



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

FIFTH SECTION

CASE OF PALJIC v. GERMANY

(Application no. 78041/01)

JUDGMENT

STRASBOURG

1 February 2007

FINAL

01/05/2007

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 Paljic v. Germany,

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

Mr P. LORENZEN, *President*,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 8 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 78041/01) 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, at that time, a citizen of the State Union of Serbia and Montenegro, Mr Milos Paljic ("the applicant"), on 18 April 2001.

2. The applicant, who had been granted legal aid, was represented by Mr B. Schaudinn, a lawyer practising in Munich. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. The applicant alleged that his right to a fair trial as guaranteed by Article 6 § 1 of the Convention had been violated as the Federal Court of Justice, when dismissing his appeal on points of law, adopted admissibility criteria which were inconsistent with that same court's previous case-law and therefore unforeseeable to him.

4. On 16 September 2004 the Court decided to give notice of the application to the Government. On 4 March 2005 it decided under the provisions of Article 29 § 3 of the Convention to examine the merits of the application at the same time as its admissibility.

5. The Government of the State Union of Serbia and Montenegro, having been informed by the Section Registrar of their right to intervene (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), did not indicate any intention of doing so.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Blaichach, Germany.

1. The initial trial against the applicant

7. Since July 1990 the applicant worked as a cleaner in a home for the care of mentally disabled persons.

8. On 11 August 1994 the applicant was arrested on suspicion of having sexually abused Ms U., a mentally disabled resident of the said home.

9. On 14 February 1995 the Munich Public Prosecutor's Office charged the applicant with having attempted to sexually abuse Ms U. twice, once on an unspecified date at the end of 1993 or the beginning of 1994 (first charge) and a second time on 12 July 1994 (second charge).

10. On 29 February 1996 the Munich Regional Court II convicted the applicant on two charges of sexual abuse of a person unfit to defend herself and sentenced him to a cumulative sentence of three years' imprisonment (one year for the first charge and two years and six months for the second one).

11. On 5 September 1996, following the applicant's appeal on points of law, the Federal Court of Justice quashed the Regional Court's judgment and remitted the case to a different chamber of the Munich Regional Court. The Federal Court of Justice found that the Regional Court, in dismissing the defence's motion to obtain another report of a psychiatric expert, had made a procedural mistake. In view of the fact that witness U. had abused alcohol and tablets at a period in time prior to the offences, it was necessary to have her examined by a medical expert in order to verify whether she suffered from a mental illness affecting her ability to give correct evidence (*Aussagetüchtigkeit*). In these circumstances, it was not sufficient, as was done by the Regional Court, to have the witness's credibility examined by a psychological expert.

2. The applicant's retrial

12. During an oral hearing on 15 December 1999, the sixth hearing in the case, the Munich Regional Court II heard further witnesses. It indicated to the parties that the offences in question could be qualified differently in law as Ms U. had not proved unable to defend herself. Following a short interruption of the hearing, the Regional Court discontinued the proceedings concerning the first charge preliminarily according to section 154 § 2 of the Code of Criminal Procedure (see paragraph 26 below) upon a motion by the Public Prosecutor's Office. The minutes of the hearing do not contain any

reasons given either by the Public Prosecutor's Office or by the Regional Court for proceeding in this manner. It had not been possible throughout the proceedings to establish the exact date on which the offence underlying the first charge had been committed.

13. On 17 December 1999 the Munich Regional Court II convicted the applicant in respect of the remaining second charge of sexual abuse and of bodily injury and sentenced him to two years' imprisonment suspended on probation. The Regional Court based its judgment mainly on the evidence given by Ms U., who was the only eye-witness to the alleged crime. Relying on reports given by both a psychological and a psychiatric expert, the court noted that due to her slight mental disability, Ms U.'s ability to give correct evidence was considerably restricted. Nevertheless, it was convinced that Ms U.'s statements were correct. She had not reported the offence on her own motion, but had confessed it to her partner on the same day when the latter had noticed that she felt depressed. Her partner had then convinced her some days later to inform the management of the home of the incident. Numerous other signs, such as the fact that U. had not tried unnecessarily to incriminate the applicant and had no other motives to accuse him demonstrated that the witness was credible. Moreover, two further female witnesses had confirmed that the applicant had harassed them.

14. In the judgment, no reasons were given for discontinuing the proceedings in respect of the first charge.

15. On 20 December 1999 the applicant, represented by counsel, lodged an appeal on points of law with the Federal Court of Justice, which he reasoned on 13 March 2000. He complained, *inter alia*, that there was a procedural error as no reasons for discontinuing the proceedings in respect of the first charge emerged either from the Public Prosecutor's request to do so or from the Regional Court's decision to partly discontinue the proceedings or from its judgment. However, the Regional Court had not found witness U. to be credible in this respect, which was documented by the fact that it had decided to discontinue the proceedings pursuant to section 154 § 2 of the Code of Criminal Procedure. The reasons for discontinuing the proceedings could be essential for the evaluation of Ms U.'s credibility as both charges concerned similar offences and were primarily based on Ms U.'s assertions. If the Regional Court did not follow Ms U.'s testimony with respect to the first charge, it would have been necessary to explain why that court found the same witness's testimony to be credible with respect to the second charge.

16. On 18 April 2000 the General Public Prosecutor requested the court to dismiss the applicant's appeal on points of law as ill-founded. He argued in particular that no reasons had to be given for partly discontinuing the proceedings pursuant to section 154 § 2 of the Code of Criminal Procedure.

17. In his submissions in reply dated 9 May 2000, the applicant agreed that section 154 § 2 of the Code of Criminal Procedure did not prescribe

that reasons had to be given for the discontinuance of the proceedings. However, failure to do so nevertheless rendered the evaluation of evidence defective in the circumstances of the present case.

18. On 30 May 2000 the Federal Court of Justice rejected the applicant's appeal on points of law. In respect of the said procedural error complained of, it dismissed his appeal on points of law as inadmissible, finding that the applicant had not sufficiently set out the facts which were relevant for his complaint as required by section 344 § 2 of the Code of Criminal Procedure (see paragraph 26 below).

19. The court agreed with the applicant's submission that

“in cases in which the charges for two offences were based on the statement of only one witness and the proceedings were discontinued pursuant to section 154 § 2 of the Code of Criminal Procedure in respect of one of these offences, the reasons to do so can have evidential value for the decisive question of the credibility of the sole witness for the prosecution; if no grounds for discontinuing the proceedings are given, there is a lack of reasoning (*Erörterungsmangel*) (see Federal Court of Justice, *Strafverteidiger (StV)* 1998, pp. 580, 582).”

20. However, what had been discussed in the hearing before the Regional Court discontinued the proceedings pursuant to section 154 § 2 of the Code of Criminal Procedure could not be known by having regard to the text of the judgment alone, as there was no duty to mention the discontinuance of the proceedings pursuant to that section or the reasons therefor in the judgment. It was true that there were judgments in which courts had set out in detail the reasons for partly discontinuing the proceedings and the influence of that decision on the evaluation of evidence, but this was only done if the court saw reasons to do so.

21. In the present case, the Federal Court of Justice was unable to ascertain on the basis of the applicant's reasoning in his appeal alone whether there had been a procedural error assuming that the facts submitted by him proved to be true (the court referred to its previous decisions published in the *Neue Juristische Wochenschrift* (NJW) 1995, p. 2047 and *StV* 1996, p. 530 in this respect).

22. According to the Federal Court of Justice,

“what is missing is a statement as to which reasons, if any, for discontinuing the proceedings were orally discussed during the court's hearing, because the failure to give reasons for the discontinuance could only constitute a procedural error if these reasons could have had an influence on the outcome of the judgment, such as doubts about the credibility of the statements of the only prosecution witness.”

23. The Federal Court of Justice noted that as a rule, proceedings were not discontinued pursuant to section 154 § 2 of the Code of Criminal Procedure without any comments, despite the fact that there was no duty to record such statements in the minutes. If, in exceptional circumstances, no comments were made, the appellant was at least obliged expressly to state that the court had not given any other grounds, such as a limitation of the

offences at issue in the proceedings for reasons of efficiency, which were irrelevant for the evaluation of evidence.

3. The proceedings before the Federal Constitutional Court

24. On 7 September 2000 the applicant lodged a constitutional complaint with the Federal Constitutional Court. He argued that his rights to be heard and to a fair trial were violated as in its decision the Federal Court of Justice had applied new admissibility criteria which he could not have foreseen. According to the applicant, the Federal Court of Justice, in its previous case-law, had demanded an account of the oral statements during the hearing only if the minutes disclosed that there had been such statements at all. Now on the contrary, that same court asked for an account of statements which (might) have been made in the course of the hearing and which were not included in the record.

25. On 15 October 2000 the Federal Constitutional Court, sitting as a panel of three judges, refused to admit the applicant's constitutional complaint. The decision was served on the applicant's counsel on 19 October 2000.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Relevant provisions of the Code of Criminal Procedure

26. The relevant provisions of the Code of Criminal Procedure read as follows:

Section 154 [Insignificant further offences]

“(1) The Public Prosecutor's Office may dispense with prosecuting an offence

1. if the penalty or the measure of correction and prevention (*Maßregel der Besserung und Sicherung*) in which the prosecution might result is not particularly significant compared to a penalty or measure of correction and prevention which was imposed with binding effect upon the defendant for another offence or which he has to expect for another offence, or

2. furthermore, if a judgment for such offence is not to be expected within a reasonable time and if the penalty or the measure of correction and prevention which was imposed with binding effect upon the defendant or which he has to expect for another offence, appears sufficient to have an influence on the offender and to defend the legal order.

(2) If public charges have already been preferred, the court may provisionally discontinue the proceedings upon the motion of the Public Prosecutor's Office at any stage.

...

(4) If the proceedings were discontinued provisionally on account of a penalty or measure of correction and prevention which was to be expected for another offence, the proceedings may be resumed, unless barred by limitation in the meantime, within three months after the judgment delivered in respect of the other offence became final.”

Section 344 [Reasoning of an appeal on points of law]

“(1) The appellant shall make a statement on the extent to which he contests the judgment and applies for it to be quashed (notices of appeal on points of law) and shall give reasons for his motions.

(2) The reasoning must show whether the judgment is contested because of a violation of the law of procedure or because of a violation of a different legal provision. In the former case the facts which constitute the defect have to be set out.”

Section 345 [Time-limit for reasoning the appeal on points of law]

“(…)

(2) The defendant may only do so [*i.e. submit notices of appeal and the grounds therefor*] in the form of observations signed by defence counsel or a lawyer or orally to be recorded by the court's registry.”

Section 273 [Recording of the main hearing]

“(1) The record must indicate the course and the results of the main hearing in essence, and show that all essential formalities have been observed; it must also specify the documents read out or those documents the reading of which has been dispensed with ..., as well as the applications filed during the course of the hearing, the decisions given, and the operative provisions of the judgment.

(2) The main outcome of questionings in the main hearing ... shall also be included in the record; ...”

Section 274 [Probative value of the record]

“Observance of the formalities required for the main hearing can only be proved by the record. Against the contents of the record concerning these formalities only proof of forgery is possible.”

2. Case-law of the Federal Court of Justice

a. General principles

27. Pursuant to the well-established case-law of the Federal Court of Justice, an appellant alleging a violation of a procedural rule must set out the facts which constitute the defect within the meaning of section 344 § 2, second sentence, of the Code of Criminal Procedure in such a comprehensive and detailed manner that the appellate court is in a position

to verify on the basis of the appellant's reasoning alone whether there would be a procedural error if the alleged facts were proved. It is not only necessary for the appellant not to omit facts weighing against him, but also to submit facts militating in favour of exceptional circumstances which would render his complaint unfounded. Depending on the nature of the violation of the procedural rule, the Federal Court of Justice developed special requirements in its case-law on how to reason an appeal on points of law (see the decision of the Federal Constitutional Court of 25 January 2005, nos. 2 BvR 656/99, 2 BvR 657/99 and 2 BvR 683/99, § 92 with many references to decisions taken by the Federal Court of Justice between 1982 and 2002).

28. In its decision of 25 January 2005 (cited in paragraph 27 above) the Federal Constitutional Court examined the constitutionality of the requirements set up in the case-law of the Federal Court of Justice which an appellant has to satisfy in order to lodge an admissible appeal on points of law about a procedural error in accordance with section 344 § 2, second sentence, of the Code of Criminal Procedure. The Federal Constitutional Court found that as a rule, these requirements did not violate the individuals' right to effective legal protection and did not limit access to the Federal Court of Justice in an arbitrary manner (see §§ 91-108 of the decision). It stressed that the interpretation of the said section by the Federal Court of Justice served to prevent that court from being overcharged, which would itself compromise an effective legal protection (see § 107 of the decision).

b. Case-law relied on by the Federal Court of Justice in its decision of 30 May 2000

29. The Federal Court of Justice, in its decision of 9 March 1995 (no. 4 StR 77/95, NJW 1995, p. 2047), considered an appeal on points of law lodged by the Public Prosecutor's Office complaining about a procedural error to be inadmissible for failure to comply with the requirements of section 344 § 2, second sentence, of the Code of Criminal Procedure. It found that the appellant failed to set out all the facts which constituted the defect in such a comprehensive and detailed manner that the appellate court was in a position to verify on the basis of the appellant's reasoning alone whether there would be a procedural error if the alleged facts were proved. The submissions failed to give an account of the contents of the statements made by the defendant prior to the hearing before the police.

30. In its decision taken on 5 March 1996 (no. 5 StR 643/95, StV 1996, pp. 529-530) the Federal Court of Justice dismissed the defendant's appeal on points of law concerning a procedural error as inadmissible pursuant to section 344 § 2 of the Code of Criminal Procedure. The appellant, who complained that his motion to appoint a further expert had wrongly been dismissed, despite the fact that the court-appointed expert allegedly lacked

expertise, failed to set out the full contents of the report given by that expert. In so far as the appellant based his allegations on statements made by that expert during the hearing, the account given in the judgment of the discussion with the expert in the hearing proved that there was no lack of expertise on his part. Accordingly, the Federal Court of Justice was not in a position to verify whether the allegation of a lack of expertise was well-founded.

31. On 29 July 1998 the Federal Court of Justice (no. 1 StR 94/98, StV 1998, pp. 580-582) allowed the defendant's appeal on points of law alleging that the law had been applied wrongly to the facts ascertained in the judgment (*Sachrüge*). The defendant had been charged with six counts of sexual abuse of children, which had all been based on the statements made by the only witness for the prosecution. He was acquitted as the witness had been proved to have invented the incident in respect of one count and convicted in respect of three other counts; in respect of two counts of sexual abuse the proceedings were discontinued pursuant to section 154 § 2 of the Code of Criminal Procedure. According to the Federal Court of Justice, the evaluation of evidence in the Regional Court's judgment was defective, *inter alia*, because that court had discontinued the proceedings in respect of two counts of sexual abuse of children without giving reasons therefore. In the circumstances of the case – there was notably only one witness for the prosecution, no further incriminating evidence and the defendant's innocence was established in respect of one of the comparable offences he had been charged with – the reasons for discontinuing the proceedings in respect of two further counts could have had evidential value for the decisive question of the credibility of the sole witness for the prosecution.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

32. The applicant complained that his right to a fair trial had been violated in that the Federal Court of Justice, in its decision taken on 30 May 2000, had applied inadmissibility criteria which were inconsistent with its previous case-law and therefore unforeseeable to him. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

33. The Government contested that argument.

A. Admissibility

34. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

35. The applicant claimed that the Federal Court of Justice had dismissed his complaint about the Regional Court's error of procedure as inadmissible in an unforeseeable manner contradicting its own well-established case-law. According to that case-law, it was not only unnecessary, but even inadmissible to base a complaint about a procedural error on oral submissions made during the hearing which were not recorded in the minutes. The decisions cited by the Government in support of their view that the Federal Court of Justice had applied well-established case-law in this respect were not applicable to facts as the one in the present case. The applicant relied, *inter alia*, on a decision taken by the Federal Court of Justice on 29 July 1998 (see paragraph 31 above).

36. In the applicant's submission, the Regional Court had been obliged in the circumstances of the present case to set out in detail in its judgment all facts relevant for the evaluation of U.'s testimony as a witness. There had notably been an almost total lack of ability of this only witness for the prosecution to give correct evidence and the proceedings had been discontinued in respect of one charge pursuant to section 154 § 2 of the Code of Criminal Procedure.

37. The applicant stressed that he did not claim that the Regional Court had found the only witness for the prosecution not to be credible in respect of the first charge. This was in fact irrelevant. In his view, there had been a procedural error because the Regional Court had failed to set out any reasons in its judgment for discontinuing the proceedings.

38. In the Government's submission, the Federal Court of Justice had examined the applicant's appeal on points of law in accordance with its well-established case-law on the admissibility of complaints about alleged procedural errors. According to that case-law, a complainant had to set out all facts which, if proved, warranted the conclusion that there had been a procedural error. However, the applicant failed to report whether reasons were given in the hearing by the Public Prosecutor's Office for its motion to discontinue the proceedings in respect of one of the charges. Moreover, the applicant failed to state facts indicating that the Regional Court found the witness to be credible with respect to one charge and not credible with

respect to the other. This duty could not be considered as unreasonable, given that the applicant and his counsel had been present at the hearing. Consequently, the Federal Court of Justice neither acted in a manner contradicting its case-law nor reached a surprise decision in finding that the applicant's appeal on points of law was inadmissible in this respect.

39. In particular, pursuant to its well-established case-law on how to raise an admissible complaint about procedural errors in accordance with section 344 § 2, second sentence, of the Code of Criminal Procedure, the Federal Court of Justice has always requested appellants to set out the facts concerning oral submissions in the hearing. This applied even if the submissions were not – and according to the relevant provisions (notably section 273 of the Code of Criminal Procedure, see paragraph 26 above), did not have to be – contained in the minutes of the hearing. To support their view, the Government notably relied on the decisions cited by the Federal Court of Justice itself in its decision of 30 May 2000 in the present case (see above, at paragraphs 21 and 29-30).

40. The Government confirmed that according to the case-law of the Federal Court of Justice, it was necessary for a court critically to evaluate the testimony of the only witness for the prosecution in its judgment in cases in which it considered only part of his or her submissions to be credible and had therefore partly discontinued the proceedings pursuant to section 154 § 2 of the Code of Criminal Procedure.

41. However, in the present case there was nothing to indicate that the Regional Court had discontinued the proceedings because it had found Ms U.'s testimony concerning the first charge not to be credible. Partially discontinuing the proceedings pursuant to section 154 § 2 of the Code of Criminal Procedure, as in the present case, served to expedite criminal proceedings and was generally unrelated to questions of the credibility of witnesses for the prosecution.

2. The Court's assessment

a. Relevant principles

42. The Court reiterates that the “right to a tribunal”, of which the right of access is one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36), is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, p. 24, § 57). However, these limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. In particular, such limitations

must not restrict or reduce a person's access to court in such a way or to such an extent that the very essence of the right is impaired (see, among other authorities, *Levages Prestations Services v. France*, judgment of 23 October 1996, *Reports of Judgments and Decisions* 1996-V, p. 1543, § 40; *Sotiris and Nikos Koutras ATTEE v. Greece*, no. 39442/98, § 15, 16 November 2000; *Związek Nauczycielstwa Polskiego v. Poland*, no. 42049/98, § 29, ECHR 2004-IX).

43. In order to satisfy itself that the very essence of an applicant's "right to a tribunal" was not impaired by the declaration that the appeal was inadmissible, the Court will notably examine whether the procedure to be followed for an appeal on points of law could be regarded as foreseeable from the point of view of a litigant and whether, therefore, the penalty for failing to follow that procedure did not infringe the proportionality principle (see *Levages Prestations Services*, cited above, p. 1543, § 42; *Nicolai v. France* (dec.), no. 69090/01, 19 February 2004).

44. The manner in which Article 6 § 1 applies to courts of appeal or cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted in the domestic legal order; the conditions of admissibility of an appeal on points of law may be stricter and more formal than for an ordinary appeal (see, *inter alia*, *Levages Prestations Services*, cited above, p. 1544, § 45; *Brualla Gómez de la Torre v. Spain*, judgment of 19 December 1997, *Reports* 1997-VIII, p. 2956, § 37; *Sotiris and Nikos Koutras ATTEE*, cited above, § 18).

45. The Court further affirms that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This applies in particular to the interpretation by the courts of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, among other authorities, *Leoni v. Italy*, no. 43269/98, § 21, 26 October 2000; *Sotiris and Nikos Koutras ATTEE*, cited above, § 17; *Tricard v. France*, no. 40472/98, § 29, 10 July 2001).

b. Application of those principles to the present case

46. Turning to the facts of the present case, the Court observes that the Federal Court of Justice dismissed the applicant's appeal on points of law, in which he complained about the Regional Court's failure to give reasons for partly discontinuing the proceedings, as inadmissible. The Federal Court of Justice found that the applicant had not sufficiently set out the facts which were relevant for his complaint because he had failed to state if and which reasons for discontinuing the proceedings had been discussed orally during the Regional Court's hearing.

47. In examining whether declaring the applicant's appeal on points of law inadmissible in this manner constituted a disproportionate limitation to his right of access to court, notably as the procedure could not be regarded as foreseeable for him, the Court notes that it is contested between the parties whether or not the Federal Court of Justice applied its well-established case-law in dismissing the applicant's appeal. The applicant claimed that the Federal Court of Justice had not previously requested appellants to set out the contents of oral discussions during the hearing in order to lodge an admissible complaint about a procedural error. On the contrary, the Government submitted that the Federal Court of Justice has always requested appellants to state also such facts in an appeal on points of law.

48. In assessing whether in the instant case the Federal Court of Justice deviated from its own well-established case-law in an unforeseeable manner, the Court will notably have regard to the case-law referred to by that court itself when dismissing the applicant's appeal as inadmissible (see paragraphs 19, 21 and 29-31 above). It notes that none of the decisions quoted by the Federal Court of Justice appear to deal with exactly the same constellation as the one at issue in the present case, that is, a discontinuance of proceedings pursuant to section 154 § 2 of the Code of Criminal Procedure which has been the cause of an appeal on points of law alleging a procedural error (as opposed to an allegedly wrong application of the law to the facts of the case). However, it is clear that, in all decisions it cited, the Federal Court of Justice, applying its well-established case-law (see paragraph 27 above), has required the appellant to state those facts which, in the circumstances of the case, were necessary for it to verify on the basis of the appellant's reasoning alone whether there would be a procedural error if the alleged facts were proved. It emerges from the decisions referred to that the Federal Court of Justice, in accordance with that aim, had already previously required appellants also to set out the content of statements made orally by persons involved in the proceedings – without a distinction having been made in these decisions as to whether or not these statements were recorded in the minutes – if it considered the knowledge of those statements necessary to examine the appeal.

49. Having regard to the material before it, the Court is therefore not convinced that the Federal Court of Justice departed from the admissibility criteria set up in its own case-law for an appeal on points of law in a manner which was unforeseeable to the applicant. The Court affirms in this connection that problems of interpretation notably of rules of a procedural nature are to be resolved primarily by the domestic courts. In the light of this, it also takes into consideration that the Federal Constitutional Court refused to admit the applicant's constitutional complaint in which he had raised exactly the same complaint as the one brought before the Court.

50. It remains for the Court to determine whether, in the circumstances of the present case, the Federal Court of Justice's decision to declare the applicant's appeal on points of law partly inadmissible – even though it could not be considered as unforeseeable – impaired the applicant's access to court in a disproportionate manner, in particular by its consequences (compare also *Levages Prestations Services*, cited above, p. 1544, § 43).

51. Having regard to the requirements set up in the case-law of the Federal Court of Justice which the applicant had to satisfy in order to lodge an admissible appeal on points of law about a procedural error in accordance with section 344 § 2 of the Code of Criminal Procedure (compare paragraphs 27-31 above), the Court considers that these are, as a rule, anything but easy to comply with. However, the role of the Federal Court of Justice was limited to reviewing – a second time – whether the law had been applied correctly in the applicant's case. The Regional Court had previously heard and fully examined the applicant's case both on points of fact and law, the Federal Court of Justice, in its first decision, had then quashed the Regional Court's judgment and a different chamber of the Regional Court had reconsidered the applicant's case as a whole in the light of the (first) decision of the Federal Court of Justice. Moreover, given that pursuant to section 345 § 2 of the Code of Criminal Procedure (see paragraph 26 above) appellants are obliged to submit their reasoning for the appeal on points of law either signed by defence counsel or a lawyer or orally to be recorded by the court's registry, there was also a guarantee that appellants had recourse to legal advice in order to help them to comply with the said admissibility requirements. The applicant was indeed represented by counsel when lodging his appeal on points of law. In these circumstances, the procedure followed by the Federal Court of Justice could, in the Court's opinion, legitimately be more formal, thereby ensuring a proper administration of justice (compare also *Levages Prestations Services*, cited above, pp. 1544/45, § 48).

52. The Court further observes that the Federal Court of Justice considered it necessary for the applicant to show in his appeal that the reasons for discontinuing the proceedings could have had an influence on the outcome of the judgment, in particular because there had been doubts about the credibility of the statements of the only prosecution witness. In the circumstances of the present case, it does not find this requirement too formalistic so as to limit unreasonably the applicant's access to that court. In this connection, the Court notes that it becomes clear from the Regional Court's reasoning that it did find Ms U. credible for several reasons and considered her statements to be correct.

53. In conclusion, regard being had to the proceedings in the domestic courts as a whole, the Court finds that the applicant's right of access to court as guaranteed by Article 6 § 1 was not violated by reason of the conditions

he had to satisfy for his appeal on points of law to be admissible. There has accordingly been no violation of that provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 of the Convention.

Done in English, and notified in writing on 1 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President