AS TO THE ADMISSIBILITY OF

Application No. 13882/88
by Siegfried GRITSCHNEDER
against the Federal Republic of Germany

The European Commission of Human Rights (First Chamber) sitting in private on 8 September 1992, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
J.A. FROWEIN
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First Chamber

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

Having regard to the application introduced on 13 September 1987 by Siegfried GRITSCHNEDER against the Federal Republic of Germany and registered on 20 May 1988 under file No. 13882/88;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant, born in 1940, is a German national and resident in Wuppertal. He is a jurist.

In 1983 criminal proceedings were instituted against the applicant and his father on the suspicion of defamation.

At the end of December 1983 or beginning of January 1984 the Wuppertal Police Office (Kreispolizeibehörde) summoned the applicant to be heard on the charges against him. The applicant refused any statements before police authorities and announced written submissions.

On 19 April 1984 the Augsburg Public Prosecutor's Office (Staatsanwaltschaft) preferred the indictment (Anklageschrift) against the applicant and his father. They were charged with having made defamatory remarks about the former custodian of the applicant's deceased uncle and staff of the Neuburg District Court, in particular the judicial assistant (Rechtspfleger) in charge of custody matters. In the following proceedings the applicant was assisted by counsel.

On 27 February 1985 the applicant and his father, the Vice President of the Augsburg Regional Court (Landgericht), the President of the Neuburg District Court (Amtsgericht), counsel for the custodian and the legal officer concerned agreed upon a settlement concerning all disputes, including the hierarchical complaints (Dienstaufsichts-beschwerden) brought by the applicant and his father. The agreement

provided for termination of the criminal proceedings by withdrawal of the charges (Rücknahme der Strafanträge). In March 1985 the applicant renounced his consent to the settlement.

In April 1985 the applicant and his father lodged a petition with the Bavarian Diet (Landtag). In this context the criminal files were sent to the President of the Augsburg Regional Court and subsequently to the President of the Munich Court of Appeal (Oberlandesgericht). The files were returned end of September 1985. In the meantime the case had been assigned to another judge at the Neustadt District Court. In January 1986 the applicant asked the District Court about the state of the proceedings.

On 16 January 1986 the Neustadt District Court committed the applicant and his father for trial (Eröffnung des Hauptverfahrens).

On 14 April 1986 the Neustadt District Court, upon hearings on 24 and 26 March, 7 and 14 April 1986, convicted the applicant and his father of defamation on two counts and imposed fines of DM 2000 each, namely fifty daily rates à DM 40.

The District Court, having heard several witnesses, found that the applicant and his father, in various letters, had wrongly reproached the former custodian of the applicant's deceased uncle and staff of the Neuburg District Court, in particular the judicial assistant in charge of custody matters, with misuse of powers and irregularities, inter alia, in respect of the sale of a collection of coins. The defamatory remarks concerned were not justified for protection of the applicant's and his father's rightful interests (Wahrnehmung berechtigter Interessen). In view of the circumstances of the case they were inappropriate and disproportionate means to clarify the allegations. The request of the defence to hear the custodian was dismissed on the ground of his lasting bad health. The request to consult internal files of the Director of the Neustadt District Court was dismissed with regard to the Director's refusal to hand over these documents destined for internal use only.

The judgment was served on 16 June 1986.

On 30 January 1987 the Augsburg Regional Court (Landgericht), upon the appeals (Berufungen) lodged by the applicant and his father, quashed the District Court's judgment of 14 April 1986 and acquitted them. The Regional Court, proceeding on the basis of the same facts as the District Court, considered that the defamatory remarks in question were justified as means to protect rightful interests. Despite official information to the contrary, the accused had been convinced of the alleged irregularities at Neustadt to the disadvantage of the applicant's deceased uncle. As relatives and heirs, they could not be blamed for having addressed themselves to all possible authorities in order to have the alleged criminal offences prosecuted. The judgment was served upon the Public Prosecutor's Office on 10 March 1987. Following several reminders, it was served upon the applicant on 19 June 1987.

On 22 October 1987 the Bavarian Court of Appeal (Oberlandesgericht), upon the appeal on points of law (Revision) of the Augsburg Public Prosecutor's Office, quashed the judgment of the Augsburg Regional Court. The establishment of the material facts was upheld. The case was sent back to another Chamber at the Augsburg Regional Court. The Court of Appeal considered that the applicant could not claim to have protected his rightful interests after official information that his defamatory remarks were incorrect. In December 1987 the files were sent back to the Neustadt Regional Court.

On 7 March 1988 the Federal Constitutional Court (Bundesverfassungsgericht) declared inadmissible the applicant's and his father's constitutional complaint (Verfassungsbeschwerde) concerning the

judgment of the Bavarian Court of Appeal of 22 October 1987 and the delay of the criminal proceedings. The Constitutional Court found in particular that, having regard to the subsidiary character of a constitutional complaint, the applicant had to raise his complaint about the length first in the proceedings as such, especially at the trial and possibly in his appeal on points of law. It was first for the competent courts to establish whether or not proceedings had lasted unreasonably long, and to draw the necessary consequences.

On 29 July 1988 another Chamber of the Augsburg Regional Court conducted the hearing on the appeals of the applicant and his father. In the course of the hearing the Public Prosecutor's Office proposed to discontinue the proceedings against the applicant in view of his minor guilt. The applicant did not agree. The proceedings against the applicant's father were discontinued.

Following the hearing, the Regional Court dismissed the applicant's appeal against the judgment of 14 April 1986. The fine was reduced to DM 1400 (35 daily rates à DM 40).

The Regional Court found that the applicant had made defamatory remarks about the above-mentioned persons, the truth of which he had failed to prove. After his first letters, the applicant had been informed by the Director of the Neustadt District Court about the incorrectness of his allegations, he had been informed about the comments of the persons concerned and had received the decision of the Public Prosecutor's Office to discontinue prosecution of these persons. After this official information by the competent authorities, he could no longer claim to have acted in order to protect his rightful interests.

In fixing the sentence the Regional Court noted that the proceedings had been conducted very slowly, partly due to the applicant's numerous submissions. Balancing all aggravating and mitigating circumstances, it found a fine calculated on the basis of 35 daily rates to be appropriate and sufficient.

On 15 March 1989 the Bavarian Court of Appeal dismissed the applicant's appeal on points of law against the Regional Court's judgment of 29 July 1988.

On 27 February 1989 the Federal Constitutional Court refused to admit the applicant's constitutional complaint on the ground that it offered no prospect of success. The Constitutional Court considered in particular that the judgments complained of could not be objected to under constitutional law. The reasoning of the trial courts did not disclose any arbitrariness. The Regional Court had taken the length of the proceedings duly into account when considering all relevant circumstances in fixing the sentence.

COMPLAINTS

The applicant complains about the length of the criminal proceedings against him. He also complains that the proceedings were unfair, in particular that the Neustadt District Court at the trial in 1986, and the Augsburg Regional Court at the trial in 1988 had not duly taken evidence. He invokes Articles 5, 6 and 10 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 13 September 1987 by the applicant and his father and registered on 20 May 1988.

On 2 December 1991 the Commission communicated the applicant's complaint about the length of criminal proceedings against him. In a

partial decision, it declared his father's complaints inadmissible.

On 8 April 1992 the respondent Government submitted observations on the admissibility and merits, which they supplemented on 3 June 1992. Observations in reply were submitted by the applicant on 14 and 28 June 1992. He also made submissions on further occasions.

THE LAW

1. The applicant considers that the criminal proceedings against him exceeded a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Article 6 para. 1, so far as relevant, provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ..."

a. The Commission observes that mitigation of sentence and discontinuance of prosecution accorded on account of the excessive length of proceedings may deprive the individual concerned of his status as a victim within the meaning of Article 25 (Art. 25), when the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, pp. 30-31, para. 66, p. 38, para. 87).

The Commission notes that the Augsburg Regional Court, in its judgment of 29 July 1988, states that the proceedings had been conducted very slowly, however, that some delay was caused by the applicant's repeated submissions. The sentence was fixed without particular reference to the length of the proceedings.

The Commission considers that the German Court thereby neither acknowledged a breach of the applicant's right to a hearing within reasonable time, nor were there sufficient indications as to the extent to what the length of the proceedings was taken into account when fixing the sentence.

Accordingly, the applicant may claim to be a victim of his right to trial within reasonable time, as guaranteed under Article 6 para. 1 (Art. 6-1).

2. The Government contend that the applicant failed to exhaust, as required under Article 26 (Art. 26) of the Convention, the domestic remedies available to him under German law in respect of his complaint about the length of the initial part of the criminal proceedings against him, namely the proceedings up to the Augsburg Regional Court's judgment of 30 January 1987. They consider that the applicant should have raised this complaint already at the first trial before the Neuburg District Court or at least in the course of the first set of appeal proceedings before the Augsburg Regional Court.

The Commission notes that, in the course of the criminal proceedings against him, the applicant lodged a constitutional complaint with the Federal Constitutional Court about the delay of the proceedings. On 7 March 1988 the Federal Constitutional Court declared this complaint inadmissible on the ground that, having regard to the subsidiary character of the constitutional complaint, the applicant had to raise the length issue first in the proceedings as such, in particular at the trial and possibly in his appeal on points of law.

After termination of the criminal proceedings against him, i.e. the decision of the Bavarian Court of Appeal of 15 March 1989 dismissing his appeal on points of law, the applicant again lodged a constitutional complaint about, inter alia, the length of these

proceedings. On 27 February 1989 the Federal Constitutional Court refused to admit this constitutional complaint on the ground that it offered no prospect of success. As regards the length of the proceedings, the Constitutional Court found that the Regional Court had taken it duly into account when fixing the sentence.

In these circumstances, the Commission considers that the applicant's constitutional complaint after termination of the criminal proceedings against him, which was not rejected for non-exhaustion of ordinary remedies or other formal reasons, constituted exhaustion of domestic remedies, as required by Article 26 (Art. 26) of the Convention.

c. Furthermore, the parties discussed the question of the reasonableness of length of the criminal proceedings at issue in the light of the criteria established by the Convention organs.
The Government considered that there was no indication that the length of the proceedings was in breach of Article 6 para. 1 (Art. 6-1). The applicant objected thereto.

The Commission, having regard to all the information in its possession, finds that the applicant's complaint about the length of the criminal proceedings against him raises questions of fact and of law, which can only be determined upon an examination on the merits. The complaint cannot, therefore, be declared manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2). No other grounds for declaring it inadmissible have been established.

2. The applicant further complains about his conviction by the Augsburg Regional Court of defamation, and also about the court proceedings concerned, in particular an allegedly unfair taking of evidence. He invokes Articles 5, 6 and 10 (Art. 5, 6, 10) of the Convention. However, the Commission, having examined the remainder of the applicant's complaints, finds that it does not disclose any appearance of a violation of the Convention rights invoked by him.

For these reasons, the Commission, unanimously,

1. DECLARES ADMISSIBLE THE APPLICANT'S COMPLAINT ABOUT THE LENGTH OF THE CRIMINAL PROCEEDINGS AGAINST HIM;

2. DECLARES INADMISSIBLE THE REMAINDER OF HIS COMPLAINTS.

Secretary to the First Chamber Acting President of the First Chamber

(M. de SALVIA) (F. ERMACORA)