AS TO THE ADMISSIBILITY OF

Application No. 22333/93
by R. S.
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 30 November 1994, 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
I. BÉKÉS
E. KONSTANTINOV
G. RESS

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 21 April 1993 by R. S. against Germany and registered on 26 July 1993 under file No. 22333/93;

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 1957, is a German national and resident in Münster.

On 8 June 1990 the applicant, who was driving his car on a public road, was stopped by two police officers, and his car was checked as to its safety in traffic. Having noted problems regarding in particular the brakes, the applicant's car was seized and was brought to a technical control centre where several defects were found.

On 25 July 1990 the Head of the Münster Municipality (Oberstadtdirektor) imposed an administrative fine (Bußgeldbescheid) upon the applicant for having driven a car which did not meet the standards of safety in traffic. Following the applicant's objection in August 1990, proceedings were instituted before the Münster District Court (Amtsgericht).

The first hearing took place before the District Court on 19 March 1991; a further hearing scheduled for 9 July 1991 was postponed due to a change in the person of the judge competent to deal with the applicant's case. At the next hearing on 4 December 1991, the

applicant challenged the single judge for bias on the ground that the judge had refused the applicant's request to postpone the hearing. On 23 December 1991 the President of the Münster District Court dismissed the applicant's motion of 4 December 1991. On 6 January 1992 the Münster Regional Court rejected the applicant's appeal against the decision of 23 December 1991.

On 19 February 1992, a further hearing was held by the District Court. In the course of this hearing the District Court dismissed the applicant's further motions of challenge for bias, his repeated requests to postpone the hearing in order to consult a defence counsel, and to discontinue the proceedings, as it appeared that the applicant intended to delay the proceedings.

Following the hearing, the District Court convicted the applicant of an offence under the relevant provisions of the Road Traffic Regulations, regarding the use of a car with shortcomings as to its safety in traffic, and imposed a fine of DM 280. The Court, having regard to the oral evidence given by the police officers and the statements of a technical expert, found that the applicant had driven a car which, in several respects, did not meet the standards of safety in traffic. The District Court rejected the applicant's submissions that, as director of an "international organisation for peace", he had the position of a diplomat and was not subject to German jurisdiction. Furthermore, the District Court considered that the length of the proceedings was not excessive contrary to Article 6 para. 1 of the Convention, and referred to the applicant's conduct in the course of the proceedings, in particular to his attempts to delay even the last hearing before the Court.

On 8 July 1992 the Hamm Court of Appeal (Oberlandesgericht) dismissed the applicant's appeal on points of law (Rechtsbeschwerde). In these proceedings the applicant was assisted by defence counsel.

On 23 September 1992 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde). The applicant received the decision on 21 October 1992.

COMPLAINTS

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

2. He further complains under Article 6 para. 3 (d) of the Convention that his requests to postpone the hearing on 19 February 1992 in order to ensure the assistance of a defence counsel were dismissed.

THE LAW

1. The applicant 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) includes the following provision:

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

The period to be taken into consideration started on 8 June 1990 when the applicant's car was seized on the suspicion of shortcomings as to its safety in traffic and ended on 8 July 1992 when the Hamm Court of Appeal dismissed the applicant's appeal on points of law. The criminal proceedings thus lasted about two years and two months. The subsequent proceedings before the Federal Constitutional Court concerning the applicant's constitutional complaint lasted a further

two and a half 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 parties and the conduct of the authorities dealing with the case. In this instance the circumstances call for an overall assessment (see Eur. Court H.R., Ficara judgment of 19 February 1991, Series A no. 196-A, p. 9, para. 17).

The Commission considers that the proceedings, taking into account the nature of the charges against the applicant, was not particularly complex.

The Commission further finds that, though the applicant cannot be held responsible for having taken resort to remedies available to him under German law, his conduct contributed to the overall length of the proceedings. As regards the conduct of the German authorities, the Commission considers that the proceedings before the District Court from August 1990 until February 1992 appear rather lengthy, i.e. a period of about one year and five months. However, the Commission finds that the overall length of the proceedings which were conducted before one administrative and two judicial instances did not exceed the "reasonable time" referred to in Article 6 para. 1 (Art. 6-1) of the Convention.

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

2. The applicant also complains about the alleged unfairness of the proceedings against him. He submits in particular that the hearing on 19 February 1992 was not postponed although he had wished to consult a defence counsel.

He invokes Article 6 para. 3 (c) (Art. 6-3-c) of the Convention which provides as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
> ..."

The Commission notes that criminal proceedings against the applicant concerned a charge under the Road Traffic Regulations, namely shortcomings regarding the safety in traffic of the applicant's car. The applicant has had the opportunity to defend himself in person in these proceedings, whereas in the proceedings before the Hamm Court of Appeal he was assisted by counsel. In the course of the proceedings before the Münster District Court, the applicant did not choose to be assisted by defence counsel until the last hearing of February 1992 when he requested a further postponement in order to consult a counsel. The District Court dismissed this request as it appeared that the applicant merely intended to delay the proceedings. The Commission finds that the applicant did not show that, at this stage, legal assistance was necessary in view of the simple issues before the District Court, and, moreover, that new circumstances had emerged at the particular hearing which could explain his late request.

In these circumstances, there is no appearance of an interference with the applicant's right under Article 6 para. 3 (c) (Art. 6-3-c) of the Convention (cf., mutatis mutandis, Eur. Court H.R., Engel judgment of 23 November 1976, Series A no. 22, p. 38, para. 91).

Consequently, this part of the application is likewise manifestly ill-founded within the meaning 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)