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. 23560/02
by Klaus-Dieter JÖCKS
against Germany

The European Court of Human Rights (Third Section), sitting on 23 March 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mrs R. JAEGER
Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 27 May 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Klaus-Dieter Jöcks, is a German national who was born in 1944 and lives in Kiel. From 1978 to 1998 he worked as a judge at the Neumünster District Court (*Amtsgericht*).

A. The circumstances of the case

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

1. The applicant's detention on remand

On 18 March 1999 the Kiel District Court issued a warrant of arrest against the applicant on the ground that there was a strong suspicion that he had committed thirty-one criminal offences, including eleven counts of fraud, one count of instigation to falsification of official records, one count of bodily injury, one count of perversion of justice in connection with judicial bribery, one count of illegal arms trade and sixteen counts of having failed to pay contributions to the social security on behalf of a company's employees. According to the preliminary investigations, the applicant was suspected of having been involved in a number of fraudulent real-estate transactions. He was further suspected of having, in his capacity as a District Court Judge, unlawfully released one of his suspected co-offenders from detention on remand.

On 29 March 1999 the applicant was arrested and subsequently detained on remand.

On 16 August 1999 the Kiel Public Prosecutor brought an indictment against the applicant, which had an overall length of more than 350 pages.

The hearing before the Kiel Regional Court began on 18 November 1999 and ended on 23 November 2004. During that time, the trial took place on 345 days during which numerous witnesses were heard.

On 21 May and 1 October 1999, 25 July 2000, 25 April and 10 September 2001 and 14 January 2002 the Kiel Regional Court upheld the arrest warrant and ordered the applicant's continued detention on remand.

On 2 August 1999, 1 October 1999, 19 October and 20 December 2000, 3 July and 25 October 2001 and 21 March 2002 the Schleswig-Holstein Court of Appeal (*Oberlandesgericht*) rejected the applicant's complaints against the continuation of his detention on remand.

On 2 August 1999, in a reasoned decision of a total length of thirty-five pages, the Court of Appeal found that the preliminary examination had confirmed a strong suspicion against the applicant. This assessment had been based on numerous witness statements, which were corroborated by numerous documents and further circumstantial evidence.

The Court of Appeal considered that there was a risk of collusion (*Verdunkelungsgefahr*) within the meaning of section 112 of the Code of Criminal Procedure (*Strafprozessordnung*, see relevant domestic law below), on the ground that if the applicant was released, he might try to influence other accomplices or witnesses. This was corroborated by the strong suspicion that the applicant had, in the past, built up a smoke screen which was aimed at preventing possible controls by hiding the real facts. The applicant was suspected of having employed a front man (*Strohmann*) in order to disguise his own role in the real estate business. According to the results of the preliminary investigations, there was specific evidence that the applicant and his co-offenders had, in the past, intimidated both business

partners and accomplices by use of threats and violence. There were further indications that the applicant had influenced witnesses before his arrest.

On 1 October 1999 the Kiel Regional Court ordered the applicant's continued detention. It found that the reasons to suspect him of the alleged crimes, as laid down in the arrest warrant, persisted. While the risk of collusion did not persist, as the evidence was sufficiently secured by the Public Prosecutor's preliminary investigations, there was the danger of the applicant's absconding. In case of his conviction, the applicant would have to face a severe prison sentence. Furthermore, he had been disallowed part of his income in disciplinary proceedings. In case of his conviction he would risk removal from office and the loss of his pension claims, which would mean the destruction of his social, professional and economical basis. As the applicant's children were already grown up, his social bonds were not of such a weight as to prevent him from absconding. On the other hand, the applicant had declared that his wife possessed considerable property. Under these circumstances, there was no less intrusive measure possible to prevent the applicant from absconding than the further continuation of his detention on remand.

Also on 1 October 1999, the Court of Appeal ordered the continuation of the detention on remand. Referring to its earlier decision of 2 August 1999, that court found that the risk of collusion persisted. It further found that the duration of the detention was justified by the exceptional extent of the investigations.

On 19 October 2000 the Court of Appeal rejected the applicant's fresh complaint against his continued detention. Referring to its decision of 2 August 1999 and examining the new arguments put forward by the applicant, it found that the grounds of suspicion against the applicant persisted. The Court of Appeal further maintained that the danger of collusion persisted, as the raising of evidence before the Regional Court had not yet considerably advanced.

Furthermore, the danger of absconding persisted, as the applicant tried to evade the proceedings by rendering himself unfit to plead. In this respect, the Court of Appeal referred to the Public Prosecutors submissions of 16 October 2000, which read as follows:

> "In this respect the Chamber [of the Regional Court] has rightly pointed out that the accused, on 5 January 2000, had rendered himself unfit to plead and that he, on another occasion, refused to take his medication, which led to similar results. Furthermore, the Chamber could take into consideration that the accused's and his lawyer's behaviour did not give the impression that the accused was interested in a swift termination of the proceedings. This is confirmed by the fact that, during 62 days of hearings, the accused respectively his lawyer had lodged a total of 37 motions for bias against the court, which have so far all been rejected as being unfounded. It is therefore acceptable if the Chamber deduces that there is the concrete danger that the accused would try to render himself unfit to plead if he were released from the supervision of detention on remand..."

The Court of Appeal followed these submissions.

On 12 April 2001 the applicant submitted a medical attestation according to which it was indicated to discontinue treatment with antidepressant medicine, as his state of health had stabilised and requested, once again, to be released from detention.

On 25 April 2001 the Regional Court rejected the applicant's fresh request *inter alia* for the following reasons:

> "As the Chamber has just pointed out in its decision of 1 February 2001 on the applicant's fifty-third motion for bias, the accused and his defendants pursue a procedural strategy which is primarily aimed at obstructing the proceedings. Accordingly, the Chamber continues to expect that the applicant, if released, would do everything to evade the proceedings. It is obvious that such cannot only be done by overdosing or refusing prescribed medication. Accordingly, the medical attestation ...was not fit to disprove the Chamber's expectations. The danger that the accused would abscond from the proceedings had been further increased by the fact that the evidence presented so far has not yielded any facts in the applicant's favour..."

In his complaint, the applicant contested that he had put himself into a state of being unfit to plead and that there had not been any evidence in his favour. Furthermore, the Regional Court had failed sufficiently to expedite the proceedings.

On 3 July 2001 the Court of Appeal rejected the applicant's complaint. Referring to its former decisions and examining the new arguments put forward by the applicant, that court confirmed that a strong suspicion against the applicant persisted and that there remained the risk of the applicant's absconding and of collusion. With regard to the conduct of the Regional Court, the Court of Appeal found as follows:

> "There is no indication that the Court of Appeal failed sufficiently to expedite the proceedings, as prescribed by Article 5 § 3 sentence 2 of the Convention. The latter provides that a detained person is entitled to trial within a reasonable time. As the Regional Court correctly pointed out, the proposed dates for hearings could not be used because either the accused or his counsel were unable to attend."

On 3 September 2001 the applicant lodged a further complaint against the arrest warrant, alleging, *inter alia*, that the Regional Court had failed sufficiently to expedite the proceedings. He complained, in particular, that two dates for hearings had been cancelled because of a judge's holidays and a lay judge's attendance of a funeral.

On 10 September 2001 the Regional Court rejected the complaint, pointing out that the cancellation of the hearings had been justified and that the Chamber had offered alternative dates for hearings, which could not take place as the accused's counsel had been unable to attend.

On 25 October 2001 the Court of Appeal confirmed the Regional Court's decision.

On 7 January 2002 the applicant lodged a further request to quash the arrest warrant. Referring to the Court's judgment in the case of *Kudla v. Poland* ([GC], no. 30210/96, ECHR 2000-XI), the applicant maintained that

only compelling reasons could justify his detention on remand for a period of more than two years. According to the applicant's allegations, the domestic courts had failed to conduct the proceedings with due diligence.

The applicant maintained that there had never been a strong suspicion against him. Furthermore, there had never been facts confirming a risk of collusion. He further maintained that there had not been any danger of his absconding, as he entertained close contacts to his wife and to his two grown-up children. He pointed out that he had at no occasion attempted to evade. Finally, the applicant maintained that the Regional Court had failed to hold hearings at all available dates. In this respect, he pointed out that the chamber had heard another criminal case on seventeen days from 13 October 2000 to 2 January 2001.

On 14 January 2002 the Kiel Regional Court rejected the applicant's motion. It found, first, that there existed the risk that the applicant might attempt to make himself unfit to plead by abuse of medication. In this respect, the Regional Court stated that the applicant's medical condition on 5 January 2000 had necessitated extensive medical treatment in order to restore his fitness to plead. A blood examination had revealed a toxic overdose of medication. The strong suspicion against the applicant had been confirmed by the evidence taken.

With respect to the applicant's complaint about an alleged lack of diligence, the Regional Court pointed out that, until 9 January 2002, it had held hearings on 145 days. The parallel proceedings had been conducted with a partially differing composition of the Chamber.

The Regional Court further maintained that the applicant had delayed the taking of evidence. A large part of the length of the proceedings was imputable to the applicant's own conduct.

On 21 March 2002 the Schleswig-Holstein Court of Appeal rejected the applicant's complaint. Referring to the Public Prosecutor's comments in the complaint proceedings and to its previous decisions of 2 August 1999, 19 October and 20 December 2000, 3 July and 25 October 2001, the Court of Appeal confirmed that the strong suspicion that the applicant had committed the offences he was accused of persisted and that he was likely to tamper with evidence or abscond if released. With regard to the applicant's complaint under Article 5 § 3 of the Convention, the Court of Appeal found that the domestic authorities had displayed special diligence given the complexity of the case. They had expedited the investigations following the applicant's arrest in March 1999 and continuously held hearings in the applicant's case since November 1999. The chamber had generally held hearings at two days per week. There was no indication that the Regional Court could have considerably expedited the proceedings.

The Court of Appeal finally found the applicant's continued detention to be proportionate, given both the conviction the applicant was likely to face and the general interest in the integrity of the judicial system.

On 16 April 2002 the Federal Constitutional Court refused to admit the applicant's constitutional complaint for lack of prospect of success.

On 18 December 2002 the further execution of the arrest warrant was suspended (*Haftverschonung*) and the applicant released.

2. The applicant's letters written during detention on remand

On 21 July 2002 the applicant, who was at that time detained on remand, wrote a letter to the journalist G. He alleged that a prosecution witness had stated during a public hearing that he had been induced by the Public Prosecutor's Office to give false evidence against the applicant. In return, the Public Prosecutor's Office had discontinued prosecution in two criminal proceedings directed against that witness. The applicant added that the Public Prosecutor's actions had been unfair ("*unlautere Mittel*").

On the same day, the applicant wrote another letter to the journalist M. in which he repeated his allegations. He added that the Regional Court had refused to hear the respective witness on these allegations.

On 29 July 2002 the Kiel Regional Court ordered under section 119 § 2 of the Code of Criminal Procedure in conjunction with rule 34 § 2, no. 3, of the Rules on the Execution of Detention on Remand (*Untersuchungshaftvollzugsordnung*, see relevant domestic law below) that the two letters should not be delivered, but returned to the applicant. It found that both letters contained allegations of prosecution of innocent persons and defamatory statements directed against the Public Prosecutor and – with respect to the second letter – also against the Chamber of the Regional Court.

On 1 August 2002 the applicant lodged a complaint. He maintained, in particular, that his allegations had been true.

On 22 August 2002 the Schleswig-Holstein Court of Appeal rejected the applicant's complaint. It found that the content of the letters had been designed to jeopardise the purpose of detention on remand (section 119 § 3 of the Code of Criminal Procedure), as the applicant had accused the Public Prosecutor's Office of having employed illegal means. The transmission of the letters was also apt to disturb the prison order, as it could set an example for other prisoners. The Court of Appeal further pointed out that it was not established that the applicant's allegation had been true. The applicant was in a position to pursue his interests by the means provided to him in the criminal proceedings.

On 24 October 2002 the Federal Constitutional Court refused to admit the applicant's complaint.

3. Further developments

On 23 November 2004 the Kiel Regional Court sentenced the applicant to six years and nine months' imprisonment.

B. Relevant domestic law

The admissibility of detention on remand is governed by the Code of Criminal Procedure (*Strafprozessordnung*), the relevant provisions of which read as follows:

Section 112

"(1) Detention on remand may be ordered against the accused if he is strongly suspected of the offence and if there is a ground for arrest. It may not be ordered if it is disproportionate to the significance of the case or to the penalty ... likely to be imposed.

(2) A ground for arrest shall exist if on the basis of certain facts:

1. it is established that the accused has fled or is hiding;

2. considering the circumstances of the individual case, there is a risk that the accused will evade the criminal proceedings (risk of flight); or

3. the accused's conduct gives rise to the strong suspicion that he will

a) destroy, alter, remove, suppress, or falsify evidence,

b) improperly influence co-accused, witnesses, or experts, or

c) cause others to do so,

and if, therefore, the danger exists that establishment of the truth will be made more difficult (risk of collusion, *Verdunkelungsgefahr*).

..."

Section 119

"...

(3) Only such restrictions may be imposed on the arrested person as are required by the purpose of detention on remand or by the need for order in the prison.

..."

Rule 34 § 1 of the Rules on the Execution of Detention on Remand (*Untersuchungshaftvollzugsordnung*) provides that a judge is entitled to stop a letter, if the delivery of that letter is suited to jeopardise the prison order. According to rule 34 § 2, no. 3, this can *inter alia* be the case if the delivery of the letter – in the knowledge of its content - would constitute an offence.

COMPLAINTS

1. Invoking Article 6 of the Convention, the applicant complained about the Federal Constitutional Court's refusal to accept his complaint about his detention on remand for adjudication and, in substance, about the length of his detention of remand.

2. The applicant further complained under Article 10 of the Convention about the refusal to deliver his two letters written on 21 July 2002.

THE LAW

A. The applicant's complaint about the length of the detention on remand

The applicant complained in substance that the length of his detention on remand had been excessive. Article 5 § 3 of the Convention provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

The period to be considered under Article 5 § 3 started on 29 March 1999, when the applicant was arrested, and ended on 18 December 2002, when the further execution of the arrest warrant was suspended. The applicant was accordingly held in detention on remand for a total period of some 3 years and 9 months.

The Court recalls that the issue of whether a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features and on the basis of the reasons given in the domestic decisions and of the well-documented facts mentioned by the applicant in his applications for release. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV; and *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, § 153).

a. Grounds for continued detention

As to the grounds for the applicant's continued detention, the Court notes that the national courts advanced several reasons for not quashing or suspending the execution of the arrest warrant. They argued, firstly, that

there had been a persistent strong suspicion that the applicant was guilty of the criminal offences he was accused of. Secondly, they relied on the risk of collusion by the risk of pressure being brought to bear on witnesses and co-offenders. Finally, they found that the applicant was likely to abscond or to render himself unfit to plead if released.

With regard to the suspicion against the applicant, the Court notes that the domestic courts, in their various decisions on the continuation of the applicant's detention, thoroughly analysed the contents of the case-file, the evidence obtained during the criminal proceedings and the arguments presented by the applicant and confirmed that a strong suspicion against the applicant persisted. The Court accepts that at least a reasonable suspicion that the applicant was guilty of the crimes he had been accused of had persisted throughout the time of his detention on remand. It further finds that these crimes were of a very serious nature, given both the number and gravity of the offences and the fact that the applicant, at the time he allegedly committed them, held the office of a criminal court judge.

As regards the danger of collusion, the domestic courts estimated that there was evidence that the applicant had, prior to his conviction, built up a smoke screen aimed at hiding the real facts, for example by employing a front man in order to hide his business activities. Furthermore, they found that there was specific evidence that the applicant and his co-offenders had intimidated both business partners and accomplices. While the Regional Court, in its decision of 1 October 1999, estimated that the risk of collusion did not persist as the evidence had been sufficiently secured by the Public Prosecutor's preliminary investigations, the Court of Appeal maintained that that risk continued throughout the detention, as the raising of evidence before the Regional Court had not yet been completed.

The Court accepts that there was, from the outset, a genuine risk of collusion, which gradually diminished throughout the presentation of evidence before the Kiel Regional Court. As that presentation had not been terminated by the end of the applicant's detention, it can be accepted that the risk did not disappear completely until the end of that detention.

As regards the danger of absconding, the Court notes that the domestic courts found that there was a concrete risk that the applicant would either disappear or render himself unfit to plead in case of his release. They noted, in particular, that the applicant had suffered from an overdose of medication on one occasion and had refused to continue necessary treatment on another. Having particular regard to the applicant's and his counsel's conduct throughout the proceedings, they further found that his defence strategy was primarily aimed at obstructing them. There was, accordingly, the risk that he would try to avoid the proceedings in case of his release. In the event of his absconding, the domestic courts would not have been able to continue criminal proceedings against the applicant.

The Court, having regard to the content of the case-file, finds that the applicant has not submitted any evidence disproving the domestic courts' finding. Under these circumstances, the Court accepts that there remained a danger of the applicant's absconding throughout the proceedings.

b. Conduct of proceedings

It remains to be ascertained whether the judicial authorities displayed "special diligence" in the conduct of the proceedings.

In this respect, the Court notes, first, that the criminal proceedings were of a very complex nature, as is demonstrated by the fact that the applicant was accused of an overall number of thirty-one criminal offences and that the indictment brought out against him had an overall length of more than 350 pages.

With regard to the applicant's conduct in the proceedings before the Regional Court, the Court notes that the applicant brought at least fifty-three motions for bias against the judges sitting in the Chamber, all of which were unsuccessful. While the applicant cannot be blamed for using all means of defence at his disposal, the delays entailed by them cannot be imputed to the domestic courts. The Court concludes that the applicant's own conduct had considerably contributed to the delays in the proceedings.

Having regard to the conduct of the proceedings by the domestic authorities, the Court fully appreciates that the right of an accused in detention to have his case examined with particular expedition must not unduly hinder the efforts of the courts to carry out their tasks with proper care (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, § 102). Turning to the circumstances of the present case, the Court notes that the Kiel Regional Court had heard the applicant's case on 345 days between 18 November 1999 and 23 November 2004. According to the Court of Appeal's findings, which were not disproved by the applicant, the Regional Court generally held hearings at two days per week. The Court further notes that the Regional Court had offered alternative days of hearings in order to replace those which had to be cancelled, but the accused's counsel had been unable to attend. Under these circumstances, the Court is satisfied that the Regional Court exercised special diligence when hearing the applicant's case.

The Court concludes that the reasons relied on by the domestic courts in their decisions on the applicant's detention on remand were sufficient to justify the applicant's being held in detention for the period in question.

It follows that the applicant's complaint is manifestly ill-founded and has to be rejected under Article 35 § 3 of the Convention.

B. The applicant's complaint about the refusal to deliver the letters

Invoking Article 10 of the Convention, the applicant complained about the domestic authorities' refusal to deliver his two letters written on 21 July 2002 to the journalists.

The Court chooses to examine this complaint, firstly, under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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 the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court finds that the ban imposed on the two letters amounted to an interference with the applicant's right to respect for his correspondence as guaranteed by Article 8 § 1.

Such interference amounts to a violation of this provision unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in § 2 and, furthermore, is "necessary in a democratic society" in order to achieve them (see, among other authorities, *Erdem v. Germany*, no. 38321/97, § 55, ECHR 2001-VII).

The Court notes that the basis for the interference was section 119 § 3 of the Code of Criminal Procedure, according to which only such measures may be imposed on the arrested person as are required by the purpose of detention on remand or by the need for order in the prison. This is further defined by Rule 34 of the Rules on the Execution of Detention on Remand, which provides that letters may be intercepted if their delivery would be apt to jeopardise prison order.

The Court finds that there was a legal basis for the interference in domestic law. Furthermore, having regard to the wording of the statutes concerned, the Court considers that it satisfied the tests of accessibility and foreseeability established in the Court's case-law (see *Erdem*, cited above, § 58; *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61, pp. 32-34, §§ 85-90).

The Court further finds that the refusal of the delivery of the two letters pursued the legitimate aim of preventing "disorder or crime" referred to in Article 8 § 2.

As to the necessity of the measure at issue, the Court reiterates that that notion implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued, having regard to the State's margin of appreciation (see, *mutatis mutandis*, *Sunday Times v. the United Kingdom (no. 2)*, judgment of 26 November 1991, Series A no. 217, § 50; *Chishti v. Portugal* (dec.),

no. 57248/00, 2 October 2003). Moreover, the Court has recognised that some measure of control over prisoner's contacts with the outside world is called for and is not of itself incompatible with the Convention (see *Silver*, cited above, § 98; *Chishti*, cited above).

Turning to the present case, the Court notes that the measure imposed on the applicant did not concern his correspondence with family members or with his counsel, but exclusively two letters addressed to journalists. It follows that the applicant has not been deprived to a significant extent of his written contacts to the outside world. The Court further notes that the domestic courts have pointed out that the applicant was not prevented from raising his complaints against the criminal proceedings, which were included in the letters, before the courts. Under these circumstances, the Court finds that the interference at issue was proportionate to the legitimate aim pursued. It follows that there is no violation of Article 8 of the Convention.

On the same grounds, the Court, considering that the restrictions imposed on the applicant's correspondence with journalists were limited to the period of his detention on remand and that domestic law does not impose any constraints on the coverage by media of pending court proceedings, finds that the applicant's complaint does not raise a separate issue under Article 10 of the Convention. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 § 3.

For these reasons, the Court

unanimously
Declares the application inadmissible, as regards the length of detention on remand;

by a majority
Declares the application inadmissible, as regards the interception of letters.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President