled to consult the files which have been presented to the trial court, or which would be presented to the trial court in case of an indictment, and to inspect the exhibits. Paragraph 2 of this provision allows for a refusal of access to part or all of the files or to the exhibits for as long as the preliminary investigation has not been terminated, if the purpose of the investigation would otherwise be endangered. Pending the termination of the preliminary investigation, it is for the public prosecutor's office to decide whether to grant access to the file or not; thereafter it is for the president of the trial court (Article 147 § 5). By an Act amending the Code of Criminal Procedure (*Strafverfahrensänderungsgesetz*, *Bundesgesetzblatt*, 2000, vol. I, p. 1253) with effect from 1 November 2000, the latter provision has been amended to the effect, *inter alia*, that an accused who is in detention is now entitled to ask for judicial review of the decision of the public prosecutor's office denying access to the file.

33. Articles 151 et seq. of the Code of Criminal Procedure regulate the principles of criminal prosecution and the preparation of the indictment. Article 151 provides that any trial has to be initiated by an indictment. According to Article 152, the indictment is to be preferred by the public

prosecutor's office which is, unless otherwise provided, bound to investigate any criminal offence for which there exist sufficient grounds of suspicion.

34. Preliminary investigations are to be conducted by the public prosecutor's office according to Articles 160 and 161 of the Code of Criminal Procedure. On the basis of these investigations, the public prosecutor's office decides under Article 170 whether to prefer an indictment or to discontinue the proceedings.

35. According to Article 103 § 1 of the Basic Law (*Grundgesetz*), every person involved in proceedings before a court is entitled to be heard by that court (*Anspruch auf rechtliches Gehör*).

According to the Federal Constitutional Court (*Bundes-verfassungsgericht*), this rule requires a court decision to be based only on those facts and evidential findings which could be commented upon by the parties. In cases involving arrest and detention on remand, the arrest warrant and all court decisions upholding it must be founded only on those facts and pieces of evidence of which the accused was previously aware and on which he was able to comment (Federal Constitutional Court, decision of 11 July 1994 (*Neue juristische Wochenschrift*, 1994, p. 3219), with further references).

In the aforementioned decision, the Federal Constitutional Court held that, following his arrest, an accused had to be informed of the content of the arrest warrant and promptly brought before a judge who, when questioning him, had to inform him of all relevant incriminating evidence as well as of evidence in his favour. Moreover, in the course of ensuing review proceedings, the accused must be heard and, to the extent that the investigation will not be prejudiced, the relevant results of the investigation at that stage must be given to him. In some cases, such oral information may not be sufficient. If the facts and the evidence forming the basis of a decision in detention matters cannot or can no longer be communicated orally, other means of informing the accused, such as a right to consult the files (*Akteneinsicht*), are to be used. On the other hand, statutory limitations on an accused's access to the files until the preliminary investigation are completed are to be accepted if the efficient conduct of criminal investigations so requires. However, even while those investigations are in progress, an accused who is detained on remand has a right of access to the files through his lawyer if and to the extent that the information which they contain might affect his position in the review proceedings and oral information is not sufficient. If in such cases the prosecution refuses access to the relevant parts of the files pursuant to Article 147 § 2 of the Code of Criminal Procedure, the reviewing court cannot base its decision on those facts and evidence and, if necessary, has to set the arrest warrant aside (Federal Constitutional Court, op. cit.).

PROCEEDINGS BEFORE THE COMMISSION

36. Mr Lietzow applied to the Commission on 4 March 1994. He complained under Article 5 § 4 of the Convention that he had been denied access to the investigation file in connection with the judicial review of his detention on remand. He further submitted that, in breach of Article 6 § 3 (b), he had not been given sufficient time to prepare his defence.

37. On 10 April 1997 the Commission declared admissible the complaint under Article 5 § 4 and the remainder of the application (no. 24479/94) inadmissible. In its report of 17 September 1998 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable from the Registry.], it expressed the opinion, by twenty-seven votes to five, that there had been a violation of Article 5 § 4.

FINAL SUBMISSIONS TO THE COURT

38. In their written submissions, the Government requested the Court to find that the Federal Republic of Germany had not violated its obligations under the Convention.

39. The applicant requested the Court to hold that his rights under Article 5 § 4 of the Convention had been violated and to award him compensation for non-pecuniary damage and for legal costs and expenses under Article 41.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

40. The applicant complained about the proceedings for the review of his detention on remand. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Arguments before the Court

41. The applicant stated that the review proceedings were not truly adversarial. The arrest warrant indicated that the strong suspicion against

him was based on the statements made by two other suspects, Mr N. and Mr W. In his view, the summary information which it provided on the charges against him did not offer a sufficient basis on which to ensure his defence. Without access to the file and knowledge of the details of the said statements, which turned out to be decisive pieces of evidence against him, his counsel had not been able to put the credibility of Mr N. and Mr W. in doubt and to argue properly that the suspicions of fraud and corruption were not sufficiently established and his detention was therefore unlawful. Not until January 1995, following inspection of the relevant files, had his counsel been in a position to set out effectively his defence and discuss the statements made by Mr N. and Mr W.

42. According to the Government, Article 5 § 4 did not provide for a general right for a person detained on remand or his counsel to inspect the files concerning the investigations against him. What mattered was to ensure that the person concerned was in a position to exercise effectively his rights and this could be done by different means.

In the present case, the information stated in the arrest warrant was sufficient to allow the applicant to exercise his defence rights properly, as it contained details about all relevant facts and pieces of evidence which grounded the suspicion against him, along with the reasons justifying his detention in the District Court's opinion. In addition, at the hearing of 24 February 1992, the applicant was orally informed of the reason why the District Court considered that there existed a danger of collusion: shortly before his arrest the applicant had attempted to influence another suspect. In the Government's view, the applicant had failed to state what specific piece of information he still missed in order to be able to exercise his defence rights adequately.

As regards the denial of access to the investigation file, it was to be explained by the fact that the investigations against the applicant formed part of a complex set of proceedings concerning more than 160 accused. Having regard to the conspiratorial behaviour of all those concerned, and the collusion established in the course of the investigations, the establishment of the truth would have been seriously hindered if access had been granted too early.

43. In substance, the Commission shared the applicant's view. It considered that, given the importance in the review proceedings of the statements by Mr N. and Mr W., the applicant or his counsel should have been given an opportunity to read them in full, in order to be able to challenge them properly.

B. The Court's assessment

44. The Court recalls that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are

essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine "not only compliance with the procedural requirements set out in [domestic law] but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention".

A court examining an appeal against detention must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure "equality of arms" between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see, among other authorities, *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II).

These requirements are derived from the right to an adversarial trial as laid down in Article 6 of the Convention, which means, in a criminal case, that both the prosecution and the defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. According to the Court's case-law, it follows from the wording of Article 6 – and particularly from the autonomous meaning to be given to the notion of "criminal charge" – that this provision has some application to pre-trial proceedings (see *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36). It thus follows that, in view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5 § 4 of the Convention should in principle also meet, to the largest extent possible under the circumstances of an ongoing investigation, the basic requirements of a fair trial, such as the right to an adversarial procedure. While national law may satisfy this requirement in various ways, whatever method is chosen should ensure that the other party will be aware that observations have been filed and will have a real opportunity to comment thereon (see, *mutatis mutandis*, *Brandstetter v. Austria*, judgment of 28 August 1991, Series A no. 211, pp. 27-28, § 67).

45. In the present case, the arrest warrant served on the applicant on 6 February 1992 contained a summary of the facts underlying the charges against him, the reasons justifying in the District Court's opinion the applicant's detention and a short reference to the evidence relied on by the Court, that is to say the statements of two other suspects in the case, Mr N. and Mr W., along with the results of the ongoing investigations, no further details being provided, however, as to the precise content of the evidence referred to.

On 7 February 1992 the applicant's counsel asked the District Court for judicial review of his client's detention. He also requested the public prosecutor to grant him access to the case file or, in the alternative, to provide him at least with copies of the statements of Mr N. and Mr W., as they appeared to have been decisive in the District Court's decision to order the applicant's detention. Referring to Article 147 § 2 of the Code of Criminal Procedure, the public prosecutor rejected this request on the ground that the consultation of these documents would endanger the purpose of the investigations. On 10 February 1992 the public prosecutor forwarded to the District Court six volumes of a file relating to the investigations against the applicant and other accused.

On 24 February 1992 the District Court ordered the applicant's continued detention. While it held that the strong suspicion against him persisted, it provided no further details about the relevant facts and confined itself to referring to the arrest warrant. The court further held that, given the attempts made by the applicant before his arrest to influence other suspects in the case, there was still a serious risk of collusion if his detention was discontinued.

46. The statements of Mr N. and Mr W. thus appear to have played a key role in the District Court's decision to prolong the applicant's detention on remand. However, while the public prosecutor and the Frankfurt District Court were familiar with them, their precise content had not at that stage been brought to the applicant's or his counsel's knowledge. As a consequence, neither of them had an opportunity to challenge adequately the findings referred to by the public prosecutor and the District Court, notably by questioning the reliability or conclusiveness of the statements made by Mr N. and Mr W., who were themselves affected by investigations in the applicant's case.

It is true that, as the Government point out, the arrest warrant gave some details about the facts grounding the suspicion against the applicant. However, the information provided in this way was only an account of the facts as construed by the District Court on the basis of all the information made available to it by the public prosecutor's office. In the Court's opinion, it is hardly possible for an accused to challenge properly the reliability of such an account without being made aware of the evidence on which it is based. This requires that the accused be given a sufficient opportunity to take cognisance of statements and other pieces of evidence underlying them, such as the results of the police and other investigations, irrespective of whether the accused is able to provide any indication as to the relevance for his defence of the pieces of evidence to which he seeks to be given access.

47. The Court is aware that the public prosecutor denied the requested access to the file documents on the basis of Article 147 § 2 of the Code of Criminal Procedure, arguing that to act otherwise would entail the risk of compromising the success of the ongoing investigations, which were said to

be very complex and to involve a large number of other suspects. This view was endorsed by the Frankfurt Court of Appeal in its decision of 24 April 1992 (see paragraph 19 above).

The Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a person's detention should be made available in an appropriate manner to the suspect's lawyer.

48. In these circumstances, and given the importance in the District Court's reasoning of the statements made by Mr N. and Mr W., which could not be adequately challenged by the applicant as they had not been communicated to him, the procedure before the Frankfurt District Court, which reviewed the lawfulness of the applicant's detention on remand, did not comply with the guarantees afforded by Article 5 § 4 of the Convention. This provision has therefore been violated.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Under Article 41 of the Convention,

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

50. The applicant claimed a sum of not less than 5,000 German marks (DEM) for non-pecuniary damage. He stressed that owing to the denial of access to the investigation file, he was totally unable to avert his detention on remand, which lasted for as long as almost two months, from 6 February until 3 April 1992, and appeared to have been disproportionate given that the District Court sentenced him only to a fine. As he was already 66 years old and in bad health at that time, he even came to feel faint during a transfer between places of detention.

51. The Government did not comment on this issue.

52. The Court considers that it is impossible to determine whether or not the applicant's arrest warrant would have been set aside by the Frankfurt District Court if there had been no violation of Article 5 § 4 of the Convention. As to the alleged frustration suffered by the applicant on account of the absence of adequate procedural guarantees during his

detention, the Court finds that in the particular circumstances of the case the finding of a violation is sufficient (see *Nikolova*, cited above, § 76).

B. Costs and expenses

53. In addition, the applicant claimed DEM 968.87 in respect of the costs and expenses relating to his legal representation before the domestic courts. He also claimed reimbursement of the costs of his representation before the Convention organs, but provided no details as to their amount.

54. The Government did not comment on this issue.

55. As regards the costs and expenses incurred by the applicant in respect of his legal representation, the Court, making an assessment on an equitable basis, awards the applicant DEM 2,000, together with any value-added tax that may be chargeable.

C. Default interest

56. According to the information available to the Court, the statutory rate of interest applicable in Germany at the date of adoption of the present judgment is 8.42% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, DEM 2,000 (two thousand German marks) for costs and expenses, together with any value-added tax that may be chargeable;
   (b) that simple interest at an annual rate of 8.42% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 13 February 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President