



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

COURT (CHAMBER)

**CASE OF ECKLE v. GERMANY (ARTICLE 50)**

*(Application no. 8130/78)*

JUDGMENT

STRASBOURG

21 June 1983

**In the Eckle 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. R. RYSSDAL, *President*,  
Mr. Thór VILHJÁLMSSON,  
Mr. W. GANSHOF VAN DER MEERSCH,  
Mr. L. LIESCH,  
Mr. J. PINHEIRO FARINHA,  
Mr. L.-E. PETTITI,  
Mr. R. BERNHARDT,

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

Having deliberated in private on 22 March and on 25 and 26 May 1983,

Delivers the following judgment, which was adopted on the last-mentioned date, on the application in the present case of Article 50 (art. 50) of the Convention:

## PROCEDURE AND FACTS

1. The Eckle case was referred to the Court on 18 May 1981 by the European Commission of Human Rights ("the Commission"). The case originated in an application (no. 8130/78) against the Federal Republic of Germany lodged with the Commission on 27 September 1977 by two German nationals, Mr. Hans Eckle and his wife Marianne.

2. By a judgment of 15 July 1982, the Court found a breach of Article 6 § 1 (art. 6-1) of the Convention in that the applicants had not received a hearing within a reasonable time (Series A no. 51, point 2 of the operative provisions and paragraphs 71-95 of the reasons, pp. 32-40).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as regards the facts the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 9 to 60 of the above-mentioned judgment (*ibid.*, pp. 8-28).

3. At the hearings on 22 March 1982, counsel for the applicants stated that, should the Court find a violation of the Convention, his clients would be claiming just satisfaction under Article 50 (art. 50) for the prejudice

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\* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules of Court entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

suffered as a result of the unreasonable length of the proceedings and possibly for legal costs; he did not, however, quantify their claims. The Government of the Federal Republic of Germany ("the Government") did not take a stand on the matter.

In its judgment of 15 July 1982, the Court reserved the whole of this question. The Commission was invited to submit to the Court, within the coming two months, its written observations and, in particular, to notify the Court of any friendly settlement at which the Government and the applicants might have arrived (see point 3 of the operative provisions and paragraph 96 of the reasons, *ibid.*, p. 40).

4. After one extension of the above-mentioned time-limit by the President of the Chamber and in accordance with his Orders and directions, the registry received:

- on 15 October 1982, 19 November 1982 and 17 January 1983, through the Secretary to the Commission, the Delegate's and the applicants' respective observations;
- on 28 October 1982, 14 December 1982 and 14 February 1983, the Government's comments.

These documents revealed that no friendly settlement had been reached.

5. By letter dated 6 October 1982, which was received at the registry six days later, the lawyer for Mr. and Mrs. Eckle informed the Registrar that he was no longer representing them; on 12 October, they instructed Mr. von Stackelberg as their lawyer.

6. Mr. L. Liesch, substitute judge, took the place of Mr. D. Evrigenis, who was prevented from taking further part in the consideration of the case (Rules 22 § 1 and 24 § 1 of the Rules of Court).

7. After consulting, through the Deputy Registrar, the Agent of the Government and the Delegate of the Commission, the Court decided on 25 May 1983 that there was no call to hold hearings.

## CLAIMS MADE BY THE APPLICANTS

8. The claims submitted by the applicants may be summarised as follows:

### (a) Mr. Eckle

In his observations of October 1982, the applicant asked the Commission to request the Court to defer judgment until the Federal Court of Justice (Bundesgerichtshof) had ruled on an action (Amtshaftungsklage) brought by him against the Land of Rhineland- Palatinate to recover compensation for all damage resulting from the failure to comply with the requirements of Article 6 § 1 (art. 6-1). Having been invited on 20 October by the President

of the Chamber to file the applicant's claims without prejudice to the decision to be taken on the request for deferment, the Commission forwarded the said claims to the registry on 19 November.

Mr. Eckle sought to recover

*(i) for material loss allegedly suffered on the professional, economic and financial level:*

- DM 5,049,284 and
- 19 per cent annual interest on the sum of DM 49,284;

*(ii) for non-pecuniary damage:*

- DM 703,124.50;

*(iii) for costs and expenses:*

- DM 241,482.40, on a provisional estimate,
- release from joint and several liability (Befreiung aus der Mithaft) to pay the sum of DM 17,193.57 (court costs),
- 12 per cent annual interest on DM 16,000.

**(b) Mrs. Eckle**

Mrs. Eckle claimed

*(i) for material loss allegedly suffered on the professional, economic and financial level:*

- DM 844,535.64;

*(ii) for non-pecuniary damage:*

- DM 421,875;

*(iii) for costs and expenses:*

- DM 93,691.45, on a provisional estimate,
- release from joint and several liability to pay the sum of DM 17,193.57 (court costs),
- 12 per cent annual interest on DM 26,007.60.

## FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

9. The Government requested that the Court,

"at its discretion but orientating itself by the [Government's] observations, assess satisfaction for the necessary and reasonable legal costs actually incurred by the

applicants for the prevention of the violation found, and, for the rest, reject the claims preferred".

## AS TO THE LAW

### I. REQUEST TO DEFER JUDGMENT

10. Article 50 (art. 50) of the Convention reads as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

11. In his initial observations, Mr. Eckle requested that the proceedings regarding him be suspended until the Federal Court of Justice had given its ruling on an action he had brought in 1964 before the Trier Regional Court (see paragraph 8 above). In his submission, the European Court could only apply Article 50 (art. 50) once the domestic courts' final decision on reparation had been delivered.

12. This submission, whilst not commented on by the Commission, was contested by the Government, whose argument ran as follows.

Following the dismissal of his appeal on 4 March 1981 by the Koblenz Court of Appeal (Oberlandesgericht), Mr. Eckle has up till now taken no steps to expedite the examination of his petition for review on points of law (Revision); on the contrary, he has several times asked the Federal Court to extend the time-limit for the filing of his supporting written pleadings, relying on the need to await the outcome of the proceedings pending at Strasbourg. Furthermore, the object of his action for damages is only in part the same as that of the Strasbourg proceedings, in that the former is concerned solely with the criminal prosecutions brought in Trier. Finally, the European Court and the Federal Court perform their functions on different levels and independently of one another, even though an award made by the first deciding court can be taken into account by the other.

13. The Court would point out that Article 50 (art. 50) of the Convention empowers it to afford just satisfaction to Mr. Eckle on condition that, *inter alia*, "the internal law" of the Federal Republic of Germany "allows only partial reparation to be made for the consequences" of the breach found by the judgment of 15 July 1982. This is precisely the case here: for when proceedings are continued beyond the "reasonable time" laid down in Article 6 § 1 (art. 6-1), the intrinsic nature of the wrong prevents

complete reparation (*restitutio in integrum*). This being so, the only claim the person concerned can make is for just satisfaction. Even if an applicant has been able to bring such an action before a court in the respondent State, the Court is not bound to reject the claim put before it for just satisfaction (see the *De Wilde, Ooms and Versyp* judgment of 10 March 1972, Series A no. 14, pp. 8-9 and 10, §§ 16 and 20; the *König* judgment of 10 March 1980, Series A no. 36, pp. 14-15, § 15).

14. Nonetheless, where the victim of a breach found by the Court chooses first to seek compensation under this head within the domestic legal order, there is in principle nothing to preclude the Court from deferring judgment until delivery of the final decision by the national court, especially if the applicant has so requested. The requirements of the proper administration of justice may even militate in favour of such a course of action in certain circumstances.

However, Mr. Eckle has furnished no details as to the state of the proceedings he has taken in Germany. His observations simply disclose that his action is directed against the Land of the Rhineland- Palatinate and was instituted before the Trier Regional Court on 16 April 1964, that is almost three years before the bringing of the prosecutions in Cologne - a town situated in North Rhine-Westphalia - (see the above-mentioned *Eckle* judgment, p. 19, § 37) and more than thirteen years before the judgment delivered at Strasbourg on 15 July 1982; this action called on the Regional Court to hold the Land liable for the damage allegedly caused to Mr. Eckle by the relevant Trier authorities in conveying to his creditors the unfounded suspicion that he was defrauding them.

According to the undisputed information supplied by the Government, Mr. Eckle had his appeal dismissed on 4 March 1981, petitioned for a review on points of law on 27 April 1981 and filed his supporting written pleadings on 30 September 1982.

In these circumstances, it is difficult to discern how his action could have in view the reparation of the prejudice resulting from the two-fold failure to comply with the "reasonable time" requirement, as found by the Court in its judgment of 15 July 1982. Consequently, the suspension suggested by the applicant in October 1982 would not contribute to, but would rather hinder, the proper administration of justice. Moreover, he did not revert to the matter when submitting his quantified claims in November 1982 and January 1983 in response to the invitation made to him by the Registrar on the instructions of the President.

Accordingly, the Court rejects the request for deferment of judgment.

## II. APPLICATION OF ARTICLE 50 (art. 50)

15. The applicants sought just satisfaction for material loss, non-pecuniary damage and legal costs.

### A. Material loss

16. Mr. Eckle alleged a loss of earnings of 5 million marks because of the forced sale of at least 250 building plots, in that at the time of his imprisonment and prosecution (from 18 March 1967 until 11 January 1974) his firm was out of business, which prevented him from disposing of the plots on the basis of freely negotiated agreements.

He further claimed reimbursement of DM 49,284 plus 19 per cent annual interest; he was obliged, so he asserted, to borrow this amount for payment to the Federal Social Insurance Fund for Salaried Employees (Bundesversicherungsanstalt für Angestellte) in order to maintain his pension rights in respect of the years 1956 to 1973 and the year 1981.

17. For her part, Mrs. Eckle contended that if the Trier proceedings had been conducted with the necessary diligence, she would have been able to commence her professional activities in 1964 instead of on 1 December 1974 and so able as from 1967 to earn profits similar to those she made in 1980 as an insurance agent. Asserting that she had lived without means from the moment of her husband's first arrest on 18 March 1967, she assessed her losses as follows: DM 598,126 for the period from 19 March 1967 to 30 November 1974, plus DM 246,409.64 for the period from 1 December 1974 to the end of 1979, that is a total of DM 844,535.64.

18. In the submission of the Government, all these various claims should be rejected, notably because of the absence of any causal link between the material prejudice allegedly suffered and the violation found by the Court. The Government's argument may be summarised as follows.

Mr. Eckle would appear to be proceeding on the assumption that if the national authorities had complied with Article 6 § 1 (art. 6-1), he would have been able to continue the business activities in respect of which he had been prosecuted. However, the judgment of 15 July 1982 did not in the least affect his criminal conviction. In addition, he would in any event have been obliged to pay contributions to the Federal Social Insurance Fund.

With regard to Mrs. Eckle, she was hardly prevented from practising her profession except during the hearings before the Trier Regional Court and thereafter when serving the prison sentence imposed on her by the Saarbrücken Regional Court. Here again these were lawful measures which were unaffected by the Court's judgment and which did not give rise to any entitlement to compensation.

19. The Delegate of the Commission expressed a similar viewpoint. He considered in particular that the applicants had not shown any causal connection between their claims and the breach of Article 6 § 1 (art. 6-1).

20. The Court shares this opinion.

The Court's judgment of 15 July 1982, whilst pronouncing the length of the proceedings taken against the applicants to be unreasonable, did not in any manner hold, or carry the implication, that their prosecution, conviction

and imprisonment were also in breach of the Convention. The sole matter to be taken into consideration is thus the prejudice possibly entailed by the fact of the two proceedings in question having lasted beyond a "reasonable time".

Yet, the alleged financial losses of Mr. and Mrs. Eckle result from the very existence and outcome of the prosecutions brought against them. There is nothing in the evidence submitted to support the view that the asserted damage was attributable to the failure to comply with the requirements of Article 6 (art. 6).

Accordingly, no compensation is recoverable for material loss.

### **B. Non-pecuniary damage**

21. Asserting that the Trier proceedings could have been terminated by the end of 1963, the applicants concluded that the unreasonable length of proceedings amounted to fourteen years and three weeks (1 January 1964 - 23 January 1978). They also stressed that, having regard to the overlapping of the proceedings in Cologne (March 1967 - September 1977) and in Saarbrücken (end of 1963 - April 1972), they were subjected to continuous prosecution in three criminal cases.

On this basis, they sought as compensation for non-pecuniary damage a lump sum assessed at a yearly rate of DM 50,000 for Mr. Eckle and DM 30,000 for his wife. The explanation given by Mr. Eckle for this difference was that during the relevant period he was, so he maintained, arbitrarily deprived of his liberty for six and a half years. He claimed under this head DM 703,124.50 and his wife DM 421,875.

22. The Government disputed that the Trier proceedings could have been terminated by the end of 1963. They further pointed out that the period referred to by the applicants included phases which, in the Government's submission, could not on any basis be treated as relevant, namely the days of the trial hearings before the Saarbrücken and Trier Regional Courts, the time spent by Mr. Eckle in custody on remand and the time during which each applicant was serving his or her prison sentence subsequent upon conviction in Saarbrücken. The amounts claimed were, moreover, preposterous. Finally, so the Government argued, the acknowledgment by the domestic courts of the breach of the Convention, the mitigation of the sentences imposed in Trier and the discontinuance of the Cologne proceedings provided the applicants with just compensation.

23. In the opinion of the Delegate of the Commission, the criminal prosecutions brought must have constituted a source of some anxiety for both Mr. and Mrs. Eckle and hence caused them a certain degree of non-pecuniary damage. Nevertheless, the Delegate considered the sums claimed to be out of all proportion. Having regard to the various factors present, he suggested an award of modest compensation.

24. The applicants themselves, it has to be pointed out, did not allege that the unreasonable length of the proceedings in question provoked in them feelings of anxiety and distress. Moreover, at the time they evinced no particular concern to have the proceedings conducted as speedily as possible (see the above-mentioned Eckle judgment, pp. 36 and 38, §§ 82 and 90).

The fact of exceeding the "reasonable time" must nonetheless have exposed them to some disadvantages and inconvenience. It should however be recalled that the Trier Regional Court, according to the grounds given in its decisions, mitigated the sentences in view of the inordinate length of time that had elapsed and that the Cologne Regional Court ordered the discontinuance of the proceedings (*ibid.*, pp. 16, 17, 18 and 27, §§ 27, 33, 35, 36 and 55); although these circumstances did not cause Mr. and Mrs. Eckle to cease to be "victims" within the meaning of Article 25 (art. 25), they are factors that must be taken into consideration in assessing the extent of the injury allegedly suffered (*ibid.*, pp. 30-32, 38, 39 and 40, §§ 66-70, 87, 88, 94 and 95). In addition, as was rightly observed by the Delegate of the Commission, it cannot be overlooked that they were charged with serious acts of fraud committed to the detriment of, amongst others, persons lacking substantial financial resources and that the Trier Regional Court imposed heavy prison sentences on them (*ibid.*, pp. 15-16 and 17, §§ 17 and 33).

Taking these factors together and on an equitable basis, as is required by Article 50 (art. 50), the Court considers that the finding of a violation contained in the judgment of 15 July 1982 has already furnished sufficient just satisfaction, for the purposes of Article 50 (art. 50), in respect of the alleged non-pecuniary injury (see, *mutatis mutandis*, the Corigliano judgment of 10 December 1982, Series A no. 57, p. 17, § 53).

### **C. Costs and expenses**

#### *1. Introduction*

25. The applicants claimed recovery of the costs and expenses occasioned by all the various remedies and defence measures employed by them since the end of 1963, the date on which, in their contention, the Trier proceedings could have ended.

According to the settled case-law of the Court, to be entitled to an award of costs and expenses under Article 50 (art. 50), the injured party must have incurred them in order to seek, through the domestic legal order, prevention or redress of a violation, to have the same established by the Commission and later by the Court or to obtain reparation therefore (see the Minelli judgment of 25 March 1983, Series A no. 62, p. 20, § 45). Furthermore, the Court has to be satisfied that the costs and expenses were actually incurred, were necessarily incurred and were also reasonable as to quantum (*ibid.*).

*2. Costs and expenses incurred in the Federal Republic of Germany*

26. The Court will first examine in turn the claims of each applicant as to his or her costs and expenses in the Federal Republic of Germany.

**(a) Mr. Eckle**

27. Under this head, Mr. Eckle sought in total DM 226,827.40 and release from joint and several liability to pay the sum of DM 17,193.57, together with interest of 12 per cent on DM 16,000. He reserved the right to quantify certain other claims.

The Government could agree to DM 495.59; the Delegate of the Commission considered that Mr. Eckle was entitled to recover DM 3,525, or DM 4,791 provided he could prove payment of the difference between these two amounts.

28. The Court rejects the following items as unconnected with the violation found or even with the relevant facts of the case:

- agreed fees of Mr. von Stackelberg (advice "in the criminal proceedings" between July 1964 and July 1968): DM 50,000;
- agreed fees of Mr. Bungartz (imprisonment of the applicant in the Saarbrücken, Trier and Cologne proceedings): DM 12,000;
- agreed fees of Mr. von Stackelberg (various steps taken in the Saarbrücken proceedings): DM 42,000;
- prosecution costs (DM 54,024.84) and release from joint and several liability (DM 17,193.57) in the Trier proceedings;
- agreed fees and disbursements of Mr. von Stackelberg (advice regarding detention on remand, Trier Regional Court): DM 2,321;
- agreed fees and disbursements of Mr. von Stackelberg (appeal against the continuation of the detention on remand, decided by the Trier Regional Court on 1 October 1971): DM 1,266;
- agreed fees of Mr. von Stackelberg (constitutional complaint against the decision of 1 July 1971 by the Koblenz Court of Appeal refusing the installation of a television set in the applicant's prison cell): DM 2,500;
- agreed fees of Mr. von Stackelberg (constitutional complaint against the decision by the Koblenz Court of Appeal refusing to grant the applicant parole in order to participate in the civil proceedings): DM 3,000;
- agreed fees of Mr. Meinecke (detention on remand in the Cologne proceedings; 21 December 1974): DM 5,296.10;
- fees and disbursements of Mr. Meinecke (seizure of documents; 17 April 1970): DM 952.86;
- agreed fees of Mr. von Trützschler (arrest warrant; seizure of documents): DM 3,000;
- agreed fees of Mr. von Stackelberg for four constitutional complaints (refusal to nominate Mr. Becker as officially appointed defence lawyer;

detention on remand; levy of distress in respect of payment of court costs; adjournment of civil proceedings): DM 9,981.50;

- the following non-quantified claims: court costs in the Saarbrücken and Cologne proceedings; costs of the action brought against the Land of Rhineland-Palatinate; costs of the proceedings regarding the Eckle firm's being struck off the register.

*(i) Lawyer's fees and disbursements for a constitutional complaint against the decision of 25 November 1971 by the Koblenz Court of Appeal maintaining Mr. Eckle's detention on remand*

29. Mr. Eckle sought recovery of DM 1,266 for the agreed fees and disbursements of Mr. von Stackelberg who had on his behalf, on 7 January 1972, challenged before the Federal Constitutional Court a decision of 25 November 1971 by the Koblenz Court of Appeal ordering his continued detention on remand.

The Government argued that this claim should be rejected since it did not relate to a complaint against the length of the proceedings as such.

In the view of the Delegate of the Commission, on the other hand, the sum in question should be taken into consideration provided the applicant could adduce proof of its payment.

30. The Court does not concur with the view expressed by the Delegate.

Admittedly, the applicant did refer, *inter alia*, to Article 6 (art. 6) of the Convention in his constitutional complaint. It might well also have been the case, as the Delegate assumed, that the competent authorities would have been prompted to accelerate matters had the Constitutional Court ordered the applicant's release. However, it should not be overlooked that the complaint in question was not aimed at securing a more expeditious conduct of the proceedings: the complaint was directed against the unreasonable length of the detention on remand and had as its sole object Mr. Eckle's release from custody. It could have been of relevance in relation to Article 5 § 3 (art. 5-3) - if, as the Government rightly recalled, the Commission had not declared the application inadmissible on that score - but not in relation to Article 6 § 1 (art. 6-1).

*(ii) Lawyer's fees and disbursements for the petition for a review on points of law (Revision) of the judgment of 17 March 1972 by the Trier Regional Court*

31. Mr. Eckle also claimed DM 10,866.50 for the agreed fees and disbursements of Mr. von Stackelberg who had represented him in the review proceedings.

According to the Government, the services of this lawyer were not necessary as Mr. Becker had been nominated officially appointed defence lawyer. In addition, Mr. von Stackelberg had pleaded a number of matters and had, for example, applied on 7 April 1975 for the prosecutions to be

discontinued on the ground of limitation, but had never objected to the dilatory nature of the proceedings or invoked Article 6 § 1 (art. 6-1).

32. The evidence does not disclose that Mr. Eckle raised any such objection before the Federal Court of Justice. Indeed he does not even claim to have done so. However, whilst he complained essentially of procedural irregularities, he also alleged contravention of the substantive law (*Sachrügen*). Consequently, the Federal Court was under a duty to review, of its own motion, the conformity with the law of the judgment challenged, and in particular the sentence imposed. This is why in its own judgment of 19 February 1976 the Federal Court examined the reasoning of the Trier Regional Court regarding the level of the sentence imposed; amongst other things, it re-affirmed the reliance placed on the case-law holding that excessive length of criminal proceedings may constitute a special mitigating circumstance (see the above-mentioned Eckle judgment, p. 17, § 33; see also the admissibility decision of 10 May 1979, appendix II to the Commission's report).

In the second place, as the Government conceded, the supporting written pleadings (*Revisionsbegründung*) were filed by Mr. von Stackelberg who alone, according to the Federal Court's judgment, appeared before it on behalf of Mr. Eckle.

Nevertheless, in view of his not having raised the issue of "reasonable time" himself the applicant cannot recover in full Mr. von Stackelberg's fees and disbursements. The Delegate of the Commission suggested an award of DM 1,000. In the particular circumstances of the case, the Court judges this amount to be adequate.

*(iii) Lawyer's fees and disbursements for the constitutional complaint against the judgment of 17 March 1972 by the Trier Regional Court and the judgment of 19 February 1976 by the Federal Court of Justice; fees for the legal opinion of Professor Kloepfer*

33. Mr. Eckle further claimed DM 10,866.50 in respect of agreed fees and disbursements of Mr. von Stackelberg who applied on his behalf to the Federal Constitutional Court on 24 May 1976 and DM 16,000, together with 12 per cent interest, in respect of fees for a legal opinion by Professor Kloepfer which was submitted to the Constitutional Court.

The Government pointed out that only one of the four grounds of the constitutional complaint related to the unreasonable length of the proceedings. On the basis of the Federal Scale of Lawyers' Fees (*Bundesgebührenordnung für Rechtsanwälte*), they were of the view that he could claim DM 495.59. As far as the fees for the drafting of the legal opinion were concerned, these were not necessarily incurred and there was no causal link between them and the violation found, so the Government argued, in that Mr. Eckle consulted Professor Kloepfer simply to establish expiry of the limitation period and hence the unlawfulness of his conviction.

The Delegate of the Commission thought it reasonable to award the applicant DM 1,500 in respect of the fees and disbursements connected with the constitutional complaint. On the other hand, he judged the expenditure represented by Professor Kloepfer's expert opinion to be unnecessary.

34. The Court agrees with the Government and the Delegate that Mr. Eckle can recover only a proportion of the lawyer's fees and disbursements: the constitutional complaint of 24 May 1976 was not directed solely against the length of the proceedings but also against, *inter alia*, the composition of the Regional Court and the alleged unconstitutionality of a statutory rule of law applied by the Federal Court of Justice.

35. The Government further contended that the amount claimed by way of lawyer's fees and disbursements did not tally with the Federal Scale.

To begin with, the Court would recall that in this context it is not bound by domestic scales or standards (see the above-mentioned König judgment, Series A no. 36, p. 18, § 23; the Sunday Times judgment of 6 November 1980, Series A no. 38, p. 17, § 41).

Furthermore, German law does not preclude entering into a contract to charge agreed fees higher than the levels laid down in the Federal Scale. Although the lawyer admittedly cannot enforce payment of such agreed fees except by virtue of a written declaration signed by his client (Article 3 § 1, first sentence, of the Federal Scale), the Court does not deem it necessary to seek proof of such an undertaking, as the Government would wish to see it do, since there is no suggestion in the evidence of any disaccord between Mr. von Stackelberg and Mr. Eckle as to the latter's liability to pay the sum indicated.

The Government expressed surprise that Mr. von Stackelberg should have waited until October 1982, that is more than five years after the decision of the Federal Constitutional Court (30 June 1977), before drawing up the particular fee note in question as well as, moreover, nearly all the other fee notes he has produced to the Court. For its part, the Court has no cause to believe that it is confronted with a bogus document drafted solely for the purposes of the proceedings pending before it since the judgment of 15 July 1982.

In conclusion, the Court judges it appropriate, as was suggested by the Delegate of the Commission, to award Mr. Eckle DM 1,500 in respect of the lawyer's fees and disbursements connected with the constitutional complaint of 24 May 1976.

36. On the other hand, the claim regarding the legal opinion of Professor Kloepfer, an opinion that dealt with the consequences in law of the unreasonable length of criminal proceedings, is to be rejected. The Court, like the Delegate of the Commission, is not satisfied as to the necessity of the expenditure involved (see, *mutatis mutandis*, the above-mentioned Sunday Times judgment, pp. 16-17, § 37).

*(iv) Fees of lawyers who represented Mr. Eckle in the proceedings concerned with determination of a cumulative sentence*

37. Finally, Mr. Eckle claimed DM 461.10 and DM 1,025 in respect of fees for Mr. von Trützschler and Professor Vogler, respectively, who had represented him in the proceedings concerned with determination of the cumulative sentence.

The Government's contentions were the following. There exists no causal link between these costs and the violation found by the Court. Since a cumulative sentence must be fixed by the courts of their own motion, the proceedings provided for under law for that purpose do not figure amongst the remedies to be exhausted in accordance with Article 26 (art. 26). Furthermore, the services of two lawyers were not necessary. The applicant had, moreover, neither produced fee notes nor established actual payment of the sums being claimed.

The Delegate of the Commission suggested retention of a figure of DM 1,025, corresponding to the amount asked for in relation to Professor Vogler's fees.

38. The brief of Mr. von Trützschler had been to challenge, on behalf of Mr. Eckle, before the Koblenz Court of Appeal the decision of 24 November 1977 whereby the Trier Regional Court determined the cumulative sentence (see the above-mentioned judgment of 15 July 1982, p. 18, §§ 35 and 36). Professor Vogler, for his part, acted for Mr. Eckle before the Federal Constitutional Court to which he had applied following the Court of Appeal's dismissal on 23 January 1978 of the above appeal (*ibid.*).

39. The Court, concurring with the Delegate, recognises that it was in the applicant's interest to have the assistance of a lawyer during these proceedings. According to the terms of the judgment of 19 February 1976 by the Federal Court of Justice, in determining the cumulative sentence account had to be taken of the excessive length of the proceedings, notably as regards "the period which [had] elapsed between the hearing before the trial court and the moment when the principle of *res judicata* took effect in respect of the judgment, and which [would] elapse until the final decision" (*ibid.*, p. 17, § 33). Thus, the determination of the cumulative sentence was a matter of great importance for Mr. Eckle, especially since it could lead to the violation of Article 6 § 1 (art. 6-1) being redressed (*ibid.*, pp. 30-32, 38 and 39-40, §§ 66-70, 87, 88, 94 and 95).

40. The specific figures put forward appear plausible and reasonable. In these circumstances, the Court does not deem it necessary to call for the vouchers requested by the Government.

**(b) Mrs. Eckle**

41. For costs and expenses, Mrs. Eckle sought in total DM 89,036.45 and release from joint and several liability to pay the sum of DM 17,193.57,

together with interest at 12 per cent on DM 26,007.60. Her lawyer gave notice of certain other outstanding bills that had not yet been rendered.

The Government could agree to DM 600 and 4 per cent interest, the outside limit being DM 800. According to the Delegate of the Commission, Mrs. Eckle could claim recovery of DM 3,525.

42. The Court rejects the following items as unconnected with the violation found or even with the relevant facts of the case :

- prosecution costs (DM 47,495.40) and release from joint and several liability (DM 17,193.57) in the Trier proceedings;
- agreed fees and disbursements of Mr. Bungartz (representation of the applicant in the Trier proceedings): DM 13,188.45;
- agreed fees and disbursements of Mr. Bungartz (representation of the applicant in the Cologne proceedings): DM 7,000.

*(i) Lawyers' fees and disbursements for the petition for a review on points of law of the judgment of 17 March 1972 by the Trier Regional Court*

43. Mrs. Eckle claimed DM 10,866.50 and DM 6,000, together with 12 per cent interest, for the agreed fees and disbursements of Mr. von Stackelberg and Professor Habscheid, respectively, who had acted for her during the proceedings for a review on points of law.

The Government's arguments regarding this item were as follows. Mrs. Eckle did not need the services of Mr. von Stackelberg since Mr. Teuber had represented her as officially appointed defence lawyer until 16 November 1974. Moreover, Mr. von Stackelberg ceased acting for her at the beginning of 1975. On the other hand, Professor Habscheid, who had been instructed by her on 26 January 1975, did refer to Article 6 § 1 (art. 6-1) in his written pleadings of 26 January 1976. Consequently, she could recover, at the outside limit, one-thirtieth of his fees.

According to the undisputed evidence supplied by the Government, supporting written pleadings on behalf of the applicant were filed with the Federal Court of Justice firstly by Mr. Teuber and subsequently in March 1973 and April 1974 by Mr. von Stackelberg, but neither lawyer formulated any complaint as to the unreasonable length of the proceedings. Professor Habscheid, for his part, did place reliance on Article 6 § 1 (art. 6-1) when submitting that the proceedings should be discontinued on the ground of limitation.

This being so, and having regard to what has been said in relation to Mr. Eckle's case (see paragraph 32 above), the Court agrees with the Delegate of the Commission that Mrs. Eckle should be awarded the sum of DM 1,000 under this head.

*(ii) Lawyer's fees and disbursements for the constitutional complaint against the judgment of 17 March 1972 by the Trier Regional Court and the judgment of 19 February 1976 by the Federal Court of Justice*

45. Mrs. Eckle further claimed DM 3,000 plus 12 per cent interest for the fees of Professor Habscheid who, on her behalf, had brought before the Federal Constitutional Court a complaint challenging both the judgment of 17 March 1972 by the Trier Regional Court and the judgment of 19 February 1976 by the Federal Court of Justice.

The Government drew attention to the fact that only one of the five grounds of this complaint was concerned with the excessive length of the proceedings. In their view, the applicant could therefore recover no more than DM 600.

The Delegate of the Commission regarded a figure of DM 1,500 as reasonable.

46. The Court likewise considers that Mrs. Eckle cannot be granted reimbursement of the full amount paid out: in addition to the dilatory nature of the proceedings, the matters raised in the constitutional complaint of 18 May 1976 included the allocation of the various groups of cases, violation of the principle of equality before the law and disregard of the rights of the defence.

In the particular circumstances of the case, and in the light of what has been stated in respect of Mr. Eckle with regard to the application of the Federal Scale (see paragraph 35 above), the Court deems it appropriate to award to Mrs. Eckle DM 1,500 under this head.

*(iii) Fees of lawyers who represented Mrs. Eckle in the proceedings concerned with determination of a cumulative sentence*

47. Finally, Mrs. Eckle claimed DM 461.10 and DM 1,025, together with interest at 12 per cent, for the fees of Mr. Schabio and Professor Vogler, respectively, who had represented her in the proceedings concerned with the determination of the cumulative sentence.

For the reasons given at paragraph 37 above, the Government argued for the outright rejection of this claim; the Delegate of the Commission suggested an award of DM 1,025.

48. It would appear that on 24 October 1977 Mr. Schabio requested the Trier Regional Court to fix a cumulative sentence, taking proper account of the unreasonable length of the proceedings; on 2 December 1977, he appealed to the Koblenz Court of Appeal against the decision that the Regional Court had delivered on 24 November 1977 (see the above-mentioned Eckle judgment, p. 18, §§ 35-36). Professor Vogler, for his part, acted for Mrs. Eckle before the Federal Constitutional Court to which he had applied following the dismissal on 23 January 1978 of the above appeal (ibid.)

49. In these circumstances, the Court judges it equitable to award Mrs. Eckle the amounts claimed; in this connection, the Court refers back to what it has stated with regard to Mr. Eckle (see paragraphs 39 and 40 above).

### *3. Costs incurred in Strasbourg*

50. The applicants, neither of whom received the benefit of free legal aid before the Strasbourg institutions, each sought recovery of DM 4,655 to cover the disbursements and fees of Professor Vogler who had represented them before the Commission (DM 2,525) and then before the Court (DM 2,130). Mrs. Eckle further claimed 12 per cent interest, and Mr. Eckle DM 10,000 in respect of advances paid on Mr. von Stackelberg's fees in the Article 50 (art. 50) proceedings.

The Government's replies may be summarised as follows. Without disputing the applicants' entitlement to reimbursement of their costs incurred in Strasbourg, the Government considered that a deduction should be made in view of their applications having been unsuccessful in relation to three complaints declared inadmissible by the Commission. Also, the difference in the size of the claims made by Mr. and Mrs. Eckle dictated a different apportionment of the fees, namely one-third for Mrs. Eckle and two-thirds for her husband. Furthermore, the applicants had produced no detailed vouchers or evidence of any payment whatsoever. As far as Mr. von Stackelberg's fees were concerned, these should be calculated in accordance with the Federal Scale and on a pro rata basis, that is in proportion to the degree of success of the claims made (amounting to more than seven million marks). Finally, the sums sought for Professor Vogler bordered on the upper limit of what could be regarded as reasonable in comparison with the Federal Scale and Mr. von Stackelberg's services had essentially consisted of forwarding written statements and files prepared by the applicants. Subject to the foregoing, the Government left it to the discretion of the Court to settle the rates recoverable for the costs and expenses.

The Delegate of the Commission submitted that the claims be acceded to, subject to reducing to DM 1,000 the sum to be awarded to each applicant in relation to the Article 50 (art. 50) stage of the proceedings.

51. The Court is unable to agree with the Government in its proposal to make a deduction from the costs connected with the proceedings before the Commission. The applicants did, it is true, unsuccessfully plead complaints regarding the Saarbrücken proceedings, Article 6 § 2 and Article 5 § 3 (art. 6-2, art. 5-3) (see the above-mentioned Eckle judgment, pp. 28-29, § 61). Nevertheless, and in contrast to what occurred in the case of *Le Compte, Van Leuven and De Meyere* to which the Government referred (see the judgment of 18 October 1982, Series A no. 54, p.10, § 21), the complaints in question failed at the admissibility stage. Furthermore, the Commission did not reject them as being manifestly ill-founded, and hence after a

preliminary inquiry into the merits, but for being out of time (Saarbrücken proceedings and Article 5 § 3) (art. 5-3) and for non-exhaustion of domestic remedies (Article 6 § 2) (art. 6-2). As is apparent from the decision on admissibility (appendix II to the Commission's report), the examination of these two questions of admissibility (in the strict sense of the term) was not of such complexity that its outcome could warrant the deduction called for by the Government.

Nor does the Court deem it necessary, in the particular circumstances of the case, to apportion the costs and expenses in a different manner from that suggested by the applicants themselves.

With regard to the DM 10,000 claimed by way of advance payment on Mr. von Stackelberg's fees, the Court concurs with the Government and the Commission in finding this item to be out of proportion with the actual work performed by this lawyer during the Article 50 (art. 50) stage of the proceedings, especially when compared with the services rendered earlier by Professor Vogler before the Commission and the Court. As was rightly pointed out by the Government, the contribution of Mr. von Stackelberg was in essence limited to forwarding, together with a covering letter, the claims and documents of his clients. His memorandum of 13 January 1983 constitutes an exception, in that he furnished replies to the Government's observations. Consequently, the Court concurs with the Delegate's proposal on this item and awards DM 1,000 to each applicant.

As far as the amounts asked for in respect of Professor Vogler are concerned, the Court regards these as plausible and reasonable; accordingly, it does not deem it necessary to call for the vouchers requested by the Government.

#### *4. Interest*

52. In all the circumstances of this case, the Court does not consider it appropriate to allow interest on the sums awarded in respect of costs and expenses.

#### *5. Recapitulation*

53. The items accepted by the Court in paragraphs 32, 35, 40, 44, 46, 49 and 51 amount to a total of DM 9,641.10 for each applicant.

### FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that the respondent State is to pay to each of the applicants nine thousand six hundred and forty-one marks and ten pfennigs (DM 9,641.10) in respect of costs and expenses and rejects the remainder of the claims for just satisfaction.

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

Rolv RYSSDAL  
President

Marc-André EISSEN  
Registrar