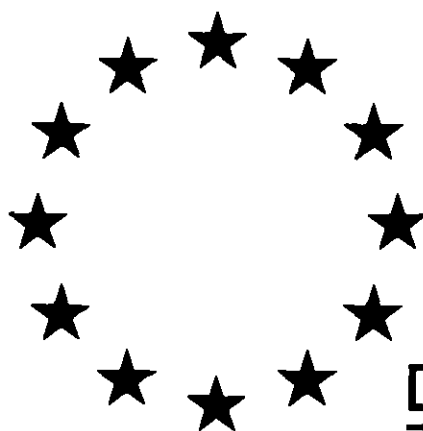


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**EUROPEAN COMMISSION
OF HUMAN RIGHTS**

Application No. 11755/85

**Walter Stocke
against
the Federal Republic of Germany**

Report of the Commission

(Adopted on 12 October 1989)

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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 application

2. The applicant, born in 1926, is a German national. When lodging his application with the Commission, he was detained in prison at Saarbrücken. Before the Commission he was represented by Mr. T. Vogler, professor of criminal law at Giessen University.

The application is directed against the Federal Republic of Germany whose Government were represented by their Agent, Mrs. I. Maier, Ministerialdirigentin, succeeded by Mr. J. Meyer-Ladewig, Ministerialdirigent, both of the Federal Ministry of Justice.

3. The application concerns complaints under Articles 5 and 6 of the Convention about the applicant's detention and trial in the Federal Republic of Germany. The applicant, while in France, was allegedly tricked by the German authorities in collaboration with a private person into flying in an aircraft which was supposed to take him to Luxembourg but which in fact landed in Saarbrücken where the applicant was arrested by the German police.

B. The proceedings

4. The application was introduced on 20 September 1985 and registered on 23 September 1985.

5. On 9 May 1986 the Commission decided in accordance with Rule 42 para. 2 (b) of its Rules of Procedure to give notice of the application to the respondent Government and to invite them to present before 21 July 1986 their observations in writing on the admissibility and merits of the application.

The Government's observations dated 21 July 1986 were received on 24 July 1986. The applicant submitted his reply, after an extension of the time-limit, on 9 October 1986.

6. On 4 March 1987 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application.

7. The hearing took place on 9 July 1987. The applicant who attended the hearing in person was represented by Mr. T. Vogler. The respondent Government were represented by Mrs. I. Maier, Agent, and by Mr. H. Gauf, Generalstaatsanwalt, Directorate of Public Prosecutions Zweibrücken, and Mr. J. Meyer-Ladewig, then Ministerialrat, Federal Ministry of Justice, as Advisers.

8. Following the hearing the Commission declared the application admissible.

9. The text of this decision was on 23 July 1987 communicated to the parties who were invited to submit any additional observations or further evidence which they wished to put before the Commission. The Government were invited to file particular documents.

10. Written observations on the merits and documents were submitted by the Government on 13 November 1987. The applicant's observations in reply were dated 19 February 1988. The Government submitted further documents on 5 April 1988. Further written submissions were made by the applicant on 6 April 1988, by the Government on 27 April 1988, and again by the applicant on 14 May 1988.

11. In the meanwhile, on 5 May 1988, the Commission decided under Article 28 (a) of the Convention to proceed through three delegates to the taking of oral evidence by hearing witnesses on the issue whether the Federal Republic of Germany had violated the applicant's rights under Article 5 para. 1 of the Convention. The Delegates appointed were Mr. A. Weitzel (Principal Delegate), Mr. J.A. Frowein and Mr. H. Vandenberghe.

12. On 4 July 1988 three Delegates of the Commission heard in Strasbourg two public prosecutors and one police officer on the nature and scope of contacts between German prosecution authorities and the private person concerned in connection with the events which resulted in the applicant's arrest, and the contents of conversations in this respect. The police officer presented an official permission to give evidence which was restricted, in particular as regards the co-operation with police informers.

13. The Commission resumed its examination of the case on 14 July 1988. It decided that the taking of evidence be continued.

14. On 15 September 1988 the Delegates of the Commission heard four further police officers, and the police officer and one of the public prosecutors already heard in July 1988 as to the above-mentioned question of evidence as well as to the instructions given in respect of the applicant's arrest and the circumstances of the arrest. The police officers presented official permissions to give evidence which were restricted in particular as regards the co-operation with police informers, with the exception of the co-operation with K in the applicant's case.

15. After the hearing the Delegates decided to continue the taking of oral evidence by hearing two further police officers in regard to the applicant's allegations. The witnesses were heard on 16 October 1988. The witnesses presented official permissions to give evidence similar to the above-mentioned documents.

16. On 9 December 1988 the Government submitted observations on the evidence taken and on the legal issues under Article 5 para. 1 of the Convention. The applicant submitted observations in reply on 14 and 23 December 1988, and commented upon the Government's observations on 25 January 1989.

17. By letter of 28 February 1989 the Agent of the Government requested permission to comment upon the applicant's submissions.

18. On 11 March 1989 the Commission decided that the parties be given the opportunity to submit, before 10 April 1989, any additional observations they wished to put before the Commission.

19. The applicant's further observations were dated 23 March 1989. The Government made further submissions on 6 April, 7 and 31 August 1989. The applicant sent additional information on 4 and 5 July and 10 August 1989.

20. After declaring the case admissible, the Commission, acting in accordance with Article 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

21. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
G. SPERDUTI
E. BUSUTTI
G. JÖRUNDSSON
A. WEITZEL
J. C. SOYER
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ

22. The text of this Report was adopted on 12 October 1989 and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

23. The purpose of the Report, pursuant to Article 31 para. 1 of the Convention is to establish the facts, and to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

24. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

25. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. THE FACTS

A. Introduction

26. The facts of the case, which are set out below, are to a large extent not in dispute between the parties. As regards the nature and scope of contacts between German authorities and a private person in connection with the events which resulted in the applicant's arrest, the Commission has established the facts on the basis of the material before it, in particular the parties' submissions and the oral evidence of witnesses heard by Delegates of the Commission.

27. The Commission, in this respect, refers to Article 28 (a) of the Convention, according to which it shall, in its examination of the merits of the application, ascertain the facts of the case, if need be, by an investigation to be carried out with the assistance of the parties and in particular the respondent State.

B. The particular circumstances of the case

28. In June 1975, subsequent to the bankruptcy of his construction firm, criminal investigations were instituted against the applicant on the suspicion of fraud and fraudulent conversion. In July 1975 investigations were also started on the suspicion that the applicant had committed tax offences. On 25 March 1976 the Ludwigshafen District Court (Amtsgericht), in the latter proceedings concerning tax offences, issued a warrant of arrest against the applicant. From 26 March until 9 July 1976 he was detained on remand. The execution of the warrant of arrest was then suspended. As the applicant did not respect the conditions under which he had been released the execution of the warrant of arrest was again ordered in November 1976. To avoid his arrest the applicant absconded abroad. He later lived in Strasbourg, France. In November 1977 an international search warrant was issued.

29. In summer or autumn 1978 a certain Mr. K phoned the Rhineland Palatinate Office of Criminal Investigations (Landes-kriminalamt) and told Police Officer Ho that he could possibly contact the applicant. He wanted to meet the public prosecutors who were competent in this case.

30. K was working as police informer ("V-Mann"), at that time for the Rhineland Palatinate Office of Criminal Investigations, later for the Ludwigshafen Police Headquarters (Polizeipräsidium). The co-operation with him was in general successful, he worked at his own expense without guarantees that his expenses be compensated. In many cases K unexpectedly presented occasions to arrest persons. In other cases he was to some extent included into tactical police actions ("polizeitaktisches Vorgehen") and, therefore, did not get official permission to give evidence in subsequent criminal proceedings. Since 1974 criminal proceedings on the suspicion of fraud were pending against the applicant.

31. Following K's first telephone call in this matter, Police Officer Re, Head of the Section General Investigations at the Rhineland Palatinate Office of Criminal Investigations and as such Ho's superior, arranged a meeting with Public Prosecutor Wi, Head of the Section Economic Offences at the Kaiserslautern Public Prosecutor's Office (Staatsanwaltschaft). In preparation of this

meeting Wi phoned Public Prosecutor St, the Frankenthal Prosecutor's Office, and inquired about K and the criminal proceedings which were there conducted against him. Wi concluded that K should be treated with caution.

32. The meeting took place in the office of Public Prosecutor Wi. Present were also Public Prosecutor He, who was in charge of the preliminary investigations against the applicant, Police Officers Re and Ri from the Rhineland Palatinate Office of Criminal Investigations and K. Ri was in charge of the police investigations against the applicant. K knew that the applicant was living abroad, presumably in France, and offered his services for returning the applicant to the Federal Republic of Germany. K referred in this respect to his previous co-operation with German prosecution authorities. He mentioned a building project in Spain in respect of which he might contact the applicant. He could possibly arrange a meeting in Luxembourg and have the applicant deported by the Luxembourg Police in order to make the applicant's arrest in the Federal Republic of Germany possible. Upon K's questions whether he could expect a reward or advantages in the criminal proceedings against him, Public Prosecutor Wi informed him that the Public Prosecutor's Office had no financial means to subsidise private assistance in the search of offenders; however, a positive influence in the proceedings against the applicant might be later put forward by the prosecution as a mitigating circumstance at his own trial.

33. The meeting lasted about half an hour. Public Prosecutor Wi had the impression that K overestimated his opportunities lawfully to co-operate with the prosecution authorities in the prevention of crime.

34. Subsequently, the Rhineland Palatinate Office of Criminal Investigations arranged together with K a meeting with Mr. We, a former colleague of the applicant, in order to discuss a building project in which We and the applicant should participate. The meeting took place in a hotel in Frankfurt where Police Officer Ho was presented by K to We as investor interested in a building project in Spain. Ho informed We that he would only continue negotiations with the applicant.

35. In October 1978 We informed the applicant that K was organising a project to build an hotel in Spain, and that he should meet K and other persons interested in the project. This meeting should take place in an hotel in Luxembourg.

36. The Rhineland Palatinate Office of Criminal Investigations contacted the Luxembourg Police and informed them about possible unlawful business activities of the applicant in Luxembourg which might be a reason to deport the applicant.

37. On his way to the above meeting Police Officer Ho, who was attended by his colleague Li, inquired at the Luxembourg Police whether the applicant could be arrested on the suspicion of having committed criminal offences in Luxembourg and deported to the Federal Republic of Germany. The Police Officers were informed that according to Luxembourg law the applicant, in case of his deportation, could insist on being brought to the French border.

38. Thereupon, Police Officer Ho dropped the plan to attend the meeting, but telephoned the applicant who was together with K in the hotel in Luxembourg. Ho pretended to have had an accident in the Federal Republic of Germany and proposed a meeting in Trier. The applicant refused to go to Trier.

39. Police Officer Re informed the Kaiserslautern Prosecutor's Office that the plan concerning Luxembourg had failed.

40. Two weeks later K arranged a meeting with the applicant and We for 7 November 1978 in an hotel in Strasbourg to continue the negotiations concerning the building project.

41. On 27 October 1978 the Kaiserslautern Public Prosecutor's Office renewed the request for an international search concerning the applicant in order to prepare a request to have him extradited from France.

42. In the early morning of 7 November 1978 K phoned Police Officer K.Eb from the Schifferstadt Police, who was at that time on sick leave, at his private address. K told him that the applicant would come to the Federal Republic of Germany in connection with negotiations concerning a building project. K explained that he would meet the applicant in Strasbourg and come with him by aeroplane to Saarbrücken late that afternoon. K asked K.Eb to pass this information on to his colleagues from the Ludwigshafen Police Headquarters whom he had unsuccessfully attempted to contact.

43. Police Officer K.Eb had been involved in the police investigations against K in 1974/1975 and was often contacted by K and asked to pass information on to the Rhineland Palatinate Office of Criminal Investigations or the Ludwigshafen Police Headquarters.

44. K.Eb informed Police Officers Hö and Kl of the Ludwigshafen Police Headquarters which was competent for the police investigations against the applicant. Police Officer Kl was the Head of the Section TE, i.e. terrorism and search, to which also Hö belonged. Police Officers Kl and Hö informed the Head of the Ludwigshafen Police Headquarters who instructed them to go to Saarbrücken and prepare and assist in the applicant's probable arrest. Police Officer K.Eb, who had in the meantime come to the Ludwigshafen Police Headquarters, accompanied them. Upon their arrival at the Saarbrücken Police Office, Police Officer Kl asked Police Officer Le, in presence of Police Officers An, Head of the Special Task Force (Mobiles Einsatzkommando) at the Saarbrücken Police, and Bi for assistance (Amtshilfe) in respect of the applicant's probable arrest at Saarbrücken-Ensheim airport. The applicant's arrest was thereupon prepared, and the Police Officers Kl, Hö and K.Eb assisted by members of the Special Task Force awaited the applicant's arrival at the airport.

45. On the same day K went together with We to Strasbourg in order to meet the applicant. K had already arranged for a private aeroplane to be ready at Strasbourg-Entzheim airport to fly to Saarbrücken. K told the applicant in Strasbourg that those interested in the building project had not been able to come to Strasbourg, but would wait for them in Luxembourg. The applicant, together with K and We, boarded the aeroplane which belonged to a charter company, had German registration and was piloted by Ma and M.Eb. M.Eb and K.Eb who have the same family name are not related.

46. Before the start K secretly instructed Ma to make a stop-over on his flight to Luxembourg at Saarbrücken-Ensheim airport.

47. At 19.50 hours the aeroplane made a stop-over at Saarbrücken-Ensheim airport. The pilots indicated an icing of the engine. Air traffic control in Saarbrücken had been informed and had therefore alerted the fire brigade at the airport. The pilots did not make use of any technical help.

48. The applicant was arrested at the airport by members of the Special Task Force on the basis of the warrant of arrest issued by the Ludwigshafen District Court in March 1976, and then detained on remand.

49. After the arrest on 7 November 1978 the Saarbrücken Police informed the Rhineland Palatinate Office of Criminal Investigations by telex about the applicant's arrest. On 8 November 1978 Police Officer Re passed this information on to the Kaiserslautern Public Prosecutor Wi who drafted a file note about this phone call. Subsequently the Public Prosecutor He gave instructions to the Saarbrücken Police concerning matters in connection with the applicant's arrest, as well as with regard to the search of his apartment in Strasbourg.

50. On 8 November 1978 the Ludwigshafen Police Headquarters paid K DM 500 and on 16 March 1979 DM 2,500 out of a special fund ("V-Gelder") as reimbursement of his expenses in connection with the applicant's arrest, in particular the charter of the aeroplane.

51. On 2 April 1979 the Kaiserslautern Public Prosecutor's Office preferred the indictment against the applicant.

52. On 15 May 1979 the applicant laid information against K and other unknown persons for unlawful deprivation of liberty.

53. The Zweibrücken Public Prosecutor's Office opened preliminary investigations against 'K and Others' and disciplinary proceedings against the Head of the Kaiserslautern Public Prosecutor's Office Sch and Public Prosecutors Wi and He. Further disciplinary proceedings apparently concerned the police officers involved in the applicant's arrest.

54. In the context of these investigations, in a note of 12 June 1979, Police Officer Ad, Head of the Rhineland Palatinate Special Task Forces at the Saarbrücken Police Office, stated that the applicant had been arrested on 7 November 1978 by the Saarbrücken Police on the basis of a warrant of arrest on instructions of the Kaiserslautern Public Prosecutor He, brought before the Saarbrücken District Court (Amtsgericht) to be informed about the warrant of arrest and then detained at a prison in Saarbrücken. Furthermore, Public Prosecutor He, being in charge of the proceedings against the applicant, had given instructions concerning police measures to be taken in the Saarland.

55. According to their official statements in September 1979 the Public Prosecutors Sch, Wi and He had only on 8 November 1978 been informed about the applicant's arrest. Public Prosecutor Sch, in his report of 3 September 1979 to the Rhineland Palatinate Ministry of Justice (Ministerium der Justiz), stated in particular that the Prosecutor's Office had only known that the Rhineland Palatinate Office of Criminal Investigations had planned to have the applicant deported from Luxembourg in co-operation with K and that this plan had been abandoned. In his comment of 7 September 1979, upon the note of 12 June 1979 by the Saarbrücken Police Officer Ad, He pointed out that he had only after the applicant's arrest given instructions for further police measures.

56. On 24 September 1979 the Zweibrücken Public Prosecutor's Office decided to discontinue the preliminary investigations against 'K and Others'. The facts alleged by the applicant were not considered to constitute an unlawful deprivation of liberty within the meaning of S. 239 of the German Penal Code (Strafgesetzbuch). The Public

Prosecutor's Office stated in particular that the applicant had been lawfully arrested in Saarbrücken-Ensheim on the basis of a warrant of arrest in accordance with S. 112 of the Code of Criminal Procedure (Strafprozessordnung). As regards the applicant's flight from Strasbourg to Saarbrücken, the Prosecutor's Office considered that the applicant had voluntarily boarded the aeroplane. There was therefore no deprivation of liberty even assuming that the applicant had been tricked into the aeroplane and would not have participated in the flight, had he known about its true destination.

57. At the same time the disciplinary proceedings against the Kaiserslautern Public Prosecutors were discontinued.

58. On 7 October 1979 the applicant laid information against 'unknown persons' for abduction. He alleged in particular collusion between German prosecution authorities and K.

59. On 25 October 1979 the applicant's trial opened before the Kaiserslautern Regional Court (Landgericht)..

60. In October and November 1979 the Kaiserslautern Public Prosecutors Sch, Wi and He declared in corresponding statements that before 8 November 1978 they had not known about any plan to arrest the applicant subsequent to his being brought by aeroplane from abroad into the Federal Republic of Germany.

61. Furthermore, in official statements of October 1979 the Saarbrücken Police Officers Le, An and Bi declared that the Kaiserslautern Police had requested their assistance to arrest the applicant on the morning of 7 November 1979 and that Police Officer Kl had, upon query, stated that he acted in agreement with the competent Public Prosecutor's Office.

62. On 5 February 1980, upon the applicant's appeal against the decision of 24 September 1979 to discontinue investigation proceedings against 'K and Others', the Zweibrücken Court of Appeal (Oberlandesgericht) ordered the Zweibrücken Director of Public Prosecutions (Generalstaatsanwalt) to investigate the matter further.

63. In August 1980 Police Officers Kl, Hö and K.Eb were heard as witnesses in the proceedings against 'K and Others'. They refused to give evidence on the ground that they might thereby incriminate themselves (S. 55 of the Code of Criminal Procedure). Hö furthermore stated that the questions asked concerned details of police strategy and he would, as a matter of principle, not get official permission to give evidence in this respect.

64. On 15 November 1980 the applicant laid information against Police Officers Re, Kl, Hö and K.Eb for unlawful deprivation of liberty.

65. In February and March 1981 Police Officers Kl, Hö and K.Eb were heard on the charges against them. They refused to give evidence.

66. On 17 March 1981 the Kaiserslautern Regional Court, in the criminal proceedings against the applicant, ordered his continued detention on remand. The applicant's appeal was dismissed by the Zweibrücken Court of Appeal on 16 April 1981. The applicant lodged a constitutional complaint (Verfassungsbeschwerde) relating to his continued detention on remand and to the pending criminal proceedings against him. He submitted that the German police had unlawfully

brought him from France to the Federal Republic of Germany and that this barred his prosecution. On 26 August 1981 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint on the ground that it offered no prospect of success. The Court found in particular that the applicant could only complain of the trial after a final decision had been taken in these criminal proceedings. As regards the applicant's complaint of his continued detention on remand the Court observed that his allegations concerning his return from France to the Federal Republic of Germany had not yet been examined by the trial court.

67. On 23 September 1981 the Zweibrücken Director of Public Prosecution dismissed the applicant's further request of May 1981 to proceed against several Public Prosecutors and Police Officers allegedly involved in his return from France. The Director assumed from the concurring statements of the Public Prosecutors concerned that they were not aware of any intention to abduct the applicant from abroad to the Federal Republic of Germany by aeroplane. He found no reason to doubt the correctness of these official statements.

68. On 4 February 1982 the applicant was convicted by the Kaiserslautern Regional Court of fraud in two cases one of which concomitant with incitement to breach of trust, and of tax evasion (Steuerhinterziehung) in three cases, each concomitant with a violation of the statutory obligation to keep books (Buchführungspflicht). He was sentenced to six years' imprisonment.

69. The judgment, comprising 399 pages, states, inter alia, that contrary to the applicant's arguments the prosecution was not barred by the alleged fact that the applicant was lured to the Federal Republic by a police conspiracy. It is pointed out that the applicant was arrested on the territory of the Federal Republic on the authority of a valid and lawful warrant of arrest. In so far as the applicant had been lured into the Federal Republic this "private kidnapping" (private Entführung) did not render his arrest unlawful as the subsequent approval by the authorities of such kidnapping was not an unlawful act contrary to principles of international law.

70. The Court further pointed out that contrary to the applicant's allegations the Public Prosecutor's Office in Kaiserslautern had, according to official statements made by its Director, its Head of Division and the Prosecutor dealing with the case, neither instigated the alleged kidnapping nor known of it. The Court did not investigate the matter further because it found it irrelevant for its jurisdiction whether K had acted on the instruction of the German police authorities and had carried out the kidnapping with their support. If the French-German extradition treaty or French territorial sovereignty had been violated, this was a matter of international law affecting the rights of a State but not the rights of the individual concerned. France could have protested against the alleged violation and requested reparation. However, France had not done so. On the contrary the Strasbourg Public Prosecutor (procureur de la République) discontinued proceedings instituted at the applicant's request (Anzeige) stating that no punishable act had been committed on French territory (... das Vorliegen einer strafbaren Handlung auf französischem Boden verneint und die Anzeige zu den Akten gelegt).

71. The applicant was released from detention on remand on the same day.

72. On 10 November 1982 the Zweibrücken Public Prosecutor's Office preferred an indictment against the two pilots, Ma and M.Eb, as well as against three Police Officers - Kl, Hö and K.Eb - charging them as accessories to unlawful deprivation of liberty. The investigations against Police Officer Re were discontinued.

73. The criminal proceedings against K were provisionally discontinued on the ground that he had gone abroad. He was arrested in Austria in April 1982, but the Austrian Federal Ministry of Justice refused his extradition in respect of charges relating to the applicant's arrest. In two letters of April 1982 to the Ludwigshafen Police Officer Kl and November 1982 to the Kaiserslautern Public Prosecutor Wi, K requested help to obtain his release and, in this respect, referred to the services which he had rendered as under-cover agent and police informer, inter alia, in the applicant's case. He stated in particular that the applicant's case had been discussed with the Rhineland Palatinate Office of Criminal Investigations and the Kaiserslautern Public Prosecutor's Office. The Rhineland Palatinate Office had told him when to start; there had been a first meeting between the Office, We and himself in Frankfurt and he had succeeded in motivating the applicant to come to a meeting in Luxembourg. In his first letter he denied having told the pilot to make a stop-over at Saarbrücken airport or having informed the police authorities about the applicant's arrival. He did not maintain these allegations in his second letter. K was detained on remand until July 1983 when the warrant of arrest was suspended. K did not comply with his duty of reporting, but disappeared.

74. In the meantime, in January 1983, Police Officers Kl, Hö and K.Eb, represented by counsel, submitted written comments upon the bill of indictment: K had in the morning of 7 November 1978 first informed K.Eb that the applicant would in the course of the day possibly come to a still unknown place in the Federal Republic of Germany. After K.Eb had already informed the Ludwigshafen Police Headquarters, K informed Police Officer Hö that the applicant would possibly land at Saarbrücken airport in the course of the afternoon. The Head of the Ludwigshafen Police Headquarters had then ordered Kl and Hö to go to Saarbrücken in order to arrest the applicant.

75. On 26 July 1983 the Frankenthal Regional Court decided not to commit the five accused, Ma, M.Eb, Kl, Hö and K.Eb, for trial on the ground that there was no sufficient suspicion.

76. The respective complaints of the Public Prosecutor's Office and the applicant were dismissed by the Zweibrücken Court of Appeal on 6 April 1984.

77. The Court of Appeal found in particular that the pilots would have to be acquitted because their defence that they were not aware of K's plan could not be refuted. The pilot Ma, who had stated that K had asked him right before the flight to make a stop-over at Saarbrücken airport without telling the others, could have assumed various obvious reasons for this furtive behaviour.

78. The Court further stated that any possible suspicion that the accused police officers might have committed an offence was not sufficient for a conviction. The Court considered that the witness Ku who had alleged collaboration between K and the police in order to arrange the applicant's return from abroad was not credible. It assumed that Ku, who had himself been a police informer, wanted to get

his revenge following his arrest and detention in connection with criminal proceedings against him. Furthermore, there were inconsistencies in his statements and mistakes such as his statement that Police Officer K.Eb had been in the aeroplane. Ku's statements that consultations between K and the police had taken place on how to return the applicant to the Federal Republic of Germany were considered as being too general to create sufficient suspicion against the three policemen charged with abduction. The testimonies of further witnesses were considered to be useless on the ground that they had only later heard about the alleged abduction when K boasted about his collaboration with the police. The Court of Appeal concluded that in these circumstances it was possible that the three officers had been informed by K that the applicant would be landing at Saarbrücken airport on 7 November 1978 and could be apprehended there. However, it could not be shown that they knew that the applicant was to be tricked into boarding the aeroplane and thus be trapped and brought to Saarbrücken airport against his will.

79. On 25 July 1984 the Federal Court of Justice (Bundesgerichtshof), in proceedings concerning the applicant's appeal on points of law (Revision) against the Regional Court's judgment of 4 February 1982, had the witness Ku again examined with regard to the applicant's allegation that his return to the Federal Republic of Germany was performed by a police conspiracy. The witness Ku, who was at that time detained on remand, talked about his conversations with K according to which K had met with police officers to discuss plans concerning the applicant's return, with a trick, to the Federal Republic of Germany and his arrest. In particular, the Public Prosecutor St had approved K's plan to return the applicant to the Federal Republic of Germany. K and the police officers concerned had later celebrated the applicant's arrest in an hotel in Mannheim.

80. On 2 August 1984 the Court rejected the applicant's appeal on points of law. It found in particular that the applicant's allegation that he had been kidnapped on French territory did not bar his criminal prosecution in the Federal Republic of Germany. The Court first pointed out that the applicant did not belong to the circle of persons enjoying immunity. The jurisdiction of German courts would only have been put in question had the French Republic requested reparation for an alleged violation of its territorial sovereignty or for an alleged violation of the French-German extradition treaty. However, although the competent French authorities had been informed about the applicant's allegations by his counsel no such requests had been formulated.

81. On 17 July 1985 a group of three judges of the Federal Constitutional Court rejected as offering no prospects of success the applicant's constitutional complaint against the aforementioned decisions by the criminal courts.

82. The Constitutional Court found no general rule in international law barring prosecution of a person in a State to whose territory he or she had been taken in violation of the territorial sovereignty of another State. Citing international case law (namely: U.S. Court of Appeal, 8.1.75, U.S. ex rel Lujan v. Gengler, AJIL 69 <1975>, p. 895 et seq.; Jerusalem District Court, 15.12.61, Eichmann case, ILR 36 <1968>, p. 57 et seq.; U.S. Supreme Court, Ker v. Illinois, 119 US 436 <1886>) the Constitutional Court stated that according to international practice courts would in general only refuse to assume jurisdiction in case of a kidnapped accused if the other State had protested against the kidnapping and had requested the return of the accused. Some decisions held that the kidnapping of an

accused could bar prosecution in the receiving State but there was no established practice in this sense in international law. Furthermore there existed no general rule in international law barring prosecution of a person who had been taken to the prosecuting State in violation of an extradition treaty with another State.

83. The Federal Constitutional Court further stated that, although the applicant had unsuccessfully laid charges of kidnapping, the Federal Court had also dealt with and correctly rejected his submission that his prosecution was barred on the ground that his kidnapping involved the criminal responsibility of German public officials. So far a bar to prosecution had been considered only in cases of inordinate length of proceedings and of incitement by an agent provocateur to commit an offence. Even if kidnapping was likewise a possible bar to prosecution this could be assumed only in exceptional cases but not in the applicant's case, even assuming that the applicant had been taken to the Federal Republic of Germany by subterfuge and not by physical force. He had been arrested by the German police on German and not foreign territory. His arrest had been based on a lawful and valid warrant of arrest. Any involvement of public officials in the alleged kidnapping related, according to the findings of the Public Prosecutor, only to unauthorised activities of lower police officers not involving responsibility of superior authorities. In these circumstances there was nothing which could have barred the proceedings against the applicant.

84. Finally the Constitutional Court pointed out that the applicant, when in France, was not safe from prosecution in the Federal Republic of Germany; his extradition was not excluded by the fact that the main charges against him were of tax offences.

85. The applicant served the remaining part of two thirds of his sentence of imprisonment from 10 June to 6 December 1985, the further third was suspended on probation.

86. On 9 December 1986 the Zweibrücken General Public Prosecutor's Office asked the Frankenthal Public Prosecutor St to comment upon his role in the prosecution of the applicant and, as far as it can be determined from St's - negative - reply of 15 December 1986, upon the statement of the witness Ku of 25 July 1984 in the applicant's appeal proceedings before the Federal Court of Justice.

87. Furthermore, in August 1987, the Zweibrücken General Prosecutor's Office asked Public Prosecutor Wi to comment on K's letter of November 1982. In his official statement dated 7 August 1987 Wi reported on the meeting with K, Public Prosecutor He and Police Officer Re in the course of 1978 where K had offered his services to return the applicant to the Federal Republic of Germany. W stated that he had declared that the Public Prosecutor's Office had no financial means to subsidise private assistance in the search of offenders. K had talked about an idea to arrange a meeting with the applicant in Luxembourg and to have the applicant deported by the Luxembourg Police. K had however been told that the Public Prosecutor's Office could not, in this respect, instruct him. Furthermore there were no plans to return the applicant against his will to the Federal Republic of Germany. It had been left to K's discretion whether he wanted to induce the applicant to return to the Federal Republic of Germany. He had been told that a positive influence in the applicant's case might be considered as a mitigating circumstance in his own criminal proceedings.

88. In February 1988 K who had been searched again since November 1985 was arrested and taken into detention on remand.

89. On 23 March 1988 the Frankenthal Public Prosecutor's Office informed the applicant that it had resumed the criminal proceedings against K on the charge of abduction and preferred an indictment against him before the Frankenthal Regional Court. In the bill of indictment, K was charged with unlawful deprivation of liberty in that, in connection with a pretended building project, he had talked the applicant into boarding the aeroplane with him, allegedly from Strasbourg to Luxembourg, but in reality destined for Saarbrücken.

90. On 14 November 1988 the Frankenthal Regional Court convicted K of counterfeiting and sentenced him to four years and six months' imprisonment. On 16 March 1989 K was convicted of fraud and sentenced to eight years' imprisonment; a global sentence of nine years' imprisonment was fixed.

91. On 2 August 1989 the Frankenthal Regional Court decided not to commit K for trial on the charge of unlawful deprivation of liberty. The Court found that, on the basis of the preliminary investigations, there was no sufficient suspicion that K had committed the offence in question. The Court referred, in this respect, to the decision of the Zweibrücken Court of Appeal of 6 April 1984 not to open main proceedings against the pilots and police officers. It could not be expected that these persons would give evidence upon which K's conviction could be based. Appeal proceedings are pending.

C. The evidence before the Commission

1. Documentary evidence

92. The parties submitted a large number of documents concerning the proceedings against the applicant as well as criminal proceedings against persons involved in the applicant's return and arrest on 7 November 1978. The contents of the relevant documents are summarised above ("Particular circumstances of the case").

2. Oral evidence obtained in the proceedings before the Commission

93. The evidence of the nine witnesses who were heard by three Delegates of the Commission may be summarised as follows:

a. The evidence of Public Prosecutor Wi,
Kaiserslautern Public Prosecutor's Office

94. At the hearing of 4 July 1988, Public Prosecutor Wi, born in 1929, stated that, having regard to the lapse of time, he could not remember all details of the events concerned. However, he considered that he could well recall the circumstances of the meeting with K as well as Public Prosecutor He and Police Officer Re in his office on the ground that, in his official function at that time, as Head of the Economic Crimes Section, he had been interested in the outcome of the criminal proceedings against the applicant.

95. Wi explained that he had beforehand been phoned by Police Officer Re and informed that K had asked for a meeting in order to talk about the applicant's case. The Rhineland Palatinate Office of Criminal Investigations was the direct contact for the Public Prosecutor's Office in questions of search for a person, and

had been dealing with the international search warrant. Wi supposed that Police Officer Re had been charged with the search for the applicant. It had therefore not appeared unusual to arrange such a meeting.

96. Wi had prepared the meeting in phoning the Head of the Frankenthal Public Prosecutor's Office St, who had informed him about the criminal proceedings against K and his activities as police informer. He had, therefore, awaited K's visit with great caution.

97. At the meeting the date of which Wi could not remember, K wanted to know from the very beginning whether services in the search for the applicant could be somehow rewarded, either compensated financially or considered in the criminal proceedings against him. However, K had been clearly told that the Public Prosecutor's Office had no financial means to pay an informer. Any help in the search for the applicant could only be put forward as mitigating circumstance at a future trial of K. Wi stressed that K had been told that any possible assistance by him in the search for the applicant should be a lawful one and consist either in finding out the applicant's address abroad with a view to extradition proceedings or in inducing the applicant to return voluntarily to the Federal Republic of Germany. Wi had assumed that extradition proceedings required an indication about the whereabouts of the person concerned.

98. Upon further questioning concerning his official statement of 1987, Wi first confirmed that presumably K had also talked about a possibility of arranging a business meeting with the applicant in Luxembourg and of having him deported by the Luxembourg Police to the Federal Republic of Germany. Upon query, he was not entirely sure whether he might have only in a subsequent telephone conversation been informed about this plan. Wi only vaguely remembered that later Police Officer Re had phoned to inform him that this idea would not be a realistic means of search for the applicant. In any way, no plans relating to the flight on 7 November 1978 had been discussed.

99. Wi summarised his impression of K at the meeting, which had lasted about half an hour, as follows: K had talked a lot about his previous successful activities as police informer and mysteriously hinted at his good chances of getting in touch with the applicant. At the end of the meeting the witness had the impression that there should be no further contacts with K in that matter, that K did not appear reliable and that it was doubtful whether K would assist in the search for the applicant in a lawful way.

100. Wi pointed out that he had not given any instructions before the applicant's arrest. He had, contrary to usual practice in such matters, only afterwards been informed by Police Officer Re about the applicant's arrest. Wi had then informed the Public Prosecutor He and instructed him to prepare the indictment of the applicant in due course.

101. Furthermore Wi explained that, in his official statement of 1979, he had not mentioned this meeting because he had only been asked about his knowledge concerning the flight as such. He had not talked with other police officers about the applicant's arrest.

b. The evidence of Public Prosecutor He,
Kaiserslautern Public Prosecutor's Office

102. At the hearing of 4 July 1988, Public Prosecutor He, born in 1935, remembered that he had attended the meeting with K in the office of Public Prosecutor Wi; however, he himself had remained rather passive, and did not, therefore, recall any details. K had inquired about possible rewards, in particular in respect of the criminal proceedings against him, for services concerning the search for the applicant. K had declared that for personal reasons - he had been detained at the same time as the applicant, who had been released earlier - he would see to it that the applicant returned to prison. As far as this witness remembered, no particular plans were discussed at the meeting, but he could not exclude that there had been talks concerning a building project in Spain.

103. Furthermore, He confirmed his official statement of 1979 that he had had no further contacts with K nor any knowledge about the events which resulted in the applicant's arrest. No police officer had contacted him before the arrest. He had only been informed on the following day, and had then given instructions concerning the applicant's luggage, car and apartment.

104. Upon questioning concerning Police Officer Re, Public Prosecutor He stated that Re had not been responsible for the police investigations against the applicant or the search for him.

105. Upon query as to the "Luxembourg plan" He recalled that Police Officer Re had phoned him at a time after the meeting and told him about a plan to have the applicant deported from Luxembourg as a foreigner committing criminal offences in Luxembourg. A meeting in Luxembourg had apparently been arranged; however, the plan could then not be carried out. Police Officer Re had informed him about these events.

106. At the hearing of 15 September 1988 He briefly confirmed his statements of 4 July 1988.

c. The evidence of Police Officer Re,
Rhineland Palatinate Office of Criminal Investigations

107. At the hearing of 4 July 1988, the now retired Police Officer Re, born in 1924, referred to the restrictions of his official permission to give evidence before the Commission.

108. Re recalled that K had asked for a meeting with the Public Prosecutor in charge of the preliminary investigations against him and indicated that he might reveal the applicant's whereabouts. Re believed he remembered that he had then arranged the meeting with Public Prosecutor He whom he supposed to be in charge of the investigations against K. As he himself was not informed about the criminal proceedings against the applicant, and as his functions were not related to this case, Re had asked his colleague, Police Officer Ri, charged with the police investigations against the applicant, to accompany him to the meeting. This meeting had been very short. K had

stated that he had contacts with the applicant in connection with a building project in Spain, and might find out the applicant's whereabouts. Re could not remember whether K had stated that the applicant was at that time living in France, or whether a plan to have the applicant deported from Luxembourg was discussed at the meeting.

109. Re recalled that he had later seen a telex to the Luxembourg Police informing them that the applicant tried to interest old people in Luxembourg to invest in a Spanish building project. He might have told Public Prosecutor Wi that a deportation of the applicant from Luxembourg did not appear possible.

110. On 8 November 1978 Re had received a telex from the Saarbrücken Police concerning the applicant's arrest, and informed Public Prosecutor Wi or He.

111. Re said that he had been very astonished that the applicant had laid information against him for unlawful deprivation of liberty; he had reacted with a request to institute criminal proceedings against the applicant for defamation.

112. Police Officer Re was heard again on 15 September 1988. His permission to give evidence had been extended to cover matters concerning K in relation to the applicant's arrest.

113. Re stated that after the meeting in 1978 at the Kaiserslautern Public Prosecutor's Office he had had no further contacts with K concerning the applicant's case, nor heard anything from him until the applicant's arrest. K had then co-operated with the Ludwigshafen Police Headquarters, in particular Police Officer Kl, and with Police Officer K.Eb from the Schifferstadt Police.

114. Re repeated his earlier statements concerning the meeting at the Kaiserslautern Public Prosecutor's Office. K had indicated that he could meet the applicant in Luxembourg in connection with a building project in Spain. For this reason, the Rhineland Palatinate Office of Criminal Investigations had warned the Luxembourg Police about the applicant's activities in Luxembourg.

d. The evidence of Police Officer Kl,
Ludwigshafen Police Headquarters

115. At the hearing of 15 September 1988, Police Officer Kl, born in 1937, confirmed his statements given in the course of the criminal proceedings against him.

116. In the morning of 7 November 1978 he had been informed by Police Officers Hö and K.Eb that the applicant would arrive in Saarbrücken in the course of that day. K.Eb had told him that he had received a telephone call to that effect from K. They had then informed the Head of the Ludwigshafen Police Headquarters who had instructed them to go to Saarbrücken and ask for assistance from the Saarbrücken Police in the applicant's arrest.

117. Kl stated that they had known that the applicant, while living abroad, had repeatedly visited the Federal Republic of Germany with false identity papers. Kl vaguely remembered that K had told Police Officer K.Eb thereof. It had therefore been reasonable to believe that the applicant would come to Saarbrücken although no details were

known. Upon their request, the Saarbrücken Police, in particular the Special Task Force, had prepared the applicant's arrest, which could in fact be executed in the evening. He had not informed the Kaiserslautern Public Prosecutor's Office about the envisaged arrest. He could not imagine that he had told the Saarbrücken Police Officer Le anything to this effect. The warrant of arrest against the applicant had been decisive.

118. Upon questioning, Kl explained that he met K at the end of 1976 or in the beginning of 1977 when he had been Head of the Speyer Police. He had co-operated with K in a case concerning false paintings. Kl pointed out that he had not known about any contacts between K and the applicant. Any statements that he himself and Police Officers Hö and K.Eb had met the applicant in Luxembourg were wrong. Moreover, he had not participated in any champagne party after the arrest, nor had his colleagues Hö and K.Eb.

119. Police Officer Kl then explained the payments by the Ludwigshafen Police to K in the context of the applicant's arrest. K had received DM 500 shortly after the arrest, and a further DM 2,500 in February or March 1970 to cover his expenses for chartering the aeroplane. These expenses had been verified by phoning the charter company. K's expenses had not beforehand been approved by the authorities. However, it was usual to reimburse K's expenses in respect of his activities as a police informer.

120. Since the applicant's arrest K had worked as a police informer for the Ludwigshafen Police Headquarters. Kl described K as being fickle in his decisions.

121. Asked about his refusal to give evidence in the domestic proceedings, Kl stated that although he had not known anything about K's plans, he had, in view of the applicant's allegations and the legal discussion about their relevance under German criminal law, preferred to avail himself of his right under German law not to give evidence. He had contacted his lawyer at the time in question, who had advised him not to give evidence.

122. Upon query concerning K's letter of 9 April 1982, Kl denied the alleged prior contacts with K concerning the applicant's arrest. He also contested corresponding statements by the witness Ku. Kl explained that Ku, a former police informer, had been arrested by the Ludwigshafen Police in the context of criminal proceedings against him, and had therefore been furious.

123. Moreover, Kl declared that he had never been with K to see the Public Prosecutor St about the applicant's case.

e. The evidence of Police Officer Hö,
Ludwigshafen Police Headquarters

124. At the hearing of 15 September 1988, Police Officer Hö, born in 1946, stated that, as far as he could remember, Police Officer K.Eb had telephoned him in the morning of 7 November 1978. K.Eb had informed him that the applicant would probably land in Saarbrücken at noon or in the evening. They had informed Police Officer Kl and then

the Head of the Ludwigshafen Police Headquarters, who had instructed them to go to Saarbrücken and contact the Police Office there. They had arrived in Saarbrücken about noon. They had not known beforehand about any plan to return the applicant to the Federal Republic of Germany.

125. Upon further questioning, Hö declared that he had known K before the applicant's arrest. He had been involved in police investigations against K in 1975 and had arrested him. He had had no contacts with K at the time of the applicant's arrest. However, he knew that K was working as police informer for the Rhineland Palatinate Office of Criminal Investigations and co-operated in particular with Police Officer K.Eb from the Schifferstadt Police. Only some time after the applicant's arrest had the Ludwigshafen Police Headquarters, especially he himself, started co-operation with K as police informer.

126. Hö stated that K's expenses in connection with the applicant's arrest were reimbursed. Hö did not remember that he himself had made one of the payments to K.

127. Upon further questioning Hö stated that a birthday party together with K had taken place at a Mannheim hotel on 18 December, one or two years after the applicant's arrest.

128. Furthermore, Hö also declared that in several cases after the applicant's arrest he had accompanied K to Public Prosecutor St, who conducted criminal proceedings against K.

129. Moreover, Police Officer Hö explained that in the domestic proceedings he had refused to give evidence upon advice of his counsel.

f. The evidence of Police Officer Ad,
Saarbrücken Police Office

130. At the hearing of 15 September 1988 Police Officer Ad, born in 1927, stated that in November 1978 he had been Head of the Rhineland Palatinate Special Task Forces at the Saarbrücken Police Office. Such a Special Task Force had been requested to assist in the applicant's arrest.

131. In 1978 he had not been informed about any details concerning this arrest for which Police Officer Le, Saarbrücken Police Office, was competent. After the arrest, in the context of criminal proceedings against Police Officer An, who had been assigned to him, he had investigated the matter. He had only then heard about the circumstances of the arrest, and drafted a note that there were no reasons to take any criminal or disciplinary measures against Police Officer An. In this note of 17 June 1979 he had set out the circumstances of the arrest according to the information in particular of Police Officer An. The statement in his note that the applicant had been arrested upon instructions of Public Prosecutor He did not mean that He had himself talked to officers at the Saarbrücken Police.

132. Ad also mentioned that he had later heard about a special group of police officers at the Rhineland Palatinate Office of Criminal Investigations charged with the search (Zielfahndung) for the applicant, however, nothing about their strategy.

g. The evidence of Police Officer Ri,
Rhineland Palatinate Office of Criminal Investigations

133. At the hearing of 15 September 1988 Police Officer Ri, born in 1948, explained that he had been charged with the police investigations against the applicant, not, however, with the search for him. After the applicant's arrest he had been involved in further investigations, in particular the search of rooms in Mannheim.

134. Upon query Ri stated that K had worked as police informer for the Rhineland Palatinate Office of Criminal Investigations. However, he could not remember details. One day, he had been asked whether there was a warrant of arrest against the applicant, and he was informed that K would be able to return the applicant to the Federal Republic of Germany. He had met K at the Kaiserslautern Public Prosecutor's Office where he had accompanied Police Officer Re. Re had known K. However Ri did not believe that Re had controlled K as police informer, but rather his colleague, Police Officer Ho. K had contacted Ho, and the meeting at the Kaiserslautern Public Prosecutor's Office had then been arranged. At that time, Ho might have already been delegated to advanced training and therefore not accompanied them to the above meeting. On the occasion of that meeting, possibly outside the meeting room, K had also inquired about whether Ri could take over the police investigations against him and influence them to his advantage. Ri had declined.

135. Upon query, he summarised the subject-matter of the meeting as follows: K had declared that he would be able to present the applicant to the German prosecution authorities. He had been full of expectations about this. Upon the question about K's plans to return the applicant, Ri explained that he had heard various versions concerning a flight by aeroplane, a meeting in Luxembourg and a previous meeting somewhere else, and could not therefore remember any details of the conversation at the meeting. He had thought that K might, for example, invite the applicant to come to a meeting in the Federal Republic of Germany.

136. Ri also reported about a conversation with Police Officer Ho two days before the hearing as witness in Strasbourg. Ho had told him about co-operation with K with a view to the applicant's arrest, e.g. a meeting in an hotel in Frankfurt where Ho pretended to be interested in financing a building project.

137. Ri then recalled a telephone conversation between Ho and his superior Fl after the failure of the plan to have the applicant deported from Luxembourg and the attempt to get the applicant to come to Trier. Ho proposed himself or passed on K's proposal to involve the applicant in an accident which might be a reason for the Luxembourg police to expel the applicant. This proposal had been strictly refused on the ground that in such circumstances the Rhineland Palatinate Office of Criminal Investigations was not interested in the applicant's arrest.

138. Upon further questioning this witness stated that he had known that the applicant lived in France. However, there was no international warrant of arrest, possibly on the ground that it could not be issued for the applicant's tax offences.

139. Ri had no precise memory concerning payments to K in connection with the applicant's arrest.

h. The evidence of Police Officer K.Eb,
Ludwigshafen Police Headquarters

140. At the hearing of 12 October 1988, Police Officer K.Eb, born in 1939, stated that he met K in 1974 on the occasion of the investigation against K and his arrest.

141. His only activity in connection with the applicant's arrest had been the receipt of K's telephone call in the early morning of 7 November 1978, at approximately 7 a.m. K, who had not got the Ludwigshafen Police Headquarters on the telephone, had informed him that the applicant would come to the Federal Republic of Germany in the course of the afternoon and that K.Eb should inform his colleagues K1 or HÖ in Ludwigshafen. K had explained that a meeting with the applicant concerning a building project would take place in Strasbourg, and that in the late afternoon K would land with the applicant in Saarbrücken. K.Eb had passed this information on to Ludwigshafen Police Officers K1 and HÖ. They had asked him to accompany them to Saarbrücken.

142. In this connection, K.Eb pointed out that K had often asked him to pass on information to the Rhineland Palatinate Office of Criminal Investigations or the Ludwigshafen Police Headquarters on the ground that K.Eb is living in a small town near Speyer, K's place of residence. However, K had not been his informer but informer of the Rhineland Palatinate Police Officer Ho. When Ho was delegated to advanced training in the course of 1978, K had no person to contact at the Rhineland Palatinate Police Office. As he himself had been interested in K's work as police informer, he had got various information about K and had known about plans and investigations of the Rhineland Palatine Office of Criminal Investigations concerning the applicant and contacts with the applicant, e.g. the meeting with We in a Frankfurt hotel. Furthermore, as far as he could remember, Rhineland Palatinate police officers had told him that the applicant had repeatedly returned to the Federal Republic of Germany. However, he had not given any instructions to K in respect of the applicant, nor arranged anything with K. He could not remember any contacts with K in this matter earlier than 7 November 1978. He had not been involved in any payments to K in connection with the applicant's arrest.

143. Upon further questioning K.Eb stated that K had been at Police Officer HÖ's birthday party on 18 December one year. K.Eb had not participated on the ground that it was also his wife's birthday.

144. K.Eb also explained that in the beginning of the domestic criminal proceedings he had refused to give evidence in consultation with his colleagues on the ground that the applicant had laid information against various persons, and alleged serious offences.

i. The evidence of Police Officer Ho,
Rhineland Palatinate Office of Criminal Investigations

145. At the hearing of 12 October 1988, Police Officer Ho, born in 1938, made the following statement: In summer or autumn 1978 K had phoned and informed him that he had contacts with an architect from Speyer who was in touch with the applicant. K had known that the applicant was wanted by the German police on the suspicion of having committed fraud. He had passed this information on to his colleague Ri who had been charged with the police investigations against the applicant. Ri had stated that there was a great interest in the applicant's arrest. Thereupon, K was asked to arrange a meeting with the architect in Frankfurt. At the meeting, the architect We and two women accompanying him, K and he himself had been present. K had presented him as investor possibly interested in the project. The architect had presented documents concerning a building project and contracts. On that day he had refused further consultations and declared that he wanted to talk to the building contractor, i.e. the applicant.

146. Before the meeting, the Rhineland Palatinate Office of Criminal Investigations had contacted the Luxembourg Police in order to verify whether or not the applicant could be arrested upon his arrival in Luxembourg. On the day of the meeting he and his colleague Li had driven to the Luxembourg Police Office where they were told that under Luxembourg law the applicant could choose to be expelled to France. Furthermore, the applicant, in default of an international arrest warrant, could not be arrested. Ho vaguely remembered that he phoned to have an international arrest warrant sent to Luxembourg. This attempt presumably failed on the ground that no international arrest warrant existed. Thereupon he had phoned the applicant at the Luxembourg hotel and pretended that he had had a car accident on his way to Luxembourg. He had proposed to meet in Trier, but the applicant had refused.

147. Shortly afterwards, presumably about October 1978, he had been delegated to advanced training of about one year and had no further contacts with K.

148. Upon questioning Ho stated that K had been working as police informer, and addressed himself to several police officers, e.g. Police Officers K.Eb, Re or the Ludwigshafen Police Headquarters and often to him. He presumed that after his transfer, K had first continued contacts with Police Officers Re and Li but then preferred to co-operate with the Ludwigshafen Police Headquarters and in particular Police Officers K.Eb and Hö.

149. Upon query, Ho stated that in 1978 he had not known about the meeting between K, the Police Officers Re and Ri and the Public Prosecutors Wi and He at the Kaiserslautern Public Prosecutor's Office. Re had himself had good contacts with K and not necessarily talked with him about this meeting. Either We or K had told him that the applicant would come from time to time to the Federal Republic of Germany. Ho considered it possible that K expected advantages in the criminal proceedings against him.

D. The relevant domestic law

150. S. 239 para. 1 of the German Penal Code (Strafgesetzbuch) defines unlawful deprivation of liberty (Freiheitsberaubung) as follows:

<German>

"Wer widerrechtlich einen Menschen einsperrt oder auf andere Weise des Gebrauchs der persönlichen Freiheit beraubt, wird mit Freiheitsstrafe bis zu fünf Jahren oder mit Geldstrafe bestraft."

<Translation>

"Anybody who unlawfully imprisons a human being or who deprives him in any other way of the exercise of his personal liberty shall be punished by imprisonment for a term not to exceed five years or by a fine."

151. SS. 48 to 71 of the German Code of Criminal Procedure (Strafprozessordnung) govern the hearing of witnesses. S. 55 provides that a witness can refuse to answer questions insofar as he or his relatives would incur the risk of prosecution.

152. SS. 112 to 131 of the Code of Criminal Procedure concern the arrest and detention of a person on reasonable suspicion of having committed an offence. S. 112 prescribes the prerequisites of detention on remand. S. 114 provides that detention on remand is ordered by a judge in a written warrant of arrest.

153. SS. 151 to 177 of the Code of Criminal Procedure regulate the principles of criminal prosecution and the preparation of the indictment. S. 151 provides that the opening of a trial presupposes an indictment. According to S. 152 the indictment is preferred by the Public Prosecutor's Office which is, unless otherwise provided, obliged to investigate any criminal offence of which there is a reasonable suspicion ("zureichende tatsächliche Anhaltspunkte").

154. Preliminary investigations are conducted by the Public Prosecutor's Office according to SS. 160 and 161 of the Code of Criminal Procedure. On the basis of these investigations the Public Prosecutor's Office decides under S. 170 whether to prefer an indictment or to discontinue the proceedings. In the latter case the victim of an offence can request a court ruling on the question of whether criminal proceedings are to be instituted (SS. 171 to 177).

155. According to S. 199 of the Code of Criminal Procedure, the court competent for the trial decides whether to commit an accused for trial. S. 203 provides that an accused is committed for trial, if on the basis of the preliminary investigations he can reasonably be suspected of having committed an offence.

III. OPINION OF THE COMMISSION

A. Points at issue

156. The issues to be determined are:

- whether the applicant's arrest on 7 November 1978 and his subsequent detention on remand were in conformity with Article 5 para. 1 of the Convention;
- whether his detention after conviction was in conformity with Article 5 para. 1 of the Convention;
- whether the applicant's trial was fair, in accordance with Article 6 para. 1 of the Convention.

B. The applicant's arrest and detention on remand (Article 5 para. 1 (c) of the Convention)

1. The application of Article 5 para. 1 (c) in the present case

157. Article 5 para. 1 (c) of the Convention provides:

"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:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

..."

158. The applicant submits that there was collusion between German authorities and K to abduct him from France to the territory of the Federal Republic of Germany in order to effect his arrest which violated international law and rendered his arrest and detention in the Federal Republic of Germany unlawful. Amongst civilised nations extradition would be the means of returning fugitive offenders. He concludes from the facts established that there was such collusion and submits that this was not disproved by the respondent Government. In this respect, he refers in particular to the close co-operation between the prosecution authorities and the police informer K, a criminal, in general, the assumed difficulties in requesting the applicant's extradition from France, the plan to arrange the applicant's deportation from Luxembourg involving already a trick, the payment of K's expenses as well as the conduct of the domestic investigations against K and others.

159. The Government consider that the evidence before the Commission does not prove any responsibility of the Federal Republic of Germany in the applicant's abduction from France. However, even assuming such a responsibility, the applicant was lawfully arrested in the Federal Republic of Germany within the meaning of Article 5 para. 1 (c) of the Convention. His arrest was effected on the basis of a valid warrant of arrest. The applicant could not himself claim any violation of international law, and in particular of extradition treaties.

160. The Commission notes that the applicant was arrested on 7 November 1978 on the territory of the Federal Republic of Germany on the basis of a valid warrant of arrest issued by the Ludwigshafen District Court on 25 March 1976. His arrest and subsequent detention therefore come within the scope of Article 5 para. 1 (c) of the Convention.

161. It remains to be determined whether the applicant's deprivation of liberty was "lawful" and "in accordance with a procedure prescribed by law" within the meaning of Article 5 para. 1. The Convention here refers essentially to national law, and it is in the first place for national authorities, notably the courts, to establish, interpret and apply domestic law (cf. Eur. Court H.R., Bozano judgment of 18 December 1986, Series A no. 111, p. 23, para. 54, p. 25, para. 58).

162. The Commission notes that, in the context of the criminal proceedings against the applicant, the domestic courts did not find that the alleged circumstances of his arrest violated his rights under German law. In particular, the Kaiserslautern Regional Court, according to its judgment of 4 February 1982, did not investigate the applicant's allegations of a police conspiracy further on the ground that any possible violation of the French-German Extradition Treaty or of French territorial sovereignty would be a matter of international law affecting the rights of a State but not the rights of the individual concerned. The Federal Constitutional Court, in its decision of 17 July 1985, found no general rule in international law according to which prosecution of a person was barred in a State to whose territory the person concerned had been taken in violation of the territorial sovereignty of another State. The Constitutional Court pointed out that the applicant had been arrested by the German police on German and not on foreign territory. His arrest had been based on a lawful and valid warrant of arrest. Any involvement of public officials in the alleged kidnapping related, according to the findings of the Public Prosecutor, only to unauthorised activities of lower police officers not involving responsibility of superior authorities. Furthermore, in France the applicant was not safe from prosecution in the Federal Republic of Germany.

163. The Commission has to examine whether the domestic findings comply with the principles of Article 5 para. 1 of the Convention. In particular, any measure depriving a person of his liberty must issue from and be executed by a competent authority (cf. Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A no. 33, pp. 17 - 18, para. 39 and pp. 19 - 20, para. 45).

164. The applicant's arrest on 7 November 1978 was effected on the territory of the Federal Republic of Germany on the basis of a valid warrant of arrest issued by the Ludwigshafen District Court on 25 March 1976. It was therefore, as such, justified under Article 5 para. 1 (c) of the Convention.

165. However, the lawfulness of the applicant's deprivation of liberty must also be established in the light of the events resulting in this act, namely the alleged activities of German authorities before the arrest of the applicant who was resident in France.

166. According to Article 1 of the Convention the High Contracting Parties have to ensure the rights under Article 5 para. 1 of the Convention to everyone "within their jurisdiction". This undertaking is not limited to the national territory of the High Contracting Party concerned, but extends to all persons under its actual authority and responsibility, whether this authority is exercised on its own territory or abroad. Furthermore, nationals of a State are partly within its jurisdiction wherever they may be, and authorised agents of a State not only remain under its jurisdiction when abroad, but bring any other person "within the jurisdiction" of that State to the extent that they exercise authority over such persons. Insofar as the State's acts or omissions affect such persons, the responsibility of that State is engaged (cf. No. 6780/74 & No. 6950/75, Dec. 26.5.76, D.R. 2 p. 125).

167. Article 5 para. 1 of the Convention requires that any measure depriving a person of his liberty must be in accordance with the domestic law of the High Contracting Party where the deprivation of liberty takes place. Accordingly, a person who is on the territory of a High Contracting Party may only be arrested according to the law of that State. An arrest made by the authorities of one State on the territory of another State, without the prior consent of the State concerned, does not, therefore, only involve State responsibility vis-à-vis the other State, but also affects that person's individual right to security under Article 5 para. 1. The question whether or not the other State claims reparation for violation of its rights under international law is not relevant for the individual right under the Convention.

168. In the case of collusion between State authorities, i. e. any State official irrespective of his hierarchical position, and a private individual for the purpose of returning against his will a person living abroad, without consent of his State of residence, to its territory where he is prosecuted, the High Contracting Party concerned incurs responsibility for the acts of the private individual who de facto acts on its behalf. The Commission considers that such circumstances may render this person's arrest and detention unlawful within the meaning of Article 5 para. 1 of the Convention.

169. The Commission would add that the Convention does not prevent co-operation between States, within the framework of extradition treaties or in matters of deportation, for the purpose of bringing fugitive offenders to justice, provided that it does not interfere with any specific rights recognised in the Convention (see Eur. Court H.R., Soering judgment of 7 July 1989, Series A No. 161, paras. 87, 89; and Eur. Comm. H.R., No. 8916/80, Dec. 7.10.80, D.R. 21 p. 250; No. 9433/81, Dec. 11.12.81, D.R. 37 p. 225; No. 10893/83, Dec. 2.12.85, D.R. 45 p. 198). A problem under Article 5 para. 1 may, however, arise in exceptional circumstances, e. g. if a deportation amounting to a disguised form of extradition is designed to circumvent a domestic court ruling against extradition (cf. Eur. Court H.R., Bozano judgment op. cit., pp. 25-27, paras. 59, 60; Eur. Comm. H.R., Bozano v. France, Comm. Report 17.12.84, paras. 70-82).

2. The evaluation of the evidence

170. The Commission recalls that it acts ex officio in the establishment of the facts of a case under Article 28 (a) of the Convention. In the present case, the Commission has to determine, on the basis of the material before it, whether there was collusion between the German authorities and K to return the applicant, against his will and without knowledge of the French authorities, to the territory of the Federal Republic of Germany in order to effect his arrest, thereby incurring the responsibility of the Federal Republic of Germany.

171. The Commission considered any evidence possibly relevant for the determination of the Convention issue before it, and subjected the evidence already obtained at the national level to independent assessment taking due account of the arguments of the parties including any reference to the findings of the competent national authorities (cf. Colak v. the Federal Republic of Germany, Comm. Report 6.10.87, paras. 143-144).

172. The Commission notes that on 7 November 1978 the applicant's arrest was prepared upon K's information to the police authorities that the applicant would possibly land in Saarbrücken in the course of the afternoon.

173. The Commission, like the parties, starts from the assumption that K tricked the applicant into boarding an aeroplane allegedly destined for Luxembourg, whereas K had arranged for a landing at Saarbrücken-Ensheim airport. The details of this action appear in particular from the decision of the Zweibrücken Court of Appeal of 6 April 1984 and the bill of indictment against K of 23 March 1988. For the purposes of the proceedings before the Commission the decision of the Frankenthal Regional Court of 2 August 1989 not to commit K for trial in respect of the charge with unlawful deprivation of liberty is not decisive.

174. The Commission finds that the applicant's arrest at Saarbrücken-Ensheim airport was preceded by a close co-operation between German prosecution authorities and the police informer K.

175. It is not in dispute between the parties that K co-operated as police informer in various cases with the German police authorities, in particular the Rhineland Palatinate Office of Criminal Investigations and the Ludwigshafen Police Headquarters. This co-operation is outlined in the statements of Police Officers Ho, Ri, Kl, Hö and K.Eb. Moreover, the Head of the Kaiserslautern Public Prosecutor's Office Sch, in his report of 3 November 1979, already mentioned such co-operation.

176. Co-operation between German prosecution authorities and K concerning the applicant commenced after K's first telephone contact in this matter with the Rhineland Palatinate Office of Criminal Investigations, as it was set out both by Police Officers Ho and Re.

177. At a meeting with Public Prosecutors and Police Officers at the Kaiserslautern Public Prosecutor's Office, K had offered his services for the applicant's return to the Federal Republic of Germany. His assistance in the search for the applicant was accepted, and he was told that a positive influence might be mentioned as mitigating circumstance in his own trial.

178. The Commission notes that the statements of most of the witnesses involved in the meeting at the Kaiserslautern Public Prosecutor's Office were very unclear. The contents of the conversation with K could not be established in detail, but there is no conclusive evidence about an agreement with K concerning the applicant's forced return to the Federal Republic of Germany. The Commission relies, in this respect, in particular on the consistent account of the discussion given by the Public Prosecutor Wi, who confirmed his previous written statement of 7 August 1987. His testimony stood out from the statements of the other witnesses whose memories were fragmentary.

179. Following this meeting the Rhineland Palatinate Office of Criminal Investigations and K co-operated in realising a plan to arrange the applicant's deportation from Luxembourg. This co-operation comprised in particular a preparatory meeting in Frankfurt where K presented the Police Officer Ho as an investor possibly interested in a Spanish building project in order to get in touch with the applicant, and a planned meeting with the applicant in Luxembourg. As the envisaged co-operation with the Luxembourg Police in the applicant's deportation could not be carried out because of legal impediments, the two Police Officers Ho and Li did not attend the prepared meeting. Their subsequent attempt to induce the applicant to meet them in the Federal Republic of Germany failed.

180. The above action was explained by Police Officer Ho. His account is accepted by the parties. The applicant's further allegation that Police Officer Ho had also discussed in a telephone conversation with the Rhineland Palatinate Office of Criminal Investigations a plan to involve him in an accident in Luxembourg was not confirmed by Police Officer Ho, who gave a detailed description of the police actions in which he was involved. The evidence of Police Officer Ri in this respect was mainly based on hearsay evidence from a conversation with Ho. Ri did not refer to the proposal to meet the applicant in Trier which concerned a pretended accident. The Commission cannot exclude that Police Officer Ri had misunderstood or confused the plan for a meeting in Trier.

181. The Kaiserslautern Public Prosecutor's Office was informed about the outcome of the plan to arrange the applicant's deportation from Luxembourg. In this respect, the Commission refers to the evidence of Public Prosecutors Wi and He as well as the report drafted by the Head of the Kaiserslautern Public Prosecutor's Office Sch on 3 September 1979.

182. After the failure of these plans concerning the applicant's deportation from Luxembourg the German authorities did not expressly discontinue their co-operation with K.

183. The applicant submits that the taking of oral evidence in the proceedings before the Commission has clearly shown collusion between German prosecution authorities and K in the applicant's abduction with a view to his arrest, although the extent to which the authorities were involved in the preparation of K's action remained unclear.

184. The applicant considers in particular as proved that, following the early telephone call on 7 November 1978, the German prosecution authorities knew that K, expecting the promised mitigation of his sentence, made a further attempt to keep his promise. Although the authorities knew about the unsuccessful action in Luxembourg and K's criminal past, the Public Prosecutor's Office instructed the Police Officers to prepare the applicant's arrest in Saarbrücken, and thus had their share in the abduction plan. The payment of K's expenses constitutes further circumstantial evidence that the prosecution authorities knew beforehand about his abduction plan. The witnesses did not, in the applicant's view, convincingly explain their previous refusals to give evidence in domestic proceedings. They had and have to fear repercussions in case of true statements admitting their collaboration with K.

185. The Government maintain that the hearing of the witnesses has not produced anything to prove K's collaboration with German prosecution authorities for the purpose of abducting the applicant.

186. The Government consider that on 7 November 1978 the Ludwigshafen Police Headquarters, upon K's information about the applicant's probable landing, had taken the necessary steps without knowing about K's plan to return the applicant against his will. K used to act independently and to spend his money for his activities as police informer and, having regard to the criminal proceedings against him, was interested in a good relationship with the prosecution authorities. The Kaiserslautern Public Prosecutor's Office had not been informed on 7 November 1978. Differing statements in domestic proceedings must have been due to a misunderstanding. Furthermore, the statements of K in his letters of 1982 and of Ku, who was heard in the applicant's proceedings before the Federal Court of Justice in 1984, could not be relied on.

187. As regards the applicant's allegation that German prosecution authorities had known about K's plan to return the applicant against his will from France, the Commission notes that Public Prosecutors Wi and He as well as Police Officers Re, Ri, Ho, Kl, Hö and K.Eb have denied such knowledge in the course of domestic proceedings and when heard as witnesses in the present proceedings. It is true that these witnesses had been involved in criminal and/or disciplinary proceedings instituted at the applicant's request. They possibly still have a personal interest in the outcome of the present case. However, this renders their statements not altogether untrustworthy.

188. Doubts as regards the statements of Public Prosecutors Wi and He that they were only on 8 November 1978 informed about the applicant's arrest have not been confirmed by the oral evidence. The Police Officers confirmed that they did not inform the Kaiserslautern Public Prosecutor's Office before the arrest. Police Officer Ad conceded that statements in his note of 1979 according to which Public Prosecutor He had given instructions with a view to the applicant's arrest were possibly based upon later knowledge and thus erroneous.

189. The Commission further finds that K's letters of April and November 1982 do not prove that German authorities had prior knowledge of K's plan. K's statements about co-operation with prosecution authorities in the applicant's case can be read as covering only the actions up to the unsuccessful plan to arrange the applicant's deportation from Luxembourg. In any case, these statements, in particular the exaggerations, reflect the fact that K was at the time in question faced with the criminal proceedings against him, inter alia, on the charge of having abducted the applicant. K did not make any relevant statements in the criminal proceedings against him.

190. The evidence of Ku, who was heard as a witness in the applicant's appeal proceedings before the Federal Court of Justice in 1984, is not conclusive. His incriminating statements are mostly hearsay evidence and originate from conversations with K. Ku's statements show errors based on misunderstanding, such as the confusion between the pilot M.Eb and Police Officer K.Eb. Moreover, Ku had a personal interest in the matter which was elaborated in the Zweibrücken Court of Appeal's decision of 6 April 1984.

191. Furthermore, the Commission finds that the payment of K's expenses on 8 November 1978 and on 16 March 1979 does not necessarily lead to the conclusion that the prosecution authorities had known beforehand about K's plan to return the applicant against his will. There is no evidence to prove that the payments were based on a prior agreement. In particular, no payments were promised during the meeting at the Kaiserslautern Public Prosecutor's Office. Police Officer Ri stated that the question of reimbursement was discussed at the Rhineland Palatinate Office of Criminal Investigations in a negative sense.

192. The Commission, therefore, finds that, on the basis of the material before it, it has not been established that German authorities had known about the applicant's return against his will from France and consented to this plan, and that there was thus a particular collusion in this respect.

193. The Commission has next examined whether the general concept of the co-operation between the German prosecution authorities and K in the search for the applicant was such as to cover also the applicant's involuntary return from France.

194. The Commission considers that the discussions at the Kaiserslautern Public Prosecutor's Office about K's possible assistance were based on the assumption of lawful action. Furthermore, the activities to arrange a meeting with the applicant in Luxembourg were supposed to prepare the applicant's deportation within the framework of international co-operation between Luxembourg and the Federal Republic of Germany, which is not, in principle, prohibited by the Convention.

195. It is true that the prosecution authorities entered into co-operation with a police informer who himself was facing criminal proceedings concerning, inter alia, fraud in various cases and who had a vital interest in good relations with the prosecution authorities. The German officials concerned were aware that K had to be treated with caution. The Public Prosecutor Wi even had the impression that K overestimated his possibilities lawfully to co-operate in the search for the applicant. Nevertheless K's assistance was accepted, and the expectation of having a mitigation of his sentence decisively motivated K to act and to be successful in the applicant's case.

196. The Commission considers that it might be open to question whether the actual co-operation with K was appropriate. In particular, the circumstances of the plan to arrange the applicant's deportation from Luxembourg, the made-up building project and role of the Police Officer Ho as an interested party might have had a misleading impact on K's future activities. It has not been established that, after the failure of this plan, and until the morning of the applicant's arrest, the prosecution authorities had any contacts with K and thereby exercised any control over him, although, having regard to K's strong motivation, they could have expected further activities on K's part.

197. It follows that it has not been established that the co-operation between German authorities and K in general also covered the applicant's return against his will from France.

198. Events after the applicant's arrest do not, for the following reasons, provide evidence for collusion, either.

199. The continued co-operation between K and German prosecution authorities, and even later private contacts between K and police officers do not prove the alleged collusion in the applicant's return to the Federal Republic of Germany. The allegation that K and some police officers celebrated the applicant's arrest has not been confirmed.

200. The facts that, in the criminal proceedings against 'K and others', the Zweibrücken Public Prosecutor's Office did not consider the applicant's allegations to constitute criminal behaviour under German law and discontinued the investigation proceedings, could, at first sight, give rise to doubts. However, upon the applicant's appeal, the Zweibrücken Court of Appeal ordered further investigations. Indictments were preferred against three police officers and the pilots, but the courts refused to commit them for trial on the ground that there was no sufficient suspicion. Likewise, in the proceedings against K on the charge of unlawful deprivation of liberty, which were delayed by K's escape and as a result of pending proceedings concerning various other offences, the Frankenthal Regional Court decided in 1989 not to commit K for trial.

201. Consequently, the course of the domestic investigations against K and others, including several public officials, does not, seen as a whole, give reason to believe that German authorities were hiding collusion with K.

202. The Commission therefore considers that the facts found do not show that the co-operation between the German prosecution authorities and K also covered unlawful activities abroad such as to return the applicant against his will from France to the Federal Republic of Germany.

203. Viewing the circumstances of the case as a whole, the Commission finds that collusion between German authorities and K in returning the applicant against his will from France has not been established.

204. Consequently, the applicant's arrest on 7 November 1978 and detention have to be considered as "lawful" and effected "in accordance with a procedure prescribed by law" within the meaning of Article 5 para. 1 (c) of the Convention.

Conclusion

205. The Commission concludes, by twelve votes to one, that there has been no violation of Article 5 para. 1 of the Convention in respect of the applicant's arrest and detention on remand.

C. The applicant's detention after conviction (Article 5 para. 1 (a) of the Convention)

206. The applicant complains that the events resulting in his arrest also rendered the detention after his conviction unlawful.

Article 5 para. 1 (a) provides:

"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;

..."

207. The Commission, having regard to its above opinion on the applicant's complaint about his arrest and detention on remand, finds no indication that his detention after conviction was not "lawful" and effected "in accordance with a procedure prescribed by law" within the meaning of Article 5 para. 1 (a) of the Convention.

Conclusion

208. The Commission concludes, by twelve votes to one, that there has been no violation of Article 5 para. 1 of the Convention with regard to the applicant's detention after his conviction.

D. The applicant's trial (Article 6 para. 1 of the Convention)

209. The applicant complains that the events resulting in his arrest also rendered the trial against him unfair.

210. The relevant part of Article 6 para. 1 reads:

"In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ..."

211. The Commission, having regard to its above opinion on the applicant's complaint about his arrest and detention on remand, finds no indication that he did not have a fair trial in accordance with Article 6 para. 1 of the Convention.

Conclusion

212. The Commission concludes, by twelve votes to one, that there has been no violation of Article 6 para. 1 of the Convention.

E. Recapitulation

213. The Commission concludes:

- by twelve votes to one that there has been no violation of Article 5 para. 1 of the Convention in respect of the applicant's arrest and subsequent detention on remand (para. 205);

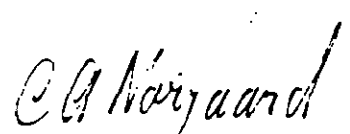
- by twelve votes to one that there has been no violation of Article 5 para. 1 of the Convention with regard to the applicant's detention after his conviction (para. 208);

- by twelve votes to one that there has been no violation of Article 6 para. 1 of the Convention (para. 212);

Secretary to the Commission


(H. C. KRÜGER)

President of the Commission


(C. A. NØRGAARD)

APPENDIX I

HISTORY OF PROCEEDINGS

Date	Item
20 September 1985	Introduction of the application
23 September 1985	Registration of the application
<u>Examination of Admissibility</u>	
9 May 1986	Commission's decision to invite the Government to submit observations on the admissibility and merits of the application
21 July 1986	Government's observations
9 October 1986	Applicant's observations in reply
4 March 1987	Commission's decision to hold an oral hearing
9 July 1989	Oral hearing on admissibility and merits, Commission's decision on admissibility.
<u>Examination of the merits</u>	
13 November 1987) 5 April 1988) 27 April 1988)	Government's observations on the merits
19 February 1988) 6 April 1988) 15 May 1988)	Applicant's observations on the merits
5 May 1988	Commission's decision to proceed through three delegates to the taking of oral evidence
4 July 1988	Hearing of three witnesses
14 July 1988	Commission's decision to continue the taking of evidence
15 September 1988	Hearing of six witnesses
16 October 1988	Hearing of two witnesses

9 December 1988	Government's observations on the taking of evidence and on the merits
14 and 23 December 1988) 25 January 1989)	Applicant's observations on the same subjects
11 March 1989	Commission's consideration of the state of procedure
23 March 1989	Applicant's additional observations
6 April, 7 and 31 August 1989	Government's additional observations
4 and 5 July, 10 August 1989	Applicant's further submissions
3 October 1989	Commission's deliberations on the merits and final vote
12 October 1989	Adoption of the Report