

## APPLICATION/REQUÊTE N° 6541/74

X. v/the FEDERAL REPUBLIC OF GERMANY  
X. c/RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

DECISION of 18 December 1974 on the admissibility of the application  
DÉCISION du 18 décembre 1974 sur la recevabilité de la requête

*Article 6, paragraph 1, of the Convention : Provision neither applicable to the preliminary judicial investigations nor to the proceedings concerning the review of an order for detention on remand.*

*Article 6, paragraphe 1, de la Convention : Disposition inapplicable à l'instruction préparatoire, ni à la procédure relative au maintien d'un inculpé en détention préventive.*

### Summary of the relevant facts

(français : voir ci-dessous)

*The applicant, charged with murder, complains that he was refused permission to appear in person before the Court of Appeal, when decisions were taken confirming his detention on remand. He further alleges that the preliminary judicial investigations have not been carried out impartially, as they favoured the person whom the applicant considers to be the real murderer.*

### THE LAW (Extract)

The applicant has (further) complained of unfair court proceedings in that he has been refused oral hearings before the Court of Appeal in Düsseldorf in respect of his appeals against his detention and in that his pre-trial investigation was partial. However, under Article 25 (1) of the Convention, it is only the alleged violation of one of the rights and freedoms set out in the Convention that can be the subject of an application presented by a person, non-governmental organisation or group of individuals.

According to Article 6 (1) of the Convention, everyone is entitled to a fair and public hearing in the determination of his civil rights and obligations, or of any criminal charge against him. In the case of the applicant the proceedings complained of concerned the reviews of his detention, and his preliminary judicial investigation. It is clear that within the meaning of Article 6 (1) these proceedings were not concerned with the determination of the applicant's civil rights or obligations. Nor does the question of determining a criminal charge against him arise with regard to the review proceedings. The Commission refers in this respect to its established case-law and the principle laid down by the European Court of Human Rights in the *Neumeister* case.\* As regards the preliminary judicial investigation of the applicant's case the Commission cannot on the basis of the applicant's submissions find that the examining judge was engaged in determining any criminal charges against the applicant by refusing various requests made by him.

It follows that the proceedings concerned fall outside the scope of Art. 6 and that, therefore, this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27 (2).

### Résumé des faits pertinents

*Inculpé de meurtre se plaint de n'avoir pu comparaître en personne devant la cour*

\* Eur. Court of H.R., *Neumeister* case, Judgment of 27 June 1968, paras. 22-25; see also Application No. 3637/68, Collection 31, p. 51.

*d'appel, appelée à se prononcer sur la confirmation du mandat de dépôt. Il allègue d'autre part que l'instruction préparatoire a été conduite d'une manière partielle, c'est-à-dire de manière à favoriser celui que le requérant considère comme le véritable auteur du crime.*

**Résumé des considérants pertinents**

*Il est manifeste que ni la procédure suivie devant la cour d'appel de Düsseldorf, appelée à se prononcer sur le maintien du requérant en détention préventive, ni la procédure d'instruction préparatoire n'avaient trait à une contestation sur les droits et obligations de caractère civil du requérant, au sens de l'article 6, paragraphe 1, de la Convention.*

*La procédure concernant le maintien du requérant en détention préventive ne portait pas sur le bien-fondé de l'accusation pénale dirigée contre lui (cf. requête N° 3637/68, Recueil 31, p. 51 ; cf. Cour eur. D.H., arrêt Neumeister du 27.6.68, paragr. 22 à 25).*

*Quant à l'instruction préparatoire, la Commission estime, sur la base du dossier, que le magistrat instructeur n'était pas non plus appelé à statuer sur le bien-fondé de l'accusation pénale.*

*L'article 6, paragraphe 1, n'est donc pas applicable et les griefs sont incompatibles, ratione materiae, avec les dispositions de la Convention.*