CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

Application no. 47389/99
by Johann-Georg BRODTMANN
against Germany

The European Court of Human Rights (Third Section), sitting on 16 June 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Ms R. JAEGER, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 19 March 1999,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicant, Johann-Georg Brodtmann, is a German national, who was born in 1945 and lives in Gießen. He is represented before the Court by Mr Hauck-Scholz, a lawyer practising in Marburg. The Government were represented by their Agent, Mrs Wittling-Vogel, Federal Ministry of Justice.

In criminal proceedings brought in 1973, the applicant was charged with sexual coercion, assault, false imprisonment, intimidation, theft and coercion. By a judgment of 13 March 1975 the Frankfurt Regional Court (*Landgericht)* found the applicant not criminally responsible, as he was

suffering from schizophrenia. It ordered his confinement to a psychiatric hospital.

On 17 April 1976, in the course of the regular proceedings to review the applicant's confinement to a psychiatric hospital, the Frankfurt Regional Court decided to suspend the further execution of the sentence on probation as from 10 May 1976. The applicant was subjected to supervision of conduct until 24 July 1979.

The applicant stayed exempt from further punishment and lived an unobjectionable life.

On 5 January 1981 the Public Prosecutor at the Frankfurt Regional Court ordered that the applicant's files be archived and held until 2002.

On 12 February 1994 and 8 May 1996 the applicant requested the Public Prosecutor at the Frankfurt Regional Court to destroy the files concerning the criminal proceedings. On 16 January 1998 the Public Prosecutor dismissed this request on the ground that, pursuant to the relevant administrative directives in force on the storing of records, the applicant's files had to be retained until 2002.

On 19 January 1998 the applicant appealed against this decision to the Gießen Administrative Court (*Verwaltungsgericht*) which on 2 February 1998, for reasons of competence, referred the case to the Frankfurt Court of Appeal (*Oberlandesgericht*).

On 12 August 1998 the Frankfurt Court of Appeal dismissed the applicant's request. It pointed out that the storage of his files did not have a sufficient basis in law. Referring to the census judgment of the Federal Constitutional Court (*Bundesverfassungsgericht*) of 15 December 1983, it recalled that, under the conditions of modern data processing, the individual was protected against the unrestricted storage, use, and circulation of his personal data in accordance with the general right to privacy as guaranteed by Article 2 § 1 in connection with Article 1 § 1 of the Basic Law. This fundamental right to privacy (*Recht auf informationelle Selbstbestimmung*) entitled the individual to decide when and to what extent personal matters should be disclosed. However, this right was not absolute. The individual had to accept limitations in accordance with the prevailing general interest. These limitations must have a constitutional basis in law requiring it to be sufficiently clear in its terms to give citizens an adequate indication as to the conditions and the extent of any such limitations. The legal provisions must be in conformity with the principle of proportionality. Furthermore the legislature had to take organisational and procedural precautions against the danger of an impairment of privacy. The right to privacy included any kind of utilisation, transfer and accessibility of personal data irrespective of whether processed by automatic means or in respect of an individual, such as contained in the files of public prosecutors or courts.

In the court's view there was a need for specific regulations concerning the storage, disposal and destruction of files, including time-limits,

irrespective of the circumstance that the files were being kept by the Public Prosecutor and that the number of persons authorised to have access to the files was predictable.

However, the applicant had to accept for a transitional period that a legal basis for the storing of files was lacking. For prevailing reasons of general interest, it was appropriate to temporarily accept an administrative practice which had become unconstitutional due to a change of legal opinion. The legislature must be given sufficient time to enact new rules on the storage of data. In particular criminal cases involved complex and important issues in this context. Pointing at the importance of the storage of criminal files for the prevention and prosecution of crime, the Court of Appeal concluded that in the meantime the general interest in the ongoing storage of the applicant's files prevailed over his personal interest in their destruction.

On 12 October 1998, sitting as a bench of three judges, the Federal Constitutional Court refused to entertain the applicant's constitutional appeal.

COMPLAINT

The applicant complained that the refusal of the German authorities to destroy the criminal files on him constituted an unjustified interference with his rights under Article 8 of the Convention.

THE LAW

The applicant considered that the impugned court decisions violated his right to respect for his private life within the meaning of Article 8 of the Convention. This provision, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life ....
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety ..., [or] for the prevention of disorder or crime ..."

On 24 May 2005 the Court received from the Agent of the Government a letter dated 23 May 2005, enclosing a copy of the confirmation of the destruction of the file, a copy of the order for payment of EUR 4,000 to the applicant and the following declaration signed respectively on 2 May and 9 May 2005 by her and counsel for the applicant:

> "The Government ... and the applicant ... have reached the following friendly settlement:

1. The Government of the Federal Republic of Germany undertake to pay the applicant the total amount of EUR 4,000. This sum is to cover any claims against the Federal Republic of Germany or the Land of Hesse, in particular any pecuniary and non-pecuniary damage of the applicant as well as the costs ...

2. The criminal file no. 71 KLs 10/74 has been destroyed ...

3. The applicant declares that the application has been settled and agrees that it be struck out of the Court's list of cases. The applicant waives any further claims against the Federal Republic of Germany or the Land of Hesse in respect of the facts underlying the application ..."

On 10 June 2005 the Registrar received a letter from the applicant dated 8 June 2005, confirming that he had approved the settlement.

The Court takes note of the agreement reached between the parties and considers that the matter has been resolved (Article 37 § 1 (b) of the Convention). Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President