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

FOURTH SECTION

DECISION

Application no. 28005/24
S.B.
against Germany

The European Court of Human Rights (Fourth Section), sitting on 23 June 2026 as a Committee composed of:

András Jakab*, President*,
Anja Seibert-Fohr,
Corinna Wissels*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 28005/24) 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") on 27 September 2024 by a German national, Mr S.B. ("the applicant"), who was born in 1944, lives in Mengerskirchen and was represented by Mr I.-J. Tegebauer, a lawyer practising in Trier;

the decision to give notice of the application to the German Government ("the Government"), represented by one of their Agents, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection;

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The issue in the present case is whether the statements contained in the judgment acquitting the applicant of criminal charges were in line with the principle of the presumption of innocence under Article 6 § 2 of the Convention.

2. The applicant co-founded and worked in an educational institution associated with the German Scouting movement. He regularly hosted

children for overnight stays at the institution's premises, which consisted of castle ruins and several service buildings in which he had a private room.

3. In 2016 the public prosecutor's office charged the applicant with at least four counts of "aggravated sexual abuse of children", namely S.M. In the bill of indictment, it noted that prosecution of the offence of sexual abuse of persons in one's charge was time-barred and did not therefore charge the applicant with that offence.

4. During the criminal proceedings, the applicant, who was represented by lawyers of his own choosing, denied all the allegations and maintained that he had not met S.M. as early as 2004 or 2005. Apart from that, he remained silent.

5. In 2019 the District Court found the applicant guilty of two counts of aggravated sexual abuse of children and sentenced him to two years in prison. The court held that the applicant had, on at least two occasions and before S.M. had turned 14, picked him up for overnight stays and performed sexual acts on him while they were staying in the same bedroom. The court based its findings on various witness statements, including the statement by S.M.

6. In 2024 the Regional Court, having held eight oral hearings, acquitted the applicant. In its written judgment the Regional Court stated that the hearing of witnesses had established that the applicant had committed "sexual acts" (*sexuelle Handlungen*), as well as "assaults" (*Übergriffe*) and "sexual assaults" (*sexuelle Übergriffe*) against S.M., whom the court partly referred to as the "injured person" (*Geschädigter*). The applicant nevertheless had to be acquitted on factual and legal grounds as the available evidence had been inapt to establish S.M.'s age at the time of the assaults in question. It found that, based on the established facts, the offence of (aggravated) sexual abuse of a child had not been established to the required standard of proof, since there remained doubts as to whether S.M. had still been a child at the material time, or whether the sexual acts had begun at a later point in time.

7. The Regional Court further held that, "as far as in addition or in the alternative" the established facts qualified as sexual abuse of minors, juveniles or persons in one's charge, the prosecution in respect of those offences had become time-barred. It also noted that "all acts committed" (*sämtliche verwirklichte Taten*) and any "further offences committed" (*weitere verwirklichte Straftatbestände*) under Articles 174 and 182 of the Criminal Code – that is, the provisions criminalising sexual abuse of persons in one's charge and sexual abuse of juveniles – had become time-barred so that the applicant could not be held responsible for them. In the concluding paragraph of the judgment, the court reiterated its findings indicated in paragraph 6 above.

8. Later the same year, the Federal Constitutional Court declined to consider the applicant's constitutional complaint against the Regional Court's judgment, without providing reasons (2 BvR 338/24).

9. Relying on *Cleve v. Germany* (no. 48144/09, 15 January 2015), the applicant complained under Article 6 § 2 of the Convention that the wording used in the Regional Court's judgment in that acts or offences under Articles 174 and 182 of the Criminal Code had been committed had amounted to a finding of guilt, even though those offences had not been the subject of the criminal proceedings and he had been acquitted. Moreover, he complained that the use of terms "sexual assaults", "assaults", and "sexual acts" he had committed had created the impression that he was regarded guilty of (aggravated) sexual abuse of a child.

THE COURT'S ASSESSMENT

10. The Government have argued that the applicant had not exhausted domestic remedies, contrary to the requirements of Article 35 § 1 of the Convention. They have submitted that as a general rule of domestic criminal procedural law, an appeal on points of law was admissible only if the operative provisions provided for certain prejudice for the defendant. However, in a decision of 14 October 2015 (1 StR 56/15) the Federal Court of Justice had found – with express reference to the Court's judgment in *Cleve* (cited above) – that exceptionally that principle did not apply to cases in which the prejudice suffered by the accused had resulted from surrounding circumstances, such as the wording used in a judgment acquitting the accused. This was precisely the situation complained of by the applicant and he should thus have lodged an appeal on points of law against the Regional Court's judgment prior to lodging his constitutional complaint.

11. Having regard to the general principles on non-exhaustion of domestic remedies, as summarised in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* ([GC], no. 21881/20, §§ 138-44, 27 November 2023), the Court considers that in the present case the Government have discharged the burden of proving that an effective remedy was available in respect of the applicant's complaint. In that regard, the Court notes that the applicant complained under Article 6 § 2 of the Convention that the wording used in the Regional Court's judgment had amounted to a finding of guilt (see paragraph 9 above). He thus complained about a prejudice suffered from the wording used in the judgment acquitting him. This was the situation for which the Federal Court of Justice in its decision of 14 October 2015 held that appeals on points of law would be exceptionally admissible.

12. The Court further notes that in responding to the Government's plea of non-exhaustion, the applicant has confined himself to submitting that according to settled case-law the filing of an appeal on points of law required the finding of a penalty in the operative part of the judgment, which had been absent in his case. He did not, however, make any submissions as to why an appeal on points of law against the Regional Court's judgment based on the legal arguments contained in the Federal Court of Justice's decision of

14 October 2015 had not been available to him or for some reason had been inadequate and ineffective in the circumstances of his case.

13. Accordingly, and reiterating that the existence of mere doubts as to the prospects of success of a particular remedy is not a valid reason for failing to exhaust that avenue of redress (see, *mutatis mutandis*, *Mansouri v. Italy* (dec.) [GC], no. 63386/16, § 99, 29 April 2025), the applicant failed to substantiate that the remedy in question was not effective or that there existed any special circumstances absolving him from the requirement to exhaust the domestic remedy in question (see *Communauté genevoise d'action syndicale (CGAS),* cited above, § 143).

14. Lastly, with regard to the decision of the Federal Constitutional Court (see paragraph 8 above), which contained no reasoning, it is not for the Court to speculate as to why that court declined to accept the applicant's constitutional complaint for adjudication. There is nothing to suggest that the Federal Constitutional Court declared the applicant's complaint admissible and examined it on the merits and therefore its decision is not such as to rule out the non-exhaustion of domestic remedies on the part of the applicant (see *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008, and *Türk v. Germany* (dec.) [Committee], no. 61347/16, § 17, 10 December 2024).

15. Accordingly, the Court considers that the applicant failed to exhaust domestic remedies. It follows that the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 July 2026.

Simeon Petrovski	András Jakab
Deputy Registrar	President