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SECRETARIAT DU COMITE DES MINISTRES



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Item reference: Action plan / action report

Please find enclosed a communication from Germany concerning the Sürmeli group of cases against Germany (Application No. 75529/01).

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Référence du point : Plan d'action / Bilan d'action

Veillez trouver, ci-joint, une communication de l'Allemagne relative au groupe d'affaires Sürmeli contre Allemagne (Requête n° 75529/01).

* In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).



Applications

Sürmeli (No. 75529/01),

Abduvalieva (No. 54215/08), Adam (No. 44036/02), Bähnke (No.10732/05), Ballhausen (No. 3545/04), Bayer (8453/04), Bozlar (No.7634/05), D.E. (No.1126/05), E. Deiwick (No. 17878/04), H-J. Deiwick (No. 7369/04), Glösen (No.1679/03), Herbst (No. 20027/02), Hub (No. 1182/05), Jesse (No. 10053/08), Kindereit (No. 37820/06), Kirsten (No. 19124/02), Kressin (No. 21061/06), Laudon (No. 14635/03), Leela Förderkreis e.V. (No. 58911/00), Mianowicz (II) (No.71972/01), Nanning (No. 39741/02), Ommer (I) (No. 10597/09), Ommer (II) (No. 26073/03), Petermann (No. 901/05), Reinhard (No. 485/09), Ritter-Coulais (No. 32338/07), Sinkovec (No. 46682/07), Skugor (No. 76680/01), Sopp (No. 47757/06), Volkmer (No. 54188/07), Wetjen (No. 30175/07), Wildgruber (No. 42402/05), Niedzwiecki II (No. 12852/08)

Report on the further Implementation of the Judgments of the European Court of Human Rights

Action Plan / Action Report

1. Convention violation found

In its judgment of 8 June 2006 in the Sürmeli case ([GC] No. 75529/01) the Court found that the possibilities of legal protection in Germany in the event of excessive length of proceedings do not meet the requirements of Article 6 para. 1 and Article 13 of the Convention. The Court pointed out that two points were important for a legal remedy designed to address the problem of excessive length of proceedings: A legal remedy is “effective” within the meaning of Article 13 of the Convention if it may either prevent the alleged violation or its continuation, or provide adequate redress for any violation of the Convention that has already occurred.

2. Legislative procedure to ensure legal protection in the case of excessive length of court proceedings and criminal investigation proceedings

The draft Act on Legal Protection in the Event of Excessive Length of Court Proceedings and Criminal Investigation Proceedings (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*, cf. Annex) aims to do justice to Article 6 para. 1 and Article 13 of the Convention as interpreted by the Court.

a) Prevention

A complaint about the delay must first be lodged in the original proceedings. The principle of “tolerate and liquidate” can therefore not be applied. The affected court can react to a complaint about a delay (“warning shot”) by taking remedial action. Where this is not done, an action for damages can, according to the bill, be brought whilst the delayed original proceedings are ongoing.

b) Compensation

The bill proposes introducing provisions to regulate a new kind of claim for damages for cases in which the length of proceedings was excessive. Other claims which may be possible in a given case, in particular in regard to official liability, are to concur with the new right to claim damages. The possibility of claiming damages is to apply to all types of court proceeding and is to be established in the Courts Constitution Act (*Gerichtsverfassungsgesetz*, GVG). There are plans to introduce a special rule for criminal proceedings which will do justice to the special features of such proceedings, in particular for the possibility of compensating for the excessive length of the court proceedings in the context of the execution of the sentence.

According to the plans, the jurisdiction for such actions for compensation are to lie, for all types of excessively long proceedings, with the higher regional court (*Oberlandesgericht*, OLG) at the seat of the affected legal entity (*Land* government or Federal Government), i.e. one specific higher regional court is to be responsible for each *Land*. Such decisions must always be taken by the Divisions in the higher regional court. Leave to appeal on points of law to the Federal Court of Justice may be granted in order to guarantee uniformity of rulings. However, in order to ensure that compensation proceedings cannot be protracted, there is to be no legal remedy of complaint against the denial of leave to appeal.

These regulations are also to cover all applications pending before the European Court of Human Rights.

c) A separate solution for the Federal Constitutional Court

A comparable solution is to be drawn up for the Federal Constitutional Court, although it will be adapted in accordance with the special features applicable to constitutional proceedings.

d) The legislative process

The bill was drafted in the Federal Ministry of Justice and in March 2010 was passed on to the affected federal ministries and the federal courts. In early April 2010 the draft was also

forwarded to the *Länder*, to the associations affected by the bill, to the offices of the parliamentary groups in the German Bundestag and to the Bundesrat. The deadline for the submission of comments is the beginning of June 2010. Following that, all the comments received will be subjected to a thorough analysis. Where changes are deemed necessary, these will have to be agreed on once again with the other federal ministries. After that the bill will be referred to the Cabinet.

Once an agreement has been reached with all the ministries involved, the *Länder* and associations have been involved, and a decision has been taken in the Cabinet, a number of further steps are necessary as part of the legislative process: Once the Cabinet has occupied itself with the bill, the Head of the Federal Chancellery forwards the Federal Government's draft to the Bundesrat. The Bundesrat then has six weeks to submit its observations, which it adopts in a plenary session. The Bundesrat's decision is then forwarded to the Federal Government.

The Federal Government then has the opportunity to submit a counter-statement in response to the Bundesrat's observations. The counter-statement deals in depth with the changes proposed by the Bundesrat and is agreed by the Cabinet. No explicit deadline is set, although the counter-statement should not significantly delay the bill being passed to the Bundestag together with the Bundesrat's observations. In practice a period of six weeks is allocated here as well.

After agreement has been reached on the Federal Government's counter-statement, the Federal Chancellery relays the bill, including the Bundesrat's observations and the Federal Government's counter-statement, to the President of the Bundestag. The bill is thereupon distributed to all the Members of the German Bundestag, to the Federal Government and to the Bundesrat in the form of a Bundestag printed paper. Bundestag printed papers are accessible to the public and are available on the Bundestag's homepage (<http://dip.bundestag.de>). The Council of Elders (*Ältestenrat*), which comprises the President of the Bundestag and representatives of all the parliamentary groups in the Bundestag, then takes a decision as to when the bill will be put on the agenda of the Bundestag for deliberation and which Bundestag committees are to be involved.

The next stage in the legislative process is the first debate on the bill in plenary session. This is known as the first reading and only involves a general debate if recommended by the Council of Elders or if proposed by a parliamentary group or five per cent of the Members of the Bundestag. Only the basic principles of the bill are debated during this first reading; substantive motions may not be submitted on such occasions. As a rule the first reading ends with the bill being referred to the responsible committee.

The subsequent committee deliberations represent the core of the parliamentary legislative process. This is where the Federal Government's draft is examined in detail by experts and where the political fine-tuning occurs. The committee must examine the draft in respect of its objective, content, solutions and alternatives, effects and legal formalities. Further, the committee may obtain information from experts, associations and affected individuals. The amount of time taken up by the deliberations is chiefly dependent on the significance and scope of the legislative proposal. It is expected that especially in the case of complex proposals - such as the draft Act on Legal Protection in the Event of Excessive Length of Court Proceedings and Criminal Investigation Proceedings - the committee will discuss unanswered questions with experts in the course of what are known as rapporteur meetings and/or in the framework of a public hearing. The results of the committee deliberations are summarised in a committee recommendation for a decision which is forwarded to the Bundestag.

After the responsible committee has put forward a recommendation for a decision, the plenary debates the legislative proposal, which is now ready for vote, in a second and third reading. The second reading begins with a general debate if this is recommended by the Council of Elders or demanded by a parliamentary group or five per cent of the Members of the Bundestag present. Whether a debate is held depends on the political decision-making of the Members of the Bundestag. The concluding deliberations begin at the earliest on the second day after the committee recommendation and the committee report have been distributed as a printed paper. The second and third readings generally take place on the Friday after the committee meeting or during the following week in which Parliament is sitting.

As soon as the Bundestag has adopted the bill it must be passed on to the Bundesrat without delay. The President of the Bundesrat then passes it to the competent committees and appoints the committee responsible. The committee deliberations must end with a committee recommendation which contains an explicit verdict on whether the Bundesrat consents to the bill or whether it is to demand that the Mediation Committee be convened. In the case of the draft Act on Legal Protection in the Event of Excessive Length of Court Proceedings and Criminal Investigation Proceedings, which requires the consent of the Bundesrat, the Bundesrat has the following options:

- It may give its consent to the bill, in which case the bill passes into law.
- But the Bundesrat may also refuse to give its consent to the bill. In this case, the process is concluded unless the Bundestag or the Federal Government demand that the Mediation Committee be convened. Furthermore, the Bundesrat can itself, within a period of three weeks after receipt of the bill, demand that the Mediation Committee be convened.

The procedure in the Mediation Committee follows the Joint Rules of Procedure of the Bundestag and Bundesrat for the Committee under Article 77 of the Basic Law (Mediation Committee). This is not simply a committee of experts, but rather a political committee tasked with finding a compromise. It comprises 16 Members of the Bundestag and 16 Members of the Bundesrat. The Mediation Committee in principle has the following options:

- It can confirm the bill. In this case the Bundestag will not be required to vote again on the bill.
- It can decide to request that the Bundestag throw out the bill in its current form. In that case the Bundestag will be required to vote again on the bill.
- It may recommend that the Bundestag amend the bill in its current form. In this case too the Bundestag will be required to vote again on the bill.
- Finally, it may terminate the mediation procedure without a compromise proposal. The Bundestag will then not be required to vote again on the bill.

Once the Bundestag and Bundesrat have adopted the bill, it is presented to the Federal President for signature and subsequently promulgated in the Federal Law Gazette.

3. Figures on the duration of court proceedings in the various jurisdictions

Over the past few years the length of main proceedings has continuously dropped on a good level across Germany. Whilst average durations have revealed notable variation from *Land* to *Land*, durations may be considered good overall. For more details please refer to the attached overview.



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Report on the further Implementation of the Judgments of the European Court of Human Rights

Action Plan / Action Report

Herewith and in supplementation of the Action Report and Action Plan of 23 June 2010, the Federal Government reports on the following additional measures for implementation in Germany of the Judgments of the European Court of Human Rights.

1. Individual Measures

a) Ballhausen (No. 1479/08, Judgment of 23 April 2009)

It has now been possible for the proceedings to be concluded with final and binding force. A judgment was given by Braunschweig Higher Regional Court on 30 June 2010 (AZ 3 U 60/09). Leave to file an appeal on points of law was not granted and no complaint against the decision refusing to grant leave of appeal was filed. The judgment of the Regional Court is dated 28 May 2009.

b) Reinhard (No. 485/09, Judgment of 25 March 2010)

According to information from Hanover Regional Court, the Reinhard proceedings have been concluded with final and binding force since 2 March 2010. No appellate remedy was filed.

c) Mianowicz (II) (No. 71972/01, Judgment of 11 June 2009)

The remaining claims for payment of higher remuneration in accordance with the collective agreement that were still pending in the litigation 22 Ca 6244/90 on which the case before the Court is based – these claims going beyond the remuneration in accordance with the collective agreement already established by judgment – was disposed of by the court of first instance in the final judgment of Munich Labour Court dated 3 September 2009. No claims are still pending from the proceedings at first instance. The plaintiff filed an appeal on points of fact and law on 7 October 2009 against the final judgment, in respect of which a final decision was made in the form of the final judgment of Munich Regional Labour Court on 28 July 2010. The court refused to grant leave to appeal. However, we have in the meantime learnt that the plaintiff has filed a complaint against the refusal to grant leave to appeal with the Federal Labour Court under the file reference no. 5 AZB 1029/10.

d) Volkmer (No. 54188/07, Judgment of 30 March 2010)

The proceedings have been pending at Nuremberg Higher Regional Court since 19 March 2010 following the decision given by the Federal Constitutional Court on 18 January 2010. On 1 June 2010, Nuremberg Higher Regional Court submitted a settlement proposal that was accepted by the respondent's side but was, however, rejected on the plaintiff's side. The Higher Regional Court subsequently set a date for a hearing in the matter for 9 September 2010. After a change took place in the position of judge-rapporteur of the Division on 1 September 2010, the date for the hearing had to be postponed until 4 November 2010. It has therefore not yet been possible for the proceedings to be concluded.

e) Ritter-Coulais (No. 32338/07, Judgment of 30 March 2010)

It has not yet been possible for the proceedings before Landau Regional Court on which the case before the Court was based to be concluded – in spite of efforts made to this end by the competent division of the Regional Court – due to the fact that the necessary taking of evidence is complex and the fact that the plaintiffs make extensive use of their rights to make statements and of other procedural rights.

2. Legislative procedure to ensure legal protection in the case of excessive length of court proceedings and criminal investigation proceedings

The Federal Government adopted the draft bill for an Act to ensure legal protection in the case of excessive length of court proceedings and criminal investigation proceedings on 8 August 2010. The Bundesrat, by means of which the Federal *Länder* take part in the Federal legislative process, made observations thereon on 15 October 2010. Whilst it is true that, according to these observations, the Bundesrat is of the opinion that various amendments to the bill must still be made, the Federal Government does however take the view that a compromise can be reached on the basis of the proposals put forward by the Bundesrat. Following the Bundesrat's observations and the Federal Government's counter statements in this regard, the draft bill is to be forwarded to the German Bundestag for discussion and adoption. The Bundesrat must then give its consent to the draft bill in the version adopted by the Bundestag. In the opinion of the Federal Government, it would appear certain that the legislative procedure will be concluded within the time-limit set by the European Court of Human Rights.