

Application No. 14260/88
by A.K.
against the Federal Republic of Germany

The European Commission of Human Rights sitting in private
on 13 July 1990, the following members being present:

MM. S. TRECHSEL, Acting President
J.A. FROWEIN
F. ERMACORA
G. SPERDUTI
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS

Mrs. G. H. THUNE

Sir Basil HALL

Mrs. J. LIDDY

MM. L. LOUCAIDES

J.-C. GEUS

A.V. ALMEIDA RIBEIRO

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 29 July 1988
by A.K. against the Federal Republic of Germany and registered
on 29 September 1988 under file No. 14260/88;

Having regard to the Commission's decision of 4 December 1989
to give notice of the application to the respondent Government and to
invite them to present their observations in writing on the admissibility
and merits of the application;

Having regard to the Government's letter of 30 March 1990
enclosing the agreement reached between the parties;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Turkish citizen born in 1957 and living at
Heilbronn. He is represented by Rechtsanwalt N. Wingerter, a lawyer
practising at Heilbronn.

The facts submitted may be summarised as follows.

On 23 May 1986, at Heilbronn, the applicant, driving a private
motor car, was involved in a traffic accident.

By a regulatory fine order (Bussgeldbescheid) of 17 July 1986
the city of Neckarsulm imposed on the applicant a regulatory fine
(Geldbusse) for causing a traffic accident by careless driving.

On the applicant's objection (Einspruch) the District Court
(Amtsgericht) of Heilbronn fixed 1 December 1986 as date of the
trial. An interpreter was appointed for this hearing.

At the hearing on 1 December the Court took evidence and decided to continue the trial on 11 December. On 2 December 1986 the applicant withdrew the objection and the Court ruled that he had to bear the costs of the proceedings under Article 109 of the Act on Regulatory Offences (Gesetz über Ordnungswidrigkeiten).

On 23 June 1987 the Court Cashier's Office (Gerichtskasse) fixed the costs to be paid by the applicant at 198.10 DM, of which 124.10 DM represented the interpreter's fee.

On 24 July 1987 the applicant entered an objection (Erinnerung) against the bill of costs to the extent that it included the interpreter's fee.

On 7 October 1987 the District Court dismissed the objection ("wird nicht abgeholfen") as unfounded.

The applicant's appeal (Beschwerde) of 2 November 1987, alleging a violation of Article 6 para. 3 (e) of the Convention, was dismissed by the Regional Court (Landgericht) of Heilbronn on 2 March 1988. The Regional Court held that No. 1904, second sentence, of the Schedule to the Court Costs Act (Kostenverzeichnis zum Gerichtskosten-gesetz), as amended in 1980 following the Luedicke, Belkacem and Koc judgment of 28 November 1978 (Eur. Court H.R., Series A no. 29), did not cover regulatory proceedings and that it was for the legislator to take the action required under Article 53 of the Convention following the Court's subsequent interpretation of Article 6 para. 3 (e) of the Convention in the Öztürk judgment of 21 February 1984 (Eur. Court H.R., Series A no. 73). In relation to Article 6 para. 3 (e) of the Convention, as incorporated into domestic law in 1952, the Schedule, as amended in 1980, prevailed, being both *lex posterior* and *lex specialis*.

COMPLAINT

The applicant alleged a violation of Article 6 para. 3 (e) of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 29 July and registered on 29 September 1988.

On 4 December 1989 the Commission decided to bring the application to the notice of the respondent Government and to invite them to present before 23 February 1990 their observations in writing on the admissibility and merits of the application.

By a letter of 21 February 1990 the Government informed the Commission of the terms of a draft agreement which they had sent to Rechtsanwalt Wingerter.

Under cover of their letter of 30 March 1989 the Government submitted the agreement reached between the parties.

The agreement reads as follows:

(German original)

"V E R E I N B A R U N G

über das Individualbeschwerdeverfahren Nr. 14 260/88
A.K. gegen die Bundesrepublik Deutschland

zwischen

Herrn A.K., Christophstrasse 53, 7100 Heilbronn,

vertreten durch Rechtsanwälte Norbert Wingerter, Volker Hohbach, Anke Stiefel-Bechdorf, Christoph Haussmann in Heilbronn

und

der Bundesrepublik Deutschland vertreten durch Ministerialdirigent Dr. Meyer-Ladewig, Bundesministerium der Justiz, 5300 Bonn 2

1. Dem Beschwerdeführer werden die in dem Bussgeldverfahren vor dem Amtsgericht Heilbronn - 31 OWi 3307/86 - entstandenen und von ihm gezahlten Dolmetscherkosten in Höhe von 124,10 DM zurückerstattet.
2. Die Bundesregierung zahlt dem Beschwerdeführer zur Abgeltung der ihm im Erinnerungs- und Beschwerdeverfahren gegen diesen Kostenansatz und anlässlich der Einlegung der Individualbeschwerde bei der Europäischen Menschenrechtskommission entstandenen Kosten und Auslagen einen Betrag von insgesamt 600,- DM (sechshundert Deutsche Mark).
3. Die Beträge zu 1. und 2. werden an den Verfahrensbevollmächtigten des Beschwerdeführers, Rechtsanwälte Norbert Wingerter, Volker Hohbach u.a. überwiesen.
4. Der Beschwerdeführer nimmt die Beschwerde hiermit zurück.

Bonn, den 21.2.1990

Heilbronn, den 21.2.90

gez. Meyer-Ladewig
(Ministerialdirigent
Dr. Meyer-Ladewig)
English translation

gez. Wingerter
(Rechtsanwalt Wingerter)"

"A G R E E M E N T

concerning the proceedings relating to individual Application No. 14260/88 A.K. against the Federal Republic of Germany

between

Mr. A.K., Christophstrasse 53, 7100 Heilbronn,
represented by MM. Norbert Wingerter, Volker Hohbach, Mrs. Anke Stiefel-Bechdorf and Mr. Christoph Haussmann, lawyers in Heilbronn,

and

the Federal Republic of Germany, represented by Dr. Meyer-Ladewig, Ministerialdirigent, Federal Ministry of Justice, 5300 Bonn 2

1. Interpretation costs of 124.10 DM incurred in regulatory proceedings - 31 OWi 3307/86 - before the Heilbronn District Court and paid by the applicant shall be reimbursed.
2. In satisfaction of the costs and expenses incurred by the applicant in the objection and appeal proceedings to the above-mentioned bill of costs and in the submission of the application to the European Commission of Human Rights, the Federal Government shall pay to the applicant the sum of 600 DM (six hundred Deutschmark).
3. The sums referred to in paragraphs 1. and 2. above shall be paid to the applicant's representatives in the proceedings, MM. Norbert Wingerter, Volker Hohbach and others.
4. The applicant hereby withdraws the application.

Bonn, 21.2.1990

Heilbronn, 21.2.90

(signed) Meyer-Ladewig
(Ministerialdirigent
Dr. Meyer-Ladewig)

(signed) Wingerter
(Rechtsanwalt Wingerter)"

The Government state that they have arranged for the above sums to be paid to Rechtsanwalt Wingerter.

REASONS FOR THE DECISION

The Commission notes that the parties have reached an agreement on the applicant's claims and that the applicant wishes to withdraw his application to the Commission. It concludes that the applicant does not intend to pursue further his petition, the factual basis of which has been resolved, within the meaning of Article 30 para. 1 (a) and (b) of the Convention.

Moreover, the Commission finds no reasons of a general character affecting respect for Human Rights, as defined in the Convention, which require the further examination of the case by virtue of Article 30 para. 1 in fine of the Convention.

In this respect the Commission notes that, in view of the Öztürk judgment, the Federal Republic of Germany has, by Article 2 para. 1 of an Act of 15 June 1989 (Gesetz zur Regelung des Geschäftswertes bei land- und forstwirtschaftlichen Betriebsübergaben und zur Änderung sonstiger kostenrechtlicher Vorschriften, BGBl I p. 1083), amended No. 1904 of the Schedule to the Court Costs Act. Under the amended provision interpretation costs incurred in regulatory proceedings will only be claimed from the accused if the court finds that he caused them unnecessarily.

For these reasons, the Commission

DECIDES TO STRIKE THE APPLICATION OFF ITS LIST OF CASES.

Secretary to the Commission

Acting President of the Commission

(H.C. KRÜGER)

(S. TRECHSEL)