



## Decision to revoke suspension of a previous sentence before suspect's conviction in new proceedings breached presumption of innocence

In today's **Chamber judgment**<sup>1</sup> in the case of [El Kaada v. Germany](#) (application no. 2130/10) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights.**

The case concerned Mr El Kaada's complaint that the decisions of the German courts revoking the suspension of a prison sentence previously imposed on him had violated his right to be presumed innocent.

The Court noted in particular that the German courts had stated their "firm conviction" that Mr El Kaada had again committed an offence during his probationary period. Their findings had amounted to a clear declaration that he was guilty of the offence in question before he was convicted of it by the competent trial court in a final judgment in accordance with the law.

### Principal facts

The applicant, Rachid El Kaada, is a German national who was born in 1988 and lives in Gladbeck (Germany).

In October 2009 Mr El Kaada was arrested and questioned, without his counsel being present, on suspicion of having committed a burglary at a hotel. Having been informed of his right to remain silent and to consult a defence counsel at any time, he admitted to having committed the offence. Several days later, at a court hearing for the review of his continued detention on remand, in the presence of his counsel, he retracted his confession, maintaining that he had admitted the offence only to obtain his release from detention on remand. During subsequent proceedings, the court which had previously imposed on him in 2008 a suspended sentence of two years' imprisonment for a number of offences revoked the suspension on probation. The court noted in particular that it had suspended the sentence on the condition that Mr El Kaada would not reoffend during the probationary period and that he had breached that condition, having regard to his confession of having committed the burglary.

Mr El Kaada appealed, stressing in particular that he had retracted his confession and claiming a breach of his right to be presumed innocent. The appeal court rejected his appeal, holding in particular that the retraction of the confession was not credible, as witness statements supported the suspicion that he had committed the burglary. In December 2009, following a decision of the first-instance court, his detention on remand was interrupted in order for him to serve the sentence imposed in 2008. On 23 December 2009 the Federal Constitutional Court declined to consider his constitutional complaint against the decisions to revoke the suspension of his prison sentence. In January 2010 the trial court convicted him of burglary and sentenced him to one year's imprisonment by a judgment which became final in June 2010.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 6 § 2 (presumption of innocence), Mr El Kaada complained that the decisions of the German courts revoking the suspension of his prison sentence on probation had violated his right to be presumed innocent. The decisions had been based on the courts' finding that he had committed a new offence despite the fact that he had not yet been convicted of that offence.

The application was lodged with the European Court of Human Rights on 11 January 2010.

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

Josep Casadevall (Andorra), *President*,  
Angelika Nußberger (Germany),  
Boštjan M. Zupančič (Slovenia),  
Ganna Yudkivska (Ukraine),  
Helena Jäderblom (Sweden),  
Aleš Pejchal (the Czech Republic),  
Síofra O'Leary (Ireland),

and also Milan Blaško, *Deputy Section Registrar*.

## Decision of the Court

### Article 6 § 2

The Court observed that the German courts had based their decisions to revoke the suspension of Mr El Kaada's sentence on probation in particular on the fact that he had initially confessed before an investigating judge. The German courts had considered his confession credible, even though at the time of their decisions revoking the suspension of the sentence he had already withdrawn it, basing their assessment on witness accounts.

The appeal court had confirmed the first-instance court's conclusion that Mr El Kaada had committed the burglary, stating that it was of the "firm conviction" that he had again committed an offence. That wording was in line with the relevant section of the Juvenile Courts Act, on which the revocation of the suspension of the sentence was based. Under that provision, it was a precondition for the courts to revoke the suspension of a prison sentence that the young offender "commits a criminal offence during the period of probation". The appeal court's findings had thus amounted to a clear declaration that he was guilty of burglary before he was convicted of it by the competent trial court in a final judgment in accordance with the law.

In a previous case against Germany<sup>2</sup> the Court had found a violation of Article 6 § 2 on account of the courts' decision to revoke the applicant's sentence on the ground that he had committed further criminal offences during his probation period, which amounted to a finding of guilt before he was convicted in criminal proceedings by the competent court. The decision in that case had been based on the relevant provision of the German Criminal Code, applicable to adult offenders, whose wording was almost identical to the relevant section of the Juvenile Courts Act applied in Mr El Kaada's case. In its judgment in the previous case, the Court had already noted the German Government's declared intention to consider whether an amendment to the relevant provision of the Criminal Code was necessary to ensure that the revocation of a suspended sentence in similar circumstances as in that case did not conflict with the presumption of innocence as guaranteed by Article 6 § 2 of the Convention. However, there had not been any changes to the relevant provisions, and the proceedings in Mr El Kaada's case revealed that the interpretation of the relevant section of the Juvenile Courts Act was not compatible with Article 6 § 2.

<sup>2</sup> *Böhmer v. Germany* (no. 37568/97), Chamber judgment of 3 October 2002

The Court concluded that the reasoning of the German courts revoking the suspension of Mr El Kaada's sentence had breached the principle of presumption of innocence. There had accordingly been a violation of Article 6 § 2 of the Convention.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Germany was to pay Mr El Kaada 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 2,227.44 in respect of costs and expenses.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

#### **Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Nina Salomon (tel: + 33 3 90 21 49 79)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

**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.