CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 71741/01
by Andreas CORDIER
against Germany

The European Court of Human Rights (Third Section), sitting on 19 January 2006 as a Chamber composed of:

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

Having regard to the above application lodged on 16 December 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Andreas Cordier, is a German national who was born in 1959 and lives in Teningen. He works as a lawyer and was represented before the Court by Mr Wagner, a lawyer practising in Freiburg.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 10 October 1990 the German Protestant-Lutheran Free Church in Europe (*Deutsche Evangelisch-Lutherische Freikirche in Europa,* hereafter "Free Church") conferred a doctorate on the applicant although it was not authorised to confer any academic titles.

On 17 February 1992 the Freiburg Police searched the premises of the Free Church because they suspected the people in charge of fraud and violation of the law concerning academic titles. On 29 October 1992 the Freiburg Police Department submitted the files of the preliminary investigations instituted against the Free Church to the Offenburg Public Prosecutor and requested the latter to issue a search warrant for the applicant's premises. The Police Department indicated that it had attempted to question the applicant but that he had explicitly refused to make any statements.

On 11 April 1994 the Public Prosecutor opened preliminary investigations against the applicant. On 6 May 1994 the police interrogated him. On 4 February 1998 the Freiburg Public Prosecutor issued a bill of indictment. On 16 April 1999 the Freiburg Regional Court opened the main proceedings.

On 2 December 1999 the Freiburg Regional Court convicted the applicant of misuse of titles, of forgery and on three counts of fraud. Considering all aggravating and mitigating circumstances it fixed separate sentences (*Einzelstrafen*) of two to eight months' imprisonment respectively. The court further observed that the Public Prosecutor had opened the preliminary investigations against the applicant already on 11 April 1994 and that the length of proceedings had accordingly violated Article 6 of the Convention. On that account the court mitigated the separate sentences as follows: The sentence for forgery had to be reduced from two months to one month, the sentence for the first and third count of fraud from six months to four months, and the sentence for the second count of fraud from seven months to five months. As regards the misuse of titles the court however held that the sentence of eight months was not to be reduced as the applicant had continued to use the title for years even after the criminal proceedings had been instituted against him. The court imposed a cumulative sentence (*Gesamtstrafe*) of one year's imprisonment suspended on probation.

On 17 July 2000 the Federal Court of Justice rejected the applicant's appeal on points of law.

On 17 August 2000 the applicant lodged a constitutional complaint of 14 pages and complained that the courts had violated their obligation to proceed speedily (*Beschleunigungsgebot)* deriving from Article 6 of the

Convention taken in conjunction with Articles 3 and 20 § 3 of the Basic Law, the principle of equal treatment as expressed in Article 3 of the Basic Law, his right to be heard and the prohibition of arbitrariness (*Willkürverbot*). On the first eight pages, he summarised the facts of the case and on the following six pages, he presented his arguments concerning the merits of the complaint.

As regards the courts' obligation to proceed speedily, the applicant underlined that it was also applicable to preliminary investigations and aimed at relieving an offender of an additional burden. The Regional Court had expressly acknowledged a violation of Article 6 of the Convention. Given that the offence of misuse of titles was punishable only with up to one year imprisonment, he argued that the proceedings should have been expedited all the more and, in the present case, even discontinued. Instead, the Regional Court had explicitly stated that in relation to compensation the obligation to proceed speedily was not applicable as regards the misuse of titles. Article 6 established an objective standard, irrespective of the completion of the offence or its continuance. Pursuant to the Court's judgment in the case of *Eckle v. Germany* (judgment of 15 July 1982, Series A no. 51) only the date of the notice to the presumed offender that criminal proceedings had been instituted against him should be decisive. The Regional Court's interpretation that Article 6 conceded some discretion to the national courts as to its application was arbitrary. If Article 6 had been applied properly, his cumulative sentence would have been reduced substantially.

On 12 September 2000 the Federal Constitutional Court refused to admit his constitutional complaint and ordered him to pay a penalty of DEM 4,000 [approximately EUR 2,045] for the abuse of his right to a constitutional complaint (*Missbrauchsgebühr*). Although the applicant had been represented by a lawyer, his submissions did not meet the legal requirements regarding the substantiation of a constitutional complaint; his complaint was accordingly declared inadmissible.

The court acknowledged that an excessive length of criminal proceedings should have an effect on the sentence and could – in extreme cases – even lead to the discontinuance of the proceedings if the length represented a tangible burden for the accused. However, such compensation could not be granted in case the applicant had continued to commit this offence although he had been aware that criminal proceedings had been instituted against him on account of that offence. In such a case the lengthy proceedings had evidently constituted no psychological burden on the offender.

Regarding the penalty imposed, the court recalled that pursuant to its constant case-law a constitutional complaint was abusive if it was evidently futile. This applied to the applicant's complaint, for he had used the court as another appellate court without addressing any questions of constitutional importance. The court underlined that it could not accept to be prevented

from discharging its responsibility of deciding on fundamental questions of constitutional law.

The decision was served on the applicant's lawyer on 29 September 2000.

B. Relevant domestic law and practice

According to the settled case-law of the Federal Constitutional Court, Article 2 § 1 of the Basic Law, in conjunction with the principle of the rule of law as enshrined in Article 20 § 3 of the Basic Law, guarantees effective protection by the law. It follows from the rule of law that, in the interests of legal certainty, legal disputes must be settled within a reasonable time and that an excessive length of criminal proceedings should have an effect on the sentence and could – in extreme cases – even lead to the discontinuance of the proceedings if the length represented a tangible burden for the accused.

COMPLAINT

The applicant complained under Article 6 of the Convention that the proceedings had lasted too long.

THE LAW

The applicant complained that the length of the criminal proceedings against him was in breach of Article 6 § 1 which, as far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

As regards the period to be taken into account under Article 6 § 1, the Court recalls that in criminal matters the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 33, § 73).

In the present case the letter of the Freiburg Police Department dated 29 October 1992 suggests that the applicant had already been interrogated at that time. However, since he was only heard as a witness in the context of preliminary investigations against the Free Church, the earlier date cannot be seen as the beginning of the criminal proceedings instituted against the applicant. As the Regional Court indicated, the Public Prosecutor opened the preliminary investigations against the applicant on 11 April 1994. The proceedings thus commenced on 11 April 1994 and ended on 29 September 2000 when the Federal Constitutional Court served its decision on the applicant's representative. The period to be considered accordingly lasted for six years and seven months.

Having regard to the reasoning of the Regional Court concerning the length of proceedings, the question arises whether the applicant may still claim to be a victim of a violation of the Convention.

In this respect the Court recalls that the mitigation of a sentence on the ground of the excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged in a sufficiently clear way the failure to observe the reasonable-time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Eckle*, cited above, § 66; *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001). In such circumstances, to duplicate the domestic process with proceedings before the Court would hardly appear compatible with the subsidiary character of the machinery of protection established by the Convention. The Convention leaves to each Contracting State, in the first place, the task of securing the enjoyment of the rights and freedoms it enshrines (see *T.K. and S.E. v. Finland* (dec.), no. 38581/97, 16 March 2004).

Applying these principles to the present case, the Court notes that the Regional Court explicitly acknowledged that the proceedings had lasted too long and were therefore in breach of Article 6 of the Convention.

Furthermore, the Regional Court reduced the separate sentences – which it had fixed after considering all mitigating and aggravating circumstances – on account of the length of proceedings. The sum of the applicant's separate sentences was reduced from 29 to 22 months, although the Regional Court refused to reduce the sentence for the misuse of titles. Bearing in mind that the applicant eventually received a cumulative sentence of one year's imprisonment suspended on probation, the Court is satisfied that the reduction of the sentences was measurable and had a decisive impact on the applicant's actual sentence. Accordingly, the applicant was afforded adequate redress for the alleged violation.

Having regard to the foregoing considerations, the Court concludes that the applicant cannot claim to be a victim of a violation of Article 6 § 1 of the Convention.

It follows that the length-of-proceedings complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President