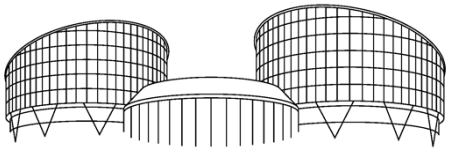

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

This version was rectified on 26 January 2021
under Rule 81 of the Rules of Court.

CASE OF KREBS v. GERMANY

(Application no. 68556/13)

JUDGMENT

Art 6 § 2 • Presumption of innocence • Court's refusal to suspend sentence on probation, motivated by unambiguous declaration of applicant's guilt in respect of further offences that are the subject of separate proceedings pending before another court • Applicant's choice not to comment on further separate charges • Observance of due process not capable of rebutting a violation of the presumption of innocence

STRASBOURG

20 February 2020

FINAL

20/06/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Krebs v. Germany,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Lətif Hüseynov,
Anja Seibert-Fohr, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 14 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 68556/13) 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, Mr Reiner Krebs ("the applicant"), on 15 October 2013.

2. The applicant was represented by Mr Tegebauer, a lawyer practising in Trier. The German Government ("the Government") were represented by one of their Agents, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

3. The applicant alleged a breach of Article 6 §§ 1 and 2 of the Convention because, when assessing evidence in relation to sentencing following his first conviction, the criminal court's statements in respect of further offences of fraud of which he had been charged but in relation to which separate criminal proceedings were pending had violated the presumption of innocence.

4. On 6 October 2017 the Government were given notice of the complaint concerning Article 6 §§ 1 and 2 of the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979.

6. On 9 August 2010 the Weiden District Court convicted the applicant of twenty-five counts of fraud in conjunction with twenty-two counts of forgery of data. The applicant was found to have ordered documents and

services via the Internet under a false name and given another person's bank account details for payment.

7. He was sentenced to a global sentence (*Gesamtstrafe*) of ten months' imprisonment, comprising individual sentences for the twenty-five counts of fraud. The sentence was not suspended on probation because the prognosis regarding the likelihood of the applicant reoffending was unfavourable. It was considered of relevance that the applicant had been convicted of similar offences in the past and had committed the fraud and forgery while being on probation as a result of a previous conviction. The applicant and the public prosecutor appealed and subsequently limited the scope of their appeals to the sentence.

8. In February and April 2011 new criminal proceedings against the applicant were instituted after several other persons and organisations filed criminal complaints alleging fraudulent behaviour.

9. On 17 June 2011 the police searched the applicant's house and seized evidence regarding the new accusations.

10. On 7 and 21 June 2011 the Weiden Regional Court held oral hearings in the appeal proceedings. It also heard witness testimony from police officer P., who was in charge of the new criminal investigations (see paragraph 8 above). P. reported on the new accusations, indicating in particular that items had been seized from the applicant's apartment during the house search, which had been ordered online using a fake identity. When questioned during the court hearing, the applicant did not comment on the new accusations, but stated via his lawyer that he was not able to remember anything.

11. On 21 June 2011 the Regional Court dismissed the appeals. When assessing the evidence in relation to sentencing following his first conviction for fraud and forgery, the Regional Court found:

> "The appellate court has also no doubt that the accused committed further offences of fraud after his conviction by the first-instance court on 9 August 2010. This follows from the credible witness testimony given by [police officer] P., who is conducting further criminal investigations against the accused.
>
> ...
>
> The appellate court has no doubt that the accused is responsible for these further offences. There is no doubt about witness P.'s credibility. The witness has testified objectively and without any eagerness to incriminate [the accused]. There are no indications that the results of the criminal investigations are not correct.
>
> ...
>
> Since the items, which had been ordered by the fraudulent use of another person's bank account, were delivered to the applicant ['s property] and seized there, it has been proven that the accused is once more guilty of several offences of fraud."
>
> ["Für die Berufungskammer besteht auch kein Zweifel daran, dass der Angeklagte seit der Verurteilung durch das Erstgericht am 09.08.2010 sich weiterer Vergehen des

Betrugs schuldig gemacht hat. Dies folgt aus den glaubwürdigen Bekundungen des Zeugen P., der weitere Ermittlungen gegen den Angeklagten führt.

...

Für die Berufungskammer besteht kein Zweifel daran, dass der Angeklagte für diese weiteren Straftaten verantwortlich ist. An der Glaubwürdigkeit des Zeugen P. besteht kein Zweifel. Der Zeuge hat sachlich und ohne jeglichen Belastungseifer ausgesagt. Es gibt keinen Hinweis dafür, dass seine Ermittlungsergebnisse nicht zutreffend wären.

...

Da die Waren, die unter missbräuchlicher Verwendung eines fremden Kontos bestellt wurden, an den Angeklagten geliefert und dort sichergestellt wurden, ist der Beweis geführt, dass der Angeklagte sich erneut mehrerer Vergehen des Betrugs schuldig gemacht hat."]

12. With regard to the sentence of ten months' imprisonment, the Regional Court found that it could not be suspended on probation because of the unfavourable prognosis for the likelihood of the applicant reoffending. Even though the applicant's psychotherapist had presented an opinion in favour of the applicant, the court found in that context that:

"The taking of evidence has, however, shown that the applicant, while undergoing psychotherapy and despite the forthcoming appeal hearing, reoffended. This behaviour shows a high degree of obstinacy."

[„Die Beweisaufnahme der Berufungshauptverhandlung hat jedoch ergeben, dass der Angeklagte noch während seiner psychotherapeutischen Behandlung und trotz der bevorstehenden Berufungshauptverhandlung sich erneut straffällig gemacht hat. Gerade dieses Verhalten zeigt ein hohes Maß an Unbelehrbarkeit."]

13. The applicant appealed on points of law. He argued that the Regional Court's statements were in breach of the presumption of innocence because he had denied having committed the further offences, of which he had not been convicted in a final judgment. In reply, the public prosecutor argued that pursuant to domestic law a tribunal could take into account further offences committed by an accused after he had been charged with the initial offences if it had heard evidence in relation to the further offences in the hearing and if it was convinced that the accused had committed those further offences. Thus, it was legitimate for the Regional Court to have taken account of the applicant's further offences when deciding whether to suspend his prison sentence.

14. On 11 January 2012 the Nuremberg Court of Appeal, endorsing the arguments put forward by the public prosecutor, dismissed the appeal on points of law as ill-founded and the sentence became final.

15. On 31 January 2012 the Court of Appeal dismissed a subsequent complaint by the applicant regarding a breach of his right to be heard.

16. On 20 February 2012 the applicant was formally indicted for further offences of fraud.

17. On 16 August 2012 the Weiden District Court convicted the applicant of, *inter alia*, ten counts of fraud in conjunction with five counts of forgery of data. The conviction included the further offences that had been the subject of the Regional Court's sentencing assessment and in relation to which the Regional Court had made the statements reproduced in paragraphs 11 and 12 above. The applicant had confessed to those further offences after the District Court had heard witness testimony.

18. The applicant was sentenced to a global sentence of one year and six months' imprisonment. The global sentence included the individual sentences for the ten counts of fraud and also incorporated the twenty-five separate sentences which had been imposed by the Weiden District Court on 9 August 2010 and confirmed by the Weiden Regional Court on 21 June 2011 (see paragraphs 7 and 11-12, respectively). The District Court did not suspend the global sentence on probation because the prognosis for the prospect of the applicant reoffending was unfavourable in the light of his criminal record.

19. On 18 December 2012 the District Court's judgment became final as the applicant withdrew his appeal.

20. On 31 July 2013 the Federal Constitutional Court, without giving reasons, declined to consider a constitutional complaint lodged by the applicant against the initial global sentence of ten months' imprisonment (2 BvR 333/12).

II. RELEVANT DOMESTIC LAW AND PRATICE

A. Relevant provisions of the Criminal Code

21. Articles 53 to 55 of the Criminal Code concern the fixing of a global sentence when individual sentences have been imposed for different offences or counts of offences that are the subject of the same or previous convictions. A tribunal has to fix a global sentence by increasing the most severe individual sentence. However, the global sentence must be less than the sum of the individual sentences. In finding an appropriate global sentence, there will be a global assessment of the offender's personality and the individual offences.

22. When fixing a global sentence by also including previous convictions, the competent court must assess afresh, in accordance with Article 56 § 1 of the Criminal Code, whether a global sentence can be suspended on probation. That provision stipulates the conditions for suspension on probation and reads, in so far as relevant, as follows:

Article 56
Conditions for suspension

"(1) If a person is sentenced to a term of imprisonment not exceeding one year, the court shall suspend the enforcement of the sentence for a probationary period if there are reasons to believe that the sentence will serve as sufficient warning to the convicted person and that he will commit no further offences without having to serve the sentence. The court shall particularly take into account the character of the convicted person, his previous history, the circumstances of his offence, his conduct after the offence, his circumstances and the effects to be expected from the suspension.

(2) The court may also suspend the enforcement of a longer term of imprisonment which does not exceed two years under the conditions set out in paragraph 1, if a comprehensive evaluation of the offence and character of the convicted person reveals the existence of special circumstances. In such a decision, the efforts of the convicted person to make restitution for the harm caused by the offence should be taken into particular consideration.

(3) ..."

23. When a previous global sentence becomes part of a new global sentence, the previous one becomes obsolete.

B. The case-law of the Federal Court of Justice

24. In a decision dated 10 May 2017 (file no. 2 StR 117/17), the Federal Court of Justice confirmed its case-law on the requirements to be met in order to take into account charges in pending criminal proceedings in which there had not yet been a final decision. It found that a tribunal, when deciding on the suspension of a prison sentence, could not take into account such charges to the detriment of the accused unless it had made its own findings on the validity of those accusations, observing the principles of due process.

25. Having regard to the presumption of innocence, a state of suspicion in respect of such charges may never be taken into account to the detriment of the accused.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

26. The applicant complained that, when assessing evidence in relation to sentencing following his first conviction, the Regional Court's statements in respect of further offences of fraud of which he had been charged but in relation to which separate criminal proceedings were pending had violated the presumption of innocence. He relied on Article 6 §§ 1 and 2 of the Convention. The Court observes that paragraph 2 of Article 6 is one of the elements of a fair trial that is required by paragraph 1 (see *Böhmer*

v. Germany, no. 37568/97, § 53, 3 October 2002). The Court, being the master of the characterisation to be given in law to the facts of the case (see, for example, *Wetjen and Others v. Germany,* nos. 68125/14 and 72204/14, § 44, 22 March 2018), finds it appropriate to examine this complaint by focusing on Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

1. Charged with a criminal offence

27. The Government argued that Article 6 § 2 of the Convention was not applicable because the applicant had not been charged before the Regional Court with the further offences. Criminal investigations concerning the further offences had been conducted separately and the Regional Court had not had to adjudicate on those charges. It was solely in the context of the sentencing process that it had to determine the prospects of the applicant reoffending, but there had been no binding decision on his criminal liability.

28. The applicant maintained that the parallel criminal investigation made him a person charged with a criminal offence within the autonomous meaning of this notion in the Convention.

29. As to the period of time during which the presumption of innocence is applicable, the Court reiterates that Article 6 § 2 applies to everyone "charged with a criminal offence" within the autonomous meaning of this notion in the Convention, that is, as of the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence (see *Bikas v. Germany*, no. 76607/13, § 30, 25 January 2018) or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, §§ 110-111, 12 May 2017 and the case-law cited therein).

30. The Court agrees with the Government that the proceedings before the Regional Court did not involve the determination of a criminal charge in respect of the further offences within the autonomous meaning of this notion in the Court's case-law (see *Allen v. the United Kingdom* [GC], no. 25424/09, §§ 95-96, ECHR 2013). The Regional Court had no jurisdiction to convict the applicant of the further offences. Following the termination of the criminal investigation, these charges had to be and were brought before the competent District Court in separate criminal proceedings (see paragraph 17 above).

31. However, in keeping with the need to ensure that the right guaranteed by Article 6 § 2 of the Convention is practical and effective, the presumption of innocence does not only apply in the context of criminal

proceedings where the criminal tribunal was competent to adjudicate the charges. This provision is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings (see *Mokhov v. Russia*, no. 28245/04, § 28, 4 March 2010, and *Karaman v. Germany*, no. 17103/10, § 41, 27 February 2014).

32. Statements made by public officials, including courts, which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority will come within the scope of Article 6 § 2 of the Convention when the applicant can demonstrate the existence of a link (see, *mutatis mutandis*, *Allen*, cited above, § 104, and *Karaman*, cited above, § 41).

33. In the context of simultaneously pending criminal proceedings, Article 6 § 2 applies where a court decision, rendered in proceedings that have not been directed against the applicant in his capacity as "the accused" but which nevertheless concern him and have a link with criminal proceedings simultaneously pending against him, may imply a premature assessment of his guilt (see *El Kaada v. Germany*, no. 2130/10, § 37, 12 November 2015, and *Karaman*, cited above, § 41).

34. Turning to circumstances of the present case, the Court notes that it was not disputed between the parties that separate criminal proceedings, including a house search, were ongoing. These separate criminal proceedings were instituted following allegations of further fraudulent behaviour and the Regional Court referred to these further charges in the sentencing process (see paragraphs 8-12 above).

35. In the impugned statements, the Regional Court clearly made an assessment of the facts and accusations which were later to be presented for assessment before the then competent Weiden District Court (see paragraph 17 above).

36. The Court concludes therefore that a link existed between the sentencing proceedings before the Regional Court following the first conviction for fraud and forgery and the simultaneously pending criminal proceedings in which the applicant had been charged with the further offences of fraud, albeit he had not yet been formally indicted (see paragraphs 8-9 and 16 above). Thus, the criminal proceedings before the Regional Court fell within the scope of Article 6 § 2 of the Convention. The Government's objection on that point must therefore be dismissed.

2. Victim status

37. In the Government's view, the applicant could not or could no longer claim to be a victim within the meaning of Article 34 of the Convention of a violation of the presumption of innocence. The global sentence determined by the Regional Court on 21 June 2011 was never enforced and ultimately became obsolete when the new global sentence of 16 August 2012 was imposed by the District Court (see paragraphs 18 and 23 above).

38. The applicant contested this view and maintained that it was immaterial that the initial global sentence had become obsolete.

39. The Court notes that it has no bearing on the applicant's victim status that the initial global sentence has not been enforced. It is not the prison sentence, but the Regional Court's premature assessment of his guilt in relation to charges the subject of pending criminal proceedings that may give rise to a violation. The applicant's eventual conviction of the further offences together with the imposition of a new global sentence did not remedy the infringement of his right to be presumed innocent until proved guilty according to law in the criminal proceedings later tried by the Weiden District Court (see, *mutatis mutandis*, *Matijašević v. Serbia*, no. 23037/04, § 49, ECHR 2006-X, and *Böhmer, cited above,* § 68). The Court concludes therefore that the applicant can claim to be a victim of a possible breach of the presumption of innocence.

3. Conclusion

40. The Court considers that the application is not manifestly ill‑founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

41. The applicant maintained that the Regional Court had assumed the role of the competent criminal court in respect of the further offences in breach of the presumption of innocence. The impugned statements in the judgment of 21 June 2011 reflected the Regional Court's opinion that the applicant was guilty of also having committed the further offences. It was immaterial whether the applicant had also been afforded proceedings in accordance with the rule of law in respect of these further offences.

42. The Government contested the applicant's argument. The Regional Court had not made a binding decision on the applicant's criminal liability in relation to the further offences and the offences had been just one of several criteria in the assessment of the risk of reoffending. The present case was also different to the circumstances of *Böhmer* (cited above) in which the Court has previously found a violation because a revocation of a suspended sentence had not been at issue, but the Regional Court had had to take the initial decision on the suspension of a sentence. They also pointed out that mere suspicion in respect of the further offences did not suffice for the analysis of the likelihood that the applicant would reoffend. The Regional Court could only take into account the accusations made in the simultaneously pending criminal proceedings because it had reached its own

findings on the validity of those accusations. It had therefore in compliance with the rules of procedure established all relevant facts in order to be able to conclude that the applicant had committed the further offences. The applicant had also been afforded by the Regional Court all the rights that he would have had as a defendant in the main criminal proceedings before the District Court concerning those further offences. The applicant, assisted by a defence counsel, was in particular given the opportunity to question police officer P. during the hearings.

2. The Court's assessment

(a) General principles

43. Once it has been established that there was a link between simultaneously pending criminal proceedings (see paragraph 36 above), the Court must determine whether the assessment and statements of the Regional Court respected the presumption of innocence (see *Allen*, cited above, § 119).

44. The Court reiterates that, in order to ascertain the circumstances in which Article 6 § 2 of the Convention will be violated, much will depend on the nature and context of the proceedings in which the impugned decision was adopted (see *Karaman*, cited above, § 63 which concerns premature statements and, more generally, *Allen*, cited above, § 125).

45. Nevertheless, it is apparent from the Court's case-law that the language used by the domestic courts is of critical importance (see *Müller v. Germany*, no. 54963/08, § 46, 27 March 2014 which concerns a decision to suspend the execution of a sentence for early release and, more generally, *Allen*, cited above, § 126).

46. Having regard to the aim of Article 6 § 2 of the Convention, that is the prevention of the undermining of a fair criminal trial by premature statements being made in close connection with those proceedings by public officials other than the competent criminal tribunal, particular regard must be had, as indicated previously, to the nature and context of the particular proceedings (see *Karaman*, cited above, § 63; *N.A. v. Norway*, no. 27473/11, §§ 41-49, 18 December; *Reeves v. Norway* (dec.), no. 4248/02, 8 July 2004; and *Ringvold v. Norway*, no. 34964/97, § 38, ECHR 2003 II). This does not only apply to cases of unfortunate language *(*see *Allen*, cited above, § 126), but also in cases where the impugned statements clearly cast doubt on the applicant's innocence, even though he had not been proved guilty (see, *mutandis mutatis*, *Bikas v. Germany*, no. 76607/13, §§ 51 and 52, 25 January 2018).

47. In the context of premature statements, the Court has found a violation of Article 6 § 2 of the Convention in cases in which a tribunal took into account separate offences as aggravating circumstances in the sentencing process (*Kangers v. Latvia*, no. 35726/10, §§ 55-62, 14 March

2019, and *Hajnal v. Serbia*, no. 36937/06, §§ 129-131, 19 June 2012). In *Kangers*, the Court has recognised that presumptions of fact or of law operate in every legal system and that the Convention does not prohibit them in principle. However, it has required States to confine them within reasonable limits which took into account the importance of what was at stake and maintained the rights of the defence (*Kangers*, cited above, § 56).

48. In contrast, the Court has not found a violation in *Bikas* (cited above, § 48) because of the specific circumstances of that case. At issue was the assessment of evidence in accordance with the particularities of serial offences in the field of sexual abuse and all charges had initially been pending before the adjudicating tribunal. Thus, the tribunal had also been the competent trial court in respect of the further charges. Furthermore, the criminal proceedings in respect of the further charges had been discontinued during the same trial where the impugned statements had subsequently been made.

49. Having regard to the nature and context of the proceedings, the Court has in particular analysed whether an impugned statement was explicit and comprehensive in respect of the applicant's criminal guilt (see *Lagardère v. France*, no. 18851/07, §§ 85-87, 12 April 2012) or whether a tribunal had limited itself to assess only certain elements of a penal provision (see *N.A. v. Norway*, cited above, §§ 42-49).

50. In cases concerning the revocation of a suspension of a sentence, there was no breach of the presumption of innocence when a tribunal did not make its own findings about the applicant's guilt but based its decision either solely upon the applicant's admission of guilt (see *G.S. v. Germany*, no. 15871/89, Commission decision of 9 October 1991, unreported, and contrast *El Kaada*, cited above, § 59, where the applicant withdrew his initial confession) or in a case concerning a decision to suspend the execution of a sentence for early release, when the findings were a direct quote from an expert report (see *Müller*, cited above, § 52).

51. Most important, the Court has previously found a violation where the domestic law for the revocation of the suspension of a prison sentence expressly required the courts to base their assessment on a finding that the person had committed further offences (see *Böhmer*, cited above, §§ 63 and 64). Similarly, it found a violation where the termination of criminal proceedings presupposed that the commission of an imputed act was an undisputed fact (see *Virabyan v. Armenia*, no. 40094/05, § 191, 2 October 2012). In contrast, the Court did not find a violation in a case where the execution of sentence chamber was not required to establish that the applicant had committed a further criminal offence but the impugned statements were part of an overall prognosis (*Müller*, cited above, §§ 50 and 53).

(b) Application of those principles to the present case

52. Turning first to the language used by the Regional Court, which is the starting point in assessing the compatibility of an impugned statement with Article 6 § 2 of the Convention, the Court observes that the judgment of 21 June 2011 contained statements to the effect that the applicant "had committed further offences of fraud", that it had been proven that the applicant "is once more guilty of several offences of fraud" and that despite the forthcoming appeal hearing he "had reoffended" (see the text reproduced and summarised in paragraphs 11 and 12 above).

53. The Court finds that these statements, viewed in isolation, indicate that the Regional Court found the applicant guilty of having committed further offences of fraud. They are not ambiguous. It is uncontested (see paragraph 42 above) that the Regional Court did not limit itself to describing a state of suspicion (see *Cleve v. Germany*, no. 48144/09, § 53, 15 January 2015).

54. In this context, the Court observes that the statements did not contain any explicit reservation clarifying that the further fraudulent behaviour of the applicant was still being examined in a separate set of criminal proceedings (*mutatis mutandis*, *M.M. v. Germany* (dec.), no. 23091/93, Commission decision of 30 November 1993, unreported).

55. In determining whether the impugned statements amounted to a breach of the presumption of innocence, the Court will in a second step examine the nature and context of the proceedings in which the statements were made.

56. The Court does not share the Government's view that the present case is similar to *Müller* (cited above, § 53, in which the Court found no violation). As stated previously, the impugned statements in the present case were unambiguous (see paragraph 53 above) and did not limit themselves to a prognosis of the likelihood of the applicant reoffending or an assessment of "his conduct after the offence" the subject of the sentencing assessment.

57. The Court finds that the Regional Court made a comprehensive statement about the applicant's criminal guilt concerning the further offences the subject of pending criminal proceedings (see *Böhmer*, cited above, §§ 63 and 65, and *Lagardère*, cited above, §§ 85-87). It did not limit itself to assessing certain elements of a penal provision in the context of proceedings concerning a civil compensation claim (contrast *N.A. v. Norway*, cited above, § 49) or solely rely on the applicant's admission of guilt (see *G.S. v. Germany*, cited above, and *Müller*, cited above, § 52, concerning quotations from an expert report).

58. Rather, in circumstances where the applicant had chosen not to comment on the new investigations and allegations, the Regional Court assumed the role of a criminal trial court in respect of these further offences and heard witness testimony from police officer P. (see paragraph 10 above)

before reaching its unambigious conclusion on the commission of the further criminal offences of which he was suspected.

59. Finally, the Court notes the Government's argument that the rules of criminal procedure were applied by the Regional Court in the present case and that the applicant had been afforded all the procedural rights that he would have had as a defendant in the main criminal proceedings concerning the further offences (see paragraph 42 above). However, the observance of due process in proceedings before a tribunal which is not competent to adjudicate the further offences at issue cannot rebut a violation of the presumption of innocence (see *Böhmer*, cited above, § 67, and contrast with the specific circumstances in *Bikas,* cited above, § 53, where the tribunal was also competent to adjudicate the other charges).

60. The foregoing considerations are sufficient to enable the Court to conclude that the Regional Court's statements to the effect that the applicant was guilty of having committed further offences were contrary to the presumption of innocence with respect to the pending criminal proceedings as regards those further offences. There has accordingly been a violation of Article 6 § 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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."

A. Damage

62. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He argued that he had suffered distress and frustration caused by the violation of the right to be presumed innocent until proven guilty.

63. The Government argued that the applicant had not suffered any physical or mental distress as a result of the Regional Court's judgment. The initial global sentence, which was not suspended on probation, had never been enforced, but had later become null and void. Moreover, the applicant had known that he had committed the further offences as he had confessed to them in the subsequent proceedings before the Weiden District Court.

64. Having regard to all the circumstances of the case, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicant also claimed EUR 3,570 for the costs and expenses incurred before the Court. According to the invoice issued by his lawyer, the amount was calculated on the basis of twenty hours of work at a net rate of EUR 150 per hour plus value-added tax.

66. The Government contested the claim. They considered twenty hours excessive and pointed out that no supporting documents showing an agreement for an hourly fee of EUR 150 had been submitted.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,570 (including VAT) covering costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

68. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,570 (three thousand five hundred and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 20 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Síofra O'Leary
President