



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF LITWIN v. GERMANY

(Application no. 29090/06)

JUDGMENT

STRASBOURG

3 November 2011

FINAL

03/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Litwin v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Dean Spielmann, *President*,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Isabelle Berro-Lefèvre,

Ann Power-Forde,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 October 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 29090/06) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a stateless person, Mr Günther Paul Litwin (“the applicant”), on 14 May 2004.

2. The applicant was represented by Mr T. Schmidt, a lawyer practising in Giessen. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, of the Federal Ministry of Justice.

3. The applicant alleged, in particular, that he had been denied access to the appeal courts, contrary to Article 6 § 1 of the Convention.

4. On 29 March 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lives in Fulda.

6. On 23 February 2000 the applicant was arrested on suspicion of having committed robberies. He was detained pending trial. The trial, at which he was represented by counsel, began on 19 October 2000. At the end of the fifth day of the trial, and after evidence had been heard, the court set

the next trial hearing for 17 November 2000 at 9 a.m. According to the court transcript, the trial only started at 10 a.m. on that date.

7. On 17 November 2000 between 9 a.m. and 10 a.m. negotiations took place inside the court building, the content of which are in dispute between the parties.

8. According to the applicant's submissions, the court, having previously indicated that the potential penalty that the applicant faced could amount to fourteen years' imprisonment, promised a maximum penalty of nine-and-a-half years' imprisonment in exchange for the applicant's waiver of his right to appeal, as well as a waiver of the applicant's and his wife's claims over confiscated assets and an agreement that he would not call for further evidence.

9. According to the Government, the public prosecutor did not take part in the agreement reached. The court, following a proposal made by the applicant's counsel, promised a penalty of less than ten years' imprisonment in exchange for the applicant's waiver of claims over confiscated assets.

10. According to the court transcript of the hearing on 17 November 2000, which makes no mention of the agreement, further documents were then read out, the presiding judge gave legal advice as to the qualification of the alleged offences and both the applicant and his wife, who was present in the courtroom, declared that they waived any rights to the assets confiscated by the prosecution service.

11. At the end of the hearing, the Fulda Regional Court convicted the applicant of aggravated extortion, aggravated robbery and attempted aggravated robbery (two counts of each offence) and dangerous bodily injury (one count) and sentenced him to nine-and-a-half years' imprisonment. The court, stating that the applicant had not entered a plea, based its findings on DNA expert evidence pointing to a high probability that the applicant had been the person that had caused marks found at the crime scenes and on further circumstantial evidence derived, in particular, from witness testimony. The court considered the fact that the applicant had eventually waived his right to the confiscated assets and had thus delivered a major proportion of his criminal profits as a mitigating factor.

12. After delivery of the judgment, the court verbally informed the applicant of his right to lodge an appeal on points of law. In the applicant's presence, counsel for both the defence and the prosecution waived their rights to appeal.

13. The applicant subsequently appointed new counsel. On 12 April 2001 the applicant's new counsel applied for restitution of the *status quo ante* and lodged an appeal on points of law, arguing that the waiver of the right to appeal had been invalid because it had not complied with the requirements of the Federal Court of Justice's case-law. As the applicant had not been aware of the invalidity of his waiver, he could not be held responsible for having failed to comply with the statutory time-limit of one

week for lodging an appeal on points of law. In a written statement attached to the application, the applicant submitted that his previous counsel had informed him that he would have to expect the imposition of a prison sentence of at least fourteen years if he did not accept the court's proposal and that he was only informed about the invalidity of the waiver during a first conversation with his new counsel which took place on 10 April 2001.

14. In pleadings dated 10 May 2001 counsel specified the grounds of appeal on points of law. He complained that the negotiated agreement had not been recorded in the court transcript, as required by the case-law of the Fourth Chamber of the Federal Court of Justice (see paragraph 19 below). In his view, this constituted a breach of the principle of a public hearing. He also argued that the actual waiver of the right to appeal had been declared before delivery of the judgment – namely when negotiating the agreement – and had been invalid for this reason as well.

15. On 11 June 2001 the Second Chamber of the Federal Court of Justice (file no. 2 StR 223/01) dismissed the applicant's request for restitution of the *status quo ante* and rejected his appeal on points of law as inadmissible. Relying on its own settled case-law, the court observed that a waiver of the right to appeal could not be revoked, rescinded or withdrawn. The Court of Justice did not find it necessary to establish whether the waiver had been part of a negotiated agreement, as this fact did not call into question the validity of the waiver as such. The waiver had to be measured by different standards: notably, whether the accused had retained the freedom to either accept a judgment against him or lodge an appeal had to be verified. This freedom had to be preserved, even if the judgment had been based on an objectionable agreement and the waiver had constituted honouring such an agreement. Notwithstanding any procedural defect in the alleged agreement, the accused may have pursued his interests in an autonomous and appropriate way. The only decisive factor was whether the accused had been unduly influenced when waiving his right to appeal. In the present case, there was no indication that there had been such undue influence. The applicant's submissions neither disclosed an error or misunderstanding on the applicant's part, nor any deceit or false information given by the court, nor any impairment of the interests of the defence.

16. The court further considered that, as a result of the valid waiver of the right to appeal, the Fulda Regional Court's judgment had become legally binding on 17 November 2000 and that the appeal on points of law thus had to be rejected as inadmissible. It followed that the applicant could not be granted restitution of the *status quo ante*. If a person had knowingly waived a right to appeal, he had not been "prevented from observing a time-limit" within the meaning of Article 44 § 1 of the Code of Criminal Procedure. The decision was served on the applicant's counsel on 5 July 2001.

17. On 3 August 2001 the applicant lodged a constitutional complaint, claiming that he had been unduly influenced when waiving his right to appeal in exchange for a maximum penalty of nine-and-a-half years' imprisonment. Furthermore, the Federal Court of Justice had failed to consider the fact that his wife, who had not been involved in the trial, had also been asked to waive any rights she had to the confiscated assets. This procedural method had been arbitrary, had not been in accordance with the statutory provisions governing the confiscation of assets in criminal proceedings and had also constituted a violation of the right to an effective remedy. On 20 November 2003 the Federal Constitutional Court (file no. 2 BvR 1339/01), relying on the relevant provisions of its rules of procedure, refused to admit the constitutional complaint for examination without giving further reasons. This decision was served on the applicant's counsel on 4 December 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

18. Relevant provisions:

Section 44

"If a person was prevented from observing a time-limit through no fault of his own, he shall be granted restitution of the *status quo ante* upon application. ..."

Section 45

"(1) The application for restitution of the *status quo ante* shall be filed with the court where the time-limit should have been observed within one week after the reason for non-compliance no longer applies. To observe the time-limit, it shall be sufficient for the application to be filed in time with the court which is to decide on the application.

..."

Section 257c1

"(1) In suitable cases the court may, in accordance with the following subsections, come to an agreement with the other parties to the proceedings regarding the further progress and outcome of the proceedings. ...

(2) The subject matter of such an agreement may only comprise the legal consequences which could form part of the judgment and of the associated rulings, other procedural measures related to the proceedings, and the conduct of the parties.

¹ In force since 4 August 2009.

The verdict and measures of correction and prevention may not be the subject of an agreement.

(3) The court shall announce what content the agreement might have. In this context, it may ... also indicate an upper and lower limit of the sentence.

...”

Section 302 (old version)¹

“(1) Withdrawal of an appeal, as well as waiver of the right to lodge an appeal, may also take effect before expiry of the time-limit for filing. ...

(2) Defence counsel shall require express authorisation for such withdrawal.”

Section 302 (new version)²

“(1) Withdrawal of an appeal, as well as waiver of the right to lodge an appeal, may also take effect before expiry of the time-limit for filing. If a negotiated agreement (Section 257c) has preceded the judgment, a waiver shall be excluded. ...

(2) Defence counsel shall require express authorisation for such withdrawal.”

Section 341

“(1) The appeal on points of law shall be filed with the court whose judgment is being contested, either orally to be recorded by the registry or in writing, within one week after pronouncement of judgment.”

B. Conflicting case-law of the different Chambers of the Federal Court of Justice at the time of the judgment in the instant case

19. There has always been agreement between the Chambers of the Federal Court of Justice that agreements with a view to terminating criminal proceedings are not *per se* inadmissible. It has also been accepted that a waiver of the right to appeal should not be negotiated in the context of such an agreement and that such a waiver is not legally binding on the defendant. However, the Chambers have differed on the question of the consequences of such a waiver if a defendant has nevertheless promised to grant the waiver and has made a declaration that he or she will do so to the trial court.

The First and Second Chambers have held that a waiver of the right to appeal is not invalid simply because it formed – though inadmissibly – part of an agreement between the court, the prosecution and the defence. Rather,

¹ Version in force at the time of the domestic courts’ decisions in the instant case.

² Version in force since 4 August 2009.

it has only been considered to be invalid if the procedural defect led to undue influence at the time the waiver was declared.

The Third, Fourth and, since 2003, Fifth Chambers have found a waiver of the right to appeal, which has been the subject of an agreement with a view to terminating criminal proceedings, to always be invalid. They have held that a promise not to lodge an appeal, made before delivery of a judgment, albeit not legally binding, always constitutes undue influence on the accused.

C. Decision of the Grand Chamber of the Federal Court of Justice

20. In a leading decision of 3 March 2005, the Grand Chamber of the Federal Court of Justice laid down the principles governing the validity of a waiver of the right to appeal in the context of agreements entered into with a view to terminating criminal proceedings (file no. GSSt 1/04). It considered such agreements, in which the criminal courts make a binding declaration on the maximum penalty to be imposed in exchange for the defendant's confessing to (part of) the offences he has been charged with, to be compatible with the Code of Criminal Procedure and the Basic Law if certain conditions are met.

21. In particular, all participants in the proceedings (that is, professional and lay judges, the prosecution, the defence counsel and the defendant) must be involved in reaching the agreement, the result of which must be made public at a hearing and must be duly noted in the court transcript. The veracity of any confession made by the defendant in accordance with the agreement must be verified. The agreement is not allowed to concern the legal qualification of the acts the defendant has been charged with. The penalty proposed by the court still must reflect the defendant's guilt and the penalty which, according to the court, could be expected without a confession may not be disproportionately severe in order to subject the defendant to undue pressure to confess. The court is only allowed to agree a maximum penalty (as opposed to a specific penalty) and may only exceed that penalty if relevant factual or legal issues have been overlooked and if it has previously advised the defendant at a hearing of its intention to set a higher penalty. The Federal Court of Justice noted that in view of their heavy workload, the courts would be unable to render criminal justice and to avoid delays in proceedings without being allowed to have recourse to such agreements.

22. The Federal Court of Justice further observed that in the past, such agreements had in practice often involved the defendant's promise to waive his right to appeal against the judgment, or at least the court's suggestion to do so. However, the criminal courts were not authorised, in the context of these agreements, to arrange for a waiver of the right to appeal. An agreement aimed at terminating the proceedings was not to prevent the

effective review, by the appeal courts, of the lower courts' judgments. After the delivery of a judgment which was given following an agreement – irrespective of whether a waiver of the right to appeal had been included or discussed – the court therefore had to inform the defendant not only of his right to appeal, but also of the fact that he was free to lodge an appeal irrespective of the agreement reached (what is termed a qualified instruction). If such a qualified instruction had not been given, the defendant's waiver of his right to appeal was void.

23. These guidelines of the Federal Court of Justice have meanwhile been incorporated in Sections 257c and 302 of the Code of Criminal Procedure (see paragraph 18 above).

THE LAW

I. COMPLAINT OF RESTRICTION OF ACCESS TO THE APPEAL COURTS

24. The applicant complained of the restriction of his right of access to the appeal courts as a result of his – allegedly invalid – waiver of the right to appeal. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

25. The Government contested that argument.

A. Admissibility

1. *The Government's submissions*

26. The Government submitted that the application was inadmissible for failure to comply with the six-month time-limit (Article 35 § 1 of the Convention). They observed that the six-month time-limit following the decision of the Federal Constitutional Court had ended on 4 June 2004. It followed that the application had been lodged within the time-limit if the date on the application form of 14 May 2004 was accepted. The Government observed, however, that according to the Court's statement of facts, the introduction of the application was dated 12 July 2006. Should the discrepancy between the date on the application form and the date quoted in the statement of facts have been due to the applicant's own negligence, the applicant had to be regarded as having failed to observe the time-limit.

27. The Government further considered that the applicant had failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention. Relying on the Court's case-law, in particular in the case of *Floquet v. Germany* (dec.), no. 50215/99, 9 February 2006, the Government submitted that the present complaint was inadmissible because the applicant had neither lodged his appeal on points of law nor his request for restitution of the *status quo ante* within the relevant statutory time-limits.

2. *The applicant's submissions*

28. The applicant contested these arguments. He submitted that he had posted his complaint to the Court in time and that he had submitted all relevant documents to the Court on 6 August 2004.

29. The applicant further submitted that he had been prevented from lodging his appeal on points of law within the statutory time-limit, because his previous counsel had repeatedly and against his better judgment told him that he did not have the right to lodge an appeal. Furthermore, he had been purposefully misled by the trial court. He had only learned on 10 April 2001 through his new counsel that the waiver of the appeal had been invalid.

3. *Assessment by the Court*

30. The Court notes that the final decision of the Federal Constitutional Court was served on the applicant's counsel on 4 December 2003. The applicant submitted the application form on 14 May 2004 and thus within the six month time-limit. He furthermore submitted all documents requested by the Court on 6 August 2006, as documented by the Court's stamp of receipt. It follows that the instant complaint is not inadmissible for having been lodged outside the six-month time-limit.

31. With regard to the Government's objection of non-exhaustion of domestic remedies, the Court observes that the Federal Court of Justice, in its decision dated 11 June 2001, did not reject the applicant's appeal on points of law for failure to comply with statutory time-limits, but on the grounds that the judgment had become legally binding because of the applicant's waiver of his right to appeal. On the same grounds, the Federal Court of Justice rejected the applicant's request for restitution of the *status quo ante*. The applicant contested these findings before the Federal Constitutional Court, alleging that the waiver of the appeal had been invalid. In his application to the Court, the applicant pursued the same complaint under Article 6 of the Convention. It follows that the applicant cannot be regarded as having failed to exhaust domestic remedies in this respect.

32. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

33. The applicant submitted that the trial court had exercised undue pressure on him in order to induce him to waive his right to appeal. The court had, in particular, declared that it would sentence him to fourteen years' imprisonment if he rejected the agreement, which had included the waiver of the right to appeal. The agreement reached between the applicant, the prosecution and the Regional Court had been invalid, because it had not complied with the requirements set forth by the Federal Court of Justice. Amongst other things, it had violated the principle of a public hearing because it had been concluded outside the main hearing and its content had not been read out in court and recorded in the court transcript. Referring to a number of documents submitted in proceedings instituted after the termination of the relevant criminal proceedings, the applicant alleged that the public prosecutor had taken part in the deliberations concerning the agreement and that the submissions made by the Government as to the conduct of the negotiations were contradictory.

34. The said agreement had been invalid. The applicant had not been willing to confess and to accept his conviction, but had acted only under the threat of a fourteen-year prison sentence. He had not had an opportunity to consult his counsel before the latter had declared the applicant's waiver of the right to appeal. The Regional Court and the public prosecutor had knowingly misled the applicant as to the legal effects of the waiver of rights over the confiscated assets. Furthermore, the applicant's defence counsel had not been entitled to waive the applicant's wife's rights over the confiscated assets. The waiver of rights over the assets had been disproportionate, as the confiscated values had exceeded the damage allegedly caused by the applicant. Contrary to the assurances given by public prosecutor, the assets had not been used to compensate damage caused, but rather to cover the costs of the judicial proceedings.

2. The Government's submissions

35. The Government contested these submissions. According to the statements made by the relevant judges of the Regional Court, the applicant's counsel had offered to waive the applicant's and his wife's rights over the confiscated assets in exchange for a sentence of less than ten years' imprisonment. When asked in 2010, the judges had not been able to remember having discussed a waiver of the right to appeal. The Regional Court had not declared its intention to sentence the applicant to fourteen years' imprisonment in the event that he did not enter into an agreement. They further contested the assertion that the agreement had contained a waiver of the applicant's right to call for further evidence. In any event, the

Government submitted that the applicant had failed to raise these issues in his complaint before the Federal Constitutional Court.

36. According to the Government, the applicant had acted according to his free and voluntary decision when waving his right to appeal. After the delivery of the judgment and before the declaration of the waiver of the right to appeal, the applicant had been explicitly informed of his right to lodge an appeal. He had thus been able to freely decide whether to lodge an appeal or not. There was no indication that the court had exerted undue pressure on the applicant or that there had been any deception or conscious misleading of the applicant. The fact that the Federal Court of Justice and the legislator had, at a later date, changed the rules concerning the validity of a waiver of appeal following an agreement in criminal proceedings did not imply that the former practice had violated the applicant's Convention rights.

3. *Assessment by the Court*

37. Relying on the principles emerging from its relevant case-law (see *Thind v. Germany* (dec.), no. 16771/06, 23 March 2010; *Transado-Transportes Fluviais Do Sado S.A. v. Portugal* (dec.), no. 35943/02, ECHR 2003-XII; *Pfeifer and Plankl v. Austria*, 25 February 1992, Series A no. 227; and *Zu Leiningen v. Germany* (dec.), no. 59624/00, ECHR 2005-XIII) the Court reiterates that the waiver of a procedural right – in so far as it is permissible under the Convention – must be established in an unequivocal manner. Moreover, such waiver, in order to be effective for Convention purposes, requires minimum guarantees commensurate to its importance. The Court further considers that the waiver of a right to appeal is, in principle, permissible if the principles mentioned above are adhered to.

38. The Court further observes that it appears to be a common feature of European criminal justice systems for a defendant to receive a reduction in his or her sentence for a guilty plea in advance of trial or for providing substantial co-operation to the police or prosecution (for examples from the Court's own case-law, see the references given in *Babar Ahmad and others v. the United Kingdom* (dec.), nos. 24027/07, 119494/08 and 36742/08, § 168, 6 July 2010). The Court has already stated that there is nothing unlawful or improper in that process which would in itself raise an issue under the Convention (see *Babar Ahmad*, cited above, *ibid.*). The Court further considers that it is not its task to examine in this context whether the agreement complied with the prerequisites laid down in domestic law, as the observance of their procedural rules falls within the primary competence of the domestic courts.

39. Turning to the circumstances of the instant case, the Court observes that counsel for the applicant, following pronouncement of the judgment and having been informed of the right to appeal, declared the waiver of the applicant's right to appeal. There is no indication that the applicant, who

was present when the waiver was declared, would have been prevented from consulting with his counsel prior to the declaration if he had wished to do so. There is thus no indication that the declaration of the waiver itself raised an issue under Article 6 of the Convention.

40. It remains to be determined whether the negotiations which had taken place before the last day of the hearing put the validity of the waiver into question from a Convention point of view. While both parties agree that certain talks had taken place between the applicant's counsel, the public prosecutor and the court, the precise content of these negotiations are in dispute between the parties. Both parties unanimously submitted that the applicant and his wife had promised a waiver of their rights over the confiscated assets in exchange for a sentence of less than ten years' imprisonment. However, the Government contested the applicant's allegations that the agreement had also contained an obligation on the applicant to waive his rights to call further evidence and to lodge an appeal. Furthermore, while the Government submitted that negotiations were started on the applicant's counsel's initiative, the applicant submitted before the Court that the Regional Court had initiated negotiations by informing him that they would impose a penalty of at least fourteen years' imprisonment if he did not enter into an agreement.

41. The Court notes that the applicant, in his submissions before the Federal Court of Justice and to the Federal Constitutional Court, did not submit that the Fulda Regional Court had informed him that he could expect a minimum sentence of fourteen years' imprisonment if he did not accept the terms of agreement allegedly proposed by that court. In a declaration submitted to the Federal Court of Justice, the applicant had merely declared that his former counsel had informed him to expect such an outcome in the absence of an agreement, which does not necessarily imply that this information was given by the Regional Court's judges. Furthermore, the Court notes that the applicant did not mention before the Federal Court of Justice and the Federal Constitutional Court that the agreement had contained an obligation on him to waive his right to call further evidence.

42. The Court further notes that the Regional Court's judges, in their written statements submitted by the Government in the instant proceedings, could not remember whether the agreement contained a promise by the applicant to waive his right to appeal. The Court takes note that the applicant submitted numerous documents deriving from subsequent domestic court proceedings in an attempt to support his allegations. However, none of those documents had been submitted before the Federal Court of Justice or the Federal Constitutional Court.

43. In the absence of any written record of the terms of agreement, and having regard to the period of time which has elapsed since the relevant facts occurred, the Court considers that it is not in a position to establish the precise content of the agreement reached between the parties. The Court

observes, however, that the applicant did not expressly submit to the domestic courts that the Regional Court had informed him that he could expect a minimum sentence of fourteen years' imprisonment absent a negotiated agreement, or that the agreement contained the obligation to waive his right to call further evidence. The Court notes that the Federal Court of Justice based its decision on the applicant's appeal on points of law on the assumption that the waiver of the right to appeal formed part of the agreement negotiated between the parties.

44. Having regard to the above considerations, the Court will pursue its examination on the assumption that the agreement contained the applicant's obligation to waive his rights over confiscated goods and his right to lodge an appeal, but that it did not contain any obligation not to call further evidence. Conversely, the Court will not take into account the applicant's allegations that the Regional Court had indicated that he would receive a minimum sentence of fourteen years' imprisonment in the absence of an agreement, as these allegations had not been raised before the domestic courts.

45. The Court notes that the applicant's counsel, in the applicant's presence, declared the waiver of the right to appeal on behalf of the applicant after negotiations had been terminated and after the Regional Court had pronounced its sentence. It follows that the applicant knew the sentence imposed on him before the waiver was declared. There is, furthermore, no concrete evidence that the applicant had been misled as to the legal effects of a waiver of the right to appeal.

46. The Court further observes that the criminal conviction was not based on a confession made by the applicant, but on evidence which had been taken by the Regional Court before entering into negotiations on an agreement. The applicant did not submit before the domestic courts that he had had any intention to call for further evidence. Furthermore, the applicant had been verbally informed by the trial court about his right to lodge an appeal, even though it appears that this did not include information that he was free to lodge an appeal irrespective of the agreement reached (as required after the ruling given by the Federal Court of Justice on 3 March 2005, see paragraph 20 above).

47. The Court further observes that the applicant was represented by counsel of his choice when declaring the waiver of his right to appeal and throughout the proceedings as a whole. It further notes that, according to the Federal Court of Justice's case-law already applicable at that time, a promise of a waiver of the right to appeal given during negotiations was not legally binding on a defendant. There is no apparent reason why the applicant's defence counsel should not have been aware of this case-law when declaring the waiver of the right to appeal. The Government cannot be held liable for any shortcomings on the part of the applicant's counsel (compare *Sejdovic v. Italy* [GC], no. 56581/00, § 95, ECHR 2006-II).

48. The foregoing considerations are sufficient to enable the Court to conclude that there were sufficient procedural safeguards in place in order to ensure that the applicant was not unduly influenced when waiving his right to appeal.

49. There has accordingly been no violation of Article 6 of the Convention.

II. COMPLAINT ABOUT THE LENGTH OF THE CRIMINAL PROCEEDINGS

50. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

51. The period to be taken into consideration began on 23 February 2000, when the applicant was arrested and ended on 4 December 2003, when the decision of the Federal Constitutional Court was served on the applicant. It has thus lasted 3 years and 9 months for three levels of jurisdiction. The Court, having regard to the criteria established in its case-law (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II) considers that the overall length of the proceedings can be regarded as reasonable. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. The applicant further complained of the failure of the Federal Constitutional Court to reason its decision and of the lack of a public hearing regarding the negotiation of the agreement with a view to terminating the criminal proceedings. He also claimed that the waiver of his rights to the confiscated goods had violated the presumption of innocence (Article 6 § 2). Under Article 14 he complained that his waiver of the right to appeal would have been held to be invalid had his appeal on points of law been reviewed by a different Chamber of the Federal Court of Justice. Citing Article 1 of Protocol No. 1 to the Convention, the applicant also complained of the alleged content of the agreement and of his wife’s waiver of any rights to the confiscated goods.

53. The applicant submitted that the proceedings, seen as a whole, had to be regarded as unfair because the Regional Court had violated the principles of a public hearing, the protection of confidentiality and the court’s obligation to examine relevant facts on its own motion. The Regional

Court's judgment had been based on insufficient and inconclusive evidence which had not been properly introduced into the proceedings, a fact which he had only learned of later on when he had been granted access to the case files. Furthermore, the public prosecutor had omitted to introduce relevant evidence into the proceedings, thus violating the principle of equality of arms.

54. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the restriction of access to the appeal courts admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 3 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President