



Declaring part of a suspended prison sentence as served constituted sufficient redress for excessively long proceedings

In today's **Chamber judgment**¹ in the case of **Chiarello v. Germany** (application no. 497/17) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair trial within a reasonable time) of the European Convention on Human Rights

The case concerned the length of criminal proceedings.

The Court found in particular that Mr Chiarello could no longer claim to be a "victim" within the meaning of Article 34 of the Convention since declaring three months of his suspended prison sentence as having been served constituted sufficient and adequate redress for unreasonably long criminal proceedings.

Principal facts

The applicant, Gaetano Chiarello, is a German national who was born in 1977 and lives in Überherrn (Germany).

Mr Chiarello worked as a prison guard in Saarbrücken. In January 2008, the police questioned him about a mobile telephone that had been smuggled into the prison in December 2006. In May 2008 he was accused of accepting a bribe of 200 euros (EUR), smuggling the telephone into the prison and of providing it to an inmate.

In January 2010 the main proceedings against Mr Chiarello were instituted before the District Court. After 14 hearings the court convicted him of taking a bribe and sentenced him to one year and four months' imprisonment, suspended on probation.

The applicant appealed, and the Regional Court acquitted him in November 2011. The public prosecutor lodged an appeal on points of law. In January 2013 the Court of Appeal set the judgment of the Regional Court aside and remitted the matter to the Regional Court.

New appeal proceedings commenced and in April 2015 the Regional Court found Mr Chiarello guilty of taking a bribe and sentenced him to eight months' imprisonment. However, it suspended the sentence, put him on probation and declared that three months had been served owing to the excessively long proceedings.

Mr Chiarello filed an appeal on points of law that was dismissed by the Court of Appeal in April 2016. His subsequent complaint of a violation of his right to be heard was to no avail either. He then lodged a constitutional complaint. In July 2016 the Federal Constitutional Court decided not to admit it for adjudication.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), Mr Chiarello complained that the criminal proceedings against him had been excessively long.

The application was lodged with the European Court of Human Rights on 29 December 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,
Angelika **Nußberger** (Germany),
André **Potocki** (France),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court reiterated that an assessment of whether proceedings were of a reasonable length took place in the light of the circumstances of each case, in particular its complexity, the applicant's conduct and that of the authorities and the importance of what was at stake for the applicant.

The Court found that the criminal proceedings in the applicant's case had lasted eight years and five months at four levels of jurisdiction.

As to whether that was reasonable, the Court in particular noted that Mr Chiarello's case had involved seven co-defendants, all represented by counsel, and the comprehensive taking of evidence. Mr Chiarello had not been remanded in custody and a severe sentence had not been at stake, although the proceedings had had considerable implications for him as his employment as a civil servant had been at stake.

The Court found that the overall length of the proceedings had not been excessive and could still be considered reasonable within the meaning of Article 6 § 1. However, there had been a period of prolonged inactivity between January 2013 and February 2015.

The Court noted that the Regional Court had expressly acknowledged that the criminal proceedings had been excessively long on account of that prolonged inactivity, although Mr Chiarello had not been awarded compensation, nor had the proceedings been discontinued owing to their unreasonable length.

However, the Regional Court had counted three months of his sentence as having been served, a form of compensation which would have come into effect if the suspension of his sentence had been revoked, something in turn which would have occurred if he had committed an offence during the probation period. Nevertheless, such a form of compensation was not theoretical but had mitigated the threat of imprisonment, reducing it from eight to five months, thus in an express and measurable manner.

In those circumstances the Court concluded that declaring three months of Mr Chiarello's suspended prison sentence as having been served had constituted sufficient and adequate redress. Accordingly, there had been no violation of Article 6 § 1.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.