

## AS TO THE ADMISSIBILITY OF

Application No. 17851/91  
 by Dorothea VOGT  
 against the Federal Republic of Germany

The European Commission of Human Rights sitting in private on 19 October 1992, the following members being present:

MM. C.A. NØRGAARD, President  
 S. TRECHSEL  
 F. ERMACORA  
 E. BUSUTTIL  
 G. JÖRUNDSSON  
 A.S. GÖZÜBÜYÜK  
 A. WEITZEL  
 J.-C. SOYER  
 H.G. SCHERMERS  
 H. DANELIUS  
 Mrs. G.H. THUNE  
 Sir Basil HALL  
 MM. F. MARTINEZ  
 C.L. ROZAKIS  
 Mrs. J. LIDDY  
 MM. L. LOUCAIDES  
 J.-C. GEUS  
 M.P. PELLONPÄÄ  
 B. MARXER

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 13 February 1991 by Dorothea Vogt against the Federal Republic of Germany and registered on 27 February 1992 under file No. 17851/91;

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 applicant is a German citizen, born in 1949 and living in Jever. She is a teacher by profession. She is represented by Messrs. Becker and Jäckel, lawyers in Marburg.

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

From 1976 to 1977 the applicant worked as a trainee as part of the preparatory service for teachers (Vorbereitungsdienst) and on 1 August 1977 she became a teacher (Studienrätin) in the Lower Saxony state school service in Jever. In 1979 she was made a permanent civil servant with tenure for life (Beamtin auf Lebenszeit).

On 12 August 1986, by means of a disciplinary sanction, the applicant was provisionally suspended from service on account of her political activities as a member of the German Communist Party (DKP). On 15 October 1987 the Disciplinary Chamber of the Oldenburg Administrative Court (Verwaltungsgericht) decided that the applicant had violated her duty of political loyalty (politische Treuepflicht) and imposed, in accordance with Section 61 (2) of the Regional Civil Service Act (Niedersächsisches Beamtengesetz), the disciplinary sanction of dismissal. For a period of six months she was paid the equivalent of 75% of the pension rights acquired at the relevant time.

An appeal (Berufung) was rejected by the Oldenburg Administrative Court of Appeal (Oberverwaltungsgericht). On 31 October 1989 the applicant was ordered to pay the costs of the administrative court proceedings.

A constitutional complaint was rejected by a panel of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 7 August 1990 (served on 14 August 1990) as offering no prospects of success.

On 1 February 1991 the applicant was re-employed as a teacher.

#### COMPLAINTS

The applicant submits that the disciplinary proceedings obliged her to choose either to renounce her political convictions or to accept the consequence of losing her job. She therefore considers that her dismissal constitutes an unreasonable and unjustified interference with her freedom of opinion as guaranteed by Article 10 of the Convention.

She also invokes Article 11 and further alleges a violation of Article 10 in conjunction with Article 14 as she considers herself discriminated against in comparison with civil servants who are not members of a political party.

#### PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 13 February 1991 and registered on 27 February 1991.

On 10 March 1991 the Commission decided to give notice of the application to the respondent Government, but without inviting them to submit observations at that stage.

On 7 October 1991 the Commission decided to invite the respondent Government to submit observations in writing on the admissibility and merits of the application.

The Government submitted their observations on 30 January 1992. The applicant replied on 2 May 1992.

#### THE LAW

The applicant complains of her dismissal from the teaching profession which constitutes, according to her, an unjustified interference with her rights to freedom of expression as guaranteed by Article 10 para. 1 (Art. 10-1) and to freedom of association as guaranteed by Article 11 para. 1 (Art. 11-1) of the Convention. She also considers that the measure is discriminatory in respect of these rights.

The Government accept that the application is admissible.

The Commission considers that the application raises serious issues of law and fact in relation to the Articles invoked by the applicant. There are no grounds to reject the application under Articles 26 and 27 (Art. 26, 27) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)