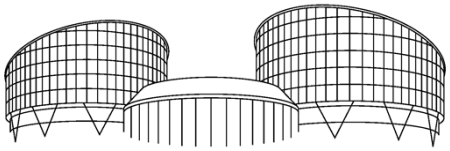

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MENG v. GERMANY

(Application no. 1128/17)

JUDGMENT

Art 6 § 1 (criminal) • Objectively justified doubts as to impartiality of court convicting applicant of murder, presided by a judge previously sitting in separate proceedings concerning only her co-accused, which made extensive findings of established fact and legal qualifications prejudging the applicant's guilt • New findings established by court not exempting an examination of whether the previous judgment contained findings prejudging the applicant's guilt • Defect not remedied by higher instance court

STRASBOURG

16 February 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Meng v. Germany,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Paul Lemmens, *President,*
Dmitry Dedov,
Georges Ravarani,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 1128/17) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Ms Salina Meng ("the applicant"), on 27 December 2016;

the decision to give notice to the German Government ("the Government") of the application;

the parties' observations;

Having deliberated in private on 26 January 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present application raises the issue of whether the Regional Court, which convicted the applicant of murdering her husband out of greed, jointly with G.S., had been impartial as required by Article 6 § 1 of the Convention. The Regional Court in the applicant's case was presided by judge M., who had been judge rapporteur in previous separate criminal proceedings conducted against G.S. alone. In these proceedings, G.S. had been convicted of murdering the applicant's husband in a judgment which contained numerous references to the applicant, describing her participation in the offence.

THE FACTS

2. The applicant was born in 1964 and is currently detained in Frankfurt/Main. She was represented by Mr H.-W. Euler, a lawyer practising in Frankfurt/Main.

3. The Government were represented by one of their Agents, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND TO THE CASE: THE CRIMINAL PROCEEDINGS AGAINST G.S.

5. On 11 July 2011 the Darmstadt Regional Court convicted G.S., the applicant's partner at the time, of murdering the applicant's husband (M.M.) and sentenced him to life imprisonment. G.S. was found guilty of having killed the applicant's husband out of greed as a single perpetrator. The Regional Court was composed of five judges, namely three professional judges, including Judge M. as judge rapporteur, and two lay judges. The applicant had been summoned as a witness in the proceedings, but had refused to testify because she was engaged to G.S. at the time

6. The Regional Court found that G.S., who had denied the offence, had killed the applicant's husband, who was no longer living with the applicant, in order to prevent him from transferring his assets overseas. This transfer would have removed the assets from the applicant's reach and would thus also have prevented G.S., as her partner, from benefiting from them.

7. The Regional Court's judgment against G.S., in its statement of facts, contained extensive findings also regarding the applicant. The court notably elaborated on the joint plan drawn up by "the accused and Salina Meng" that G.S. should kill the applicant's husband in the latter's flat after entering under the pretext of picking up medical material ordered by the applicant from a chemist. The Regional Court found, *inter alia*, as follows:

> "... the accused and Salina Meng learnt that, and to what extent, [M.M.] had withdrawn capital from the [...] company and transferred it to his partner. ... They finally realised that they would not receive in a legal manner the financial contributions from [M.M.] which they had hoped for and which they needed for a life free of (financial) worries ... which they dreamt of.
>
> They therefore decided to kill [M.M.]. ...
>
> "Having been reassured in the plan made jointly with the accused to kill [M.M.] in order to get hold of his assets, Salina Meng then continued preparing the act itself as well as the acquisition of [M.M.]'s assets. ..."

8. In its assessment of the evidence of the commission of the offence the Regional Court found, *inter alia*, that when informed of M.M.'s death neither the accused nor the applicant had asked about the cause of death and that this conduct

> "could easily be explained against the background that neither Salina Meng nor the accused had to ask about the circumstances of the violent death as they had committed the offence themselves or been involved in it."

9. In its legal classification of the act committed by G.S., the Regional Court considered that the killing of M.M. had to be classified as murder because G.S. had acted out of greed. It explained that greed in that sense was characterised by striving for material goods or advantages with a lack of restraint and showing recklessness which far exceeded what was tolerable. It then found, in particular, as follows:

> "In this context, the reckless manner in which the accused and Salina Meng acted and by which they attempted, by the murder of [M.M.], to take over his business and to cash in the respective profits had to be particularly taken into account."

10. In September 2012, after G.S.'s conviction had become final, the prosecution contacted G.S.'s sister, asking for her support in persuading G.S. to testify against the applicant. The prosecutor stated that in their judgment, the judges of the Darmstadt Regional Court had clearly expressed their conviction – shared by the prosecution – that the applicant had incited G.S. to kill her husband. On 1 November 2012 G.S., while denying that he had killed the applicant's husband himself, then disclosed information regarding the applicant's hatred of her late husband and alleged that she had paid a third person to kill her husband.

II. THE PROCEEDINGS AT ISSUE

A. The proceedings before the Darmstadt Regional Court

11. Subsequently, proceedings on murder charges were opened against the applicant before the Darmstadt Regional Court. The applicant was accused of having killed her husband jointly with G.S., out of greed.

12. The court was composed of judge M. (who was previously judge rapporteur in the proceedings against G.S.) as presiding judge, two further professional judges and two lay judges.

13. On 7 October 2013, following a query by the applicant's lawyer as to whether he had been judge rapporteur in the proceedings against G.S., judge M. submitted the case file to a chamber of the Regional Court for a decision on whether his participation as judge rapporteur in the previous proceedings against G.S. justified his being challenged for bias (Article 30 of the Code of Criminal Procedure, see paragraph 27 below).

14. On 11 October 2013 a panel of three judges of the Regional Court, including the other two professional judges scheduled to sit at the applicant's trial, found that there were no reasons to doubt the impartiality of judge M. It considered that the description of the applicant's participation in the offence in the judgment against G.S. had been necessary to establish fully the relevant facts, including the reasons why G.S. might gain financially by the death of the applicant's husband and had thus killed him out of greed. The court had not expressed any unnecessary or unfounded value judgments regarding the applicant.

15. On 14 October 2013 the applicant, relying on Article 24 § 2 of the Code of Criminal Procedure (see paragraph 26 below), lodged an application for bias against judge M. Quoting a number of passages from the Regional Court's judgment against G.S. (compare, in particular, paragraphs 7-9 above), she argued that the court, including judge M., had made findings which showed its conviction that the applicant had killed her

husband jointly with G.S. and amounted to prejudging the applicant unnecessarily.

16. On 18 October 2013 a different panel of three judges of the Darmstadt Regional Court, having heard judge M. and the applicant, dismissed the application for bias against judge M. The court referred to the Federal Court of Justice's well-established case-law on the subject-matter (see paragraphs 29-30 below) according to which a judge's participation in proceedings against co-suspects could only be a sufficient ground for objecting to a judge for bias in the presence of additional circumstances such as unobjective statements, measures or behaviour or prejudicial value judgments. Professional judges were able to form their conviction regarding the charges only on the basis of the results of the evidence taken in the proceedings at issue. The court found that the references to the applicant in the judgment against G.S. did not prove a biased attitude of judge M. Those findings had been necessary to provide a full picture regarding the planning and preparation of, and the motive for the offence, which necessarily had to involve the acts of third persons not accused in the proceedings.

17. On 9 April 2014 the Darmstadt Regional Court, including judge M., convicted the applicant of murder out of greed, committed jointly with G.S., and sentenced her to life imprisonment, following a full fresh trial lasting for 23 days, in which witness and expert evidence was taken.

18. The judgment contained fresh findings of fact, without any references to the judgment against G.S. While establishing essentially the same course of events which had led to the killing of the applicant's husband as in the previous judgment against G.S., the judgment against the applicant differed in a number of details from the findings of fact in the judgment against G.S. (for instance, regarding the moment when G.S. had entered the applicant's husband's flat) following partly new witness testimony (notably of G.S. and his sister) and the applicant's own submissions.

B. The proceedings before the Federal Court of Justice

19. On 10 February 2016 the Federal Court of Justice dismissed the applicant's appeal on points of law against the judgment of the Darmstadt Regional Court. It found, in particular, that the applicant's application for bias against judge M. had been unfounded. The court, referring to its well-established case-law (compare paragraphs 29-30 below), reiterated that a judge's participation in previous proceedings against co-accused for the same offence could only raise justified doubts about the judge's impartiality in the presence of additional specific circumstances. Such circumstances were present where the previous judgment contained unnecessary and unobjective value judgments about the person subsequently charged or

where the judge concerned had made unjustified statements to the detriment of that person.

20. The Federal Court of Justice found that the Regional Court's judgment of 11 July 2011 against G.S. did not contain such unjustified statements or value judgments. In particular, in so far as it was stated in that judgment that "the reckless manner in which the accused and Salina Meng acted and by which they attempted, by the murder of [M.M.], to take over his business and to cash in the respective profits had to be particularly taken into account" (see paragraph 9 above), this assessment was consistent with the facts established and the finding that there had been a murder out of greed.

21. The judgment against G.S. further did not contain any other statements or value judgments which could justify doubts as to the impartiality of judge M. The Federal Court of Justice observed that the Regional Court had based its finding that the offence had been committed out of greed on the applicant's financial dependence on M.M. following the breakdown of their marriage. The Regional Court had further based its conviction that G.S. had killed M.M. on elements of evidence which at the same time disclosed the participation of the applicant in the act. In these circumstances, it was indispensable in order to avoid deficiencies in the presentation of the relevant elements in the judgment to describe the applicant's participation in the act carried out by G.S.

22. Likewise, the indications in the reasoning of the Regional Court's judgment against G.S. that it was firmly convinced that the applicant was a co-perpetrator in the offence ("*feste bzw. sichere Überzeugung ... von der Mittäterschaft*") did not indicate bias, but had reflected the level of certainty necessary to ground G.S.'s conviction.

C. The proceedings before the Federal Constitutional Court

23. On 6 June 2016 the applicant lodged a constitutional complaint with the Federal Constitutional Court. She claimed that her constitutional rights to have her case decided by her lawful judge and to a fair trial had been breached in that judge M., who had not been impartial, had been on the bench of the Regional Court which convicted her of murder.

24. On 11 July 2016 the Federal Constitutional Court, without giving reasons, declined to consider the applicant's constitutional complaint (file no. 2 BvR 1168/16).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE

25. Article 23 of the Code of Criminal Procedure, on the exclusion of a judge for having participated in a contested decision, in so far as relevant, provides:

> "(1) A judge who was involved in reaching a decision contested by an appeal shall be barred by law from participating in the decision of the court of higher instance.
>
> (2) A judge who was involved in reaching a decision which was contested by an application to reopen the proceedings shall be barred by law from participating in decisions related to the reopening proceedings. ..."

26. Article 24 of the Code of Criminal Procedure on challenging a judge, in so far as relevant, provides:

> "(1) A judge may be challenged both where he is barred by law from exercising judicial office and for fear of bias.
>
> (2) A challenge for fear of bias may be brought where there is reason to doubt the impartiality of a judge. ..."

27. Article 30 of the Code of Criminal Procedure governs, in particular, the report, by a judge himself, of circumstances which potentially justify his being challenged (*Selbstanzeige*). In so far as relevant, it reads as follows:

> "The court competent to decide on a motion for bias shall also decide where no such motion has been filed but a judge reports circumstances which might justify his being challenged ..."

II. PROVISIONS OF THE CRIMINAL CODE

28. Article 211 of the Criminal Code, on murder, in so far as relevant provides:

> "(1) Whoever commits murder shall be liable to life imprisonment.
>
> (2) A murderer is a person who kills another person ... out of greed or otherwise base motives ..."

III. CASE-LAW OF THE FEDERAL COURT OF JUSTICE

29. According to the Federal Court of Justice's well-established case-law, unless a judge is barred by law from sitting in a case in accordance with Article 23 of the Code of Criminal Procedure (see paragraph 25 above) the previous involvement of a judge in proceedings concerning the same subject-matter alone is not a sufficient ground for objecting to the judge for bias. This applies, *inter alia*, to a judge's participation in previous proceedings against co-perpetrators of the same offence (see Federal Court of Justice, file no. 1 StR 233/96, judgment

of 15 May 1997, §§ 28 and 32-33; file no. 5 StR 485/05, judgment of 29 June 2006, § 20; file no. 2 StR 455/09, judgment of 30 June 2010, §§ 23 and 24, and file no. 1 StR 169/15, decision of 3 December 2015, § 15). Describing the acts of third persons who are judged only subsequently in a previous judgment against a co-perpetrator is usually required in order to give the necessary full account of the events regarding the co-perpetrator (see Federal Court of Justice, file no. 2 StR 653/85, judgment of 5 February 1986, § 5, and file no. 1 StR 233/96, cited above, §§ 33-34). Such a description does not imply that the judge made his/her final decision as to the participation in the offence of third persons who are tried subsequently. It is usual for judges to form their conviction regarding the charges only on the basis of the results of the evidence taken in the proceedings at issue (see Federal Court of Justice, file no. 2 StR 653/85, cited above, § 5, and file no. 1 StR 233/96, cited above, §§ 32-33).

30. Therefore, fears of bias resulting from a judge's statements in a previous judgment against a co-perpetrator are only justified if there are additional specific circumstances which justify doubts as to the impartiality of the judge in that they give the impression that the judge has a preconceived view regarding the person charged subsequently. Such circumstances exist where the statements in question contain unnecessary and unobjective value judgments in respect of the person subsequently on trial or where the judge made other unjustified statements to the detriment of the person charged subsequently (see Federal Court of Justice, file no. 5 StR 485/05, cited above, § 20; file no. 2 StR 455/09, cited above, §§ 23-24 and 28, and file no. 1 StR 169/15, cited above, §§ 15-16).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicant complained that the Regional Court which convicted her of murder, with judge M. sitting on the bench, had not been impartial. She relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

32. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

33. The applicant claimed that she had been convicted by a tribunal which had included judge M. and had therefore not been impartial as required by Article 6 § 1 of the Convention.

34. The applicant argued that in its judgment against G.S. the Regional Court, including judge M., had shown that it had a preconceived view on her guilt. She had been referred to numerous times in that judgment, with her full name and not by reference to her status as a witness in these proceedings. These references (see, in particular, paragraphs 7-9 above) had not been limited to a neutral and factual account of the circumstances leading to the conviction of G.S. She had been described at length as G.S.'s accomplice, without any reservations resulting from the fact that, at that time, she had not been charged with murder.

35. The applicant stressed that, in the judgment against G.S., the Regional Court had presented the findings concerning her guilt as definitive, without stating that the description of the facts concerned her presumed role in the offence or a suspicion against her. However, in those proceedings, the court only had to be convinced that the accused, G.S., who had been charged as a perpetrator acting alone, was guilty of murder. In the applicant's view, the Regional Court had deliberately formulated its conviction of the applicant's participation in a clear manner in order to signal to the prosecution authorities that it should charge her with murder. The prosecution itself had subsequently confirmed that the Regional Court had clearly expressed its view in that judgment that the applicant had participated in the offence.

36. The applicant further submitted that in the subsequent proceedings against her, judge M. had not put into perspective or clarified the references to her in the judgment against G.S. and thus had not addressed her reasons to doubt his impartiality in any way. She argued that the fact that the Regional Court, in the proceedings against her, had taken witness and expert evidence again and had not referred to the Regional Court's judgment against G.S., had simply been done in order to conduct the proceedings in line with the Code of Criminal Procedure and could not be interpreted as proof of judge M.'s impartiality.

(b) The Government

37. In the Government's view, there had been no violation of Article 6 § 1 as a result of the participation of judge M. in the trial against the applicant.

38. The Government submitted that German law contained sufficient provisions and procedures to secure the impartiality of judges. In particular, under Article 24 of the Code of Criminal Procedure (see paragraph 26 above), a challenge for fear of bias may be brought where – from the perspective of a reasonable accused – there is reason to doubt the impartiality of a judge.

39. In the present case, there was nothing to indicate that judge M. had been subjectively biased against the applicant. Moreover, there were no objectively justified doubts about judge M.'s impartiality in the circumstances of the case. The references to the applicant in the judgment against G.S. did not alter this finding. It had been indispensable for the Regional Court in these proceedings to make findings regarding the underlying facts in full, including the role and conduct of third persons such as the applicant, in order to be able to assess G.S.'s contribution to the offence, and his motives therefor, comprehensively. These findings manifestly did not entail any finding of guilt regarding the applicant. The latter had availed herself of her right not to testify in the proceedings against G.S. Consequently, her credibility did not have to be assessed in these proceedings.

40. Furthermore, judge M.'s impartiality had been demonstrated in the criminal proceedings against the applicant. The Government stressed that the fact that judge M. had himself submitted the case file to a chamber of the Regional Court for a decision on whether his participation as judge rapporteur in the previous proceedings against G.S. justified his being challenged for bias under Article 30 of the Code of Criminal Procedure (see paragraph 27 above) did not amount to a self-recusal. Following the query by the applicant's lawyer concerning his participation in the proceedings against G.S., he had been obliged to report these facts, but this did not mean that he had considered himself biased.

41. At the trial against the applicant, the Regional Court, with judge M. presiding, had taken fresh witness and expert evidence, including new evidence such as the testimony of G.S. and his sister. It had then proceeded to a completely new establishment of the facts, without any reference to the Regional Court's previous judgment in the proceedings against G.S. This had indeed resulted in different findings of fact in respect of a number of details.

2. The Court's assessment

(a) Relevant principles

(i) General principles on impartiality

42. The Court reiterates at the outset that it is of fundamental importance in a democratic society that the courts inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused. To

that end Article 6 requires a tribunal falling within its scope to be impartial (see *Padovani v. Italy*, 26 February 1993, § 27, Series A no. 257-B, and *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII).

43. In recent years, Council of Europe bodies have increasingly stressed the importance of strengthening the independence and impartiality, in accordance with Article 6 of the Convention, of the judiciaries in Europe, which is essential to ensure public confidence in the rule of law (compare, *inter alia*, Recommendation CM/Rec(2012)12 of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities, adopted by the Committee of Ministers on 17 November 2010, and the Council of Europe Plan of Action on strengthening judicial independence and impartiality, adopted by the Committee of Ministers at the 1253rd meeting of the Ministers' Deputies, on 13 April 2016, document CM(2016)36final).

44. Impartiality denotes the absence of prejudice or bias (see, *inter alia*, *Denisov v. Ukraine* [GC], no. 76639/11, § 61, 25 September 2018, and *Alexandru Marian Iancu v. Romania*, no. 60858/15, § 57, 4 February 2020). The existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, that is on the basis of the personal conviction and behaviour of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees which were sufficient to rule out any legitimate doubt in this respect (see, among many other authorities, *Ferrantelli and Santangelo v. Italy*, 7 August 1996, § 56, *Reports of Judgments and Decisions* 1996-III; *Kyprianou*, cited above, § 118; *Schwarzenberger v. Germany*, no. 75737/01, § 38, 10 August 2006; and *Poppe v. the Netherlands*, no. 32271/04, § 22, 24 March 2009).

45. In applying the subjective test the Court has consistently held that the personal impartiality of a judge must be presumed until there is proof to the contrary (see *Morel v. France*, no. 34130/96, § 41, ECHR 2000-VI; *Kyprianou*, cited above, § 119, and *Miminoshvili v. Russia*, no. 20197/03, § 113, 28 June 2011).

46. As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance (see *Kyprianou*, cited above, § 118, and *Kriegisch v. Germany* (dec.), no. 21698/06, 23 November 2010). When it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Morel*, cited above, § 42, and *Wettstein v. Switzerland*, no. 33958/96, § 44, ECHR 2000-XII).

(ii) Principles relating to impartiality in the context of a judge's participation in previous decisions on the same subject-matter

47. The Court reiterates that the mere fact that a trial judge has made previous decisions concerning the same offence cannot be held as in itself justifying fears as to his impartiality (see, *inter alia*, *Hauschildt v. Denmark*, 24 May 1989, § 50, Series A no. 154, and *Dragojević v. Croatia*, no. 68955/11, § 114, 15 January 2015, concerning pre-trial decisions, or *Thomann v. Switzerland*, 10 June 1996, §§ 32-37, *Reports* 1996-III, concerning the retrial of an accused convicted *in absentia*). Likewise, the mere fact that a judge has already ruled on similar but unrelated criminal charges or that he or she has already tried a co-accused in separate criminal proceedings is not in itself sufficient to cast doubt on that judge's impartiality in a subsequent case (see, *inter alia*, *Schwarzenberger*, cited above, § 42; *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 538 and 544, 25 July 2013; and *Bezek v. Germany* (dec.), nos. 4211/12 and 5850/12, § 32, 21 April 2015). The Court has previously accepted, in particular, that in complex criminal proceedings involving several persons who cannot be tried together, references by the trial court to the participation of third persons, who may later be tried separately, may be indispensable for the assessment of the guilt of those who are on trial (see *Bezek*, cited above, § 36).

48. However, an issue as to the judge's impartiality arises where the earlier judgment already contains a detailed assessment of the role of the person judged subsequently in an offence committed by several persons (compare *Ferrantelli and Santangelo*, cited above, § 59; *Rojas Morales v. Italy*, no. 39676/98, § 33, 16 November 2000; *Rudnichenko v. Ukraine*, no. 2775/07, § 116, 11 July 2013; and, *a contrario*, *Khodorkovskiy and Lebedev*, cited above, § 549) and, in particular, where the earlier judgment contains a specific qualification of the involvement of the applicant (see *Poppe*, cited above, § 28) or must be seen to have determined that the person judged subsequently fulfilled all the criteria necessary to have committed a criminal offence (compare *Kriegisch*, cited above, and *Miminoshvili*, cited above, §§ 116 and 118). In the circumstances of the specific case, such elements may be seen as prejudging the question of the guilt of the person on trial in the subsequent proceedings (compare *Poppe*, cited above, § 26; *Miminoshvili*, cited above, §§ 116 and 119; and *Khodorkovskiy and Lebedev*, cited above, §§ 544-547) and may thus lead to objectively justified doubts that the domestic court has a preconceived view on the merits of the case of the person judged subsequently at the outset of his or her trial. It emerges from the case-law cited above that objectively justified doubts were found to arise, in particular, where the domestic courts, over and above giving an account of the facts regarding the person judged subsequently, also made a legal assessment of the acts of that person.

49. In a number of cases the Court found that Article 6 § 1 had not been violated, in the absence of an assessment of the applicant's guilt in the earlier proceedings. In *Schwarzenberger*, cited above, in the judgment against the co-accused, the established facts about the applicant's involvement in the crimes were essentially based on the co-accused's submissions, and thus did not constitute the court's assessment of the applicant's guilt. In *Poppe*, cited above, the Court found it decisive that the applicant's name had been mentioned only in passing in the judgments against the co-accused and that the trial judges had not determined whether the applicant was guilty of having committed an offence. In *Miminoshvili* (cited above, §§ 117 et seq.) the Court analysed the judgment in the case concerning the co-accused and stressed that the applicant's name was never mentioned there in any incriminating context: the domestic court did not refer to the applicant as a "perpetrator" or "co-offender", in contrast to the situation in *Ferrantelli and Santangelo*, cited above. Information by several witnesses referring to the applicant was reproduced in the judgment. However, it was presented in the judgment as reported speech, and not as the court's own findings.

50. The Court further considered it a relevant element for assessing a domestic court's impartiality in a subsequent case that this court had shown that it had made a fresh consideration of the subsequent case (see *Schwarzenberger*, cited above, § 43; *Miminoshvili*, cited above, §§ 116 and 117; and *Bezek*, cited above, § 35). This applies when it appears from the judgment in the subsequent case that the final analysis of the applicant's case was carried out on the basis of the evidence produced and the arguments heard during the subsequent trial (compare *Morel*, cited above, § 45, and *Kriegisch*, cited above). The Court considered as an indicator in this respect that the judgment delivered in the subsequent case did not contain any references to the findings in the previous judgment against the other participant(s) in the offence combined with a reliance on these findings (compare, *inter alia*, *Kriegisch*, cited above; *Khodorkovskiy and Lebedev*, cited above, §§ 545 and 548; and *Bezek*, cited above, § 35, where there had been no reliance on the findings in the previous judgment; and, *a contrario*, *Ferrantelli and Santangelo*, cited above, § 59, where extracts of the previous judgment had been cited and the findings relied upon in the judgment in the subsequent case).

51. The Court further takes into account in its examination of a domestic court's impartiality whether the judge who participated in both sets of proceedings was a professional judge who could be considered more prepared than a lay judge or juror to disengage him-/herself from the experience and findings in the previous trial (see *Miminoshvili*, cited above, § 120; *Khodorkovskiy and Lebedev*, cited above, §§ 547 and 555; and *Bezek*, cited above, § 38).

52. The Court finally reiterates that the fact that an applicant was tried by a judge who him-/herself raised doubts about his/her impartiality in the case may raise an issue from the perspective of the appearance of a fair trial by an impartial tribunal (see *Rudnichenko*, cited above, § 118, and *Paixão Moreira Sá Fernandes v. Portugal*, no. 78108/14, § 87, 25 February 2020). However, this *per se* will not be sufficient to find a violation of Article 6 § 1 of the Convention. In any event, the applicant's misgivings about the impartiality of the judge must be objectively justified in the circumstances of the case (compare *Dragojević*, cited above, §§ 119-122; *Paixão Moreira Sá Fernandes*, cited above, § 87; *Alexandru Marian Iancu*, cited above, §§ 67-73; and *George-Laviniu Ghiurău v. Romania*, no. 15549/16, §§ 65-66 and 68, 16 June 2020).

(b) Application of these principles to the present case

53. In determining whether, in the present case, the Regional Court, with judge M. sitting on the bench, had been impartial as required by Article 6 § 1, the Court, having regard to the material before it, considers that there is nothing to indicate that judge M. acted with personal prejudice in the proceedings against the applicant. Consequently, the judge's personal impartiality must be presumed (subjective test).

54. The Court therefore needs to determine whether the participation of M. as judge rapporteur in the previous proceedings against G.S., in which the Regional Court had adopted a judgment containing numerous references to the applicant, led to an objectively justified fear that judge M. was not impartial (objective test).

55. The Court observes at the outset that the judge concerned by the applicant's fears for bias was a professional judge, who must be considered more trained, accustomed and prepared than a lay judge to disengage himself from the experience and findings in the previous trial against G.S.

56. Furthermore, the Court notes that in the proceedings against the applicant the Regional Court, presided by judge M., itself took witness and expert evidence (including new witnesses, namely G.S. and his sister) at a trial lasting for 23 days. In its judgment convicting the applicant, the court made fresh findings of fact and a legal analysis on this basis, without any references to and reliance on the findings in the judgment against G.S. The facts established differed in some details from those established in the judgment against G.S. (see paragraph 18 above).

57. The Court considers, however, that while these are important elements in the examination of the question of whether the Regional Court met the requirement of impartiality under Article 6 § 1 in the applicant's case, they do not exempt the Court from examining whether the judgment of the Regional Court against G.S. contained findings that actually prejudged the question of the applicant's guilt (compare *Rojas Morales*, cited above, §§ 33-34, and *Miminoshvili*, cited above, § 116).

58. In determining whether the judgment against G.S. contained such findings prejudging the applicant's guilt, the Court observes that the references to the applicant in that judgment, which speaks of "the accused and Salina Meng", show that the applicant was not formally on trial in these proceedings; her procedural status as a third party (witness) in these proceedings was therefore clear.

59. However, in the judgment against G.S. the applicant was not mentioned only in passing. That judgment contained extensive findings of fact also concerning the applicant. It stated, in particular, that "[t]hey" – that is, G.S. and the applicant – "...decided to kill [M.M.]" and that the applicant, following a "plan made jointly with the accused to kill [M.M.] in order to get hold of his assets", prepared the act as well as the acquisition of [M.M.]'s assets (see paragraph 7 above). It further assessed evidence taken at the trial also in respect of the applicant and found, in particular, that the fact that neither G.S. nor the applicant had asked about the cause of M.M.'s death could easily be explained in the circumstances "as they had committed the offence themselves or been involved in it" (see paragraph 8 above). Moreover, when legally classifying the killing of M.M. as murder, the Regional Court stated that "the reckless manner in which the accused and Salina Meng acted and by which they attempted, by the murder of [M.M.], to take over his business ... had to be particularly taken into account" (see paragraph 9 above).

60. The Court observes in this context that the Regional Court, in its judgment against G.S., presented its findings regarding the applicant as established facts and established legal qualification thereof, and not as mere suspicions. This was confirmed by the domestic courts themselves which had found this to have been necessary in order to establish comprehensively the relevant facts in respect of G.S. and to provide a full picture regarding the planning of, and motive for the offence (see paragraphs 14, 16 and 19- 22 above). The Federal Court of Justice, in particular, had confirmed that the Regional Court's indications in its judgment against G.S. – that it was firmly convinced that the applicant was a co-perpetrator in the offence – had been necessary to establish the basis for G.S.'s conviction (see paragraph 22 above).

61. The Court cannot but note that the judgment against G.S. contained a detailed assessment of the precise role played by the applicant in the violent death of M.M. going beyond a factual account of the circumstances of the crime. It can be regarded as having established that the criteria necessary for the act to constitute a criminal offence were also met in respect of the applicant. The judgment described in detail not only the premeditated killing of her husband and the manner in which the joint plan with G.S. was carried out, but also the base motives of the applicant herself for acting in that manner, namely that she wished to acquire M.M.'s assets in a reckless manner. The Regional Court can thereby be seen to have made a legal

assessment of the act also in respect of the applicant in that it found in substance that not only G.S., but also the applicant had acted out of greed and that the latter had thus participated in, and was equally guilty of, the murder of M.M. The Court cannot but note in that context that these findings and the assessment in respect of the applicant were made despite the fact that G.S. had been charged as a single perpetrator who was found to have acted alone at the crime scene and that the legal assessment of the applicant's acts appears to go beyond what was necessary to legally qualify G.S.'s offence.

62. The applicant's doubts that the Regional Court, including judge M., may already have reached a preconceived view on the merits of the applicant's case in the judgment against G.S., prior to the applicant's own trial, were also confirmed by the prosecution's assessment after that judgment. The prosecution stated that "the judges of the Darmstadt Regional Court had clearly expressed their conviction – shared by the prosecution – that the applicant had incited G.S. to kill her husband" (see paragraph 10 above).

63. Having regard to all the circumstances of the case, the Court concludes that the applicant had a legitimate fear that judge M., in the light of the wording of the judgment against G.S., had already reached a preconceived view on her guilt. Therefore, the applicant's doubts as to the impartiality of the Regional Court in the present case were objectively justified.

64. The Court further recalls that a higher or the highest court might, in some circumstances, make reparation for defects that took place in the first-instance proceedings (see *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86, and *Kyprianou*, cited above, § 134). However, the Federal Court of Justice, which had the power to quash the Regional Court's judgment on the ground that the Regional Court had not been impartial, upheld the applicant's conviction and sentence. Consequently, the higher court did not remedy the defect in question.

65. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

67. The applicant did not submit any claims for just satisfaction under Article 41 of the Convention. The Court therefore does not make an award in this respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 16 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Paul Lemmens
Registrar	President