



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

COURT (CHAMBER)

CASE OF BUCHHOLZ v. GERMANY

(Application no. 7759/77)

JUDGMENT

STRASBOURG

6 May 1981

In the Buchholz case,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. G. WIARDA, President,
Mr. H. MOSLER,
Mr. THÓR VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. F. MATSCHER,
Mr. E. GARCIA DE ENTERRIA,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 January and 22 April 1981,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The Buchholz case was referred to the Court by the Government of the Federal Republic of Germany ("the Government"). The case originated in an application against that State lodged with the European Commission of Human Rights ("the Commission") on 18 December 1976 under Article 25 (art. 25) of the Convention by a German national, Mr. Walter Buchholz.

2. The Government's application, which referred to Article 48 (art. 48) of the Convention, was lodged with the registry of the Court on 3 October 1980, within the period of three months laid down by Articles 32 par. 1 and 47 (art. 32-1, art. 47). The purpose of the application is to submit the case to the Court and invite it to find that there has been no breach of the Convention.

3. On 4 October, the Registrar received from the Secretary to the Commission forty copies of the latter's report.

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. H. Mosler, the elected judge of German nationality (Article 43 of the Convention) (art. 43), and Mr. G. Balladore Pallieri, the President of the Court (Rule 21 par. 3) (b) of the Rules of Court). On 4 October, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. Thór Vilhjálmsson, Mr. W. Ganshof van der Meersch, Mrs. D. Bindschedler-Robert, Mr. F. Matscher and Mr. E. García

de Enterría (Article 43 in fine of the Convention and Rule 21 par. 4) (art. 43).

5. Mr. Balladore Pallieri assumed the office of President of the Chamber (Rule 21 par. 5). He ascertained, through the Deputy Registrar, the views of the Agent of the Government and the President of the Commission regarding the procedure to be followed. On 4 October, he directed that the Agent should have until 5 December to file a memorial and that the Delegates of the Commission should be entitled to file a memorial in reply within two months from the date of the transmission of the Government's memorial to them by the Registrar.

6. On 9 October, the Secretary to the Commission informed the Registrar that the Commission had appointed Mr. Gaukur Jörundsson as its Delegate.

7. The Government's memorial was received at the registry on 5 December. On 15 December, the Secretary to the Commission advised the Registrar that the Delegate would present his observations at the hearings.

8. After consulting, through the Deputy Registrar, the Agent of the Government and the Delegate of the Commission, Mr. Wiarda, the Vice-President of the Court, who had replaced Mr. Balladore Pallieri following the latter's death (Rule 21 par. 3 (b) and 5), directed on 15 December that the oral hearings should open on 27 January 1981.

9. On 22 January 1981, he requested the Commission to produce certain documents to the Court; these documents were filed by the Commission on 27 January and 6 February.

10. The oral hearings were held in public at the Human Rights Building, Strasbourg, on 27 January. Immediately before their opening, the Chamber had held a preparatory meeting; it had authorised the Agent and counsel of the Government and the person assisting the Commission's Delegate to use the German language (Rule 27 par. 2 and 3).

There appeared before the Court:

- for the Government:

Mrs. I. MAIER, Ministerialdirigentin

at the Federal Ministry of Justice,

Agent.

Mr. H. STÖCKER, Regierungsdirektor

at the Federal Ministry of Justice,

Mr. M. LORENZ, Regierungsdirektor

at the Federal Ministry of Labour and Social Affairs.

Mr. H. WEGENER, Oberregierungsrat

at the Department of Labour and Social Affairs of the Free
and Hanseatic City of Hamburg,

Advisers;

- for the Commission:

Mr. GAUKUR JÖRUNDSSON,

Delegate,

Mr. K. SOJKA, the applicant's lawyer

before the Commission, assisting the Delegate under Rule
29 par. 1, second sentence, of the Rules of Court.

The Court heard addresses by Mrs. Maier for the Government and by Mr. Gaukur Jörundsson and Mr. Sojka for the Commission, as well as their replies to questions put by the Court. At the hearings, the Agent of the Government made several documents available to the Court.

11. On 6 February, the Agent of the Government and the applicant's lawyer supplemented in writing their answers to certain questions put to them at the hearings; on 19 February, Mrs. Maier filed observations relating to the letter received from Mr. Sojka in this connection.

AS TO THE FACTS

12. Mr. Buchholz was born in 1918 and lives in Hamburg. From February 1949 onwards he worked for the dry-cleaning firm of J. H. Dependorf KG; he was mainly employed as a driver until the end of 1963 and thereafter as, in particular, controller of branch establishments. On 28 June 1974, he was given notice that he was dismissed with effect from 31 December of the same year as a result of rationalisation measures.

He took proceedings before the appropriate courts contesting the lawfulness of this notice; in his submission, those courts did not determine his case within "a reasonable time" as required by Article 6 par. 1 (art. 6-1) of the Convention.

1. Proceedings before the labour courts

(a) The Hamburg Labour Court (Arbeitsgericht)

13. On 10 July 1974, the applicant commenced an action before the Hamburg Labour Court claiming that his dismissal was "socially unjustified" ("sozial ungerechtfertigt") within the meaning of section 1 of the Unfair Dismissal Act (Kündigungsschutzgesetz). The other party ("the defendants") served a defence on 25 July, one day before the expiry of the time-limit granted for this purpose by the Labour Court.

14. At the first hearing on 16 August, Mr. Buchholz's lawyer submitted new written pleadings. The Labour Court thereupon allowed an application by the defendants for time to reply and adjourned the case until 4 October.

15. In their written reply of 22 August, the defendants, as requested by the Labour Court, gave a detailed account of the reasons for the contested dismissal; they also described the economic situation of the firm and explained the rationalisation measures taken.

The applicant's lawyer appended to his counter-reply of 19 September a note written to him by his client. This note contained the charge that the managers of the Dependorf firm had "negligently squandered the millions (business and private assets) properly earned by Robert Dependorf" but had

"personally secured to themselves such a safe position that these people are no longer interested in whether or not the Dependorf firm gets even deeper into the red".

These accusations prompted the defendants on 30 September to send the applicant two further notices of dismissal, an extraordinary notice (ausserordentliche Kündigung) effective forthwith and, as an alternative or precautionary (vorsorglich) measure, an ordinary notice (ordentliche Kündigung) with effect from 31 March 1975. The extraordinary notice was based on Article 626 of the Civil Code (Bürgerliches Gesetzbuch) which requires a "serious reason" for a dismissal of this kind and the giving of notice within two weeks from the moment when the employers had knowledge of the facts judged by them to constitute such a reason.

On 2 October, Mr. Buchholz's lawyer filed two further sets of written submissions dated 1 and 2 October respectively; appended to the former was a copy of the defendant's letter of 30 September; the latter extended the plaintiff's action to cover the two dismissal notices of 30 September.

16. At a hearing on 4 October 1974, the Labour Court adjourned the proceedings until 25 October as the defendants' lawyer had only received the applicant's latest written pleadings at that hearing.

On 14 October, the applicant's lawyer submitted another memorandum.

At the adjourned sitting on 25 October, the Labour Court, acting in accordance with the applicable legislation, proposed a friendly settlement, but the proposal was not accepted.

17. The Labour Court delivered judgment on 8 January 1975 immediately after hearing the final submissions of the parties. It held that neither the notice of 28 June 1974 nor the extraordinary notice of 30 September 1974 had terminated the applicant's contract, since the former was "socially unjustified" within the meaning of section 1 of the Unfair Dismissal Act and the latter was invalid for lack of a "serious reason" as required by Article 626 of the Civil Code. The Court also rejected an alternative request by the defendants for discharge (Auflösungsantrag) of the contract of employment in pursuance of section 7 of the Unfair Dismissal Act. It ordered the defendants to pay Mr. Buchholz DM 5,700 arrears of wages but dismissed the claim for future salary.

The judgment was notified in writing to the parties on 25 February 1975.

(b) The Hamburg Labour Court of Appeal (Landesarbeitsgericht)

18. The defendants appealed to the Hamburg Labour Court of Appeal on 13 March 1975. In their submission, the accusations made by Mr. Buchholz constituted a "serious reason" warranting the extraordinary notice of 30 September 1974; the two ordinary notices of 28 June and 30 September 1974 were likewise valid, the former being "socially justified" for pressing reasons connected with the running of the business. They called on the Court to overrule the judgment appealed from and to dismiss the plaintiff's

action or, in the alternative, to discharge the contract of employment existing between the two parties.

The applicant in turn lodged a cross-appeal (*Anschlussberufung*) on 25 March, seeking payment of arrears of wages for the first three months of 1975.

19. The parties then filed written pleadings dated 2 April and 15 May 1975 (the defendants) and 22 April (Mr. Buchholz). The applicant maintained his accusations against the managers of the firm and asked the Court of Appeal to call for an expert's opinion in order to corroborate the allegations made.

20. In the course of this written procedure both the applicant and the defendants had requested the Court of Appeal not to hold sittings during certain periods, namely from 25 May to 5 June for the applicant and from 11 April to 2 May and from 6 to 11 June for the defendants.

21. Taking due note of this, the Court of Appeal on 16 May 1975 set the case down for hearing on 22 July. On that date, the Court examined, amongst other matters, the exact circumstances surrounding the tendering in evidence of the applicant's accusations which had been appended to his lawyer's written pleading of 19 September 1974 (see paragraph 15 above). When questioned whether he had intended use to be made of these accusations in the lawsuit, he stated that he had relied on the judgment of his lawyer. The Court also raised the possibility of employing Mr. Buchholz in some other capacity; it directed the defendants to submit within one month a chart setting out the firm's commercial staff structure, indicating for each post whether it was suitable for the applicant and, if not, the reason why.

The applicant was given one month to reply.

22. The defendants filed the chart, with accompanying explanations, on 31 July; then, on 6 August, they replied to a written pleading from Mr. Buchholz which, though presented on 16 July, had been communicated to them after the hearing of 22 July.

On 20 August 1975, the applicant put forward a proposal for a friendly settlement, but this was rejected by the defendants on 19 September. By letter of 3 October, Mr. Buchholz's lawyer filed a memorandum, dated 28 September, containing comments by his client and asked the Court to set the case down for an early hearing, thereby renewing a request he had already made on 18 September, one day before the defendants had refused the offer of friendly settlement. He stated, amongst other things, that "the disproportionately long state of suspense [had] become physically and psychologically unbearable" for Mr. Buchholz.

On 9 October, the Court of Appeal decided to hold a hearing on 19 March 1976 and transmitted to the defendants the above mentioned written pleadings of 3 October.

23. On 12 November 1975, the applicant's lawyer addressed to the Parliament (Bürgerschaft) of the Free and Hanseatic City of Hamburg a petition seeking measures to expedite proceedings before the labour courts.

Early in 1976, as an apparent sequel to this petition and following an increase in the number of judicial posts (see paragraph 39 below), the Court of Appeal was able to establish a Sixth Chamber. Almost 50 per cent of the cases pending before the Third Chamber were referred to the new Chamber, although the former continued to deal with the Buchholz action.

The Parliament advised the applicant in reply on 5 May 1976 that the authorities had immediately taken the necessary steps to ease the workload of the labour courts.

24. The legal and factual questions to be decided were debated by the two parties at the hearing held on 19 March 1976. At the close of the sitting, the Court of Appeal made an order setting out the various points in issue and their possible implications as seen by the Court; it then proposed a settlement whereby the contract of employment would be considered as having terminated on 31 December 1974 and the defendants would pay the applicant a lump sum of DM 34,200.

The Court called on the parties to state their views by 30 April.

25. By memorandum of 7 April, the defendants refused the settlement proposal; they referred to the "undisputed" fact that the two notices of 30 September 1974 had been served on the applicant on the same day.

For his part, Mr. Buchholz's lawyer, in a written statement of 8 April in which he paid tribute to the Court of Appeal for its "thorough and prudent examination of the case", declined to accept the suggested settlement; he specified that he could only agree to such a solution if the contract were regarded as terminated on 31 December 1975.

In addition, on 28 April 1976 he filed a brief reply to the above-mentioned memorandum of 7 April. He contested the defendants' affirmations "insofar as they deviate[d] from the explanations" given by his client, but he did not however specifically deal with the matter of the date of receipt of the two notices of 30 September 1974. He added that he would be absent from 30 May to 18 June and requested the Court of Appeal to fix a hearing in May.

On 3 May, the Court of Appeal directed that the hearings should resume on 27 August and so advised the parties on 1 June.

26. At the hearing on 27 August 1976, Mr. Buchholz denied that he had actually received the two notices of 30 September on that day and asked the Court to question on his wife on this point, which was material for the purposes of Article 626 of the Civil Code (see paragraph 15 above). The Court acceded to this request. Mrs. Buchholz, who was present in the courtroom, confirmed the statements of her husband; she asserted that the notices had been served between 5 and 7 October 1974.

The defendants contested this testimony and asked for the counter-evidence of four witnesses to be heard. The applicant objected to such a move on the ground that it would tend to protract the proceedings. The Court nevertheless decided that Mr. Buchholz, as well as the chief executive of the Dependorf firm and the four witnesses nominated by the defendants, should be heard on 11 January 1977. At the same time it invited the applicant, who had applied for free legal aid in the appeal proceedings, to supply the necessary certificate for that purpose.

27. The certificate was submitted under cover of a letter of 28 August from Mr. Buchholz's lawyer. Consequently, on 29 September the Court granted free legal aid for the applicant's defence against the main appeal; it reserved its decision as regards his cross-appeal (see paragraph 31 below).

28. Earlier, on 21 September 1976, the applicant had challenged the above-mentioned decision of 27 August before the Federal Constitutional Court. Complaining of the duration of the litigation and relying on Articles 2, 3, 12 and 20 of the Basic Law as well as Article 6 (art. 6) of the Convention, he had sought from the Constitutional Court an order requiring the Court of Appeal to bring its consideration of the matter to an immediate close.

The case-file was sent to the Federal Constitutional Court which, sitting as a panel of three judges (section 93 (a) of the Federal Constitutional Court Act, *Bundesverfassungsgerichtsgesetz*), gave judgment on 2 November. The Court refused leave for the constitutional application to proceed: even supposing the application to be admissible, it did not offer sufficient prospects of success since there was nothing in the evidence to show that the Court of Appeal had protracted the proceedings; having regard to the extreme complexity of the facts of the case, the length of the lawsuit had been caused primarily by the applicant who had continuously supplemented his submissions and called for the taking of further evidence.

29. The presiding judge of the Third Chamber of the Labour Court of Appeal, which was dealing with the applicant's case, retired on 19 November.

30. On 11 January 1977, the Court of Appeal heard four witnesses in connection with the date of receipt of the dismissal notices. It reserved until 28 January its decision whether, despite the objections of Mr. Buchholz's lawyer, it should hear evidence from an additional witness nominated by the defendants and from Mr. Lentfer, the chief executive of the Dependorf firm.

31. On 28 January, the Court of Appeal granted the applicant free legal aid for his cross-appeal (see paragraph 27 above) and directed that Mr. Lentfer be called to give evidence on 22 March.

By letter of 31 January, the defendants' lawyer, pleading a prior commitment, asked for adjournment of the hearing of Mr. Lentfer; he further specified that both he and Mr. Lentfer would be on leave from 15

April until 4 May. The Court of Appeal granted this request on 2 February and postponed the hearing until 6 May.

The applicant wrote on 5 February to the Secretary to the Commission - his petition to the Commission having been lodged on 18 December 1976 - to complain of this decision, but according to the Government there is no trace in the record of the case of his having entered any such objection before the Court of Appeal.

32. On 6 May, the representatives of both parties declared that the two disputed dismissal notices had indeed been received by Mr. Buchholz on 30 September 1974.

On 13 May, the Court of Appeal ordered that an expert opinion should be obtained on the question whether or not the applicant's accusations against the managers of the Dependorf firm were justified (see paragraph 15 above). The Hamburg Chamber of Commerce, on being so requested, nominated an expert on 14 June; after hearing the parties, the Court appointed the expert on 30 June.

The expert's report was filed on 2 December 1977; the Court communicated it to the applicant and the defendants for comment by 5 January 1978.

33. The last hearing was held on 3 February. The parties made their final submissions, following which the Labour Court of Appeal delivered its judgment. It allowed the defendants' appeal and dismissed the applicant's cross-appeal, awarding the costs of the proceedings against him.

The Court of Appeal held that the extraordinary notice of 30 September 1974 was valid for the following reasons. The charges made by the applicant constituted a serious reason for dismissal within the meaning of paragraph 1 of Article 626 of the Civil Code and the dismissal notice had been served within the period of two weeks laid down by paragraph 2 of that Article. The thorough and convincing explanations furnished by the expert made it clear that Mr. Buchholz's accusations were without foundation (*haltlos*): apart from being extremely defamatory, they were inappropriate and quite unnecessary for his cause of action contesting the ordinary notice of 28 June 1974 (see paragraph 15 above).

The judgment was notified in writing to the parties on 5 April.

(c) The Federal Labour Court (Bundesarbeitsgericht)

34. With a view to bringing a petition for a review on a point of law (Revision), Mr. Buchholz applied on 13 April to the Federal Labour Court for free legal aid; his application was granted on 12 September.

On 20 September, he asked the Federal Court for leave to petition notwithstanding expiry of the legal time-limit; the Court gave leave on 10 October.

The petition which had been filed earlier on 22 September, was transmitted to the defendants who replied in writing on 29 December.

35. On 26 April 1979, the Federal Court, after hearing the parties, proposed a settlement whereby the contract of employment would be considered as having terminated on 31 December 1974 and the defendants would pay the applicant a lump sum of DM 24,000 in addition to the DM 5,700 already paid as arrears of wages in compliance with the Labour Court's judgment.

The proposal was rejected by the defendants; by judgment of the same day, the Federal Court dismissed the petition for review as unfounded.

*2. Proceedings before the Federal Constitutional Court
(Bundesverfassungsgericht)*

36. On 10 May 1979, Mr. Buchholz challenged this decision before the Federal Constitutional Court alleging violation of several basic rights. He complained of the length of the proceedings before the various labour courts, citing this factor as the cause of the contested decision. He further criticised the Federal Labour Court for having terminated a lawsuit "which in normal circumstances should not have been terminated yet"; in view of his application to the Commission, so he contended, the Federal Labour Court had "clearly not wished to make the breach of the Convention more evident by continuing the proceedings". In addition, the applicant claimed that the judgment being challenged was unsustainable as far as its reasoning was concerned (*sachlich unhaltbar*) and constituted an unacceptable domestic sanction intended to punish him for having taken his case to the Commission.

On 19 July, the Constitutional Court refused leave for the constitutional application to proceed on the ground that it was inadmissible. The applicant had not, it was stated, identified with sufficient clarity any possible violation of his basic rights. In particular, his complaint regarding the length of the proceedings did not warrant a finding that the outcome of the action was incompatible with any of his basic rights; this was likewise true of his submission that the reasoning of the judgment being challenged did not bear examination.

As in 1976 (see paragraph 28 above), the Court had sat in judgment as a panel of three judges.

3. The applicant's situation after his dismissal

37. For a year after his dismissal, Mr. Buchholz was paid weekly unemployment benefits (*Arbeitslosengeld*) under the Promotion of Employment Act (*Arbeitsförderungsgesetz*), that is to say, DM 202.20 from 9 October to 31 December 1974, DM 228 from 1 January to 30 September 1975 and DM 250.80 until 7 October 1975. The Hamburg Employment Office (*Arbeitsamt*) refused, on 23 December 1975, to grant him unemployment welfare assistance (*Arbeitslosenhilfe*) thereafter on account

of his wife's earnings. Since 1 August 1978, the applicant has been in receipt of a social security retirement pension (Sozialversicherungsrente), the amount of which – originally DM 1,462 per month - has been periodically adjusted.

38. According to the Government, from October 1974 onwards the Hamburg Employment Office endeavoured in vain to find the applicant some other employment, even offering financial help to potential employers.

4. Workload of the Labour Courts of Appeal between 1974 and 1976

39. As the result of an economic recession in the Federal Republic of Germany, the labour courts of appeal experienced a significant increase in their workload between 1974 and 1976. According to the statistics supplied by the Government at the request of the Court, the incidence of appeals from labour court judgments rose, as compared with the previous year, by 23.1 per cent in 1974, by 20.8 per cent in 1975 and by 9.7 per cent in 1976. In order to cope with this state of affairs, the relevant authorities increased the number of judicial posts by 9.6 per cent in 1974, by 12.5 per cent in 1975 and by 11.1 per cent in 1976. There were 17.3 per cent more cases dealt with in 1974, 27.5 per cent in 1975 and 13.4 per cent in 1976.

As regards the Hamburg Court of Appeal in particular, 689 appeals were entered in 1974, 758 in 1975, 786 in 1976 and 756 in 1977; 716 appeals were decided in 1974, 700 in 1975, 798 in 1976 and 788 in 1977. The average length of proceedings progressed from 2.88 months in 1974 to 3.20 months in 1975, but then fell to 2.98 months in 1976, 2.79 months in 1977 and 2.53 months in 1978. In this respect, the Hamburg Court of Appeal was more favoured than the labour courts of appeal of the other Länder where, nevertheless, a downward trend was also registered. Examination of the 255 cases decided in 1975 and 1976 by the Third Chamber, which dealt with the Buchholz appeal, showed, according to the Government, that 163 cases were disposed of after one hearing, 59 cases after two hearings, 23 cases after three hearings and 10 cases after four to six hearings.

40. Faced with the backlog of labour court business in the 1970's, the Government tabled in the legislative assemblies in 1978 a Bill designed, amongst other things, to expedite proceedings before the labour courts. The resultant Act entered into force on 1 July 1979.

PROCEEDINGS BEFORE THE COMMISSION

41. In his application of 18 December 1976 to the Commission (no. 7759/77), Mr. Buchholz complained of the length of the proceedings before the German courts and alleged a breach of Articles 6 par. 1 and 8 (art. 6-1,

art. 8) of the Convention. During the course of the proceedings on the merits, he also relied on Articles 3 and 12 (art. 3, art. 12).

42. On 7 December 1977, the Commission declared the application admissible.

In its report of 14 May 1980, the Commission expressed the opinion that the requirements of Article 6 par. 1 (art. 6-1) had not been observed (seven votes to five), but that no issue arose under Articles 3, 8 or 12 (art. 3, art. 8, art. 12).

FINAL SUBMISSIONS MADE TO THE COURT

43. At the hearings on 27 January 1981, the Government made the following final submission, which had been indicated in their memorial of 5 December 1980:

"[We] request a finding that the Convention has not been violated in the instant case."

AS TO THE LAW

44. The applicant's complaint concerned the length of the proceedings he brought before the German courts. he invoked Articles 6 par. 1, 8, 3 and 12 (art. 6-1, art. 8, art. 3, art. 12) of the Convention.

1. The alleged breach of Article 6 par. 1 (art. 6-1) of the Convention

45. The Commission came to the conclusion that there had been a breach of Article 6 par. 1 (art. 6-1), which provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Government disagreed with this opinion.

46. One point has not been put in issue and the Court takes it for granted: the "right" being claimed by Mr. Buchholz was a "civil right" within the meaning of Article 6 par. 1 (art. 6-1). Accordingly, the sole question to be settled is whether or not the "reasonable time" was exceeded.

47. The Court must first specify the period to be taken into account.

Mr. Buchholz's application was directed against the proceedings carried on before the three levels of German labour courts from 10 July 1974 onwards (see paragraph 13 above) and subsequently before the Federal Constitutional Court.

The Commission considered that the latter set of proceedings was not relevant. It cited its established case-law to the effect that Article 6 par. 1 (art. 6-1) did not apply to the Federal Constitutional Court when that Court, sitting as a panel of three judges, declared a constitutional application inadmissible; it also referred to a more recent decision holding that the very nature of the rights determined by a constitutional court rendered Article 6 par. 1 (art. 6-1) inapplicable to the Federal Constitutional Court (see paragraph 93 of the report).

48. For the purposes of arriving at a decision on the matters complained of, it suffices to point out that the Constitutional Court was not called on to determine the dispute ("contestation") between Mr. Buchholz and his employers which had been before the labour courts; its ruling was not concerned with the right claimed by the plaintiff against the defendants (see paragraph 36 above, as compared with paragraphs 13 and 15). The proceedings subsequent to the judgment by the Federal Labour Court thus fall outside the ambit of Article 6 par. 1 (art. 6-1). There is no need to decide whether it might be otherwise in different circumstances.

The period to be examined under Article 6 par. 1 (art. 6-1) therefore extends from 10 July 1974 (commencement of the action before the Labour Court; see paragraph 13 above) until 26 April 1979 (delivery of the Federal Labour Court's judgment; see paragraph 35 above); its overall duration is four years, nine months and sixteen days.

49. The reasonableness of the length of proceedings coming within the scope of Article 6 par. 1 (art. 6-1) must be assessed in each case according to the particular circumstances. In respect of criminal matters, the Court has for this purpose had regard, inter alia, to the complexity of the case and to the conduct of both the applicant and the competent authorities (see the Neumeister judgment of 27 June 1968, Series A no. 8, pp. 42-43, par. 20-21, and the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 45, par. 110). The Court has taken account of the same criteria, as well as the defendant's behaviour and what is at stake in the litigation for the plaintiff, in cases concerning proceedings brought before administrative courts in connection with civil rights (see the König judgment of 28 June 1978, Series A no. 27, pp. 34-40, par. 99, 102-105 and 107-111). It considers that it should adopt a similar approach in the present case. The Court would add that only delays attributable to the State may justify its finding, in appropriate instances, a failure to comply with the requirements of "reasonable time".

50. In the Federal Republic of Germany, as in many other States members of the Council of Europe, a criminal or administrative court is, it is true, responsible for the investigation and the conduct of the trial of an action (see the above-mentioned Neumeister judgment, pp. 42-43, par. 21, and the above-mentioned König judgment, pp. 34-39, par. 102-105, 107 and 109). In contrast, so the Government submitted, in the Federal Republic of

Germany proceedings before the labour courts, as before all civil courts, are governed by the principle of the conduct of the litigation by the parties (*Parteimaxime*). In addition, German legislation encourages the friendly settlement of cases concerning employment (sections 54, 57, 64 and 72 of the Labour Courts Act, *Arbeitsgerichtsgesetz*); this factor was rightly adverted to by the Government.

Without minimising the importance of these differences, the Court considers, as did the Commission, that they do not dispense the judicial authorities from ensuring the trial of the action expeditiously as required by Article 6 (art. 6). The Court notes, moreover, that under the terms of section 9 of the Labour Courts Act the German labour courts at all levels of jurisdiction must expedite the proceedings.

51. The Government have drawn attention to the uncontested fact that as the result of an economic recession there was a significant increase in the volume of litigation in the field of employment, resulting in an abnormally heavy burden of business before the courts, including the Hamburg courts.

The Court points out that the Convention places a duty on the Contracting States to organise their legal systems so as to allow the courts to comply with the requirements of Article 6 par. 1 (art. 6-1), including that of trial within a "reasonable time". Nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided they have taken reasonably prompt remedial action to deal with an exceptional situation of this kind.

52. More than four years and nine months passed before the Federal Labour Court delivered judgment as the court of final instance. This lapse of time appears considerable for a case like this. Furthermore, what was at stake in the litigation was of great importance for Mr. Buchholz: what was involved was either reinstatement in his employment or an award of compensation in the event of the contract being terminated. Accordingly, the Court must examine, on the basis of the criteria and factors set out above, the course of the proceedings before each of the three courts which were in turn called on to deal with the case.

(a) The Hamburg Labour Court

53. The proceedings before the Hamburg Labour Court were commenced on 10 July 1974 and terminated on 8 January 1975 with a judgment which was notified in writing to the parties on 25 February. According to the statistics supplied by the Government, this lapse of time is above the average recorded in 1974 both for the Hamburg Court itself (3.5 months) and for the labour courts of the other *Länder* (2.6 months).

Before the Commission the applicant alleged that there had been several unnecessary hearings. He did not, however, furnish any details and the Court, bearing in mind that at this stage the case became more involved (see paragraph 55 below), does not find in this phase of the litigation, which

lasted less than eight months, an excessive delay such as to infringe Article 6 par. 1 (art. 6-1).

(b) The Hamburg Labour Court of Appeal

54. The proceedings before the Hamburg Labour Court of Appeal, which were set in motion by the appeal entered by the defendants on 13 March 1975, culminated on 3 February 1978 in a judgment subsequently notified in writing to the parties on 5 April. These proceedings, up till delivery of judgment, therefore lasted two years, ten months and twenty-one days, which by far exceeds the average registered between 1975 and 1978 both for the Hamburg Court and for the corresponding courts in the other Länder (see paragraph 39 above).

The applicant accordingly concentrated his criticisms on this phase and the Commission likewise regarded it as crucial.

55. As regards the complexity of the case, the Government have rightly drawn attention to the fact that the issues were complicated when Mr. Buchholz's lawyer introduced, under cover of his written pleadings of 19 September 1974 to the Labour Court, the accusations made by his client against the managers of the defendant company (see paragraph 15 above) and again when his client denied on 27 August 1976 having received the two dismissal notices on 30 September 1974, an allegation which he subsequently admitted to be incorrect (see paragraphs 26 and 32 above). The first factor prompted the two dismissal notices, and the second a hearing of witnesses which, as matters turned out, proved to be pointless.

The Court finds that the task of the courts, in particular of the Court of Appeal, was rendered more difficult by both these factors, although in the Court's views the complexity of the case, taken on its own, cannot justify the length of the appeal proceedings.

56. Insofar as the behaviour of the applicant is concerned, it should be noted that in 1975 and 1976 his lawyer on two occasions asked the Court of Appeal not to hold hearings during certain periods totalling one month (see paragraphs 20 and 25 above). What is more, by asserting on 27 August 1976 that the two dismissal notices of 30 September 1974 had not been served on him on the same day, Mr. Buchholz caused a prolongation of more than eight months, during which the Court took evidence from the witnesses called by the two parties on the issue of the disputed date (see paragraphs 26, 30, 31 and 32 above). At paragraph 108 of its report, the Commission also cited as an additional cause of delay the constitutional application of 21 September 1976. However, as was pointed out by the applicant and concerned by the Government, the Court of Appeal had fixed the date of the hearing of 11 January 1977 one month before the lodging of the constitutional complaint, which thus could have had no effect whatsoever on this decision (see paragraphs 26 and 28 above).

It nevertheless remains true that the applicant to a large extent contributed to the length of the proceedings, notably by the way in which he chose to argue his case. On this point, the Court concurs with the Government and the Commission.

57. The defendants, for their part, also asked the Court of Appeal on three occasions between 1975 and 1977 not to hold hearings on certain dates, the total number of days involved being forty-five; the defendants were thereby responsible for protracting the litigation by about six weeks (see paragraphs 20 and 31 above). Furthermore, they waited a month before replying to the offer of friendly settlement made by the applicant on 20 August 1975 (see paragraph 22 above). Finally, they prolonged the procedure by asking for the taking of evidence from witnesses called by them in connection with the date of receipt of the dismissal notices of 30 September 1974 (see paragraphs 26 and 30 above).

In the circumstances of the particular case, however, the Court judges the first two periods of prolongation to be of no importance. The third in fact resulted from a new line of argument raised by the applicant, which the Dependorf firm, in the legitimate exercise of its own right of defence, countered by calling witnesses.

58. In the opinion of the Commission and in the submission of Mr. Buchholz, the principal cause of the length of the proceedings was to be found in the handling of the case by the Court of Appeal.

The applicant complained in particular of the pointlessness of several hearings, the over-long intervals between hearings, the lack of staff in the Court of Appeal and the delay in appointing an expert.

The Commission considered that the orders of 9 October 1975 and 27 August 1976 fixing the next hearings for 19 March 1976 and 11 January 1977 respectively (see paragraphs 22 and 26 above) were not compatible with the duty to conduct proceedings expeditiously. It further observed that the decision taken on 3 May 1976 not to hold a hearing until 27 August likewise entailed a loss of time of several months (see paragraph 25 above). In the Commission's view, in order to expedite the trial of the action the Court of Appeal ought in addition to have refused the request made by the Dependorf firm on 31 January 1977 for adjournment of the taking of evidence from a witness (see paragraphs 30 and 31 above).

59. Having regard to the general rule of German law requiring that, insofar as possible, proceedings of this category be dealt with in one hearing (sections 57 and 64 of the Labour Courts Act), the number of hearings (six) devoted to the case by the Court of Appeal would at first sight appear surprising. In this context as well, the statistics furnished by the Government are revealing, for they show that very few of the cases handled by the relevant Chamber of the Court of Appeal in 1975 and 1976 gave rise to more than three hearings (see paragraph 39 above).

Nevertheless, what occurred in the present instance resulted to a large extent from the way in which the applicant argued his case. When - at the third hearing, thus at an advanced stage of the procedure - Mr. Buchholz denied having received the two dismissal notices on 30 September 1974, the Court of Appeal, quite naturally felt obliged to hear the witnesses for the other party, failing which there was a risk of prejudicing the latter's right of defence. One cannot, as did the Commission, criticise the Court of Appeal for having neglected to discuss with the parties a document already filed which might perhaps have disclosed the exact date of receipt; for, confronted with the applicant's assertions which were corroborated the same day by his wife, the Court of Appeal could reasonably have deemed it necessary also to call the defendants' witnesses.

Neither can the Court of Appeal be criticised for not having ordered expert evidence at the outset of the proceedings. It is understandable that the Court of Appeal should have thought it worthwhile to endeavour to secure a friendly settlement despite the applicant's serious accusations against the managers of the Dependorf firm. Whether these accusations were well-founded thus became a subsidiary issue; the need to go into the matter only arose once the impossibility of settling the action was established. The fact that at the third hearing the applicant subsequently denied having been served with the two dismissal notices on 30 September 1974 explains why the Court of Appeal should again have postponed seeking expert evidence: it was necessary to await the outcome of the witnesses' testimony.

60. The Court attaches greater significance to certain delays, including those noted by the Commission, attributable to time-limits set by the Court of Appeal.

Firstly, there is the order of 9 October 1975 fixing the next hearing for 19 March 1976. In point of fact, during these five months the Court of Appeal was studying the case-file with a view to arranging a friendly settlement; thus, the proposal it made on 19 March came after an examination of the case which Mr. Buchholz, in paying tribute to the Court, described as "thorough" and "prudent". According to the Government, the Court of Appeal was, following the hearing on 9 October, expecting a reply - which in the event never materialised - by the defendants to the written pleading of 3 October. Without overlooking the difficulties involved in attempting to secure a friendly settlement, especially in view of the charges made by the applicant against the management of his former employers, the Court nonetheless finds cause for concern in the duration of this phase of the procedure, which was further extended by a five-week period of reply granted to the parties.

The same applies to the order of 3 May 1976 directing the next hearing to be held on 27 August despite the request of the applicant's lawyer who had suggested the month of May and informed the Court of Appeal of his unavoidable absence from 30 May to 18 June. According to the

Government, Mr. Buchholz raised no objection to this order, but this does not mean that the Court of Appeal was thereby relieved of its responsibility.

The order of 27 August 1976 deferring the next hearing until 11 January 1977 prompts similar doubts even if it be accepted that his impending retirement might have led the presiding judge of the Third Chamber to fix a date allowing his successor to study the papers in the case.

The Commission was also right to criticise the order of 2 February 1977 postponing until 6 May, at the request of the defendants, the taking of witnesses' evidence which had been called for as early as 11 January. Mr. Buchholz does not seem to have entered any formal objection, but again this cannot discharge the court of Appeal of its responsibility.

Finally, it is difficult to understand why the judgment was not notified in writing to the parties until two months after its delivery.

61. Placing reliance on statistical evidence, the Government based their principal argument on the heavy workload which at the relevant time was facing the labour courts of appeal in the Federal Republic of Germany and, in particular, the Hamburg Labour Court of Appeal. In the Government's submission, the backlog of pending business prevented a more expeditious treatment of the Buchholz case. Whilst acknowledging that this state of affairs existed, the Commission was of the view that the remedial action taken was not sufficient to have secured the applicant a trial of his action within a reasonable time in accordance with Article 6 par. 1 (art. 6-1) of the Convention.

The Court notes, however, that the number of judicial posts was increased as early as 1974, at a time when the volume of litigation was beginning to grow in the wake of the economic recession. The Hamburg Labour Court of Appeal thus succeeded in dealing with more appeals in 1976 and 1977 than in 1974 and 1975, whilst at the same time the average length of proceedings fell (see paragraph 39 above). Furthermore the Hamburg Court, being concerned at the great number of cases - including that of Mr. Buchholz - pending before the Third Chamber, established at the beginning of 1976 a Sixth Chamber to which were referred almost half of the actions in question (see paragraph 23 above). Finally, in order to expedite the business coming before the labour courts, the Government put forward a proposal for legislative reform which was adopted by the parliamentary assemblies in 1979 (see paragraph 40 above).

It naturally took some time for the effects of these various measures to be felt. Nevertheless, they demonstrate that the Government were fully conscious of their responsibilities in the matter. Accordingly, in order to determine whether Article 6 par. 1 (art. 6-1) of the Convention has been violated, the Court must take into account the amount of work which was pending before the Hamburg Labour Court of Appeal during a period already found by the Court to be exceptional in character (see paragraph 51 above).

(c) The Federal Labour Court

62. The Federal Labour Court granted on 12 September 1978 Mr. Buchholz's application of 13 April for legal aid; his petition for a review on a point of law was filed with that Court on 22 September and dismissed by it on 26 April 1979. The total length of these proceedings was thus one year and thirteen days.

The applicant has not furnished details of his complaints as regards the Federal Court. When he challenged its decision in his constitutional application, his plea was not that there had been any specific delays but, on the contrary, that the proceedings had been terminated prematurely (see paragraph 36 above).

According to the Commission, the proceedings were not unjustifiably prolonged, either by Mr. Buchholz or by the defendants or by the Federal Labour Court. The Court perceives no sufficient reason for taking a different view.

* * *

63. After the foregoing examination of the course of the three sets of proceedings in question, the Court is in a position to determine whether their total duration violated Article 6 par. 1 (art. 6-1) of the Convention.

Although the progress of the second set of proceedings was extremely slow and although the Labour Court of Appeal had, in particular, on several occasions deferred its hearings for somewhat long periods, the duration of the litigation was also to a large extent the result of certain issues raised by Mr. Buchholz of his own accord, in respect of which he must bear the consequences. Neither can the Court overlook the fact that the delays at the Court of Appeal level occurred at a time of transition marked by a significant increase in the volume of litigation resulting from a deterioration in the general economic situation. Having assessed the material before it and taken notice of the authorities' efforts to expedite the conduct of business before the labour courts, the Court considers that, even when viewed cumulatively, the delays attributable to the competent courts did not exceed a reasonable time within the meaning of Article 6, par. 1 (art. 6-1).

2. The alleged violation of Articles 8, 3 and 12 of the Convention (art. 8, art. 3, art. 12)

64. The applicant also invoked Articles 8, 3 and 12 of the Convention (art. 8, art. 3, art. 12) contending that the length of the proceedings had been the source of serious financial and personal difficulties for him.

The Government argued that the true cause of those difficulties was Mr. Buchholz's dismissal.

In the Commission's view, no issue arose under any of the above-mentioned Articles (art. 8, art. 3, art. 12).

65. Assuming that failure to try an action within a reasonable time can on occasions have repercussions as regards respect for some other right guaranteed by the Convention (see, *mutatis mutandis*, the judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, p. 33, par. 7), the Court would recall that in the present case there was no breach of the requirements of Article 6 par. 1 (art. 6-1). Apart from this consideration, the Court finds that no issue arises under Articles 8, 3 or 12 (art. 8, art. 3, art. 12) taken on their own.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has not been breach either of Article 6 par. 1 (art. 6-1) or of Articles 3, 8 or 12 (art. 3, art. 8, art. 12) of the Convention.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this sixth day of May, one thousand nine hundred and eighty-one.

For the President
Walter GANSHOF VAN DER MEERSCH
Judge

Marc-André EISSEN
Registrar