

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

1959 · 50 · 2009

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4041/06
by Z
against Germany

The European Court of Human Rights (Fifth Section), sitting on 13 October 2009 as a Chamber composed of:

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 18 January 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant is a German national who was born in 1967 and lives in Munich.

A. The circumstances of the case

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

Of the forty-four domestic proceedings instituted by the applicant between 2000 and 2005 and referred to in his application, the applicant has submitted decisions by the Federal Constitutional Court with respect to the following three proceedings.

1. Civil proceedings instituted before the Stuttgart Regional Court under file No. 7 C 7908/01

By a judgment of 23 January 2002 the Stuttgart District Court dismissed the applicant's claim against his former partner regarding repayment of rent and compensation for expenses incurred in connection with the allegedly unlawful cancellation of the applicant's sublease agreement and his eviction from the jointly occupied apartment located in Stuttgart.

On 28 March 2002 the applicant lodged an appeal with the Stuttgart Regional Court.

On the occasion of hearings that took place on 12 September 2002 and 3 April 2003 the Regional Court heard the parties and a witness.

By a judgment of 28 April 2003 the Stuttgart Regional Court granted the applicant's claim in part, dismissed the remainder and amended the District Court judgment of 23 January 2002 accordingly.

On 25 June 2003 the applicant lodged a constitutional complaint against the judgment of the Regional Court with the Federal Constitutional Court and simultaneously requested to be reinstated in the statutory one-month time-limit for lodging such a complaint.

On 11 July 2003 the Registry of the Federal Constitutional Court by its presidential council (*Präsidialrat*) informed the applicant that there existed doubts as to the admissibility of his complaint since he had neither sufficiently substantiated his request to be reinstated nor the alleged violation of his rights guaranteed under the Constitution.

By a letter dated 25 August 2003 the applicant gave further reasons for his complaint and his request for reinstatement.

On 10 February 2004 the Federal Constitutional Court, notwithstanding the applicant's request to be reinstated, declined to consider his constitutional complaint (file No. 2 BvR 1389/03).

2. Civil proceedings instituted before the Munich District Court under file No. 413 C 30254/02

By a judgment of 10 December 2002 the Munich District Court ordered the applicant to pay outstanding rent for an apartment located in Munich, to vacate the apartment and to bear the costs of the court proceedings.

On the applicant's appeal the Munich Regional Court by a judgment dated 9 July 2003 set aside the judgment of the Munich District Court on the ground that the applicant's right to be heard had been infringed and remitted the case to this court for fresh consideration.

On 15 June and 11 November 2004 the Munich District Court heard the parties and ordered the taking of evidence.

On 11 November 2004 the applicant objected to the participation of the acting judge in the proceedings on the ground of possible bias since the same judge had already conducted the proceedings resulting in the judgment of 10 December 2002.

By written submissions of 29 December 2004 the applicant lodged a counterclaim against the owner of the apartment regarding, *inter alia*, repayment of rent.

The Munich District Court by a partial judgment (*Teilurteil*) dated 3 May 2005 again ordered the applicant to vacate the apartment.

The applicant appealed on 4 May 2005 and lodged a further application for bias against the acting judge.

On 26 October 2005 the Munich Regional Court set aside the District Court decision of 3 May 2005 and ordered the owner of the apartment, in his capacity as underlying plaintiff, to bear the costs of the proceedings. By a decision of 28 October 2005 the Regional Court clarified that the plaintiff had to bear the costs of the appellate proceedings.

The applicant appealed against the decision of the Regional Court on the ground that the latter had ordered the plaintiff only to bear the costs of the appellate proceedings but not of the proceedings at first instance. On 16 December 2005 the Munich Regional Court dismissed his complaint. It found that since the partial judgment of the District Court of 3 May 2005 had not contained a decision on the costs of the proceedings at first instance the Regional Court could only decide on the costs of the appellate proceedings. The decision on the costs of the first-instance proceedings was reserved for the final decision (*Schlussurteil*) of the District Court in the first-instance proceedings.

On 9 June 2006 the Federal Constitutional Court declined to consider the applicant's constitutional complaint (file no. 2 BvR 1273/06). The Federal Constitutional Court held that the complaint was inadmissible on the ground that the impugned decision of the Regional Court had not been rendered to the detriment of the applicant and that according to the information submitted there was nothing to establish that he would have to bear the costs of the proceedings at first instance.

3. Civil proceedings instituted before the Munich District Court under file No. 154 C 16005/04

On 23 June 2004 the applicant brought a claim against a construction firm before the Munich District Court regarding compensation for water damages caused in his cellar on the occasion of renovation works in a neighbouring building.

The District Court heard the parties on 24 August 2004 and by a decision dated 19 October 2004 ordered the taking of evidence and summoned

witnesses for a hearing scheduled for 30 November 2004. On 29 October 2004 the District Court rejected the applicant's request to adjourn the hearing as unsubstantiated.

The applicant did not attend the hearing on 30 November 2004 but was represented by counsel. The Court heard witnesses but rejected the applicant's request to hear two further witnesses as belated in accordance with the related provisions of the German Code of Civil Procedure (*Zivilprozessordnung*).

By a judgment of 23 December 2004 the Munich District Court dismissed the applicant's claim.

On 28 December 2004 the applicant lodged an appeal with the Munich Regional Court alleging that his right to be heard had been infringed on the ground that he could not attend the hearing on 30 November 2004. He also complained that his request to hear further witnesses had been dismissed by the court. He finally asked to be granted legal aid for the appellate proceedings.

By a letter dated 25 January 2005 the Munich Regional Court informed the applicant that his appeal was not signed by a lawyer as statutorily required and furthermore that it appeared to be ill-founded. On 15 February 2005 the applicant submitted written observations in reply.

On 17 February 2005 the Munich Regional Court rejected the applicant's request for legal aid since his appeal was devoid of prospects of success. It held that the District Court had correctly assessed the evidence obtained and rightly rejected the applicant's request to hear further witnesses as belated.

By a decision of 6 April 2005, which was served on the applicant on 15 April 2005, the Munich Regional Court dismissed the applicant's appeal against the judgment of the Munich District Court as inadmissible, as he was not represented by counsel as statutorily required. The applicant lodged a complaint against this decision with the Regional Court on the same day.

On 9 May 2005 the applicant lodged a constitutional complaint which he further motivated by written submissions of 10 May 2005. By letter dated 18 May 2005 the Registry of the Federal Constitutional Court by its presidential council (*Präsidialrat*) informed the applicant that there existed doubts as to the admissibility of his complaint since he had not sufficiently substantiated a violation of his rights guaranteed under the Constitution. The applicant nevertheless pursued his constitutional complaint.

On 2 June 2005 the Munich Regional Court dismissed the applicant's complaint of 15 April 2005 against its decision of 6 April 2005 on the ground that only the Federal Court of Justice (*Bundesgerichtshof*) would have been competent to deal with it.

On 3 February 2006 the Federal Constitutional Court declined to consider the applicant's constitutional complaint of 9 May 2005 and imposed a fee of 250 euros (EUR) upon the applicant for abuse of process

(file no. 2 BvR 33/06). It referred to its established case-law that the introduction of a constitutional complaint constituted abuse of process if one could reasonably assume that the complaint was devoid of any prospects of success. In the instant case the applicant, after receiving the letter of the presidential council of the Federal Constitutional Court dated 18 May 2005, could not have had any doubts that his constitutional complaint was not sufficiently substantiated and thus clearly inadmissible. The applicant had merely used the Federal Constitutional Court as an additional appellate instance without specifying any issues that were relevant under constitutional law in the manner required by the applicable procedural rules. The Federal Constitutional Court pointed out that it could not agree to be hindered in the performance of its tasks by unsubstantiated complaints.

By a letter to the Federal Constitutional Court dated 19 February 2006 the applicant contested that his complaint had been abusive and requested that the fee be revoked.

B. Relevant domestic law

Pursuant to Article 34 § 1 of the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*) the proceedings before the Federal Constitutional Court shall be free of charge. According to Article 34 § 2 of the said Act, the Federal Constitutional Court may charge a fee of up to EUR 2,600 if the lodging of a constitutional complaint constitutes an abuse of process.

In its established case-law the Federal Constitutional Court has consistently held that the lodging of an obviously inadmissible or unfounded complaint is considered to be abusive if one can reasonably expect the complaint to be devoid of any prospect of success. The Federal Constitutional Court held on several occasions that this was the case if an applicant merely used the Federal Constitutional Court as an additional appellate instance without raising issues that were relevant under constitutional law in compliance with the procedural requirements. The Federal Constitutional Court also has repeatedly held in this context that it could not agree to be hindered in the exercise of its functions by complaints that clearly did not have any prospect of success, thereby delaying the protection of the basic rights of other citizens.

In a decision of 9 October 2008 (file No. 1 BvR 1356/03) the Federal Constitutional Court held that fees charged in accordance with Article 34 § 2 of the Federal Constitutional Court Act had to be legally qualified as court fees notwithstanding that they also had a punitive character. While Article 34 § 1 established the rule that proceedings before the Federal Constitutional Court were free of charge, its paragraph 2 established the conditions under which an exception to this rule could apply. A fee imposed

on this basis could be considered an appropriate consideration for costs triggered by an abusive resort to the Federal Constitutional Court.

COMPLAINTS

1. The applicant complained under Articles 2, 3, 5, 6, 9, 10 and 13 of the Convention about the conduct and outcome of in total forty-four different civil, criminal and other proceedings, including the three above-mentioned sets of proceedings instituted before the Munich and Stuttgart District Courts, without making clear in the individual cases which specific provisions had allegedly been infringed.

2. In respect of the proceedings before the Munich District Court instituted under file No. 413 C 30254/02 he alleged in particular that the judge conducting the proceedings at the District Court had been biased.

3. As far as the proceedings instituted before the Munich District Court under file No. 154 C 16005/04 are concerned, he complained in particular about the Federal Constitutional Court's related decision of 3 February 2006 (file no. 2 BvR 33/06) refusing to admit his constitutional complaint and imposing a fee of EUR 250 on the applicant for abuse of process.

He further alleged that during the proceedings at first instance his right to be heard and to have examined witnesses proposed by him had been infringed and that his request to be granted legal aid for the appellate proceedings had been rejected.

THE LAW

1. The complaint regarding the imposition of a fee by the Federal Constitutional Court for abuse of process

The applicant complained that his rights under the Convention had been violated, on the ground that the Federal Constitutional Court by its decision of 3 February 2006 (file No. 2 BvR 33/06) dismissed his constitutional complaint and imposed a fee for abuse of process.

The Court considers that the applicant's complaint may raise an issue with respect to his right of access to court as well as his right to a fair trial, and therefore falls to be examined under Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the "right to a court", of which the right of access, that is the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6.

The "right to a court" is not absolute. It may be subject to limitations permitted by implication because the right of access by its very nature calls for regulation by the State. Guaranteeing to litigants an effective right of access to courts for the determination of their "civil rights and obligations", Article 6 § 1 leaves to the State a free choice of the means to be used towards this end but, while the Contracting States enjoy a certain margin of appreciation in that respect, the ultimate decision as to the observance of the Convention's requirements rests with the Court (see, among many other authorities, *Kreuz v. Poland*, no. 28249/95, §§ 52 and 53, ECHR 2001-VI).

The Court notes that, notwithstanding the question whether the aforementioned principles apply to proceedings before the constitutional courts, the applicant in the case at hand in any event had access to the Federal Constitutional Court.

The Court observes that the applicant was informed by a letter of 18 May 2005 by the presidential council of the Federal Constitutional that there existed doubts as to the admissibility of his complaint on the ground that he had not sufficiently substantiated a violation of his rights guaranteed by the Constitution. This preliminary advice on the complaint's admissibility did not prevent the applicant from pursuing his complaint before the Federal Constitutional Court and he obtained a final decision by the latter, declining to consider his constitutional complaint and establishing the grounds which justified its finding that the pursuance of the complaint constituted an abuse of process. The fee for such abuse of process is imposed by the Federal Constitutional Court together with its decision on the admissibility of the constitutional complaint itself.

The Court notes that the applicant was aware that his complaint might not meet the statutory admissibility criteria. He failed to lodge his appeal against the judgment of the Munich District Court of 23 December 2004 and his complaint against the decisions of the Munich Regional Court in the proceedings in accordance with the formal requirements of domestic law and therefore did not exhaust domestic remedies (see *Civet v. France*, no. 29340/95, § 41, ECHR 1999-VI). Furthermore, following the letter by the presidential council dated 18 May 2005 indicating that there existed doubts as to whether his constitutional complaint met the statutory admissibility criteria and given the established case-law of the Federal Constitutional Court he was in a position to anticipate that the pursuance of his complaint might risk being qualified as abusive by the Federal

Constitutional Court and might therefore trigger a fee in accordance with and in the range provided for by Article 34 § 2 of the Federal Constitutional Court Act.

The Court further holds that the amount of the fee of EUR 250 imposed on the applicant was not so elevated as to constitute a real impediment restricting access to the Federal Constitutional Court and refers in this context to the Federal Constitutional Court's case law stating that such a fee, notwithstanding its also punitive character, constitutes an appropriate consideration for the costs triggered by an abusive resort to the Federal Constitutional Court in the meaning of Article 34 § 2 of the Federal Constitutional Court Act (see *Maillard v. France*, no. 35009/02, § 37, 6 December 2005; *Poilly v. France* (dec.), no. 68155/01, 15 October 2002; and, *a contrario*, *Stankov v. Bulgaria*, no. 68490/01, §§ 50 et seq., ECHR 2007-VIII). The Court recalls in this respect that apart from the exceptional case where a fee is imposed for abuse of process, the proceedings before the Federal Constitutional Court are free of charge.

The Court finally notes from numerous subsequent applications lodged by the applicant with the Court that following the impugned decision of 3 February 2006 the latter had repeatedly recourse to and had obtained decisions by the Federal Constitutional Court in other matters. The fee imposed therefore cannot be held to have had a dissuasive effect on the applicant and the applicant in fact did not argue that this was the case.

The Court consequently considers that the imposition of a fee for abuse of process in the case at hand did not reduce or restrict the access to the Federal Constitutional Court afforded to the applicant in such a way or to such an extent that the very essence of that right was impaired and that there is nothing to establish that the proceedings were otherwise unfair.

The Court therefore holds that this part of the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The remainder of the applicant's complaints

Relying on Articles 2, 3, 5, 6, 9, 10 and 13 of the Convention the applicant further complained about the conduct and the outcome of the aforementioned three proceedings, as well as a further forty-one civil, criminal and other proceedings.

In respect of the proceedings instituted before the Munich District Court under file No. 413 C 30254/02 he complained in particular that the acting judge at the District Court had been biased.

As far as the proceedings instituted before the Munich District Court under file No. 154 C 16005/04 are concerned, the applicant alleged that during the proceedings at first instance his right to be heard and to have examined witnesses proposed by him had been infringed and that his

request to be granted legal aid for the appellate proceedings had been rejected.

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the complaints is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Peer Lorenzen
President