CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF A.L. v. GERMANY

(Application no. 72758/01)

JUDGMENT

STRASBOURG

28 April 2005

FINAL

28/07/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.L. v. Germany,

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Ms R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 31 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 72758/01) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr A.L. ("the applicant"), on 28 May 2001. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The German Government ("the Government") were represented by their Agent, Mr K. Stoltenberg, *Ministerialdirigent*.

3. On 25 September 2003 the Court decided to communicate the application. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1964 and lives in Germany. He used to run a car rental business.

5. On 3 November 1994 the Limburg Prosecuting Office informed him that it had begun criminal investigations against him and three other persons on the suspicion of insurance fraud. They were suspected of having obtained reimbursement for non-existent car rental costs and of having requested payment for non-refundable kilometres.

6. On 4 November 1994, following the Wetzlar District Court's arrest warrant, the applicant was arrested on the suspicion that he would attempt to hinder the investigation proceedings (*Verdunklungsgefahr*).

7. On 29 November 1994 the District Court suspended the execution of the arrest warrant on the condition that the applicant cease to have contact with his co-suspects and any of the witnesses involved.

8. On 10 February 1997 the applicant and his co-suspects were indicted for fraud.

9. On 10 March 1997 the District Court revoked the arrest warrant.

10. On 12 January 2000 the Limburg Regional Court provisionally discontinued proceedings with the applicant's consent pursuant to Section 153a § 2 of the Code of Criminal Procedure (see relevant domestic law below) on the condition that the applicant pay a sum of 3,500 DEM to the Association to Aid Criminal Offenders (*Verein für Straffälligenhilfe*).

11. On 21 March 2000, after the applicant had fulfilled this condition, the Regional Court, sitting as a chamber of three judges, permanently discontinued proceedings against the applicant but refused to grant him compensation for the time spent in detention on remand, finding that such compensation would not be equitable (*entspricht nicht der Billigkeit*), in particular as the applicant had waived any right to compensation.

12. The applicant appealed against this decision, arguing that he had never waived his right to compensation and that compensation would be equitable, as the criminal proceedings had caused him to lose his source of income and had prevented him from finishing his law studies.

13. By letter to the applicant's counsel of 18 May 2000, the presiding judge of the competent chamber of the Regional Court confirmed that if the proceedings had been pursued, the Regional Court would have opened proceedings against the applicant with regard to parts of the indictment. The applicant would then have been convicted with predominant probability ("*Insoweit war auch mit bei weitem überwiegender Wahrscheinlichkeit mit Verurteilung zu rechnen"*). In one of the cases of fraud, this predominant probability was based on the submissions of another accused and of a former suspect. In another case, a conviction for fraud was to be expected following the submission of various car rental receipts ("*...war schon im Hinblick auf die Einreichung der diversen Mietwagenrechnungen mit einer Verurteilung wegen Betrugs zu rechnen"*).

14. On 22 September 2000 the Frankfurt/Main Court of Appeal rejected the applicant's appeal. It noted that granting compensation for prosecution measures lay within the discretion of the competent courts or prosecuting offices. The relevant Section 3 of the Act on Compensation for Prosecution Measures (*Gesetz über die Entschädigung für Strafverfolgungs-massnahmen,* see relevant domestic law below) was to be seen as an exception to the rule - according to this provision, compensation should be granted in special cases where the execution of provisional prosecution

measures was considered to be grossly disproportionate ("*grob unverhältnismässig"*). This did not apply to the case against the applicant.

15. The Court of Appeal noted that the measures of prosecution instituted against the applicant were originally based on a strong suspicion (*dringender Verdacht*). If the proceedings had continued, the Regional Court would have opened proceedings against the applicant regarding a certain part of the indictment. The Court of Appeal found that taking into account a remaining suspicion ("*verbleibender Tatverdacht"*) when deciding on compensation was not in violation of the right to the presumption of innocence under Article 6 of the Convention, as it did not involve the establishment or allocation of guilt, but only constituted an admissible and necessary evaluation of the situation. Legal consequences of a non-punitive character, such as the refusal of compensation for prosecution measures, may be linked to such a remaining suspicion. This remaining suspicion, which the Regional Court took into account when deciding on compensation, was only relevant with regard to the question of whether to open proceedings and of whether the public interest in further prosecution could be overcome. It was not relevant with regard to the actual question of guilt or the probability of a conviction.

16. On 14 December 2000 the Federal Constitutional Court refused to entertain the applicant's complaint against the court decisions and the letter of the Regional Court, finding that the principle of the presumption of innocence did not prevent the establishment and assessment of a remaining suspicion in a decision on the discontinuance of criminal proceedings before a conviction has taken place. It thus also did not prevent courts or prosecuting offices from taking this remaining suspicion into account when deciding on compensation.

17. The presumption of innocence prohibits imposing sanctions with a punitive or *de facto* punitive effect on an accused whose guilt has not been established in the relevant criminal proceedings. However, in a decision on the discontinuance of proceedings, legal consequences of a non-punitive character may be linked to a remaining suspicion, but it must become sufficiently clear from its reasoning that this does not occur out of the intention to establish or allocate guilt, but out of the intention to describe and assess the state of suspicion (*Verdachtslage*). This distinction had to be sufficiently expressed in the decision's reasons. In this respect, the context of all the given reasons had to be taken into account.

18. In the light of the above principles, the Federal Constitutional Court found that the impugned decisions were compatible with the German Basic Law. It noted that the Court of Appeal had refused to grant the applicant compensation under Section 3 of the Act on Compensation for Prosecution Measures on the ground that if the proceedings against the applicant had been pursued, the Regional Court would have opened court proceedings against the applicant based on parts of the indictment. This evaluation of the

remaining suspicion with regard to the question of the opening of proceedings and overcoming the public interest in pursuing prosecution measures neither contained a declaration on the probability of the applicant's conviction, nor did it contain a criminal allocation of guilt.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The discontinuance of the criminal proceedings

19. According to Section 153a of the Code of Criminal Procedure, criminal proceedings involving a less serious criminal offence (*Vergehen*) may be discontinued subject to certain conditions and instructions (*Auflagen und Weisungen*).

20. If the proceedings are still in the investigation phase, the Public Prosecutor's Office may, with the consent of the competent court and the accused, provisionally refrain from issuing an indictment relating to an offence and may at the same time order the accused (1) to take measures providing reparation, (2) to pay a sum of money to a charitable association or the Treasury, (3) to take other measures or (4) to make maintenance payments of a particular amount, if such conditions and instructions can remove the public interest in prosecution and if this is not in conflict with the seriousness of the crime ("*...wenn diese geeignet sind, das öffentliche Interesse an der Strafverfolgung zu beseitigen, und die Schwere der Schuld nicht entgegensteht")* (Section 153a § 1).

21. If the accused has already been indicted, the court may, with the consent of both the public prosecutor's office and the accused, discontinue the proceedings and impose the same conditions and instructions (Section 153a § 2).

B. The right to compensation after the discontinuance of the proceedings

22. Compensation for various prosecution measures is covered by the Act on Compensation for Prosecution Measures (*Gesetz über die Entschädigung für Strafverfolgungsmassnahmen*).

23. In cases where an accused is acquitted or where the proceedings against him are discontinued or where a court refuses to open the proceedings against him, he is entitled to compensation for damages suffered due to time spent in detention on remand or due to other prosecution measures (Section 2).

24. If the discontinuation of the proceedings is subject to the discretion of the prosecutor's office or the competent court, compensation on an

equitable basis according to the circumstances of the case may be granted where Section 2 applies (Section 3).

25. According to the case-law of the Federal Constitutional Court, cases where the proceedings have been discontinued according to Section 153a of the Code of Criminal Procedure also fall under the scope of the above regulations.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

26. The applicant complained, under Article 6 § 2 of the Convention, that the reasoning of the domestic courts in general and in particular the content of the presiding judge's letter of 18 May 2000 reflected a finding that he was guilty of a crime without his guilt having been established according to law.

27. Article 6 § 2 of the Convention provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

28. Referring to the Court's judgment in the case of Minelli v. Switzerland (judgment of 25 March 1983, Series A no. 62), the applicant argued that the Limburg Regional Court, in its letter of 18 May 2000, had clearly expressed that it found him guilty of the alleged crime. He claimed that the content of that letter had to be regarded as supporting reasons which could not be dissociated from the operative provisions of the decision of 21 March 2000. In this respect, he emphasised the presiding judge's influence on the chamber's case-law and the fact that the wording of the letter did not demonstrate that it did not convey the whole chamber's opinion.

29. The Government contested this. They maintained that the letter of 18 May 2000 did not have any legal relevance, but merely expressed the presiding judge's opinion. In this respect, they pointed out that the Code of Criminal Procedure did not allow the deciding chamber to change or to add further reasons to its decision once it was taken. Furthermore, the original decision of 21 March 2000 had not been taken by the presiding judge on his own, but by a chamber of three judges. Neither the above-mentioned letter nor the decisions of the domestic courts amounted to an assessment of the applicant's guilt.

A. Admissibility

30. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

31. The Court recalls that the presumption of innocence enshrined in Article 6 § 2 is one of the elements of a fair criminal trial required by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty unless he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards that person as guilty (see *Daktaras v. Lithuania*, no. 42095/98, § 41, ECHR 2000-X). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Daktaras*, cited above, § 43)

32. However, neither Article 6 § 2 nor any other provision of the Convention gives a person "charged with a criminal offence" a right to compensation for lawful detention on remand where proceedings taken against him are discontinued. The refusal of compensation complained of by the applicant accordingly does not in itself offend the presumption of innocence (see *Englert* and *Nölkenbockhoff*, judgments of 25 August 1987, Series A no. 123, pp. 45-55 and 79 respectively, § 36; *Sekanina v. Austria,* judgment of 25 August 1993, Series A no. 266-A, pp. 13-14, § 25; *Hibbert v. the Netherlands* (dec.), no. 30087/97, 26 January 1999; and *Del Latte v. the Netherlands*, no. 44760/98, § 30, 9 November 2004).

33. Nevertheless, a decision whereby compensation for detention on remand is refused following termination of proceedings may raise an issue under Article 6 § 2, if supporting reasoning which cannot be dissociated from the operative provisions amounts in substance to a determination of the accused's guilt without his having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, p. 18, § 37; *Englert* and *Nölkenbockhoff*, both cited above, § 37).

34. In the case of *Baars v. the Netherlands* where, as in the present case, the reasoning of the decision to refuse compensation for pre-trial detention was at issue, the Court distinguished between decisions which describe a

"state of suspicion" and decisions which contain a "finding of guilt". It found that only the second category is incompatible with Article 6 § 2 of the Convention (no. 44320/98, §§ 25-32, 28 October 2003, with further references; see also *Del Latte*, cited above, § 31).

35. Turning to the present case, the Court notes that on 21 March 2000 the Limburg Regional Court, sitting as a chamber of three judges, decided to deny the applicant compensation for the time he had spent in detention. By letter of 18 May 2000 to the applicant's counsel, the presiding judge of that same chamber stated that the applicant would have been convicted with "predominant probability" with respect of parts of the charges against him if criminal proceedings had continued. The presiding judge gave reasons for this assessment which derived from the content of the criminal case-file.

36. With respect to the domestic courts' formal decisions, the Court notes that the Limburg Regional Court stated that the compensation claimed by the applicant would not be equitable. The Frankfurt Court of Appeal noted that the measures of prosecution instituted against the applicant had been originally based on a strong suspicion and that it was permitted to take into account a remaining suspicion against the applicant when deciding on his compensation claim. The Federal Constitutional Court found that the lower court's assessment neither contained a declaration on the probability of the applicant's conviction, nor did it contain a criminal allocation of guilt.

37. The Court accepts the Government's argument that the presiding judge's letter did not constitute a formal part of the decision on the applicant's compensation claim. However, an informal statement by a public official may – depending on the circumstances of the case – amount to a violation of the presumption of innocence (see *Daktaras*, cited above, § 41-43 and paragraph 32, above).

38. The Court notes that in the present case the impugned statement was made by the presiding judge not in a public context – as for instance in a press conference – but in a letter which was exclusively directed to the applicant's counsel. The Court further notes that, while the terms used by the presiding judge in the impugned letter were ambiguous and unsatisfactory, both the Frankfurt Court of Appeal and the Federal Constitutional Court, in their respective decisions, made it sufficiently clear that it would be contrary to the presumption of innocence to allocate guilt to the applicant. In this respect, the domestic courts decisions contrast with the decisions the Court considered in the Minelli case (see *Minelli*, cited above, §§ 12-14 and 16). Moreover, the refusal to award the applicant compensation for his detention on remand does not amount to a penalty or a measure that can be equated with a penalty (see *Nölkenbockhoff,* cited above, § 40).

39. Under these circumstances, taking into account the limited external effects of the impugned statement and the fact that the higher domestic courts duly considered the applicant's right under Article 6 § 2, the Court concludes that the content of the letter of 18 May 2000 did not breach the principle of the presumption of innocence. There has accordingly been no violation of Article 6 § 2.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* unanimously that there has been no violation of Article 6 § 2 of the Convention.

Done in English, and notified in writing on 28 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President