AS TO THE ADMISSIBILITY OF

Application No. 28397/95
by Robert LÖHR
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 28 February 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 14 November 1994 by Robert LÖHR against Germany and registered on 31 August 1995 under file No. 28397/95;

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 applicant, may be summarised as follows.

The applicant, born in 1948, is a German national and resident in Cologne. When lodging his application, he was detained in a prison in Koblenz.

A. Particular circumstances of the case

On 19 May 1994 the applicant was arrested on the suspicion of having committed theft on several counts, together with three accomplices. He was taken into detention on remand on the basis of an arrest warrant issued by the Koblenz District Court (Amtsgericht).

In the criminal proceedings against him, the applicant was assisted by defence counsel.

On 9 November 1994 the Koblenz Court of Appeal (Oberlandesgericht), as confirmed by its further decision of 28 November 1994, ordered the applicant's continued detention on remand.

On 7 February 1995 the Koblenz Public Prosecutor's Office (Staatsanwaltschaft) preferred the indictment against the applicant finding that, having regard to the result of the investigations, there

was a strong suspicion that he had, together with other members of a gang, committed theft on numerous counts.

On 14 February 1995 the Presiding Judge at the competent 4th Criminal Chamber at the Koblenz Regional Court (Landgericht) ordered that the bill of indictment be served upon the applicant and his counsel.

On 7 March 1995 the Koblenz Court of Appeal ordered the applicant's further detention on remand.

In its decision, the Court of Appeal, referring to its earlier decisions of 9 and 28 November 1994, considered that there was a strong suspicion against the applicant of having committed the criminal offences in question, and also that the reasons justifying his detention within the meaning of S. 112 para. 2 of the Code of Criminal Procedure (Strafprozeßordnung), namely the risk of his absconding, persisted. As regards the suspicion against the applicant, the Court of Appeal referred in particular to the results of the investigations as stated in the bill of indictment of 7 February 1995.

As to the conduct of the proceedings, the Court of Appeal noted that the indictment had been served upon the applicant and his defence counsel on 14 February 1995. The Presiding Judge of the competent Criminal Chamber had indicated that the trial would open in the beginning of May 1995. Such timing could not be objected to, taking into account the time-limits for the defence and the time necessary to prepare the trial. The Court of Appeal further considered that the complexity of the investigations had not allowed for terminating the bill of indictment at an earlier stage. In this respect, the Court noted that the applicant denied the charges against him and that considerable circumstantial evidence had to be investigated. The final report regarding the police investigations was dated 16 January 1995. Investigation reports to be submitted by the Rhineland Palatinate Office of Criminal Investigations (Landeskriminalamt) were still outstanding.

The Court of Appeal, balancing the seriousness of the charges against the applicant and the severity of the sentence which he risked incurring against the length of the applicant's detention on remand, considered that there was no indication of a lack of proportionality.

On 19 May 1995 the 3rd Criminal Chamber of the Koblenz Regional Court committed the applicant for trial. It further ordered the applicant's continued detention on remand. Moreover, the applicant was informed that 7 August 1995 was fixed as date for the start of the trial against him, which was to be continued on five dates in August 1995 and on further dates in September 1995, as long as necessary.

On 9 June 1995 the Court of Appeal again ordered the applicant's continued detention on remand.

The Court of Appeal, referring to its decision of 7 March 1995, considered in particular that the risk of the applicant's absconding persisted as he had no personal links and no professional prospects and, in case of his conviction, was liable to be sentenced to a substantial cumulative period of imprisonment taking the numerous offences concerned and his criminal record into account.

Furthermore, the Court of Appeal found that important reasons had so far hindered a judgment. The Criminal Chamber first competent in respect of the applicant's case had been overburdened with work. On 1 May 1995 the President's Office at the Regional Court had, therefore, transferred the case to the 3rd Criminal Chamber which had meanwhile committed the applicant for trial and fixed the dates for the opening and continuation of the trial. No reasons to doubt the proportionality

of the applicant's continued detention on remand existed.

On 29 June 1995 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde) against the Court of Appeal's decision of 9 June 1995.

On 4 October 1995 the 3rd Criminal Chamber at the Koblenz Regional Court convicted the applicant of grave theft committed as a member of a gang (schwerer Bandendiebstahl) and sentenced him to five years' imprisonment. The applicant was acquitted of some further charges.

The Regional Court, having heard the applicant, several witnesses as well as technical experts of the Office for Criminal Investigations, found that the applicant, together with accomplices, had burgled several post offices as from February 1994. In particular he had burgled a post office near Cochem in the night from 17 to 18 May 1994 and stolen a safe. As regards further charges of burglaries in April and May 1994, the Regional Court regarded the evidence as insufficient.

The written version of the judgment was finalised on 22 November 1995. According to the applicant, appeal proceedings are pending.

B. Relevant domestic law

SS. 112 to 131 of the Code of Criminal Procedure (Strafprozeß-ordnung) concern the arrest and detention of a person on reasonable suspicion of having committed a criminal offence.

S. 112 prescribes the prerequisites of detention on remand, in particular a strong suspicion that the person concerned committed a criminal offence and that there was a reason justifying detention, as for example, a risk of the person's absconding.

According to SS. 121 and 122, detention on remand may only exceed a period of six months, without any judgment imposing a sentence of imprisonment or other measure requiring the accused's detention having been passed, if the complexity of the case or investigations or another important reason justified such detention.

COMPLAINTS

1. The applicant complains that his detention on remand violated the principle of the presumption of innocence within the meaning of Article 6 para. 2 of the Convention. He submits that he was detained on remand for the mere reason of his previous criminal record.

2. The applicant complains under Article 5 para. 3 of the Convention about the length of his detention on remand.

3. The applicant complains under Article 6 para. 1 of the Convention about the length of the criminal proceedings against him.

4. Finally, the applicant complains about his conviction and the alleged unfairness of the proceedings concerned. In this respect, he invokes Article 6 para. 2 of the Convention.

THE LAW

1. The Commission, assuming compliance with the conditions of Article 26 (Art. 26)of the Convention, has considered the applicant's complaint about his detention on remand under Article 5 para. 1 (c) (Art. 5-1-c) of the Convention.

The Commission, having regard to the applicant's submission that

he was detained on remand for the mere reason of his previous criminal record, notes that the German courts duly applied the relevant provisions of the Code of Criminal Procedure. The Commission, having taken into consideration the reasons advanced in these court decisions on the applicant's detention on remand, both as to the strong suspicion against him as well as the danger of his absconding, finds no indication that the deprivation of the applicant's liberty had not been "in accordance with a procedure prescribed by law" and that his arrest and detention had not been "lawful" and effected for the purposes of Article 5 para. 1 (c) (Art. 5-1-c).

In these circumstances, there is no appearance of a violation of Article 5 para. 1 (Art. 5-1) of the Convention. The applicant's submissions further disclose no appearance of a violation of the presumption of innocence.

Consequently, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant complains under Article 5 para. 3 (Art. 5-3) of the Convention about the length of his detention on remand.

Article 5 para. 3 (Art. 5-3), so far as relevant, provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article (Art. 5-1-c) ... shall be entitled to trial within a reasonable time or to release pending trial."

The Commission notes that the applicant was detained on remand between 19 May 1994 and 4 October 1995, i.e. approximately one year, four months and two weeks.

The Commission recalls that it is in the first place for the national authorities to ensure that, in a given case, pre-trial detention of an accused person does not exceed a reasonable time. To this end, they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying (with due regard to the principle of the presumption of innocence) a departure from the rule of respect for individual liberty and set them out in their decisions on the question of release. It is essentially on the basis of the reasons given in these decisions and of the true facts mentioned by the applicant in his appeals that the Convention organs are called upon to review the reasonableness of the length of detention (Eur. Court H.R., W. v. Switzerland judgment of 26 January 1993, Series A no. 254, p. 15, para. 30).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Convention organs must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty, and whether the domestic authorities displayed special diligence in the conduct of the proceedings (W. v. Switzerland judgment, loc. cit.).

The Commission notes that the Koblenz Court of Appeal, referring to the investigations against the applicant and in particular the bill of indictment, found that there was a strong suspicion that the applicant had committed theft as member of a gang. The Court's finding as to the risk of his absconding was based on the absence of any personal links and of professional prospects as well as the severity of the sentence which he risked.

As regards the conduct of the proceedings by the domestic authorities, the Commission notes that the preliminary investigations

started in mid-may 1994 and the Public Prosecutor's Office preferred the indictment in the beginning of February 1995. The applicant was committed for trial in May 1995 and the trial started in August 1995. His conviction was dated 4 October 1995.

The Koblenz Court of Appeal, in its respective decisions, carefully examined the progress of the proceedings against the applicant and considered the question of proportionality of the applicant's continued detention on remand.

The Commission notes that the investigations were of some complexity, as they concerned charges of burglary on several counts and the applicant claimed to be innocent. The circumstantial evidence had to be investigated, necessitating the taking of expert evidence. In the course of the preliminary investigations as well as in the court proceedings, no particular delays can be attributed to the German authorities. In particular, when the 4th Criminal Chamber of the Koblenz Regional Court appeared to be overburdened with work, the applicant's case was, without any considerable delay, transferred to the 3rd Criminal Chamber, which speedily fixed the date for the trial. The applicant failed to show any failure by the police or the judicial authorities to act with the necessary diligence.

In these circumstances, the Commission finds that the period of the applicant's detention on remand did not yet exceed a reasonable time within the meaning of Article 5 para. 3 (Art. 5-3) of the Convention.

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

3. The applicant further complains under Article 6 para. 1 (Art. 6-1) of the Convention about the length of the criminal proceedings against him.

Article 6 para. 1 (Art. 6-1) provides, inter alia, that in the determination of any criminal charge against him, everyone is entitled to a hearing within a reasonable time.

The Commission considers that the period to be examined under Article 6 para. 1 (Art. 6-1) started on 19 May 1994. According to the applicant, proceedings concerning his appeal against his conviction on 4 October 1995 are pending. The proceedings have so far lasted more than one year and nine months.

The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the complexity of the case, the conduct of the applicant and the conduct of the authorities dealing with the case. In the present case, the circumstances call for an overall assessment (Eur. Court H.R., Ficara judgment of 19 February 1991, Series A no. 196-A, p. 9, para. 17).

The Commission, referring to its above findings as to the complexity of the case and the conduct of the proceedings by the German authorities, considers that there is no indication that the proceedings against the applicant were not duly furthered. Accordingly, there is no indication that the proceedings against the applicant have exceeded a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1).

It follows that the applicant's complaint about the length of the criminal proceedings against him is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2).

4. The applicant also complains about his conviction and apparently the alleged unfairness of the proceedings concerned. In this respect,

he relies on Article 6 para. 2 (Art. 6-2) of the Convention.

With regard to the judicial decision of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (cf. No. 21283/93, Dec. 5.4.94, D.R. 77, pp. 81, 88 and Eur. Court H.R., Van de Hurk judgment of 19 April 1994, Series A no. 288, p. 20, para. 61; Klaas judgment of 22 September 1993, Series A no. 269, p. 17, para. 29).

As regards any complaints under Article 6 (Art. 6) that the criminal proceedings, in particular the trial before the Koblenz Regional Court, were not fair, the Commission recalls that the question of whether a trial conforms to the standards laid down in Article 6 (Art. 6) must be decided on the basis of an evaluation of the trial in its entirety (cf. No. 11058/84, Dec. 13.5.86, D.R. 47, pp. 230 with further references). It is true that it cannot be excluded that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (cf. Nos 8603/79, 8722/79, 8723/79 and 8729/79 joined, Dec. 18.12.80, D.R. 22, p. 216). However, the Commission finds that the applicant failed to show any such specific factors. Accordingly, the applicant's complaints in this respect are premature.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)