CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 41477/98
by Peter-Heinrich SCHWICKERATH
against Germany

The European Court of Human Rights (Fourth Section) sitting on 8 December 1998 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, S*ection Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 29 August 1997 by Peter-Heinrich SCHWICKERATH against Germany and registered on 4 June 1998 under file No. 41477/98;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

Commented [Note1]: Please check if public or not. If not, put initials only. Name and, in capital letters, surname ; corporative name in capital letters ; no translation of collective names.

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THE FACTS

The applicant, born in 1938, is a German national. He is a businessman by profession. When lodging his application, he was detained in a prison in Siegburg.

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

A. Particular circumstances of the case

I. The criminal proceedings against the applicant

On 31 July 1996 the applicant was arrested on suspicion of having committed burglary.

On 24 January 1997 the Kleve District Court (*Amtsgericht*), having heard witnesses and taken expert evidence, convicted the applicant of several counts of burglary and sentenced him to two years and seven months' imprisonment. In these and the ensuing proceedings defence counsel assisted the applicant.

On 24 July 1997 the Kleve Regional Court (*Landgericht*), following an oral hearing and having again taken evidence, dismissed his appeal.

On 9 January 1998 the Düsseldorf Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal on points of law.

II. The control of the applicant's correspondence

On 21 November 1997, in the course of his detention qualifying as detention on remand under German law, the applicant complained with the Presiding Judge of the Regional Court about the opening of his letters addressed, *inter alia*, to the European Commission of Human Rights.

By letter of 26 November 1997, the Presiding Judge informed the applicant that the control of a remand prisoner's correspondence was not subject to any limitation. He stated that the Execution of Sentences Act (*Strafvollzugsordnung*) did not apply to remand prisoners. In his view, the Rules on Detention on Remand (*Untersuchungs-haftvollzugsordnung*) did not prevent him from reading such correspondence.

On 6 January 1998 the Kleve Regional Court dismissed the applicant's objections, considering that pursuant to the Rules on Detention on Remand, only letters addressed to, *inter alia*, the Commission were exempted from control. This exemption did not apply to correspondence addressed to a remand prisoner.

On 20 January 1998 the Düsseldorf Court of Appeal dismissed the applicant's appeal as having lost its purpose (*gegenstandlos*). The Court of Appeal noted that the applicant was no longer detained on remand, as his conviction had meanwhile become final.

III. The proceedings with the Federal Constitutional Court

On 24 September 1997 the applicant lodged a constitutional complaint (*Verfassungsbeschwerde*) with the Federal Constitutional Court (*Bundes-verfassungsgericht*), which he later amended. In his submissions, he complained generally about the unlawfulness of numerous decisions, which he joined. These documents did not include the German court decisions regarding his above conviction nor the control of his correspondence as remand prisoner.

On 10 February 1998 the Federal Constitutional Court refused to entertain his constitutional complaint. The Constitutional Court considered that, although having been repeatedly informed about the conditions of lodging a constitutional complaint, the applicant had merely submitted numerous documents and - without having stated any reasons of unconstitutionality - generally requested the Court for an investigation.

B. Relevant domestic law

Pursuant to Article 93 § 1 of the Basic Law (*Grundgesetz*), the Federal Constitutional Court shall rule, *inter alia*, on constitutional complaints which may be lodged by any person who considers that the public authorities have infringed one of his or her fundamental rights or one of his or her rights as guaranteed under Articles 20 § 4, 33, 38, 101, 103 and 104 of the Basic Law.

The composition and functioning of the Federal Constitutional Court are governed by the Federal Constitutional Court Act (*Gesetz über das Bundesverfassungsgericht*), as amended in 1993.

Sections 90 to 96 of that Act concern constitutional complaints lodged by individuals.

According to section 90 (1), any person who claims that one of his basic rights or one of his rights under Articles 20 § 4, Articles 33, 38, 101, 103 and 104 of the Basic Law has been violated by public authority may lodge a complaint of unconstitutionality with the Federal Constitutional Court. These rights include rights regarding the fairness of proceedings and the rule of law, and the right to respect for correspondence.

COMPLAINTS

The applicant complains about his conviction by the Kleve District Court in January 1997, as confirmed upon appeal and about the alleged unfairness of the proceedings concerned. He further complains about the control of his correspondence with the European Commission of Human Rights in the course of his detention on remand. He invokes Article 5 § 4, Article 6 § 3 (a) and (d), Article 8 § 1 and Article 13 of the Convention.

THE LAW

The applicant raises various complaints relating to criminal proceedings against him as well as the control of his correspondence.

The Court recalls that, pursuant to Article 35 § 1 of the Convention, it may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. According to this provision (Article 26 before the entry into force of Protocol No. 11), normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (*cf.* Eur. Court HR, Bahaddar v. the Netherlands judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 262, § 44, with further reference).

In applications against Germany concerning the alleged unfairness of proceedings or the issue of control of correspondence, a constitutional complaint with the Federal Constitutional Court is an effective remedy to be exhausted for the purposes of Article 35 § 1 of the Convention (*cf., mutatis mutandis*, Eur. Court HR, Klass and Others v. Germany judgment of 6 September 1978, Series A no. 28, pp. 8-9, §§ 11-13; Hennings v. Germany judgment of 16 December 1992, Series A no. 251-B, p. 9, § 18).

In the present case, the applicant lodged a constitutional complaint with the Federal Constitutional Court. In his submissions, he generally invited the Federal Constitutional Court to conduct an investigation regarding various matters, and joined numerous documents. The Federal Constitutional Court, in its decision of 10 February 1998, refused to entertain the applicant's constitutional complaint on the ground that, despite of repeated information about the conditions of lodging a constitutional complaint, he had merely submitted numerous documents and - without having stated any reasons of unconstitutionality - generally requested the Court for a review.

Moreover, the Court, even assuming that the applicant had complied with the formal requirements of lodging a constitutional complaint, notes that the applicant failed to raise, in that complaint, the issues he now intends to bring before the Court, namely questions relating to his conviction and to the control of his correspondence.

It follows that the application must be rejected for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Vincent Berger
Registrar

Matti Pellonpää
President