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

FIFTH SECTION

DECISION

Application no. 30860/15
Jörg KEMPKES
against Germany

The European Court of Human Rights (Fifth Section), sitting on 11 October 2016 as a Committee composed of:

Khanlar Hajiyev, *President,*
Faris Vehabović,
Carlo Ranzoni, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 18 June 2015,

Having regard to the declaration submitted by the respondent Government on 27 June 2016 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Jörg Kempkes, is a German national, who was born in 1965 and is currently detained in Werl Prison. He was represented before the Court by Mr C. Huppertz, a lawyer practising in Aachen.

The German Government ("the Government") were represented by two of their Agents, Mr H.-J. Behrens and Mrs K. Behr, of the Federal Ministry of Justice and Consumer Protection.

The applicant complained, in particular, under Article 5 § 1 of the Convention that his preventive detention was unlawful as the Aachen Regional Court had ordered that detention to continue only on 19 March 2013, some sixteen months after the expiry, on 16 November 2011, of the statutory two-year time-limit for judicial review of whether that detention was still necessary.

On 8 March 2016 the complaint under Article 5 § 1 of the Convention was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE LAW

The applicant complained about the domestic courts' failure to comply with the statutory time-limit for review of the necessity of his further preventive detention. He relied on Article 5 § 1 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 27 June 2016 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "In these proceedings, the Court proposed a friendly settlement, which was accepted by the Federal Government by statement dated 4 May 2016. (...) the Court has now forwarded the Applicant's letter dated 24 May 2016, in which he notifies that he is not in agreement with the conclusion of the settlement proposed by the Court.
>
> The Federal Government therefore wishes to acknowledge – by way of a unilateral declaration – that the Applicant's right under Article 5 (1) of the Convention was violated in the present case by the domestic courts far exceeding the statutory time limit for review of the necessity of continued enforcement of preventive detention.
>
> If the Court were to strike this Application from its list of cases, the Federal Government would be willing to accept a claim for compensation in the amount of EUR 12,000.00 (...). This sum of EUR 12,000.00 would be deemed to settle all claims of the Applicant in connection with the above-mentioned Application against the Federal Republic of Germany and the *Land* of North-Rhine Westphalia, including in particular compensation for the damage suffered (including non-pecuniary damage) as well as costs and expenses.
>
> The amount shall be payable within three months of the Court's decision to strike the case out of its list becoming final. (...)
>
> The Federal Government therefore requests that this Application be struck out of the Court's list of cases pursuant to Article 37 (1) c) of the Convention. (...)"

By a letter of 26 July 2016, the applicant referred to Article 37 § 1 *in fine* and indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the compensation offered was too low to cover also his costs and expenses.

The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article.

Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application."

It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court has examined the declaration in the light of the principles established in its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75- 77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Herman v. the Netherlands* (dec.), no. 35965/14, §§ 15-18, 17 November 2015).

The Court has established in a number of cases, including those brought against Germany, its practice concerning complaints about the violation of Article 5 § 1 of the Convention by non-compliance with the "lawfulness" requirement of that provision, in particular, by the failure to observe statutory time-limits for reviewing the continuation of a person's detention (see, in particular, *Rutten v. the Netherlands*, no. 32605/96, §§ 39-47, 24 July 2001; *Schönbrod v. Germany*, no. 48038/06, §§ 81-86 and §§ 103-109, 24 November 2011, and *H.W. v. Germany*, no. 17167/11, §§ 64-91, 19 September 2013, with further references).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

The Court considers that in the event of failure to settle the amount payable within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the Convention, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 5 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 3 November 2016.

Anne-Marie Dougin Acting Deputy Registrar	Khanlar Hajiyev President