



The domestic courts' decision not to reimburse John Demjanjuk's necessary expenses did not violate Art. 6 of the Convention

In today's **Chamber judgment**¹ in the case of **Demjanjuk v. Germany** (application no. 24247/15) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right of access to court) and Article 6 § 2 (presumption of innocence) of the European Convention on Human Rights.

The case concerned the domestic courts' decision not to reimburse John Demjanjuk's necessary expenses although proceedings were discontinued.

In May 2011, the late John Demjanjuk was convicted by a Regional Court for the murder of 28,060 persons while acting as a guard in the Sobibór extermination camp, but the proceedings were discontinued after his death in March 2012 while an appeal on points of law was still pending. The applicants, Mr Demjanjuk's widow and his son, complained that the Regional Court decision not to reimburse the necessary expenses, and the dismissal of their appeal by the Munich Court of Appeal, violated their right of access to a court and the principle of presumption of innocence.

The Court found in particular that the Court of Appeal's determination of the applicants' lack of standing had not affected their right to have their claims examined and determined in substance, and that therefore there had been no violation of Article 6 § 1.

The Court also found that, although some of the wording contained in the Regional Court's decision might be considered unfortunate, the domestic court had made it clear that its decision had been based on a state of suspicion against the accused and had not contained a finding of guilt. Therefore, the principle of the presumption of innocence had not been infringed.

Principal facts

The applicants, Vera Demjanjuk and John Demjanjuk, are two American nationals who were born in 1925 and 1965 respectively and live in Ohio (United States). The first applicant is the widow and the second applicant is the son of the late John Demjanjuk.

The case concerned the domestic courts' decision not to reimburse the accused's necessary expenses although proceedings were discontinued.

In May 2011 the Munich Regional Court II, after 91 days of trial, convicted the late John Demjanjuk on 16 counts as an accessory to the murder of at least 28,060 persons. It found it established that he had, in his capacity as a guard in the Sobibór extermination camp, aided and abetted the systematic murder of people who had been deported to the camp in convoys between March and September 1943. It sentenced him to a total of five years' imprisonment for these crimes.

Both the accused and the public prosecutor filed appeals on points of law with the Federal Court of Justice. John Demjanjuk died on 17 March 2012, by which time the Federal Court of Justice had not yet received the case file. In April 2012 the Regional Court discontinued the proceedings owing to Mr

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.

Demjanjuk's death. It ruled in the same decision that the accused's necessary expenses were not to be borne by the State.

The Munich Court of Appeal dismissed an immediate appeal against that decision in October 2012 owing to a lack of standing and rejected further a request to be heard (*Anhörungsrüge*). The Federal Constitutional Court declined to consider a constitutional complaint by the applicants in December 2014.

Complaints, procedure and composition of the Court

Relying on Article 6 § 2, the applicants complained that the Regional Court's decision not to reimburse the necessary expenses of the late John Demjanjuk in connection with the discontinuation of the criminal proceedings against him had violated the presumption of innocence. Under Article 6 § 1, they alleged a violation of their right of access to a court as a result of the Court of Appeal's dismissal of their appeals against the decision of April 2012 as inadmissible owing to a lack of standing.

The application was lodged with the European Court of Human Rights on 13 May 2015.

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

Yonko **Grozev** (Bulgaria), *President*,
Angelika **Nußberger** (Germany),
André **Potocki** (France),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that the Court of Appeal, in its decision of 4 October 2012, had declared the applicants' appeal against the Regional Court's decision of 5 April 2012 inadmissible due to their lack of standing. In the Court of Appeal's view the procedural status as an accused in criminal proceedings was personal in nature and could not be transferred, including by way of inheritance.

The Court held that this decision might have raised issues in respect of the applicants' right to have their claim as victims of an alleged violation of Article 6 § 2 examined. However, the Court of Appeal had gone on to state that the immediate appeal was, in addition, ill-founded and that Article 6 § 2 had not been breached. It followed that the Court of Appeal had examined and dismissed the applicants' claim in substance. Therefore, the Court considered that the Court of Appeal's determination of the applicants' lack of standing had not affected their right to have their claims examined and determined in substance.

The Court concluded that there had been no violation of their right of access to court guaranteed by Article 6 § 1.

Article 6 § 2

The Court reiterated that the presumption of innocence is violated if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he was guilty before he has been proved guilty according to law. A finding of guilt in the absence of a final conviction must be

distinguished from the description of a “state of suspicion”, which had been regarded as unobjectionable in various situations examined by the Court.

The Court found that it did not raise an issue under Article 6 § 2 that the Regional Court, after a trial of 91 days, setting out its legal and factual assessment in a judgment of 220 pages, had determined that there was at least a significant state of suspicion against the accused. At the same time, the Court considered that some of the wording contained in the Regional Court’s decision might be considered unfortunate, notably, that the conviction could not become final in the absence of a decision on the appeal on points of law and that it would have been possible to conclude the proceedings, with a final verdict, during the lifetime of the accused if the defence had exercised its procedural rights in a targeted, structured, and technical manner. These statements could be understood as attributing responsibility to the defence for the absence of a final guilty verdict against the accused.

However, the Court noted that domestic law required there to be additional factors, besides the significant state of suspicion, rendering the refusal to reimburse the accused’s expenses equitable in the event of a discontinuation of the proceedings. It thus understood the statement at issue as relating primarily to the existence of such an additional factor, to be taken into account in the exercise of discretion for determining who was to bear the necessary expenses.

This view had also been supported by the Regional Court’s statement, which the Court of Appeal had also referred to, that the decision regarding necessary expenses had been taken “in the absence of a conclusive finding of guilt”. The Court considered that the Regional Court had thereby made it unequivocally clear that its decision was based on a state of suspicion against the late accused, but that it did not contain a finding of guilt.

The Court concluded, having regard to the reasoning as a whole, the language used, and its case-law, that the domestic courts’ decision had not contained a finding of guilt and that there had accordingly been no violation of Article 6 § 2.

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.