APPLICATION/REQUÊTE N° 6232/73

Eberhard KÖNIG v/the FEDERAL REPUBLIC OF GERMANY
Eberhard KÖNIG c/RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

DECISION of 27 May 1975 on the admissibility of the application
DÉCISION du 27 mai 1975 sur la recevabilité de la requête

Article 6, paragraph 1, of the Convention *: Whether the right to practise medicine and the right to manage one's private hospital are civil rights in the meaning of this Article. Question requiring an examination of the merits of the case.*

Article 6, paragraphe 1, de la Convention *: Le droit d'exercer la profession de médecin et le droit pour un médecin de diriger une clinique dont il est propriétaire sont-ils des droits de caractère civil, au sens de cette disposition ? Question nécessitant un examen du fond de l'affaire.*

Résumé des faits (*English : see p. 82*)

Médecin spécialiste dirigeant une clinique dont il est propriétaire. En avril 1967, le Président du Gouvernement à Wiesbaden a retiré au requérant l'autorisation de diriger sa clinique pour manquements à ses devoirs de médecin et absence des garanties nécessaires pour la gestion. Contre cette décision le requérant a recouru au tribunal administratif de Francfort en novembre 1967.

En mai 1971, le Président du Gouvernement à Darmstadt a retiré au requérant l'autorisation d'exercer la profession de médecin. Contre cette décision le requérant a recouru au tribunal administratif de Darmstadt en octobre 1971.

A la date de la présente décision aucun de ces deux recours n'avait été jugé au fond.

Le requérant a déféré sans succès à la Cour constitutionnelle fédérale les deux mesures prises contre lui.

Invoquant l'article 6, paragraphe 1, de la Convention, le requérant se plaint devant la Commission de la durée des procédures pendantes devant le tribunal administratif de Francfort.

ARGUMENTATION DES PARTIES

A. **Argumentation du Gouvernement mis en cause**

Le Gouvernement de la République Fédérale d'Allemagne constate que le requérant a saisi sans succès la Cour constitutionnelle fédérale des deux mesures dont il se plaint devant la Commission. En conséquence, il déclare ne pas contester la recevabilité de la requête au regard de l'article 26 de la Convention (Epuisement des voies de recours internes).

En revanche, le Gouvernement conteste que les procès introduits par le requérant aient pour objet des droits et obligations de caractère civil. Il en conclut que la requête est incompatible avec les dispositions de la Convention, l'article 6, § 1er étant inapplicable à ces procès.

En ordre subsidiaire, le Gouvernement soutient que la requête serait manifestement mal fondée, la durée des procès n'ayant pas dépassé, eu égard aux circonstances, un délai raisonnable.

Sur le même point, dans son mémoire du 17 octobre 1974, le Gouvernement se réfère à la décision de la Cour européenne des Droits de l'Homme dans l'affaire Ringeisen (Arrêt

rapport avec le droit privé. Mais on ne saurait aller jusque là. Les recours administratifs introduits par le requérant, malgré leurs rapports avec le droit privé, ne concernent pas des droits et obligations de caractère civil et ne tombent donc pas sous l'article 6, § 1er.

Au fond et quant à la durée des procès pendants devant les tribunaux administratifs de Francfort et de Darmstadt, le Gouvernement mis en cause, dans son mémoire du

du 16 juillet 1971). Il relève que, selon cet arrêt, des droits et obligations de caractère civil sont en cause dans « toute procédure dont l'issue est déterminante pour des droits et obligations de droit privé ». L'applicabilité de l'article 6 ne serait donc pas limitée aux rapports de droit qui, au sens juridique strict, constituent l'objet exclusif du litige, mais son application devrait être étendue aux rapports de droit qui seraient influencés directement (unmittelbar) par l'issue du procès. Il suffirait que ces derniers rapports soient des rapports de droit privé. Ne tomberaient pas dans le domaine de l'article 6, alinéa 1er, des rapports de

Summary of the facts

The applicant is a medical specialist running a private hospital. In April 1967, the "Regierungspräsident" in Wiesbaden withdrew from the applicant authorisation to run his hospital. The latter was accused of having seriously neglected his duties as a doctor and of not offering adequate guarantees for the management of his hospital. In November 1967 the applicant appealed against this decision to the Administrative Court in Frankfurt.

In May 1971, the "Regierungspräsident" in Darmstadt prohibited the applicant from practising medecine. The applicant then lodged an appeal with the administrative court in Darmstadt in October 1971.

To date there has been no decision on the merits in either of these two appeals.

The applicant has appealed unsuccessfully to the Federal Constitutional Court against the two measures taken in his regard.

He alleges violation of Article 6 paragraph 1 of the Convention. He complains before the Commission of the slowness of the proceedings pending before the administrative court in Frankfurt.

(TRANSLATION)

SUBMISSIONS OF THE PARTIES

A. **Submissions of the respondent Government**

The Government of the Federal Republic of Germany, noting that the applicant had unsuccessfully seized the Federal Constitutional Court of the two measures against which he was complaining before the Commission, did not dispute the admissibility of the application in respect of Article 26 of the Convention (exhaustion of domestic remedies).

On the other hand, the Government denied that the proceedings instituted by the applicant were concerned with civil rights and obligations. It concluded that the application was not compatible with the provisions of the Convention, since Article 6 (1) did not apply to these proceedings.

As a subsidiary argument, the Government maintained that the application was manifestly ill-founded, since the length of the proceedings had not, in view of the circumstances, exceeded a reasonable period of time.

When dealing with the same point in its memorial of 17 October 1974, the Government referred to the decision of the European Court of Human Rights in the Ringeisen case (Judgment of 16 July 1971). It pointed out that, according to that judgment, civil rights and obligations were involved in "proceedings the result of which is decisive for private rights and obligations". The application of Article 6 could not therefore be restricted to the legal relationships which constituted the subject of the dispute in a strictly legalistic view, but must be extended to those legal relations which were directly (unmittelbar) affected by the outcome of the legal dispute. It sufficed if the latter were relations in private law. Relations in public law not directly affecting (unmittelbare Auswirkungen) private rights or obligations could not be considered under Article 6 (1).

The legal proceedings taken by the applicant concerned the withdrawal of authorisation to run a private hospital (under Section 53 read in conjunction with Section 30 of the Industrial Code - Gewerbeordnung) and the withdrawal of authorisation to practise medicine (under Section 5 of the Federal Code on the Practice of Medicine - Bundesärsteordnung). Both cases, therefore, concerned the legal relations between the applicant and the administrative authorities acting in virtue of their powers under public law. Private contracts made by the applicant with his patients were not directly affected (gestaltet) by these decisions. Private law contracts could be concluded only by persons authorised to practise medicine or run a private hospital. In this sense a certain connection existed between the disputed legal relations in public law and any legal relations under private law. However, such a connection could not be taken into consideration for the purpose of delimiting the legal relations in question. A distinction between private law and public law disputes would cease to be meaningful if, for the purposes of such a distinction, it was always necessary to consider whether a disputed position under public law was a requisite for any permissible

subsequent conclusion or performance of certain types of contract under private law. Were this so, it would have to be accepted, for instance, that a dispute over an alien's residence permit also concerned "civil rights and obligations" if, in the event of such a permit being refused, an employment contract could not be concluded or performed. The same would apply to a dispute over the passing of an examination or the award of a diploma, if, without such a qualification, the person concerned could not engage in a particular occupation involving the conclusion of private law contracts.

The Government then considered earlier rulings by the European Commission and Court of Human Rights and referred to a number of decisions in which the Commission had denied the relevance of Article 6 of the Convention to applications concerning the resignation of a substitute judge appointed for a limited period, the admission of an applicant to the profession of lawyer, and the right to enter and reside in a specific country.

As to the Court's precedents, the Government pointed out that, in its judgment in the Ringeisen case, the Court had not accepted the opinion of the majority of the Commission on the applicability of Article 6 (1). But neither had it endorsed the opinion of the minority. It had considered it decisive that the decision objected to by the applicant had a determining effect on the conclusion of a contract of sale, and hence on relations in civil law.

The Ringeisen judgment had been interpreted in that way by the Austrian Constitutional Court in proceedings concerning a building permit, in which the dispute was over the obligation to pay a sum of money required by the public works authorities as a guarantee.

The Government, proceeding to examine the two authentic versions of the Convention, maintained that the English text, which threw little light on the matter, should correspond to the French text which permitted a clear distinction between public and private law and was therefore of particular importance from the point of view of interpretation. Furthermore, there could be no difference in meaning between "civil rights and obligations" and "private law", otherwise the reference to civil rights and obligations alongside criminal charges would become incomprehensible. Article 6 (1) need have stated no more than : "In the determination of any charge against him, everyone is entitled to a hearing within a reasonable time by an independent and impartial tribunal".

A study of the preparatory work on the Convention also led to the conclusion that the terms "civil rights and obligations" should be understood to mean "private rights". Originally, the terms "rights and obligations in a suit of law" in the English text had corresponded to the words "droits et obligations de caractère civil" in the French version. It was only shortly before the signature of the Convention in Rome that a committee of legal experts had inserted the terms "civil rights and obligations" when making a number of stylistic and translation corrections. Apparently that change had been made to bring the English text more closely into line with the French text, without altering the latter.

More recently, the terms "rights and obligations in a suit of law" had been included in Article 14 of the 1966 United Nations Covenant on civil and political rights. The French text of the Covenant was identical to that of Article 6 (1) of the European Convention. When comparing the Covenant and the Convention, the Committee of experts had expressed the opinion that Article 14 of the Covenant concerned only the sphere of private law disputes, whereas the English wording "in a suit of law" had a wider connotation.

If the aim of Article 6 (1) were considered, it became clear that it was necessary to determine the concept "civil rights and obligations" independently. As confirmed by the Commission in a decision on 2 October 1964, and again in the Ringeisen case, the text could not be interpreted as being merely a reference to the national law of the High Contracting Parties. That view was consistent with the aim of the Convention, which was to create a common basis of Human Rights and guarantees whose effects could not be altered by the High Contracting Parties. Nevertheless the need to refer to the legal systems of the various States should not be overlooked. Such reference was essential to an understanding of the rules derived from common traditions. If the possible interpretations of Article 6 (1) were examined from that angle, "civil right" had to be understood as meaning "private right". That was the only conception which permitted the establishment of uniform criteria. On the basis of the national law of the States, Article 6 (1) would be applicable to

any dispute which, under that law, could be brought before a court. The field of application of the text could then be altered in national legislation which would be able to restrict the field of application of the procedural guarantees in the Convention, simply by amending national procedural law.

The concept of civil rights and obligations had to be understood as a concept of substantive law. Article 6 (1) required the existence in national legislation of a judicial procedure in the cases to which it referred.

The Government did not believe that its conception could be criticised for being based exclusively on continental law. The concept of civil rights and obligations was not unknown in Anglo-Saxon law. An agreement between the Federal Republic of Germany and the United Kingdom on the mutual recognition and enforcement of legal decisions in civil and commercial cases, contained the following clarification : "This Agreement shall not apply to cases coming under fiscal, customs and administrative law". One would be justified in inferring from this the existence in English law of a system of private law, covering, inter alia, the following fields : law of contract, of tort, of property and of trusts.

The Government, referring to the Ringeisen judgment, admitted that Article 6 (1) could cover disputes which came under public law in the respondent State. That could also apply in cases where it was not objectively evident whether a particular legal situation came under public or private law, e.g. the legal authorities in the matter of gas supply, health services etc... Nevertheless, even if looked at from that angle, Article 6 (1) was not applicable in the case under consideration. The granting or refusal of authorisation to practise medicine or to run a private hospital undoubtedly came under public law. In that respect, it did not matter whether the administrative decision had any effect on private law relations. Otherwise, a decision concerning an examination result, for instance, would be covered by Article 6. The same would apply to the issue of a building permit, since the conclusion of contracts with the architect and the builder depended on it. To a certain extent there would always be a connection with private law. But the argument could not be taken that far. Despite their connections with private law, the administrative appeals lodged by the applicant did not concern civil rights and obligations and therefore they were not covered by Article 6 (1).

As to the length of the proceedings pending before the administrative courts in Frankfurt and Darmstadt, the respondent Government briefly summed up the developments in its memorial of 17 October 1974 and reserved the right to submit detailed observations if the application were not dismissed as manifestly ill-founded. Nevertheless, in that eventuality, the Government stated that it would not urge that the application should be dismissed as manifestly ill-founded in so far as it concerned the withdrawal from the applicant of authorisation to run his private hospital ; with regard to the withdrawal of authorisation to practise medicine, however the Government did consider that the application should be dismissed as manifestly ill-founded.

At the hearing of the parties on 27 May 1975, the respondent Government dealt at some length with the particular features of the procedure before German administrative courts. After making a number of concrete observations on the actual proceedings and reserving the right to submit further observations if need be, the Government concluded that the application as a whole should be dismissed, since no violation of the Convention had been established.

B. The applicant's submission

In his memorial replying to the submissions of the Federal Republic of Germany, the applicant's lawyer said that, contrary to the Government's contention, Article 6 (1) also applied to legal relations which, under German law, came within the jurisdiction of administrative courts. He put forward a number of arguments in support of his view :

- Administrative jurisdiction was exercised by independent courts, distinct from the administrative authorities ;
- The German text of the Convention, which spoke of "zivilrechtliche Ansprüche", did not correspond to the authentic texts (English and French), since it restricted their scope ;
- The preparatory work on the Convention showed that the German terminology implied an inadmissible restriction ;

— The interpretation proposed by the Government, which held that only civil and criminal courts were concerned, was not possible because of the importance of the text under examination in the catalogue of procedural rights mentioned in Articles 5 to 7 of the Convention ;

— Lastly, a teleological interpretation would support the argument that the protection of civil rights (bürgerliche Rechte) against acts by the administrative authorities had to be guaranteed within a reasonable time. Such acts would affect the person concerned in the same way as civil or criminal proceedings. In the present case, the applicant's livelihood was at stake. He had been prohibited from running his private hospital since 12 April 1967 and he had been engaged in legal action against that decision since 10 November 1967. He had been forbidden to practise his profession as a doctor since 12 May 1971, and he had been fighting that decision in the courts since 21 October 1971.

At the hearing on 27 May 1975, the applicant's lawyer, also referring to the Ringeisen case, said that the Court had endorsed the opinion of the minority of the Commission and ruled that the two parties to a dispute did not have to be private persons before Article 6 (1) of the Convention could apply to a case. The wording of Article 6 (1) covered all proceedings whose outcome was decisive for private rights and obligations. And the judgment continued : "The character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law etc...) and that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body etc...) are therefore of littly consequence". Therefore, according to the applicant, the respondent Government had no grounds for maintaining that proceedings before the German administrative courts were concerned with legal relations in public law and that private law contracts between the applicant and his patients were not directly affected. In the case in point, it was his existence which was at stake. The prohibition, imposed on him by the administrative authorities had the same effects on his existence as those of a civil or criminal action.

The applicant further argued that if one went to the heart of the matter, the accusations made against him, which had led first to the withdrawal of authorisation to run his private hospital and subsequently to the withdrawal of authorisation to practise medicine, amounted to a charge in a criminal case.

Lastly, the applicant summarised the opinion of the minority of the Commission presented before the Court in the Ringeisen case. He concluded from this that civil rights and obligations were at stake.

THE LAW

1. The applicant complains of the slowness of the proceedings he instituted before the administrative courts in Frankfurt and Darmstadt, concerning, respectively the withdrawal of authorisation to run a private hospital owned by him and the withdrawal of authorisation to practise medicine. He alleges violation of Article 6 (1) of the Convention by virtue of which "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a (...) hearing within a reasonable time by a (...) tribunal".

2. The Commission notes, first, of all that the applicant is not facing a criminal charge.

3. It considers, however, that it has to be established whether the applicant's right to manage his private hospital and practise medicine are civil rights within the meaning of Article 6 (1) of the Convention. In that context, it is necessary, in particular, to determine whether the right to conclude and perform contracts for the provision of services in the exercise of a profession and the right to manage a hospital, as an attribute of the right to own such an establishment, are civil rights within the meaning of the said Article.

4. The Commission recalls that its constant practice has been to rule that the concept of "civil rights and obligations" is an autonomous concept "which must be interpreted independently of the rights existing in the law of the High Contracting Parties, even though the general principles of... domestic law... must necessarily be taken into consideration in any such interpretation" (Application No 1931/63, Yearbook No 12, p. 213, Coll. No 15, p. 8). That principle has been upheld in many decisions, including that of 19 July 1968 on the admissibility of applications Nos 3436 to 3438/67 (Yearbook 11 (I), pp. 601 to 607).

The Commission upheld the same principle before the European Court of Human Rights in the Neumeister case (cf. Publications of the European Court of Human Rights, Series A, p. 29).

5. The Commission does not find any general and decisive criterion in the Ringeisen judgment whereby to decide whether a specific right or obligation is a 'civil' right or obligation. The judgment does make it clear, however, that Article 6 (1) of the Convention applies to administrative proceedings also, if these are decisive for relations in civil law between the applicant and third parties (cf. European Court of Human Rights, Ringeisen Case, Series A, paragraph 94).

6. Having made a preliminary examination of the information and submissions presented by the parties, the Commission is of the opinion that the applicant's complaints raise difficult questions concerning the applicability of Article 6 (1) of the Convention, particularly with regard to the concept of "civil rights and obligations". It considers that the problems raised by these complaints are so complex that they cannot be settled without an examination of the merits. These complaints cannot therefore be regarded as being incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 (2).

Nor can the application be declared inadmissible because manifestly ill-founded within the meaning of Article 27 (2) of the Convention, with regard to the length of the proceedings complained of under Article 6 (1) of the Convention.

Now, therefore, the Commission, without prejudice to the merits,

DECLARES THE APPLICATION ADMISSIBLE.