COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

Application No. 10565/83
by X
against the Federal Republic of Germany

The European Commission of Human Rights sitting in private on 9 May 1984, the following members being present:

MM. C. A. NØRGAARD, President
G. SPERDUTI
J. A. FROWEIN
J. E. S. FAWCETT
M. A. TRIANTAFYLLIDES
G. JØRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
M. MELCHIOR
J. SAMPAIO
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS

Mr H. C. KRUGER, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 29 June 1983 by X against the Federal Republic of Germany and registered on 19 September 1983 under file N° 10565/83

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

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THE FACTS

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

The applicant is a German citizen, born in 1950. He is living in Ludwigshafen, Federal Republic of Germany.

On 27 February 1974 the applicant was arrested and charged with a violation of Art. 129 of the German Penal Code (founding of criminal associations). He was released on 29 March 1974 with the obligation to report to the police weekly. This condition was lifted finally on 5 March 1976. In the meantime the police investigations had led to a charge against the applicant of a violation of Art. 281 of the Penal Code (illegal use of identity paper) whereas the other charge apparently was dropped.

On 18 April 1975 the District Court of Ludwigshafen (Amtsgericht) decided that the case could be settled provided the applicant agreed to pay a fine of 2,250 DM. He refused and wanted the case tried before the court. This happened on 1 October 1975. However, the hearing was adjourned apparently in order to carry out further investigations.

On 11 February 1976 the Court ordered in accordance with Art. 81a of the Criminal Procedure Code (StPO) that the applicant should undergo certain medical examinations in order to check his identity and to establish certain facts. This included X-rays of the applicant's arm and elbow. He appealed against this decision, but to no avail. However, he did not comply with the subsequent requests to be examined by a doctor. On 18 April 1977 the Court therefore ordered the applicant to be brought before the doctors by the police.

The police could not find the applicant and learned that he had terminated his tenancy as from 1 July 1977. A note indicating that the applicant's whereabouts were unknown was therefore put in his file on 11 July 1977. However, the applicant had in fact moved to a new address and was registered there in accordance with the usual procedure as from 20 July 1977.

Nevertheless the District Court of Ludwigshafen issued an arrest warrant on 26 August 1977 since the applicant was still under suspicion of having committed an act contrary to Art. 281 of the Penal Code and since the police investigations showed that he was hiding, which meant that a danger of the applicant's absconding according to Art. 112 para. 2 of the Criminal Procedure Code (StPO) existed.

Based on this warrant, the applicant was arrested on 17 September 1977 and detained in Frankenthal Prison (Untersuchungshaft). He immediately announced that due to the arrest he was going on hunger strike. Apparently the applicant stayed in Frankenthal Prison until 30 September 1977 when he was transferred to the Frankenthal City Hospital in order to undergo the medical examination and X-rays ordered by the District Court on 11 February 1976. The examinations were partly unsuccessful due to the applicant's resistance. Especially it was not possible to carry out the X-ray examinations on him.

Since the applicant had been on a hunger strike since his arrest (17 September 1977) the chief physician at the Frankenthal prison would no longer take the responsibility for the applicant's health and recommended that he be transferred to another prison where he could be force-fed. The applicant was accordingly transferred to Wittlich Prison on 3 October 1977. He was the same day examined by the chief physician who concluded that it would be necessary to submit the applicant to forcible feeding twice a day. The procedure may be described as follows:

Twice a day the applicant was brought to the prison operating room where he was tied to a chair with leather straps around his arms, feet and chest. The applicant was asked whether he would eat the prison food voluntarily. If not the forcible feeding would start. A guard first pressed the applicant's head against the back of the chair. Hereafter a metal spatula wrapped in plaster was pressed against the jaw from the side in order to open the mouth enough to place a clip between the teeth. By means of this clip the jaws were hereafter pressed apart and the mouth opened. The doctor in charge would then lead a rubber or plastic tube through the gullet to the stomach whereafter the food consisting of a special fluid was sent through the tube to the stomach.

After having obtained the necessary court permission, this procedure was carried out on the applicant seven times between 4 October and 7 October 1977.

On 7 October 1977, and after a telephone conversation with the applicant's lawyer, the judge who had issued the arrest warrant on 26 August 1977 called the Wittlich Prison and ordered the applicant's immediate release. Due to his request the applicant was transported from the prison to the exact place where he had been arrested on 17 September 1977. There he was met by his lawyer.

Despite his release the arrest order was not repealed and the applicant was further ordered to report weekly to the police. His complaints in this regard were rejected by the Regional Court on 12 December 1977. The applicant appealed against this decision to the Court of Appeal (Oberlandesgericht) which lifted the arrest order and the duty to report to the police on 9 January 1978.

Convinced that he had been subjected to attempted manslaughter, torture, inhuman and degrading treatment, the applicant requested the Public Prosecutor to institute criminal proceedings against the doctor who had carried out the forced feeding. On 23 January 1980 the Prosecutor decided not to take any action in the case. The applicant appealed against this decision to the Senior Public Prosecutor who upheld the decision on 18 June 1980. The appeal to the Court of Appeal for a prosecution enforcement procedure (Klageerzwingungsverfahren) according to Art. 172 of the Criminal Procedure Code was rejected on 3 September 1980.

In the meantime apparently nothing had happened in the criminal case against the applicant, which as mentioned above had been adjourned on 1 October 1975 in order to obtain certain medical evidence. On 27 August 1980 the case was dropped because it had become statute-barred (Verfolgungsverjährung).

The applicant, however, was not satisfied with this decision since he was convinced of his innocence and thus requested the court to acquit him and award him reasonable compensation for the time spent in detention. His request was finally rejected by the Court of Appeal on 13 July 1981

In the meantime the applicant had launched on 2 February 1981 a major vendetta against a large number of people who had been involved in the circumstances surrounding his arrest on 17 September 1977, his detention, forced-feeding and eventual release as well as the persons who had dealt with his previous attempts to get just satisfaction. These proceedings may be described as follows:

I. A request for prosecution against the two doctors who had asked him to appear in order to be examined in accordance with the court order of 11 February 1976. The applicant was of the opinion that they were accomplices to the treatment to which he was later subjected. This case was finally rejected by the Court of Appeal (Oberlandesgericht Karlsruhe) on 22 September 1981 as inadmissible (unzulässig) since the request for the prosecution enforcement procedure (Klageerzwingungsverfahren) did not fulfil the formal requirements set out in Art. 172 para. 3 of the Criminal Procedure Code (StPO)

II. A request for prosecution against the chief physician at the Frankenthal prison who had recommended the applicant's transfer to another prison in which he could be forcibly fed, as well as the doctor who examined him on 30 September 1977 at the Frankenthal City Hospital according to the above-mentioned court order of 11 February 1976. The Court of Appeal (Oberlandesgericht Zweibrücken) rejected the request (Klageerzwingungsverfahren) on 26 October 1982 as unsubstantiated.

III. A request for prosecution against a doctor who, according to the applicant, was an accomplice to the doctor who force-fed him. The Court of Appeal (Oberlandesgericht Koblenz) rejected the request on 23 February 1982 as unsubstantiated.

IV. A request for prosecution against the doctor who had force-fed him at Wittlich prison, as well as the personnel involved in this act. The applicant was of the opinion that the treatment to which he had been subjected amounted to attempted manslaughter and bodily harm. After having obtained statements from the persons involved the Public Prosecutor rejected the request on 14 August 1981 as manifestly ill-founded. In particular he referred to Articles 178, para. 1, and 101, para. 1 of the Treatment of Offenders Act (Strafvollzugsgesetz) according to which a doctor is obliged to force feed a person if this person, due to a hunger strike, is in a highly dangerous condition. Furthermore, the actual feeding was carried out in accordance with the normal procedure without the use of excessive force. Especially there were no substantiated reasons to believe that the doctor and his personnel intended to kill or harm the applicant. The forced feeding was only carried out since the doctor, after examining the applicant, had reached the conclusion that this was necessary for the protection of the applicant's health and it did not take place until the Court had granted the necessary permission.

The Senior Public Prosecutor upheld this decision on 29 December 1981. In particular he mentioned that the circumstances in question, which had already been examined and rejected once before, had only been subjected to this new examination because of the applicant's allegation that new facts had been produced. However, the reasons set out in the previous decision (18 June 1980) would still apply and none of the applicant's submissions indicated any intentional attempts at manslaughter or bodily harm which could justify prosecution.

The Court of Appeal (OLG Koblenz) rejected the applicant's request for a prosecution enforcement procedure (Klageerzwingungsverfahren) on 23 February 1982 since the new examination of the case had not brought forward any new facts which could alter the previous decisions. The force-feeding was carried out in accordance with the procedures described in the laws and no criminal acts or other violations could be based on the applicant's claims.

V. A request for prosecution against the doctor mentioned above under IV regarding an alleged attempted manslaughter during the applicant's release from the Wittlich prison and transport from the prison to the place of his arrest. The request was rejected by the Court of Appeal (OLG Koblenz) on 23 February 1982 as unsubstanitated.

VI. A request for prosecution against the doctor mentioned above under IV and V regarding an alleged cover-up following the circumstances of the force-feeding. Unlike the requests already mentioned, which were dated 2 February 1981, this request was dated 30 October 1981. It was rejected on 9 August 1982 by the Court of Appeal (OLG Koblenz) as inadmissible (unzulässig) since the request did not contain facts which could constitute the basis for any investigations.

VII. A request for prosecution against various unnamed prison doctors, including a complaint concerning biased judges dealing with this particular complaint. Both the request and the complaint were rejected by the Court of Appeal (OLG Karlsruhe) on 29 April 1982 as inadmissible (unzulässig), the former because it did not contain any comprehensible facts part, the latter since it did not include any reasoning.

With his submissions of 2 April, 4 June, 8 September and 1 December 1982 the applicant subsequently lodged a complaint with the Federal Constitutional Court. With reference to the above-mentioned facts he invoked the following articles of the Federal Constitution:

Art. 1 - Protection of human dignity
Art. 2 - Right of liberty
Art. 3 - Equality before the law
Art. 4 - Freedom of faith and creed
Art. 11 - Freedom of movement
Art. 14 - Property rights
Art. 20 - Right to resist
Art.103 - Basic rights in the courts
Art.104 - Legal guarantees in the event of deprivation of liberty.

On 3 December 1982 the Federal Constitutional Court decided in the cases mentioned under III - VII. The complaints were rejected insofar as they were related to the prosecution enforcement procedure because these matters were left for the ordinary courts to decide and could not be challenged before this court. Furthermore the case did not as a whole indicate a violation of the Federal Constitution.

On 11 January 1983 the Federal Constitutional Court decided in the case mentioned under I. The case was rejected since it had no prospect of success. No further reasons were indicated.

Finally and insofar as it can be determined from the applicant's submissions, the case under II has never been examined by the Federal Constitutional Court.

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Complaints

The applicant complains that his arrest on 17 September 1977 was illegal. His detention until 7 October 1977 was also illegal. He had done nothing wrong but only refused to undergo the medical examination in question, which he as such also finds illegal. He was kept in detention even after it had been established that it was impossible to carry out the examination and instead of his immediate release he was transferred to another prison and subjected to inhuman and degrading treatment for four days in that he was forcibly fed.

The applicant also alleges that his subsequent attempts to have the alleged violators prosecuted and punished, as well as his attempts to obtain a just satisfaction for the treatment to which he has been subjected, have been dealt with by the various courts and administrative authorities contrary to his rights under the Convention.

He invokes Articles 2, 3, 5, 6, 8, 9, 10, 13, 14 and 17 of the Convention.

THE LAW

1. The applicant has inter alia invoked Art. 3 of the Convention complaining that he was subjected to inhuman and degrading treatment during his period of detention in Wittlich prison, in that he was forcibly fed.

Article 3 of the Convention provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

The Commission recalls the jurisprudence of the European Court of Human Rights and that of the Commission according to which treatment will be considered inhuman only if this treatment reaches a certain stage of gravity, causing considerable mental or physical suffering. The Commission refers on this point to the judgment of the Court in the case of Ireland v. the United Kingom (Judgment of 18 January 1978, Series A, N° 25, para. 162).

Furthermore, as for the criteria concerning the notion of "degrading treatment", the treatment itself will not be degrading unless the person concerned has undergone humiliation or debasement attaining a minimum level of severity. That level has to be assessed with regard to the circumstances of the case (see the above-mentioned Ireland v. the United Kingdom judgment paras. 162, 167, and 179-91).

In the opinion of the Commission forced feeding of a person does involve degrading elements which in certain circumstances may be regarded as prohibited by Art. 3 of the Convention.

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Under the Convention the High Contracting Parties are, however, also obliged to secure to everyone the right to life as set out in Art. 2. Such an obligation should in certain circumstances call for positive action on the part of the Contracting Parties, in particular an active measure to save lives when the authorities have taken the person in question into their custody.

When, as in the present case, a detained person maintains a hunger strike this may inevitably lead to a conflict between an individual's right to physical integrity and the High Contracting Party's obligation under Art. 2 of the Convention - a conflict which is not solved by the Convention itself.

The Commission recalls that under German law this conflict has been solved in that it is possible to force-feed a detained person if this person, due to a hunger strike, would be subject to injuries of a permanent character, and the forced feeding is even obligatory if an obvious danger for the individual's life exists. The assessment of the above-mentioned conditions is left for the doctor in charge but an eventual decision to force-feed may only be carried out after judicial permission has been obtained.

In the present case the Commission recalls that the applicant was transferred to Wittlich prison on 3 October 1977 since the chief physician at the previous prison could no longer take the responsibility for the applicant's health. At Wittlich prison the applicant was examined the very day he arrived and the doctor in charge reached the conclusion that the applicant's situation necessitated forced feeding. This was accordingly carried out by use of the force necessary to overcome the applicant's resistance.

The Commission is satisfied that the authorities acted solely in the best interests of the applicant when choosing between either respect for the applicant's will not to accept nourishment of any kind and thereby incur the risk that he might be subject to lasting injuries or even die, or to take action with a view to securing his survival although such action might infringe the applicant's human dignity.

Furthermore, having regard in particular to the relatively short period during which the treatment was carried out, the Commission finds that the circumstances of the present case, do not reveal that this measure, taken with a view to securing his health or even saving his life, subjected the applicant to more constraint than necessary to achieve that goal.

Accordingly the Commission concludes that the facts of the case do not disclose any appearance of a violation of Art. 3 of the Convention.

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

2. The applicant has also complained that his detention from 17 September to 7 October 1977 was illegal and contrary to his rights under the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of the Convention as, under Art. 26 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case the applicant has not shown that he pursued this particular complaint before the German courts, a complaint that could have been brought before the Federal Constitutional Court, and he has not, therefore, exhausted the remedies available to him under German law. Moreover, an examination of the case does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must in this respect be rejected under Art. 27 (3) of the Convention.

3. The Commission has finally examined the applicant's remaining complaints as they have been submitted by him. However, after considering these complaints, the Commission finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

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

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H. C. KRUGER) — (C. A. NØRGAARD)