

COUNCIL  
OF EUROPE



CONSEIL  
DE L'EUROPE

(Or. English)

EUROPEAN COMMISSION  
OF HUMAN RIGHTS

Application No. 10300/83

Martha NÖLKENBOCKHOFF

against

FEDERAL REPUBLIC OF GERMANY

Report of the Commission

(Adopted on 9 October 1985)

STRASBOURG

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The substance of the application

2. The applicant's husband, Mr N, died in the course of criminal proceedings pending against him, ie after conviction in first instance and after having lodged an appeal. The applicant's subsequent request for reimbursement of the necessary expenses incurred by her late husband in the criminal proceedings was rejected on the ground that if Mr N had not died and if his appeal had been decided his conviction would most likely have been confirmed. The applicant considers that this reasoning violates the principle of presumption of innocence as embodied in Art 6 (2) of the Convention and which she can invoke as her late husband's heiress and widow.

B. Proceedings before the Commission

3. The application was introduced on 7 February 1983 and registered on 10 March 1983. The applicant was represented by Mr Jörg Bergemann, lawyer in Frankfurt/M, who also acted as applicant. On 16 December 1983 the Commission decided to communicate the present applicant's complaint under Art 6 (2) of the Convention for observations on admissibility and merits. Subsequently the applicant was granted legal aid and Mr Bergemann continued to represent her as her legal aid counsel. Both parties having at their request been granted extensions of the time limits the respondent Government's observations were submitted on 13 August 1984 and the applicant's reply on 1 November 1984.

4. On 12 October 1984 the Commission decided to hold an oral hearing on admissibility and merits. The hearing took place on 11 December 1984. At the hearing the Government were represented by their Agent Mrs I. Maier, Ministerialdirigentin, who was assisted by Mr Karl Ernst Jaath, Regierungsdirektor, Mr Hans Hilger, Vorsitzender Richter am Landgericht, Mr Wolfgang Beitlich, Oberstaatsanwalt.

The applicant was represented by her lawyer, Mr Jörg Bergemann.

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5. Following the hearing, the Commission declared the present applicant's complaint under Art 6 (2) admissible while it rejected the remainder of her and Mr Bergemann's application.

6. The parties were subsequently invited to submit before 31 May 1985 any further written observations which they might wish to make on the merits of the case. No additional observations were however submitted.

7. After declaring the applicant's complaint under Art 6 (2) of the Convention admissible, the Commission, acting in accordance with Art 28 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement. In the light of the parties' reaction, the Commission now finds there is no basis on which such a settlement can be effected.

C. The present Report

8. The present Report has been drawn up by the Commission in accordance with Art 31 of the Convention, after deliberations and votes in plenary session, the following members being present:

MM C.A. NØRGAARD, President  
G. SPERDUTI  
J.A. FROWEIN  
G. JÖRUNDSSON  
S. TRECHSEL  
B. KIERNAN  
A.S. GÖZÜBÜYÜK  
J.C. SOYER  
H.G. SCHERMERS  
G. BATLINER  
J. CAMPINOS  
Mrs G.H. THUNE

9. The text of the Report was adopted by the Commission on 9 October 1985 and is now transmitted to the Committee of Ministers in accordance with Art 31 (2) of the Convention.

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10. A friendly settlement of the case not having been reached, the purpose of the present Report, pursuant to Art 31 of the Convention, is accordingly:

- 1) to establish the facts, and
- 2) to state an opinion as to whether the facts found disclose a breach by the respondent Government of its obligations under the Convention.

A schedule setting out the history of the proceedings before the Commission (Appendix I) and the text of the decision on the admissibility of the application (Appendix II) are appended to this Report.

11. The full text of the parties' written and oral submissions and the documents submitted to the Commission are in the Commission's archives and can be made available to the Committee of Ministers on request.

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## II. ESTABLISHMENT OF THE FACTS

12. The facts are not in dispute between the parties.

13. The applicant, a widow and heiress of her late husband's estate, is a German citizen, living in Selm-Bork.

14. The applicant's late husband, Mr N, who died on 13 November 1981, was a senior officer of an important holding company, the Stumm AG. He held key positions in this company and its subsidiaries. In October 1974 the Stumm AG requested the District Court (Amtsgericht) in Essen to institute composition proceedings because of its insolvency. On 13 November 1974 Mr N was arrested on the authority of a warrant of arrest issued by the District Court in Essen on 11 November 1974. He was inter alia suspected of having committed bankruptcy offences. Some other senior officers of the company were likewise arrested. When he was arrested Mr N chose Mr Jörg Bergemann as his defence counsel.

### A. The criminal proceedings against Mr N

15. On 17 May 1976 an indictment, comprising 489 pages, was filed against Mr N and four co-accused.

16. The trial proceedings (Hauptverhandlung) started on 29 October 1976. In addition to the chosen defence counsel Mr N was defended by Mr U, a lawyer who was appointed by the trial court as official defence counsel. The trial lasted from 29 October 1976 until 11 July 1980 with regularly two or three hearings per week. Several hundreds of witnesses were heard and several thousands of documents were read out in the course of the trial.

17. On 11 July 1980 Mr N was convicted on various counts of fraud (Betrug), breach of trust (Untreue), fraudulent bankruptcy (Bankrott) and other economic crimes. He was imposed a global sentence of eight years' imprisonment. The four co-accused were likewise convicted and sentenced, two of them, Mr M and Mr H, of more or less identical offences and of further offences. M was sentenced to nine years and nine months' imprisonment, H to eight years and six months' imprisonment. Two further co-accused, Mr B and Mr O, were convicted on various counts of aiding and abetting. As regards a complex (IV) of fraud charges proceedings were discontinued in accordance with Sec 154 of the Code on Criminal Procedure (StPO) while with regard to certain remaining charges the applicant and his co-accused M and O were acquitted.

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18. The judgment comprised 579 pages. In fixing the sentence the trial court took into account as a mitigating factor the extreme length of the proceedings and Mr N's detention on remand for some three years. All defendants lodged appeals.

19. Mr N's appeal was not decided because he died on 13 November 1981. Three of the co-accused withdrew their appeals while the appeal of one co-accused, M, was rejected by the Federal Court (Bundesgerichtshof) on 7 July 1982 as being clearly ill-founded.

B. Mr N's detention on remand

20. Mr N was arrested on 13 November 1974 and remanded in prison. He was released on bail at the end of March 1977 as according to a medical expert opinion his bile-duct needed operating. On 21 February 1979 he was again arrested but released in consequence of a decision given by the Court of Appeal (Oberlandesgericht) in Hamm on 23 March 1979 which found that there were no valid reasons to annul the trial court's earlier decision of 23 March 1977 ordering a stay of the execution of the warrant of arrest. The appellate court refused however to set aside the warrant of arrest.

21. On 30 April 1980 the trial court again ordered Mr N's arrest as well as the arrest of all co-accused stating that in the meantime the prosecution had terminated its pleadings and in view of the severe sentences requested the measures taken to prevent the defendants absconding were no longer sufficient. Mr N was eventually released on 26 June 1981 for health reasons.

C. Proceedings and decisions concerning Mr N's necessary expenses and a claim for compensation for his detention on remand

22. On 5 March 1982 the Regional Court in Essen rejected a request, made by the applicant, for reimbursement of Mr N's necessary expenses incurred in the criminal proceedings to the extent that Mr N was found guilty in first instance and also to the extent that the proceedings were discontinued. It further rejected a request for compensation for Mr N's detention on remand.

23. The court stated that when criminal proceedings cannot be pursued because of the defendant's death the necessary expenses of the defendant in principle had to be paid by the public treasury. Another decision could however be taken when it was nearly certain that the defendant would have been or would have remained convicted ("... wenn es .... annähernd sicher zu erwarten war, dass es zur Verurteilung des Angeklagten gekommen bzw bei einer Verurteilung geblieben wäre"). The court considered that Mr N's submissions in his appeal against

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conviction and sentence did not warrant the conclusion that he would eventually have been acquitted ("... lässt nicht erwarten, dass der Angeklagte bei Fortführung des Verfahrens freigesprochen wäre"). As regards the alleged violations of procedural law (formelle Rügen) the Court pointed out that supposing they were well-founded, this would only mean the case had to be re-tried. The fact that three of the co-defendants had withdrawn their appeals and thereby confirmed their convictions had however to be considered as a decisive circumstance showing that as far as substantive law was concerned the judgment was well-founded ("Für die materielle Richtigkeit des ergangenen Urteils spricht jedoch entscheidend der Umstand, dass die Angeklagten H, B und O ihre Revision zurückgenommen und dadurch das gegen sie ergangene Urteil bestätigt haben"). The Court also considered that the arguments in the appeal concerning alleged violations of substantive law did not justify the assumption that Mr N would have been acquitted ("Anhaltspunkte für einen mutmasslichen Verfahrensausgang in Richtung eines Freispruchs ergeben sich auch nicht aus den Ausführungen der Verteidigung zur materiellen Rüge"). For the same reasons the claim for compensation for Mr N's detention on remand was rejected.

24. In so far as the claim for reimbursement of necessary expenses related to the discontinued part of the proceedings the Court stated that in view of the bad economic situation of the Stumm holding company it was very likely that Mr N would to this extent also have been convicted (".... weil nach den Ausführungen im Urteil es bei der ungünstigen wirtschaftlichen Situation des Stummkonzerns bei einer Fortsetzung des Verfahrens wesentlich wahrscheinlicher war, dass es insoweit zu einer Verurteilung des Angeklagten gekommen wäre").

25. Mrs N appealed against the decision of 5 March 1982 in so far as the claim for compensation and reimbursement of expenses in connection with Mr N's conviction in first instance was rejected.

On 14 July 1982 the Court of Appeal in Hamm dismissed the appeal as being unfounded. The Court left the question undecided whether the decision on necessary expenses and on the alleged compensation claim could be based on an analogous application of Sec 467 (1) StPO or Sec 6 (1) Nr 2 second alternative StrEG. In any case the decision had to take into account the possible result of the proceedings (mutmasslicher Verfahrensausgang). Referring to the reasons stated by the lower court and referring in addition to the fact that meanwhile the appeal of the co-defendant M had been rejected by the Federal Court on 7 July 1982 as being clearly ill-founded, the appellate court repeated that Mr N's conviction would most likely have been confirmed (mit annähernder Sicherheit) had the appeal proceedings been carried through. The Court attributed particular importance to the fact that M's appeal had meanwhile been dismissed and pointed out that according to the judgment of 11 July 1980 M and N had together committed the offences of which they were convicted by that judgment (in Mittäterschaft begangen).



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26. On the same day this court rejected as being inadmissible an appeal lodged by B in his own name and relating to the necessary expenses incurred by Mr N in connection with the discontinued part of the proceedings. B had submitted that Mr N had ceded to him his possible claims against the treasury.

27. B raised objections (Gegenvorstellungen) against the decisions of 14 July 1982. These objections were rejected by the appellate court on 2 September 1982. The Court stated that there were no reasons to reconsider its decisions of 14 July 1982 and added that it had not considered as a decisive factor that the co-accused H, B and O had withdrawn their appeals.

28. Both applicants' constitutional complaints against the aforementioned decisions concerning expenses and compensation were rejected on 30 September 1982 by a group of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) as offering no prospects of success. The group pointed out that the refusal to reimburse necessary expenses was based on Sec 467 (3), sentence 2, N° 2 of the Code on Criminal Procedure (StPO) and the refusal of compensation on Sec 6 (1) N° 2 of the Act on Compensation for Prosecution Measures (StrEG). Both provisions were in conformity with constitutional law and they endowed the competent court with a margin of appreciation (Ermessensspielraum). There was nothing to show that this margin had been exceeded. The decisions complained of only contained a prognosis on the possible result of the criminal proceedings had they been terminated. Such a prognosis did not constitute a determination of guilt but contained only a finding on the continuing existence of suspicion ("... nicht die Feststellung einer Schuld, sondern lediglich die Feststellung einer fortbestehenden Verdachtslage"). Neither the arguments submitted in the criminal appeal proceedings nor the arguments submitted with the constitutional complaint necessitated considering the conclusions reached in the decisions complained of to be arbitrary. In so far as the decisions complained of referred to the fact that M's appeal was dismissed and that the other defendants withdrew their appeals the constitutional court judges considered that this was only a supplementary argument (unterstützendes Argument) and not the basis of these decisions.

D. The relevant legislative provisions

29. The relevant provisions on which the trial court based its decision to discontinue part of the proceedings and to deny reimbursement of necessary expenses as well as compensation for detention on remand read as follows:

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30. Sec 154 StPO

"(1) The Public Prosecution may refrain from prosecuting

1. if the expected sentence or measure of rehabilitation or prevention is of no importance compared to a sentence or measure of rehabilitation or prevention expected or already imposed on the defendant by a final judgment in another matter.

2. ....

(2) After the filing of the indictment the court may at any stage provisionally discontinue the proceedings at the Public Prosecutor's request."

31. Sec 467 StPO

"(1) If the defendant is acquitted .... or proceedings are discontinued, the costs of the proceedings and the defendant's necessary expenses are to be borne by the Treasury.

(2) ....

(3, second sentence) The Court may decide not to impose the cost of the defendant's necessary expenses on the Treasury if he

1. has caused the indictment by incriminating himself through untrue statements, by contradictory statements, or by omitting exonerating statements, although he had entered a pleading, or

2. is not convicted merely because of a legal impediment to continuing the proceedings (Verfahrenshindernis).

(4) If the court discontinues proceedings in accordance with a provision which leaves this decision to its discretion, it may refrain from imposing the defendant's necessary expenses on the Treasury."

32. Sec 6 StrEG

"(1) Compensation may be partly or completely refused if the accused

1. ....

2. is not convicted or proceedings are discontinued merely because of .... a legal impediment (Verfahrenshindernis).

(2) ...."

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### III. SUBMISSIONS OF THE PARTIES

33. The parties having submitted their arguments on the merits prior to the decision of 12 December 1984 declaring the complaint under Art 6 (2) admissible the Commission can now limit itself to restate the essence of these arguments.

#### A. The applicant

34. The applicant refers to a decision given in another matter by the Frankfurt Court of Appeal on 1 March 1982 (published in NJW 1982, 1891 et seq) according to which the necessary expenses of a defendant who dies before the charges laid against him are finally determined are always incumbent on the Public Treasury and Sec 467 (3) N° 2 of the Code on Criminal Procedure does not apply. She submits that an analogous application of Sec 467 (3) N° 2 in a situation like in the present case, necessitated a finding that the deceased defendant would have been, or would have remained, convicted. Any such finding, regardless of the degree of certainty attached to the prognosis, that a conviction would have been reached or maintained, implied an appraisal of guilt and was not simply the expression of existing suspicion. The applicant points out that according to the Regional Court's decision her husband would have remained convicted. She considers this finding in fact contains an appraisal of guilt contrary to the principle of presumption of innocence which in her opinion applies until final conviction. In so far as the Regional Court based its prognosis on the fact that three co-defendants withdrew their appeal the applicant submits that this withdrawal was the result of certain agreements with the Public Prosecution and not at all a recognition of the correctness of the trial court's judgment.

35. She further argues that the appellate court strengthened the Regional Court's appraisal of guilt in that it pointed out that the appeal of an accomplice, Mr M, had meanwhile been rejected.

36. The violation of the principle of presumption of innocence was not remedied by the Federal Constitutional Court as this Court did not at all deal with the merits of her and her counsel's constitutional complaint but rejected it as offering no prospects of success. Such decisions, rejecting constitutional appeals, had no binding effect whatsoever and could therefore in no way affect the substance of the decisions complained of.

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B. The respondent Government

37. The respondent Government point out that the Regional Court only had to decide whether or not it was equitable to reimburse Mr N's necessary expenses. To that extent, but also for other reasons, the present case was distinguishable from the Minelli case where a Swiss court had to decide whether the applicant Minelli had to be considered as the "losing party" and therefore had to bear the court costs and to pay compensation to the other party of the private prosecution against him.

38. In the present case the refusal to reimburse the necessary expenses did not in itself violate Art 6 (2).

As regards the terms of the decision complained of the Government argue that the grounds stated in a decision given after the termination without a formal finding of guilt of criminal proceedings did not in themselves constitute an independent legal act and thus could not violate the rights of the former defendant. The grounds could not be isolated from the decision as such. Even if they were couched in unfortunate terms, consideration as to the fairness of a course of action, stated as the reasons for a decision, could not be interpreted as a finding of guilt. The reasons in the decisions complained of only contained a prognosis on the chances of success of Mr N's appeal against conviction and sentence. This had also been made clear in the decision of a group of three judges of the Federal Constitutional Court where it is pointed out that the Regional Court's prognosis did not constitute a determination of guilt but contained only a finding on the continuing existence of suspicion. Finally the respondent Government maintain that the applicant cannot be considered as a victim of the alleged violation of Art 6 (2).

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#### IV. OPINION OF THE COMMISSION

##### A. Point at issue

39. The only point at issue is whether the Regional Court's order of 5 March 1982 and the appellate court's decision of 14 July 1982 confirming this order contain an appraisal of guilt and thereby violate Art 6 (2) of the Convention according to which "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

##### B. General considerations

40. The applicant complains of the refusal to grant her compensation for her late husband's arrest and detention on remand and of the refusal to reimburse his necessary expenses caused by the criminal proceedings against him including the part (complex IV) which was discontinued. She argues that these refusals do, in particular in view of the reasons given for them, imply an appraisal of her late husband's (Mr N's) guilt.

41. It is not the function of the Convention organs to rule in abstracto on the compatibility of certain legal rules with the Convention (Eur Court HR, Golder case, judgment of 21.2.75, Series A, Vol 18, p 19, para 39). Therefore the Commission is not called upon to examine whether the legal provisions on which the refusals complained of were based are compatible with the Convention. It only has to review the manner in which they were applied (Eur Court HR, Adolf case, judgment of 23.3.82, Series A, Vol 49, p 18, para 39).

42. The Commission has held that neither Art 6 (2) nor any other provision of the Convention contains a right to reimbursement of an accused's necessary expenses in case the proceedings against him are discontinued (Dec N° 9531/81, 6.10.82, DR 31, 213 with further references; also Dec N° 9688/82, 16.12.83 to be published in DR 35). It further decided that no right to compensation for lawful detention on remand is guaranteed by the Convention in a case where the accused is eventually acquitted or the proceedings are discontinued (see Dec N° 9108/80, 14.5.81, DR 24, 232).

43. On the other hand the Commission and the Court have admitted that the application of Art 6 (2) is not limited to cases where a prosecution ends in the conviction or acquittal of the accused and that the presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law, a judicial decision concerning him reflects an opinion that he is guilty (Eur Court HR, Minelli case, judgment of 25.3.83, Series A, Vol 62, p 18, para 37).

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C. The present case

44. Contrary to the facts in the cases just cited the proceedings against the applicant's late husband were only partly discontinued while the main charges were determined in first instance after a trial during which Mr N had the possibility of exercising his rights of defence. He then died, however, before his appeal was decided. The decisions complained of were thus given after the trial court's judgment but before final conviction. The European Court of Human Rights has already recognised that a "criminal charge is not really 'determined' as long as the verdict of acquittal or conviction has not become final" and that consequently Art 6 (1) of the Convention applies to proceedings before courts of appeal or of cassation if such courts have been provided for under the respective national law (Eur Court HR, Delcourt case, judgment of 17.1.70, Vol 11, p 14, para 25).

45. The same principle must apply in the present case. If the national law in question attributes suspensive effect to appeals in criminal proceedings, as does the German law, then the principle of presumption of innocence has to be respected until final conviction, as is in fact recognised in the German legal system (s. BVerfGE 22, 254 at 265). In the present case a final conviction was not possible as the applicant's husband died in the course of the proceedings concerning his appeal against conviction and sentence. The criminal proceedings consequently were discontinued without a decision on the merits. The charges laid against the applicant's husband thus remained undetermined despite the first instance judgment. For this reason it is incompatible with the principle of presumption of innocence if any judicial decision subsequent to the applicant's husband's appeal reflects an opinion that he was guilty.

46. It therefore remains to be determined whether the reasoning in the Essen Regional Court's order of 5 March 1982 in itself and/or read in conjunction with the reasoning given by the appellate court in its decision of 14 July 1982 confirming the order contain, as the applicant submits, any appraisal of Mr N's guilt contrary to Art 6 (2) of the Convention.

47. The Essen Regional Court stated in its order of 5 March 1982 that reimbursement of necessary expenses had to be denied if it was "nearly certain" that the defendant would have been or would have remained convicted. To justify the assumption that it was "nearly certain" that Mr N would have remained convicted the Regional Court stated that even if, on account of alleged violations of procedural law, the case would have had to be retried, the result would not have changed. It based this prognosis on the fact that three co-defendants had withdrawn their appeals and added the arguments in Mr N's appeal concerning alleged violations of substantive law likewise did not justify the assumption that Mr N would have been acquitted (see para 23 above).

48. The respondent Government point out that the operative provision of the Order of 5 March 1982 does not determine a criminal charge but a claim for reimbursement of necessary expenses and for

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compensation. The reasons given for this decision only contained a prognosis on the chances of success of Mr N's appeal against conviction and sentence corresponding to a finding on the continuing existence of suspicion.

49. The Commission recalls that it repeatedly expressed the opinion that Art 6 (2) cannot be understood as giving the accused an unconditional right to the continuation of the proceedings against him until the final proof or disproof of the charge (Adolf v Austria, Comm Report, 8.10.80, para 56; see also Dec N° 4550/70, Soltikow v Federal Republic of Germany, Coll 38, 123, at 127). Consequently a decision discontinuing criminal proceedings for reasons of procedural economy, as in the present case, with regard to a complex of fraud charges (see above para 17), or for other reasons, does not in principle violate any provision of the Convention if it simply implies that reasons to suspect the person concerned of having committed an offence continue to exist while the prosecuting authorities are prevented from prosecuting or renounce to prosecute (Adolf Report, para 59).

50. It may also be accepted that a decision discontinuing criminal proceedings and/or a decision on costs related to discontinued criminal proceedings contains a statement indicating that some suspicion still exists casting doubts on the chances of success of undecided remedies lodged by the defence and that consequently it is not justified for equity reasons to reimburse the (former) defendant's necessary expenses. It has to be noted that the Convention itself justifies procedural measures on the basis of suspicion without granting an unlimited right to be either convicted or acquitted (see Arts 5 (1)(c) and 6 (3)(a)). Consequently it is mainly a matter of degree whether a formulation in such decisions violates Art 6 (2).

51. In this respect the Commission first notes that the legislative provisions on which the refusal to reimburse Mr N's necessary expenses were based leave to the deciding courts, as the Federal Constitutional Court pointed out (see para 28 above), a margin of appreciation. Their application in a concrete case cannot therefore in itself be interpreted as implying a finding of guilt.

52. The Commission further notes that a decision's reasoning forms a whole with and cannot be dissociated from its operative provisions (Adolf judgment, loc cit, para 39; Minelli judgment, loc cit, para 38). Furthermore, the Commission agrees with the applicant that the reasoning here in question is well capable of being understood as meaning that Mr N not only continued to be suspected of having committed the offences to which the appeal proceedings on the one hand and the discontinued proceedings on the other hand related but that he was in fact guilty of these offences, beyond mere doubts as to the chances of success of his appeal.

53. The Regional Court in fact gives the impression of having carefully examined Mr N's grounds of appeal and to consider them as being unfounded. It points out that three co-defendants withdrew their appeals and concludes that they thereby "confirmed" their conviction.

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This is considered to be a "decisive circumstance showing that as far as substantive law was concerned the judgment (given in first instance) was well-founded". The fact that three co-defendants withdrew their appeal could, however, have been, as the applicant argued, motivated by various reasons and in no way justified any conclusion that consequently the applicant's appeal was unjustified. Furthermore the Regional Court considered that the arguments in Mr N's appeal concerning alleged violations of substantive law did not justify the assumption that he would have been acquitted. In sum the Regional Court's reasoning goes beyond a prognosis on the prospects of success of Mr N's appeal as it leaves no doubt that he would have remained convicted.

54. This conclusion, which follows from the Regional Court's reasoning, is strengthened by the appellate court's reasoning that Mr N's conviction would "most likely have been confirmed" had the appeal proceedings been carried through. The appellate court referred in addition to the fact that meanwhile the co-defendant M's appeal had been rejected. In the opinion of the appellate court this was of particular importance as Mr M and Mr N had been accomplices (Mittäter). The court thereby clearly implied that it was certain that Mr N's appeal would likewise have been rejected. This again went beyond the mere finding of continuing existence of suspicion. The fact that Mr M's appeal had been rejected in no way could be held against Mr N as the mental elements of the offences committed by M may have been a decisive factor for distinguishing between Mr M's and Mr N's cases.

55. Finally the Regional Court stated with regard to the discontinued part of the proceedings that in view of the bad economic situation of the Stumm holding company Mr N's conviction was also "very likely". These terms likewise cannot be understood as summarising simply a suspected state of affairs. By these terms the Court anticipated the "likely" result of the proceedings had they not been discontinued. Such a prognosis on the likely result of discontinued criminal proceedings is in the Commission's opinion compatible with Art 6 (2) only under exceptional circumstances, for example when the accused was finally convicted in another matter which related however to a system of criminal activity having also been the object of the discontinued proceedings (see Dec N° 9108/80 cited above, para 41).

56. The decision of the group of three judges of the Federal Constitutional Court of 30 September 1982 rejecting the applicant's constitutional complaint against the aforementioned decisions of the criminal courts was confined to an attempt of interpreting the reasons stated in the latter decisions, without altering their meaning or scope.

57. In any event the constitutional complaint was not even accepted for a decision on the merits and thus the reasons stated by the group of judges of the Federal Constitutional Court in no way affected the substance of the decisions complained of.



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D. Conclusion

58. The Commission unanimously concludes that the applicant's right under Art 6 (2) has been violated.

Secretary to the Commission

  
(H C KRÜGER)

President of the Commission

  
(C A NØRGAARD)

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APPENDIX I

HISTORY OF PROCEEDINGS

Item	Date	Note
Introduction of the application	7 February 1983	
Registration of the application	10 March 1983	
<u>Examination of admissibility</u>		
Commission's deliberations and decision to invite the Government to submit observations on the admissibility and merits of the application in so far as it raises an issue under Art 6 (2) of the Convention	16 December 1983	MM Nørgaard Sperduti Frowein Jörundsson Kiernan Melchior Weitzel Schermers Danelius Batliner
Receipt of the Government's observations of 13 August 1984	16 August 1984	
Receipt of the applicant's reply of 1 November 1984	5 November 1984	
Commission's deliberations and decision to invite the parties to a hearing on the admissibility and merits of the application in so far as it raises an issue under Art 6 (2) of the Convention	12 October 1984	MM Nørgaard Frowein Jörundsson Kiernan Weitzel Soyer Schermers Danelius Batliner Anton Campinos Vandenberghe Mrs Thune

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Hearing on the admissibility  
merits and decision to declare  
the application partly  
admissible (under Art 6 (2)  
of the Convention) and partly  
inadmissible

11 and  
12 December 1984

MM Nørgaard  
Sperduti  
Frowein  
Busuttil  
Jörundsson  
Trechsel  
Kiernan  
Gözübüyük  
Soyer  
Schermers  
Batliner  
Campinos  
Vandenberghe  
Mrs Thune

For the Government

Mrs Maier  
MM Jaath  
Hilger  
Beithlich

For the applicant

Mr Bergemann

Examination of the merits

Deliberations on the merits

12 December 1984

MM Nørgaard  
Sperduti  
Frowein  
Busuttil  
Jörundsson  
Trechsel  
Kiernan  
Gözübüyük  
Soyer  
Schermers  
Batliner  
Campinos  
Vandenberghe  
Mrs Thune

Applicant submits letter on  
friendly settlement

4 January 1985

Commission's consideration  
of the state of proceedings

11 May 1985

MM Nørgaard  
Frowein  
Busuttil  
Jörundsson  
Trechsel  
Kiernan  
Carrillo  
Gözübüyük  
Soyer  
Schermers  
Danelius  
Batliner  
Vandenberghe  
Mrs Thune  
Sir Basil Hall

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Commission's deliberations,  
final votes on the merits  
of the case and adoption of  
the Report

9 October 1985

MM Nørgaard  
Sperduti  
Frowein  
Jörundsson  
Trechsel  
Kiernan  
Gözübüyük  
Soyer  
Schermers  
Batliner  
Campinos  
Mrs Thune