

APPLICATION No. 6650/74

Rainer LIEBIG

against

FEDERAL REPUBLIC OF GERMANY

REPORT OF THE COMMISSION

(adopted on 11 May 1978)

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INTRODUCTION

This report relates to Application No. 6650/74 lodged against the Federal Republic of Germany on 7 June 1974 under Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The European Commission of Human Rights declared this application admissible on 15 July 1976. Subsequently the Commission proceeded to carry out its tasks under Art. 28 of the Convention, which provides that:

"In the event of the Commission accepting a petition referred to it;

- a) it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;
- b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in this Convention."

The Commission found that the parties had reached a friendly settlement of the case and, at its sitting on 11 May 1978, adopted this report which, in accordance with Art. 30 of the Convention, is confined to a brief statement of the facts and to the solution reached. The following members were present when the report was adopted:

MM. J.E.S. FAWCETT, President
G. SPERDUTI, first Vice-President
C. NØRGAARD, second Vice-President
E. BUSUTTIL
L. KELLBERG
B. DAVER
T. OPSAHL
J. CUSTERS
J. FROWEIN
G. JÖRUNDSSON
J. DUPUY
G. TENEKIDES
S. TRÉCHSEL
B. KIERNAN
N. KLECKER

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PART ISTATEMENT OF THE FACTS

The applicant, a German national born in 1950, is an artist living in Sandkrug. He was represented before the Commission by Mr. Seemann and subsequently by Mr. Adler, associates, lawyers practising in Oldenburg.

a) The facts of the case

On 25 April, the Oldenburg Public Prosecutor's Office charged the applicant with:

- aiding and abetting in narcotics trafficking;
- buying narcotics for his own use.

Proceedings on these two counts were provisionally discontinued (vorläufige Einstellung des Verfahrens) by the District Court on 15 August 1973 in accordance with Article 154, paragraph 2, of the Code of Criminal Procedure in view of the fact that the charge of armed robbery filed by the Oldenburg Public Prosecutor on 14 August 1973 in another case had rendered the earlier charges insignificant. The proceedings concerning this subsequent charge resulted in the applicant's being sentenced to three months' imprisonment, suspended for three years. The judgment became final on 5 October 1973.

The applicant's discharge in the narcotics case became final, in turn, three months after his conviction of armed robbery had become res judicata, as the Public Prosecutor had not in the meantime asked for the proceedings to be reopened (Article 154, paragraph 4, of the Code of Criminal Procedure). Consequently, the legal expenses pertaining to these proceedings were payable by the State. However, on 20 March 1974, the District Court rejected a request by the applicant for the reimbursement of his personal expenses out of public funds. In its decision the Court states, inter alia, that:

"... the question of personal expenses should be settled in accordance with Article 467, paragraph 4, of the Code of Criminal Procedure. The decision taken was necessary, and any other arrangement would have been inequitable. It is clear from the preliminary investigation of the case, particularly from the statements by witness S. and the former defendant's own statements that the accused would normally have been convicted (denn eine Verurteilung des Angeklagten wäre... erfolgt)."

Against this decision the applicant lodged an immediate appeal based, inter alia, on Art. 6, paragraph 2, of the Convention.

The Oldenburg Regional Court rejected this appeal on 22 April 1974, deciding that the District Court had properly applied Article 467, paragraph 4, of the Code of Criminal Procedure. In its decision, the Court pointed out first of all that:

"the discharge provided for in Article 154 of the Code is a matter for the judge's discretion. The payment of the expenses is therefore governed by Article 467, paragraph 4, of the Code. It therefore lies with the judge to rule on this point *ex aequo et bono*."

It then observed that the only equitable arrangement in the matter was to leave the applicant to pay his personal expenses.

After noting that the applicant's participation in narcotics trafficking (first charge) had given rise to contradictory statements during the preliminary investigation, the Court concluded:

"It is possible that the administration of evidence by the Prosecution at the trial was not satisfactory. Contrary to the appellant's assertion, however, this does not in itself enable us to treat the ex-defendant as an acquitted person with the consequences attaching thereto as regards expenses. A genuine acquittal seemed impossible, for the reasons already mentioned.

Moreover, the ex-defendant admitted having bought drugs for his personal use, so that an acquittal on this point seemed highly improbable."

b) Relevant legal provisions

The decision to discontinue proceedings taken by the Oldenburg District Court on 15 August 1973 was based on Article 154, paragraphs 1 and 2, of the Code of Criminal Procedure. It became final in accordance with paragraph 4 of the above Article.

Article 154 (1) [unimportant collateral offences]

- (1) "Preferring the public charge may be refrained from if the punishment or measure of prevention and reform in which the prosecution might result is negligible as compared to a punishment or measure of security and reform which have been imposed on the accused by final judgment or which he has to expect for another act.
- (2) If the public charge has already been preferred the Court can, upon motion of the Prosecution, provisionally discontinue the proceeding at any stage thereof.
- (4) If the proceeding has been provisionally discontinued in view of a punishment or measure of security and reform to be expected ./.

(1) § 154 [Unwesentliche Nebenstraftaten] (1) Von der Erhebung der öffentlichen Klage kann abgesehen werden, wenn die Strafe oder die Massregel der Besserung und Sicherung, zu der die Verfolgung führen kann, neben einer Strafe oder Massregel der Besserung und Sicherung, die gegen den Beschuldigten wegen einer anderen Tat rechtskräftig verhängt worden ist oder die er wegen einer anderen Tat zu erwarten hat, nicht ins Gewicht fällt.

(2) Ist die öffentliche Klage bereits erhoben, so kann das Gericht auf Antrag der Staatsanwaltschaft das Verfahren in jeder Lage vorläufig einstellen.

(4) Ist das Verfahren mit Rücksicht auf eine wegen einer anderen Tat zu erwartende Strafe oder Massregel der Besserung und Sicherung vorläufig eingestellt worden, so kann es, falls nicht inzwischen Verjährung eingetreten ist, binnen drei Monaten nach Rechtskraft des wegen der anderen Tat ergangenden Urteils wieder aufgenommen werden.

because of another act, it may be resumed within three months after finality of the judgment rendered in connection with such other act, unless prosecution is barred by lapse of time."

The Oldenburg Court's decision on 20 March 1974 to leave the applicant to pay his personal expenses was based on Article 467, paragraph 4, of the Code of Criminal Procedure. This provision may be read together with paragraph 1 of the same Article.

Article 467 (1)

- (1) If the person charged is acquitted, or if the prosecution against him is discontinued, the costs of the proceeding and expenses incurred by him in this connection shall be charged to the State Treasury.
- (4) If the court decides to discontinue the proceeding by virtue of a provision leaving it the discretion to do so, it may refrain from charging the expenses incurred by the accused to the State Treasury.

c) The application

The applicant complained to the Commission that to leave a discharged person to pay his personal expenses (Article 467, paragraph 4, of the Code of Criminal Procedure) as well as the reasons for this decision given by the courts in his particular case, constituted a violation of the principle of presumption of innocence guaranteed under Art. 6, paragraph 2, of the Convention.

On 5 March 1976, the Commission decided to give notice of the application to the respondent Government, under Rule 42 (2) (b) of its Rules of Procedure. On 12 April 1976, the Government submitted its written observations on the application's admissibility. The applicant replied to these observations on 28 April 1976.

On 15 July 1976, the Commission decided to declare the application admissible.

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(1) German Original:

§ 467 [Kosten bei Freispruch] (1) Wird der Angeschuldigte freigesprochen oder die Eröffnung des Hauptverfahrens gegen ihn abgelehnt oder das Verfahren gegen ihn eingestellt, so fallen die Kosten des Verfahrens und die notwendigen Auslagen des Angeschuldigten der Staatskasse zur Last.

(4) Stellt das Gericht das Verfahren nach einer Vorschrift ein, die dies nach seinem Ermessen zulässt, so kann es davon absehen, die notwendigen Auslagen des Angeschuldigten der Staatskasse aufzuerlegen.

When requested to submit written observations on the merits of his complaints, the applicant eventually merely referred, on 22 November 1976, to his submissions on the admissibility of his application.

Written observations dated 17 February 1977 were submitted by the Federal Government on 2 March 1977. In his letter of 9 March 1977, the applicant made some brief comments on these observations.

At its sitting on 19 May 1977, the Commission decided to request the parties to present further observations and submissions orally.

The hearing was held on 10 October 1977. For the purpose of presenting his oral arguments, the applicant, who was already being assisted by Mr. Adler, a barrister practising in Oldenburg, was granted legal aid in accordance with the provisions set out in the Addendum to the Commission's Rules of Procedure.

Finally, a friendly settlement of the case was reached as described in Part II.

PART IISOLUTION REACHED

At the close of the hearing held on 10 October 1977 on the merits of the case, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter in accordance with Art. 28 (b) of the Convention.

Following its usual practice, it instructed its Secretary to contact the parties for this purpose.

After an exchange of letters, through the intermediary of the Secretary, the parties communicated to the Commission the following statements set out below both in the original and translated versions.

In her letter of 26 April 1978, Mr. I. Maier, Agent of the Government of the Federal Republic of Germany, conveyed the following information:

(TRANSLATION)

"With reference to Article 28 (b) of the Convention for the Protection of Human Rights and Fundamental Freedoms, I declare as follows, on behalf of the Government of the Federal Republic of Germany, the respondent party in the proceedings concerning Application No. 6650/74, lodged by Mr. Rainer LIEBIG, with a view to a friendly settlement with the assistance of the European Commission of Human Rights:

- 1) The Oldenburg District Court's decision on 15 August 1973 to discontinue proceedings - Case 10 Ls 19/72 - closed the criminal proceedings opened against the applicant. This decision is final. Consequently no appreciation of the applicant's guilt can be deduced from the decision relating to court fees taken on 22 April 1974 by the Juvenile Chamber of the Oldenburg Regional Court, Case Qs 49a/74.
- 2) The Land of Niedersachsen, represented by its Minister of Justice, undertakes to cover
 - a) the personal expenses actually incurred by the applicant in connection with criminal proceedings 10 Ls 19/72 - StA Oldenburg, indicated by Mr. Seemann, his defence lawyer, as 415,67 DM;
 - b) the expenses actually incurred by the applicant during the proceedings relating to this application. These expenses have been determined ex aequo et bono to be 1.234,26 DM, from which the sum of 1.563,34 FF paid on 8 February 1978 by the Council of Europe by way of legal aid to the applicant should be deducted.

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(ORIGINAL)

"Namens der Regierung der Bundesrepublik Deutschland als Beschwerdegegnerin in der Individualbeschwerde Nr. 6650/74 des Herrn Rainer LIEBIG erkläre ich unter Bezugnahme auf Artikel 28 (b) der Konvention zum Schutze der Menschenrechte und Grundfreiheiten und im Hinblick auf einen unter Mitwirkung der Europäischen Kommission für Menschenrechte erzielten freundschaftlichen Ausgleich:

- 1) Durch den Einstellungsbeschluss des Amtsgerichts Oldenburg vom 15. August 1973 - 10 Ls 19/72 - ist das Verfahren gegen den Beschwerdeführer eingestellt worden. Dieser Beschluss ist rechtskräftig. Demzufolge kann auch aus dem Kostenbeschluss des Landgerichts Oldenburg - Jugendkammer - vom 22. April 1974 - Qs 49a/74 - nicht irgendein Schuldvorwurf hergeleitet werden.
- 2) Das Land Niedersachsen, vertreten durch den Niedersächsischen Minister der Justiz, übernimmt
 - a) die dem Beschwerdeführer in dem Strafverfahren 10 Ls 19/72 - StA Oldenburg - tatsächlich erwachsenen notwendigen Auslagen, die sein Verteidiger, RA Seeman, mit DM 415,67 beziffert hat;
 - b) die dem Beschwerdeführer in dem Individualbeschwerdeverfahren tatsächlich entstandenen notwendigen Auslagen. Diese werden im Wege des Ermessens festgesetzt auf DM 1.324,26 abzüglich des lt. Kostenfestsetzung des Europarates vom 8. Februar 1978 im Wege des Armenrechts erstatteten Betrages von FF 1.563,34."

The applicant, in his turn, communicated to the Commission a statement worded as follows:

(TRANSLATION)

"I hereby consider my application against the Federal Republic of Germany, No. 6650/74, as settled.

I furthermore declare that I will not, either by way of legal proceedings before a German Court or before an international tribunal or otherwise, make against the Federal Republic of Germany or the Land of Niedersachsen any claims (Anspruch) which are in any way connected with the subject of the proceedings before the European Commission of Human Rights or the proceedings discontinued by decision of the Oldenburg District Court on 15 August 1973; - Case 10 Ls 19/72 - StA Oldenburg.

I give this declaration in regard to the friendly settlement which under Art. 28 (b) of the Convention for the Protection of Human Rights and Fundamental Freedoms, has been reached with the assistance of the European Commission of Human Rights, in the proceedings concerning Application No. 6650/74"

(ORIGINAL)

"In meinem Verfahren gegen die Bundesrepublik Deutschland erkläre ich hiermit meine Beschwerde Nr. 6650/74 für erledigt.

Ich erkläre ferner, dass ich weder im Rechtsweg vor einem deutschen oder vor einem internationalen Gericht noch in sonstiger Weise gegen die Bundesrepublik Deutschland oder das Land Niedersachsen Ansprüche geltend machen werde, die mit dem vorliegenden Verfahren vor der Europäischen Kommission für Menschenrechte oder mit dem durch Beschluss des Amtsgerichts Oldenburg vom 15. August 1973 eingestellten Strafverfahren 10 Ls 19/72 - StA Oldenburg - in irgendeinem Zusammenhang stehen.

Diese Erklärung gebe ich im Hinblick auf den Ausgleich im Sinne von Artikel 28 (b) der Konvention zum Schutze der Menschenrechte und Grundfreiheiten ab, der unter Mitwirkung der Europäischen Kommission für Menschenrechte in dem Beschwerdeverfahren Nr. 6650/74 zustande gekommen ist."

At its sitting on 11 May 1978, the Commission noted that the above statements showed that the parties had reached agreement on the terms of settlement of the case.

It was also informed of the Federal Government's intention, at the forthcoming Conference of Ministers of Justice of the Länder, to draw the attention of the Länder judicial authorities to the need for courts to respect the principle of presumption of innocence embodied in Art. 6 (2) of the Convention when setting out the reasons for decisions relating to expenses under Articles 154 and 467, paragraph 4, of the Code of Criminal Procedure.

Having therefore found that the parties had reached a friendly settlement of the case on the basis of respect for human rights within the meaning of Art. 28 (b) of the Convention, the Commission adopted this report.

Secretary to the Commission

The President of the Commission

(H.C. KRÜGER)

(J.E.S. FAWCETT)