AS TO THE ADMISSIBILITY OF

Application No. 19512/92
by Eva PFISTER
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 7 September 1993, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA

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 5 July 1990 by Eva PFISTER against Germany and registered on 13 February 1992 under file No. 19512/92;

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 is a German citizen, born in 1948 and living in Waldalgesheim. She is represented by Mr. W. Foerster, a lawyer practising in Wiesbaden.

It follows from the applicant's statements and the documents submitted that in 1988, criminal proceedings were pending against the applicant and on 19 July 1988, Mr. L. was appointed as the applicant's official defence counsel. On 14 October 1988 the applicant choose Mr. Foerster as her defence counsel. On 21 November 1988 the trial against the applicant and others started and her chosen defence counsel made the request to revoke the appointment of the official defence counsel. It is stated in the request that the chosen counsel had made sure to be able to attend all hearings and that he would not abandon the applicant on account of possible inability to pay his fees.

The request was rejected by the trial court's president and an appeal against this decision was dismissed by the Koblenz Court of Appeal (Oberlandesgericht) on 9 December 1988 as being inadmissible.

On 12 January 1989, the applicant was convicted by the Regional Court (Landgericht) in Mainz of furthering prostitution and procuring. She was sentenced to two years imprisonment on probation. The judgment became final.

On 25 August 1989, the applicant was presented the bill

concerning the costs of the proceedings which according to the judgment of 12 January 1989 she had to pay for.

The bill included the costs of the official defence counsel in the amount of DM 15631.11.

The applicant lodged an appeal (Erinnerung) complaining of the costs of the official defence. On 27 October 1989 the appeal was partly granted in that the costs relating to the official defence counsel were reduced by DM 5443.50.

The applicant however maintained her appeal considering that the official defence counsel costs should not be imposed on her because she was defended by a chosen counsel.

On 16 January 1990, the Regional Court rejected this appeal. It stated that according to Section 143 of the Code on Criminal Procedure (StPO), the appointment of an official defence counsel could in principle be withdrawn when the defendant chooses his own counsel. In the present case however it had been necessary (unabweisbares Bedürfnis) to continue the trial both with the official defence counsel and the defendant's chosen counsel. It is pointed out that the applicant had herself initially requested that Mr. L be appointed as her official defence counsel stating that she was without means. Consequently there was danger that in view of the uncertain length of the trial, chosen defence counsel might eventually discontinue his activities because the applicant was unable to pay his fees. Therefore it was necessary in the interest of assuring the proper course of the trial to maintain the official defence counsel.

An appeal (Beschwerde) against this decision was rejected by the Regional Court on 28 February 1990 by the Koblenz Court of Appeal. This court referred to the Federal Court's jurisprudence accordin it could be justified in the interest of assuring the trial to maintain an official defence counsel even if the defendant was defended by a chosen counsel. The fact that the applicant's chosen counsel had given an assurance that he would attend all hearings of the trial was, in the Court's opinion, of no relevance as it had nevertheless been possible in view of the particular complexity of the case that for some reason or other the chosen defence counsel might not have been able to attend all hearings.

On the other hand, the question whether or not the applicant was in a position to reimburse the costs in question was a matter which became relevant only in the course of the execution proceedings.

COMPLAINTS

The applicant considers that the maintenance of the official defence counsel was unnecessary and violated Article 6 para. 3 of the Convention.

THE LAW

The present application raises the question as to whether it is compatible with Article 6 (Art. 6) for the State to seek to recover from an accused, after he/she has been convicted, the fees and disbursements of one or more defense counsel who was appointed by the competent court on the ground that the interests of justice so required and who, in accordance with its order, provided him/her during his/her trial with assistance for which they did not charge him/her at the time.

This question was in the meantime decided by the European Court of Human Rights in the affirmative and the Commission can quote from the Court's judgment of 25 September 1992 in the case of Croissant (Series A. No. 237-B, paras. 26 et seq.):

"an analysis of this complaint reveals that attention must both be given to the initial appointment itself and the subsequent reimbursement order. The former raises - irrespective of the accused's means - issues under Article 6 (Art. 6), especially as regards the meaning of the phrase "to defend himself in person or through legal assistance of his own choosing".....

It is true that Article 6 para. 3 (c) (Art. 6-3-c) entitles "everyone charged with a criminal offense" to be defended by counsel of his own choosing (cf. Pakelli v. Germany of 25 April 1983, Series A no. 64, p. 15, para. 31). Nevertheless, and notwithstanding the importance of a relationship of confidence between lawyer and client, this right cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also, as in the present case, it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defense counsel, the national courts must certainly have regard to the defendant's wishes; indeed, German Law contemplates such a course (Article 142 of the Code of Criminal Procedure). However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice."

In the present case the applicant's request to revoke the appointment of the official defense counsel was rejected on the ground that this appointment was necessary in the interests of justice in order to make sure that the applicant was effectively defended by defense counsel throughout all trial hearings. In view of the uncertain length of the trial and in view of the applicant's financial situation, rendering it unlikely that the applicant could pay her chosen lawyer's fees, the trial court considered it necessary in the interests of assuring the proper course of the trial to maintain the official defense counsel.

These grounds are, in the Commission's view, relevant and sufficient.

Consequently the appointment of an additional defense counsel cannot, under the circumstances of the present case, be held to have been incompatible with the requirements of paras. 3 (c) and 1 of Article 6 (Art. 6-1+6-3-c), taken together.

The question remains to be decided whether the reimbursement order violated Article 6 (Art. 6) of the Convention. In this respect it was stated in the aforementioned Croissant judgment:

"Under German Law an accused who is acquitted is, irrespective of his means, under no obligation to pay either the court costs or the fees of the court-appointed lawyers; all these items are borne by the State. On the other hand, a convicted person is in principle always bound to pay the fees and disbursements of his court-appointed lawyers, this being held to be a normal consequence of the conviction.

It is only in the enforcement procedure that follows the final judgment that the financial situation of the convicted person plays a role; in this respect, it is immaterial whether he had sufficient means during the trial, only his situation after conviction being relevant.

Such a system would not be compatible with Article 6 (Art. 6) of the Convention if it adversely effected the fairness of the proceedings. However, it cannot be said that the system generally produces such a result.

In addition the Commission notes that it did not do so in the present case. As already stated, the appointment of the (3) defense counsel was compatible with the requirements of Article 6 (Art. 6). Accordingly, it is not incompatible with the provision that the applicant is liable to pay their fees. The national courts were invited to consider it necessary to appoint them and the amounts claimed for them are not excessive."

These reasons apply, mutatis mutandis, to the present case and consequently the Commission again cannot find any appearance of a violation of Article 6 (Art. 6) of the Convention.

Finally it has to be noted that the present application does not raise the issue as to whether it would be compatible with Article 6 para. 3 (c) (Art. 6-3-c) of the Convention for the State to continue to seek full or partial reimbursement of expenses after the convicted person has established, in the enforcement proceedings, that he/she lacks sufficient means to bear the costs of his/her defense.

It follows that the application has to be rejected as being manifestly ill-founded in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)