AS TO THE ADMISSIBILITY OF

Application No. 25493/94
by Rocco TARANTINO
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, 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
G.B. REFFI
B. CONFORTI
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 5 September 1994 by Rocco TARANTINO against Germany and registered on 26 October 1994 under file No. 25493/94;

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, as they have been submitted by the applicant, may be summarised as follows.

The applicant, born in 1955, is an Italian national. He is a welder by profession. When lodging his application he was detained at a prison in Freiburg. In the proceedings before the Commission he is represented by Mr. M. Schubert, a lawyer practising in Freiburg.

On 29 January 1993 the Freiburg Regional Court (Landgericht), having held a trial between 21 October 1992 and 29 January 1993, convicted the applicant of aggravated arson, arson and bodily assault as well as of having simulated the commission of a punishable offence and committed fraud. The applicant was sentenced to three year's and four months' imprisonment.

The Regional Court found that on 28 December 1988, between noon and 1 p.m., the applicant had returned from a christmas holiday in Italy, while his wife - the spouses had separated - and son had continued to stay there. He had arrived at the spouses's apartment in the early morning of 29 December 1988 where he simulated a burglary and

afterwards set fire. He had intended to claim insurance payments for the damage caused and various valuables which had either previously been taken away or were taken along by him on that occasion. The applicant, when questioned by the police as a victim, according to his plan had maintained that a burglary had been committed and various valuables been stolen. Furthermore he had claimed about DM 120,000 from his insurance company for his alleged losses. The insurance company had subsequently paid shares of altogether DM 90,000. As to the applicant's financial situation in 1987 and 1988, the Regional Court found that the applicant had earned about DM 35,000 in 1987 and about DM 88,000 in 1988, that his cheque accounts at two banking institutes were mostly in debit and that he had to pay a debt of DM 40,000 by monthly instalments.

The Regional Court stated that its factual findings were based partly upon the applicant's statements and the statements of witnesses, inter alia the applicant's wife and his mistress as well as his former employer, in particular as to the applicant's financial situation. As regards the offences as such, the Regional Court noted that the applicant had denied any guilt. The Regional Court proceeded from the testimony of some other tenants in the house concerned, who had seen somebody entering the house, and heard noise in the applicant's apartment, on 29 December 1988, at about 1.15 a.m. Having regard to the opinion of an engineer and employee of the German automobile club (ADAC), the Regional Court considered that the applicant when returning from Italy on 28 December 1988, between noon and 1 p.m., had been able to return and arrive in Freiburg in the early morning of 29 December 1988, between 1.15 and 1.20 a.m. Both the expert and the Regional Court, in this respect, took the possible average speed, speed limits, the traffic and weather situation at the relevant time into account. As to the weather conditions, the Regional Court heard a meteorologist from the German weather forecast (Deutscher Wetterdienst) as expert. The Regional Court did not give credence to the statements of some of the applicant's relatives from Italy, who had indicated a later time of the applicant's departure in Italy.

Considering all relevant circumstances, the Regional Court was also convinced that the applicant had set fire to the apartment. In this respect, the Regional Court, having regard to the opinion of a further expert and the statements of a police officer as to the possibilities to open the main entrance door as well as the door of the applicant's apartment, concluded that these doors had been opened with one of the three original keys, one owned by the applicant. Even assuming that one of the original keys had been lost in 1981, it could reasonably be excluded that a third person had kept such a key until December 1988 in order to commit a burglary. Moreover, the state of the apartment, the kind of damage caused to the entrance door of the apartment rather excluded a burglary. The Regional Court considered that the applicant's motive to commit the offences in question had been his poor financial situation at the relevant time.

In these and the ensuing proceedings the applicant was assisted by defence counsel.

On 30 November 1993 the Federal Court of Justice (Bundesgerichtshof), upon the applicant's appeal on points of law (Revision), amended the Regional Court's judgment as to the legal qualification of the offence as aggravated arson only, and dismissed the remainder of the appeal on points of law.

As regards the applicant's procedural complaint that the Regional Court had refused to hear two witnesses on their impression that he had plenty of money at the relevant time, the Federal Court of Justice considered that the Regional Court had proceeded from the truth of this statement and, on the basis of the applicant's own statements, assumed that he had earned about DM 35,000 in 1987 and about DM 88,000 in 1988. His subsequent financial situation had been irrelevant.

The Federal Court of Justice further considered that the complaint about the Regional Court's refusal to hear the applicant's son on the question whether, upon the family's departure, the entrance door of the apartment had been closed by key was inadmissible. In this respect, the Federal Court of Justice observed that the applicant had failed to show that his son had at all been present.

The Federal Court of Justice also regarded as inadmissible the complaint that the interpreter present when the applicant's wife had been heard by the police had not been heard by the Regional Court as to alleged insufficiencies in that questioning. The applicant had failed to submit the contents of the record on that questioning.

Furthermore, no taking of evidence had been necessary on the question whether one or two original keys had been lost in 1981 on the ground that the Regional Court had proceeded on the assumption of the loss of one of the keys which was valid also for the possible loss of two keys in 1981.

The Federal Court of Justice also approved that the Regional Court had read out at the trial the record on the questioning, in proceedings under letters rogatory in Bari, Italy, of the applicant's mother, and, for age and health reasons, refrained from summoning her as witness at the trial. Furthermore, as regards the applicant's complaint that his counsel had not been summoned to participate in the questioning in Bari, the Federal Court of Justice noted that the applicant had not objected to the record concerned being read out. The fact that this witness had not been sworn was regarded as irrelevant on the ground that the credibility of the applicant's mother had not been called into question. Furthermore, the Regional Court had not been obliged to hear a particular meteorologist as expert on the weather conditions at the relevant time. The applicant's further complaints as to the Regional Court's taking of evidence were also regarded as unfounded for failure to show the relevance of the evidence in question.

The Federal Court of Justice confirmed the Regional Court's assessment of evidence. However, as the applicant's offence of aggravated arson had only concerned one building, he could not also be convicted of simple arson.

On 28 February 1994 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde). The decision was served on 10 March 1994.

COMPLAINTS

The applicant complains under Article 6 of the Convention about his conviction by the Freiburg Regional Court of 29 January 1993 and the alleged unfairness of the court proceedings concerned. He considers in particular that the Regional Court unduly dismissed the applicant's requests to take further evidence on his behalf. In this respect, he submits that the Regional Court's findings as to his guilt was only based on circumstantial evidence.

THE LAW

The applicant complains about his conviction by the Freiburg Regional Court of 29 January 1993, as confirmed by the Federal Court of Justice, and also of the court proceedings concerned.

With regard to the judicial decisions 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-B, 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.

The applicant alleges a violation of Article 6 (Art. 6) of the Convention in that he did not have a fair trial, in particular that the Regional Court did not duly take evidence on his behalf.

Article 6 (Art. 6), 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 a ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:
...

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance ...

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
..."

The applicant's submissions about the conduct of the proceedings relate in particular to the taking and assessment of evidence. It seems appropriate to look at these complaints from the point of view of paragraphs 1 and 3 of Article 6 (Art. 6-1, 6-3) taken together, especially as the guarantees in paragraph 3 (Art. 6-3) represent aspects of the concept of a fair trial contained in paragraph 1 (Art. 6-1) (Eur. Court H.R., Unterpertinger judgment of 24 November 1986, Series A no. 110, p. 14, para. 29).

The Commission recalls that as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which the defendants seek to adduce. More specifically, Article 6 para. 3 (d) (Art. 6-3-d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system; it does not require the attendance and examination of every witness on the accused's behalf (cf., Eur. Court H.R., Bricmont judgment of 7 July 1989, Series A no. 158, p. 31, para. 89; Vidal judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, para. 33).

The Commission notes that the Regional Court, as confirmed by the Federal Court of Justice, dismissed the applicant's requests for the taking of further evidence, in particular the hearing of witnesses. The statements of these witnesses were either found to relate to irrelevant facts, or the Regional Court proceeded on the assumption of the truth of the fact concerned. Further complaints as regards the taking of evidence by the Regional Court, raised by the applicant in his appeal on points of law, were dismissed by the Federal Court of Justice in a detailed and careful reasoning as to the applicant's arguments and the requirements of a fair trial. The Federal Court of Justice observed that the applicant had partly failed to substantiate his procedural complaints and that other issues he had failed to raise at the trial.

As regards the assessment of evidence, the Commission finds that the Freiburg Regional Court carefully examined all the evidence before it. There is nothing to show that relevant material or arguments in defence were not taken into due account or that any arbitrary conclusions were drawn.

In these circumstances, the Commission finds no sufficient grounds to form the view that there were any special circumstances in the present case which could prompt the conclusion that the Freiburg Regional Court's taking and assessment of evidence, as confirmed by the Federal Court of Justice, was incompatible with Article 6 (Art. 6) of the Convention.

Moreover, having regard to the conduct of the proceedings against the applicant as a whole, the Commission finds no other indication of unfairness. In particular his submissions do not show that, assisted by counsel, he could not duly present his arguments in defence or could not effectively exercise his defence rights.

Accordingly, there is no appearance of a violation of Article 6 (Art. 6) 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.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)