AS TO THE ADMISSIBILITY OF

Application No. 29801/96
by Manfred LANGER
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 27 November 1996, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION

Mrs. M.F. BUQUICCHIO, Secretary to the 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 12 December 1995 by Manfred LANGER against Germany and registered on 12 January 1996 under file No. 29801/96;

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 applicant, born in 1969, is a German national and resident in Flensburg. In the proceedings before the Commission he is represented by Mr. K.-H. Wintzenburg, a lawyer practising in Hannover.

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 18 January 1994 the Hannover District Court (Amtsgericht) issued a penal order (Strafbefehl) against the applicant imposing a fine amounting to DM 1,614 upon him for two counts of obtaining public transport services under false pretences. The Court found that the applicant, on two occasions, had deliberately taken the municipal bus without having had a ticket. The Court noted that it had considered the applicant's admission of guilt as a mitigating circumstance.

Following the applicant's objection to the penal order, the District Court conducted the trial hearing against him. In these and the following proceedings, the applicant was represented by Mr. Wintzenburg.

At the hearing of 7 September 1994, the District Court convicted the applicant of one count of having deliberately obtained public transport services under false pretences and acquitted him of the

remaining charge. The Court found that on 16 December 1992 and on 11 October 1993, respectively, the applicant had taken the municipal bus without having had a valid ticket with him. The Court noted the applicant's defence that for both months, he had been in possession of transferable season tickets, which he had exclusively used and only forgotten at home on the relevant dates. At the trial, he had produced in evidence a season ticket for the month of October 1993. The Court therefore assumed in his favour that he himself had bought and exclusively used the season ticket for the month of October 1993. However, regarding the incident in December 1992, he had at no stage of the proceedings against him been in a position to present such a monthly season ticket. The statement of the witness for the defence that, as far as he remembered, the applicant had regularly bought season tickets, was inconclusive. The Court was therefore convinced that on the relevant day the applicant had travelled on public transport without payment.

On 23 December 1994 the Hannover Regional Court (Landgericht) rejected the applicant's appeal (Berufung) on the ground that it was obviously ill-founded. The Regional Court confirmed that the District Court's reasoning was conclusive and convincing. The appeal submissions did not disclose any new facts or means of evidence which could possibly warrant a different assessment of the case.

On 3 July 1995 the Federal Constitutional Court (Bundes-verfassungsgericht) refused to entertain the applicant's constitutional complaint (Verfassungsbeschwerde).

COMPLAINTS

The applicant complains under Article 6 para. 2 of the Convention about his conviction of 7 September 1994. He considers that his defence argument of having been in possession of a monthly season ticket for December 1992 had not been refuted.

THE LAW

The applicant complains that his conviction by the Hannover District Court, as confirmed by the Hannover Regional Court, amounts to a violation of the principle of the presumption of innocence. His argument relates to the District Court's evaluation of the evidence.

The Commission recalls that, according to Article 19 (Art. 19) of the Convention, the duty of the Convention organs is to ensure the observance of the engagements undertaken by the Contracting States in the Convention. In particular, it is not their function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (cf. Eur. Court HR, Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, para. 45).

The Commission has found it appropriate to look at the applicant's complaint about the District Court's evaluation of evidence from the points of view of paragraphs 1 and 2 of Article 6 (Art. 6-1+6-2) taken together, especially as the guarantees in paragraph 2 represent aspects of the concept of a fair trial contained in paragraph 1 (cf., Eur. Court HR, Unterpertinger v. Austria judgment of 24 November 1986, Series A no. 110, p. 14, para. 29; Artner v. Austria judgment of 28 August 1992, Series A no. 242-A, p. 10, para. 19).

Article 6 (Art. 6) of the Convention, so far as relevant, provides as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an

independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
..."

The Commission further recalls that it is not for the Convention organs to substitute their own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them as well as the relevance of the evidence which the defendants seek to adduce. The task under the Convention is to ascertain whether the proceedings in their entirety were fair (cf., Eur. Court HR., Bricmont v. Belgium judgment of 7 July 1989, Series A no. 158, p. 31, para. 89; Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, para. 33).

The Commission notes that the Hannover District Court found the applicant guilty of one count of having obtained public transport services under false pretences. On the basis of the evidence before it, the District Court was convinced that the applicant had, on the particular date, taken the municipal bus without having a valid ticket. In this respect, the Court duly noted the applicant's defence argument, namely that he had bought a season ticket for the month concerned, which he had merely forgotten at home. The District Court also noted the statements of the defence witness. However, it considered as decisive that the applicant had been found in the bus without a ticket and had failed to present the alleged season ticket. The applicant, assisted by defence counsel, had adequate opportunity to argue the probative value of the evidence in court.

Having regard to all circumstances, the Commission finds no sufficient grounds to conclude that the trial court's evaluation of evidence in the applicant's case was incompatible with Article 6 (Art.6).

The applicant's submissions do not, therefore, disclose any appearance of a violation of his rights under Article 6 paras. 1 and 2 (Art. 6-1, 6-2) of the Convention.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber