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

FIFTH SECTION

DECISION

Application no. 4800/12
Andreas SCHULZ
against Germany

The European Court of Human Rights (Fifth Section), sitting on 31 March 2015 as a Committee composed of:

Boštjan M. Zupančič, *President,*
Angelika Nußberger,
Vincent A. de Gaetano, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 December 2011,

Having regard to the declaration submitted by the respondent Government on 6 January 2015 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Andreas Schulz, is a German national who was born in 1975 and lives in Zeesen. He was represented before the Court by Mr Tegebauer, a lawyer practising in Trier.

The German Government ("the Government") were represented by one of their Agents, Mrs K. Behr, of the Federal Ministry of Justice.

The application was communicated to the Government.

A. The circumstances of the case

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

The applicant has a son, born in 2004, who lives with his mother in Brühl. After being granted contact with his son every third week from

Thursday to Sunday, the applicant appealed against this decision with the aim of obtaining contact with his son every four weeks for one whole week. The applicant's appeal was rejected. The applicant lodged a constitutional complaint with the Berlin Constitutional Court.

On 13 November 2009 the Berlin Constitutional Court confirmed receipt of the constitutional complaint.

On 24 January 2012 the Berlin Constitutional Court dismissed the applicant's constitutional complaint as being inadmissible (no. VerfGH 132/09).

B. Relevant domestic law

The Federal Act on Protracted Court Proceedings and Criminal Investigations (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*), which entered into force on 3 December 2011, introduced general provisions for a remedy against protracted court proceedings which have been incorporated in chapter 17 of the Courts Act (*Gerichtsverfassungsgesetz*). Articles 12 and 13 of the Courts Act declare the Courts Act applicable to the ordinary jurisdiction. In order to be applicable to specialised jurisdictions the Act needs to be incorporated in their different laws on procedure.

Section 15 of the Berlin Constitutional Court Act provides that the provisions of chapters 14 and 16 of the Courts Act apply regarding the public, the court police, court language, deliberations and voting. The Act does not contain a reference to chapter 17 of the Courts Act.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention of the excessive length of proceedings before the Berlin Constitutional Court. He further complained under Article 13 of the Convention that the German law did not provide for an effective legal remedy against the excessive length of proceedings before the Berlin Constitutional Court.

THE LAW

The applicant complained about the length of the civil proceedings at issue. He relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations ...., everyone is entitled to a hearing ... within a reasonable time by (a) tribunal..."

Furthermore, the applicant complained that the German Law did not provide an effective remedy against the excessive length of proceedings before the Berlin Constitutional Court. He relied on Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

After the failure of attempts to reach a friendly settlement, the Government informed the Court by a letter of 6 January 2015 that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "1. The applicant rejected the Federal Government's proposed friendly settlement.
>
> 2. The Federal Government recognises - by way of unilateral declaration – that the applicant's rights arising from Article 6 § 1 and Article 13 of the Convention have been violated in view of the particular circumstances of the present case.
>
> 3. The Federal Government is prepared to pay compensation in the amount of EUR 2000 to the applicant, if the Court, on condition of payment of the amount, strikes the application out of the list of cases pursuant to Article 37 (1) c) of the Convention. This would satisfy any and all claims of the applicant against the Federal Republic of Germany and against the *Land* of Berlin. It covers notably any costs and expenses as well as non-pecuniary damage. The amount shall be payable within three months from the date of notification of the Court's decision to strike the case out of its list".

The Government added that the adoption of measures in response to the problem at issue had now been addressed by the *Land* of Berlin by tabling draft amendments to the Law on the Procedure before the Berlin Constitutional Court.

By a letter of 17 January 2015, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the intended amendment of the Law on the Procedure before the Berlin Constitutional Court was not sufficient to comply with the right to an effective remedy according to Article 13 in conjunction with Article 8 of the Convention. Furthermore, the Government did not propose to the applicant adequate compensation for non-pecuniary damage and reimbursement of costs for the proceedings before the Court.

The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also points out that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine the declaration carefully in the light of the principles emerging from its case-law (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

The Court notes that the present case raises the issue of undue length of proceedings before the Berlin Constitutional Court within the meaning of Article 6 of the Convention as well as the availability of an effective remedy for contesting the length of those proceedings.

It points out that it has already specified in various judgments and decisions the nature and extent of the obligations which arise for the respondent State as regards the determination of "civil rights and obligations" within a "reasonable time", also in respect of the Federal Republic of Germany (see, among many others, *Sürmeli v. Germany* [GC], no. 75529/01, ECHR 2006-VI; *Nold v. Germany*, no. 27250/02, 29 June 2006). Furthermore, the Court has already held that the German judicial system in the past did not offer an effective remedy for contesting the length of either pending civil proceedings (see *Sürmeli*, cited above, § 116) or terminated civil proceedings (see *Herbst v. Germany*, no. 20027/02, §§ 62-68, 11 January 2007). The Court had also dealt with applications concerning the new remedy act (see *Kuppinger v. Germany*, no. 62198/11, §§ 139 seq., 15 January 2015; *Peter v. Germany* (dec.), no. 68919/10, §§ 54 et seq., 4 September 2014).

Having regard to the nature of the admissions contained in the Government's declaration, the Court notes that the Government recognised that the applicant's rights under Articles 6 and 13 of the Convention had been violated because the length of the proceedings in the instant case was not in accordance with the "reasonable time" requirement and the applicant did not have an effective remedy at his disposal for contesting the length of these proceedings. Moreover, the Government proposed to provide redress to the applicant by paying him compensation for non-pecuniary damage as well as costs and expenses. The amount of compensation is consistent with the amounts awarded in similar cases and thus adequate.

The Court therefore considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols

thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 and Article 13 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 23 April 2015.

Milan Blaško
Deputy Registrar

Boštjan M. Zupančič
President