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

FOURTH SECTION

DECISION

Application no. 22391/22
Martin WIRSING
against Germany

The European Court of Human Rights (Fourth Section), sitting on 4 November 2025 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Anja Seibert-Fohr,
András Jakab*, judges*,
and Veronika Kotek, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 22391/22) 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 29 April 2022 by a German national, Mr Martin Wirsing, who was born in 1985 and is detained in Tonna ("the applicant") and was represented by Mr H. Meyer-Mews, a lawyer practising in Bremen;

the decision to give notice of the application to the German Government ("the Government"), represented by one of their Agents, Ms N. Wenzel, of the Federal Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's inability to examine a witness in criminal proceedings against him.

2. In August 2019, the police found drugs on the property of F. Before the investigating judge, F. stated that all the drugs found in his apartment and in the barbecue hut on the property where he lived belonged to him. By contrast, methamphetamine (nearly 200 grams) which had been found in a dugout under the barbecue hut belonged to the applicant, who was then in detention. After the applicant had threatened him with a gun to his head, F. was now

keeping the methamphetamine for the applicant so that the latter could sell it later.

3. In a letter from his defence lawyer dated 6 March 2020 F. withdrew the statement he had made to the investigating judge, in particular regarding the applicant's involvement in the offence.

4. In his own trial, F. testified that he had kept the methamphetamine for a third-party unknown to him. On 19 May 2020 F. was convicted of, *inter alia,* possession of drugs in conjunction with aiding and abetting the trafficking of drugs; the conviction became final the same day.

5. Based on F.'s statement to the investigating judge, the applicant, who had several previous criminal convictions related to drugs, was charged with drug trafficking.

6. F. refused to give evidence at the trial of the applicant, arguing that if he did so he would expose himself to further criminal prosecution. The applicant's defence lawyer asserted that if F. gave evidence, his client would too, which would lead to the prosecution of F. for further offences.

7. The judgment convicting F. was read out during the oral hearing in the applicant's case. In addition, the Regional Court heard oral evidence from the investigating judge as a witness. She reported the statement that F. had made to her in the proceedings leading to his conviction (see paragraph 2 above) and stated that, in her view, F.'s evidence was credible. She stated that she did not have the impression that F. had been coached by his lawyer to make the statement or that his evidence had been fabricated. When he was questioned F. had consistently differentiated between the drugs found in his apartment and in the barbecue hut, and those found under the barbecue hut. F.'s statement had been spontaneous and detailed, and at no point had he been offered a reduction in sentence in exchange for incriminating others.

The applicant was able to cross-examine the investigating judge during the oral hearing. The applicant himself did not give evidence.

8. On 12 March 2020 the Regional Court convicted the applicant of drug trafficking in respect of the above-mentioned methamphetamine and sentenced him to four years and six months' imprisonment. To establish that the applicant had given the methamphetamine to F., the court relied, in particular, on the evidence of the investigating judge, whom it found credible: she had a clear recollection of the arrest warrant being presented to F. in August 2019 and F.'s statement to her (see paragraph 2 above), and had described her perceptions in detail and clearly, calmly and objectively. The court found no reason why F. should have wrongly accused the applicant in his evidence to the investigating judge. With regard to F.'s withdrawal on 6 March 2020 of the statements he had made to the investigating judge (see paragraph 3 above) and his refusal to give evidence at the applicant's trial, the court took into account the statement of the applicant's defence lawyer (see paragraph 6 above) that the applicant had knowledge of further criminal offences committed by F. Addressing the possibility that F. had sought to

partly exonerate himself by incriminating the applicant, the court found that the applicant had indeed given the methamphetamine to F., either with a view to selling it himself later or because he had received, or expected to receive, payment for it from F., who took drugs himself and also trafficked them. The court had appointed a psychiatric expert, who had examined the applicant and stated to the court that he was a drug addict but had full capacity and that he and F. knew each other. Earlier judgments convicting the applicant showed that he had access to considerable quantities of drugs. It also appeared from the findings in a final judgment convicting the applicant in another case that he had previously given drugs to another individual, who had then kept those drugs for him.

9. The applicant's appeals were unsuccessful. Neither the Federal Court of Justice nor the Federal Constitutional Court gave reasons for their decisions.

10. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that neither he nor his lawyer had been given the opportunity to question F. as a witness and that there were no factors to compensate for this handicap.

THE COURT'S ASSESSMENT

11. The general principles concerning the right to examine witnesses, in the context of the use of statements made by witnesses for the prosecution, who are absent at trial, have been summarised in *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011) and *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015). In particular, the Court must examine (i) whether there was a good reason for the non-attendance of the witness and, consequently, for the admission of the absent witness's untested statements as evidence; (ii) whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction; and (iii) whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps caused to the defence as a result of the admission of the untested evidence and to ensure that the trial, judged as a whole, was fair (see *Schatschaschwili*, cited above, § 107). The Court has applied the same principles to the use of statements by witnesses who are not absent at trial, but who refuse to give evidence, relying on the privilege against self-incrimination (see *Vidgen v. the Netherlands*, no. 29353/06, § 42, 10 July 2012, and *Cabral v. the Netherlands*, no. 37617/10, § 33, 28 August 2018).

12. F. refused to give evidence, arguing that if he did so he would expose himself to further criminal prosecution (see paragraph 6 above). The Regional Court was under an obligation to respect F.'s decision to avail himself of his statutory right not to give evidence and therefore it had good reason for

admitting F.'s untested statements as reported by the investigating judge at trial (compare *Sievert v. Germany*, no. 29881/07, § 61, 19 July 2012, and *Cabral*, cited above, § 34).

13. Regarding the weight given to F.'s untested statements by the domestic court in convicting the applicant, the Court observes that the Regional Court relied, in particular, on the evidence of the investigating judge (see paragraph 8 above). As the additional evidence available to the Regional Court would appear to have been given limited weight, the Court finds that F.'s untested statements, as reported by the investigating judge, must therefore be considered as decisive in convicting the applicant.

14. Turning to the question of whether there were sufficient counterbalancing factors, the Court first observes that the Regional Court approached the evidence, namely F.'s initial statement as reported by the investigating judge, with caution. It gave detailed reasons why it found the investigating judge's examination and F.'s initial statements during his appearance before the investigating judge to be reliable (see paragraph 8 above, and compare *Schatschaschwili*, cited above, §§ 146-50). In this regard, the Court notes that the investigating judge, given her professional role and experience, has particular expertise in assessing the credibility of suspects and witnesses, as was illustrated by the detailed account she gave (see paragraph 7 above).

15. The Court also observes that the applicant and his defence lawyer had the opportunity to cross-examine the investigating judge and observe her demeanour when she gave evidence in court (see paragraph 7 above). They therefore had the opportunity to gain a personal impression of this witness's credibility and present the applicant's own version of the events (compare *Strassenmeyer v. Germany*, no. 57818/18, § 86, 2 May 2023).

16. Since F. had given his initial statement when he was questioned as a suspect by the investigating judge, the inability of the applicant and his defence lawyer to question the witness at that time could not be imputed to the domestic authorities (compare *Sievert*, cited above, § 60). The domestic authorities were also not required to assume that F. would subsequently withdraw his statement, exercise his right to refuse to give evidence and therefore be unavailable to be questioned at the applicant's trial (see *Schatschaschwili*, § 157, and *Strassenmeyer*, § 84, both cited above).

17. The Court observes that the applicant was at all times represented by a lawyer, who conducted his defence effectively, and that he was afforded the opportunity – which he did not make use of (see paragraph 7 above) – to give his own version of the events and to cast doubt on the credibility of the witness who refused to give evidence during the trial (see *Schatschaschwili*, cited above, § 131, with further references). Since the applicant knew F.'s identity, he would have been able to identify and pursue any motives F. might have had for lying, and he would therefore have been able to dispute his credibility effectively (compare ibid.). The Regional Court addressed the

withdrawal of F.'s initial statement and the risk that F. had falsely accused the applicant to exonerate himself, but explained why it did not find that to have been the case (see paragraph 8 above).

18. In addition to the above-mentioned counterbalancing factors, the Court notes that the applicant's defence lawyer may well have contributed to F.'s refusal to give evidence by asserting that F. – whose conviction had become final at the time of the trial against the applicant (see paragraph 4 above) – would face further prosecution if he gave evidence because, in that case, the applicant would also give evidence (see paragraph 6 above).

19. Having regard to the foregoing, the Court, assessing the overall fairness of the applicant's trial, considers that the applicant's defence rights were not restricted to an extent incompatible with the guarantees provided by Article 6 of the Convention.

20. It follows that the complaints under Article 6 §§ 1 and 3 (d) are inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 November 2025.

Veronika Kotek
Acting Deputy Registrar

Lorraine Schembri Orland
President