AS TO THE ADMISSIBILITY OF

Application No. 27311/95
by Jan TIMKE
against Germany

The European Commission of Human Rights sitting in private on 11 September 1995, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN

Mr. H.C. KRÜGER, Secretary to the Commission

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 March 1995 by Jan TIMKE against Germany and registered on 12 May 1995 under file No. 27311/95;

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 1971, is a German national and resident at Drakenburg. He is employed in the German civil service. In the proceedings before the Commission he is represented by Mr. H. Kober, a lawyer practising in Hamburg.

On 19 May 1993 the Land Niedersachsen passed a new Constitution (Verfassung), which entered into force on 1 June 1993. According to Article 9 of the said Constitution, the interval of elections to the Diet of the Land Niedersachsen was prolonged from four to five years.

On 27 September 1994 the Federal Constitutional Court (Bundesverfassungsgericht) refused to admit the applicant's constitutional complaint (Verfassungsbeschwerde) regarding Article 9 of the Niedersachsen Constitution of 1993.

COMPLAINTS

The applicant complains under Article 3 of Protocol No. 1 that Article 9 of the Niedersachsen Constitution of 1993 does not provide for elections to the Diet of the Land Niedersachsen "at regular intervals".

THE LAW

The applicant complains that Article 9 (Art. 9) of the Niedersachsen Constitution of 1993 only provides for elections to the Diet of the Land Niedersachsen at a five years interval.

He relies on Article 3 of Protocol No. 1 (P1-3) which provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Commission recalls that Article 3 (Art. 3) applies to the election of the "legislature". This word does not necessarily mean only the national parliament, but has to be interpreted in the light of the constitutional structure of the State in question (Eur. Court H.R., Mathieu-Mohin and Clerfayt judgment of 2 March 1987, Series A no. 113, p. 23, para. 53).

The Commission finds that, in accordance with the federal structure of the German State, the diets of the German Länder, are "legislature" within the meaning of Article 3 (Art. 3).

As regards the method of appointing the "legislature", Article 3 (Art. 3) leaves to the Contracting States a wide margin of appreciation, given that their legislation on the matter varies from place to place and from time to time (Eur. Court H.R., Mathieu-Mohin and Clerfayt judgment of 2 March 1987, Series A no. 113, p. 24, para. 54).

The Commission finds that the question whether elections are held at reasonable intervals must be determined by reference to the purpose of parliamentary elections. That purpose is to ensure that fundamental changes in prevailing public opinion are reflected in the opinions of the representatives of the people. Parliament must in principle be in a position to develop and execute its legislative intentions - including longer term legislative plans. Too short an interval between elections may impede political planning for the implementation of the will of the electorate; too long an interval can lead to the petrification of political groupings in Parliament which may no longer bear any resemblence to the prevailing will of the electorate. In the light of these considerations, it cannot be said that a five years interval between elections does not ensure the free expression of the opinion of the people in the choice of the legislature.

The Commission therefore considers that the Niedersachsen electoral system, as amended in 1993, did not go beyond what can be considered as "reasonable" for the purposes of Article 3 of Protocol No. 1 (P1-3), in view of an effective political democracy.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)