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EGMR Nr. 26771/03 - Urteil vom 12. Juni 2008 (Elezi vs. Deutschland)

Recht auf ein faires Verfahren (Unabhängigkeit und Unparteilichkeit von Laienrichtern: Besorgnis der Befangenheit bei Aktenkenntnis von Schöffen, Mitteilung des wesentlichen Ergebnisses der Ermittlungen; Selbstleseverfahren).

Art. 6 Abs. 1 Satz 1 EMRK; § 249 Abs. 2 StPO; § 24 Abs. 2 StPO; § 200 Abs. 2 StPO; Nr. 126 Abs. 3 RiStBV

Leitsätze des Bearbeiters

1. Individuelle Zweifel an der Unparteilichkeit eines (Laien-)Richters im Sinne des Art. 6 Abs. 1 Satz 1 EMRK sind nur begründet, wenn sie objektiv berechtigt sind. Allerdings ist der Standpunkt desjenigen gebührend zu berücksichtigen, der die Unparteilichkeit bezweifelt. Für die Berechtigung der Zweifel ist insbesondere entscheidend, ob ein gerühtes Verhalten zum Nachteil des Angeklagten rechtswidrig war oder eine grundlegende Abkehr von der ständigen Praxis im nationalen Strafverfahren zulasten des Angeklagten darstellt.

2. Nicht jeder Verstoß gegen Nr. 126 Abs. 3 RiStBV begründet berechtigte Zweifel im Sinne des Art. 6 Abs. 1 Satz 1 EMRK. Dies gilt jedenfalls dann, wenn den Laienrichtern die Kenntnis des wesentlichen Ergebnisses der Ermittlungen in einem Verfahren gegen einen anderen Angeklagten eingeräumt worden ist, um ein Geständnis dieses Angeklagten zu erläutern.

3. Der Umstand, dass ein Richter den Inhalt der Verfahrensakten im Einzelnen kennt, begründet allein noch nicht die Annahme, er sei bei der Entscheidung über das Verfahren voreingenommen.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in Berlin. 1

A. The investigation proceedings

7. On 31 August 1999 the applicant was arrested and placed in pre-trial detention on suspicion of having participated in smuggling Yugoslavian nationals into Germany. 2

8. In the first part of its bill of indictment dated 11 May 2000 (running to a total of 641 pages), the Berlin Public Prosecutor's Office set out the charges (Anklagesatz, compare Article 200 § 1, first sentence, of the Code of Criminal Procedure in paragraph 27 below) against the applicant and five co-defendants, including his sister (pp. 1-81). It accused the defendants of numerous counts of human trafficking, committed between 1997 and 1999 in exchange for money and as members of a gang. In addition to that, the applicant and his sister were charged with planning a robbery. 3

9. In the part of the indictment setting out the essential results of the investigations (wesentliches Ergebnis der Ermittlungen, compare Article 200 § 2, first sentence, of the Code of Criminal Procedure in paragraph 28 below), the prosecution set out in detail the exact course of events for each charge of human trafficking and summarised the testimonies of the witnesses and the contents of the intercepted telecommunications which were to prove the charges (pp. 253-636 of the indictment). It took the view, inter alia, that the applicant had concluded a fictitious contract of employment with his sister in order to pretend to have a legal income to support his family. Moreover, it stated that it would have to be taken into consideration as an aggravating factor when sentencing the applicant that he had involved his young children in his criminal activities. 4

B. The proceedings before the Berlin Regional Court

10. On 30 October 2000 the Berlin Regional Court opened the trial against the applicant and four co-defendants, including his sister. The court, sitting as a grand criminal division (große Strafkammer), was composed of three professional judges and two lay judges. One substitute professional judge and two substitute lay judges also attended the hearings. The prosecution read out the charges against the applicant and his co-defendants at this hearing (see Article 243 § 3 of the Code of Criminal Procedure in paragraph 33 below). 5

11. On 4 December 2000 the Regional Court, following her confession, separated the proceedings against the applicant's sister from those against the applicant. The hearings in both sets of proceedings continued to be conducted by the same professional and lay judges. 6

12. On 5 February 2001, in the course of the separated proceedings against the applicant's sister, the lay judges and their substitutes were informed of the essential results of the prosecution's investigations against all (six) defendants by being given a copy of this part of the indictment which they were to read outside the main hearing. The professional judges of the Regional Court had considered it necessary to inform the lay judges of the contents of the essential results of the investigations as the applicant's sister had stated that she generally confessed to the offences described therein, including their manner of execution, without, however, being willing to make any further, more detailed statement. The Regional Court subsequently convicted the applicant's sister according to the confession she had made of numerous offences of human trafficking in exchange for money and as a member of a gang. 7

13. On 8 February 2001 the Regional Court informed the applicant in the course of his hearing (the fifteenth hearing before that court in his case) that the lay judges had been given copies of the part of the bill of indictment containing the essential results of the investigations in the proceedings against his sister. The applicant thereupon lodged a motion for bias against the two lay judges and their two substitutes. He argued that the lay judges could no longer follow the trial without prejudice after having taken note of the entire pre-assessment of the evidence by the prosecution. Pursuant to Article 126 § 3 of the Directives for Criminal Proceedings and Proceedings concerning Regulatory Offences (see paragraph 32 below) it was expressly prohibited to disclose the essential results of the investigations to lay judges. 8

14. On 19 February 2001 the four lay judges thereupon made a separate formal declaration in writing in identical terms. They stated that in the proceedings against the applicant's sister, the latter had confessed that the accusations against her as set out in the prosecution's essential results of the investigations were well-founded. The applicant's sister, represented by counsel, had agreed that the lay judges were informed of the contents of these results by being provided with a copy of this part of the indictment, which they had read. 9

15. The lay judges further explained that prior to being given a copy of this document, the president of the chamber had informed them that, as a rule, this part of the indictment was not disclosed to lay judges as it contained the prosecution's view at the end of the investigation proceedings and was not to be confused with the taking of evidence in the main hearing. Moreover, the president had pointed out to them that the proceedings against the applicant and those against his sister had to be assessed separately. They were aware of this, able to distinguish between the taking of evidence in both sets of proceedings and knew that the essential results of the investigations, of which they had taken note in the proceedings against the applicant's sister, were not relevant for the taking of evidence in the proceedings at issue. Consequently, they were not biased against the applicant. They further stated that the submissions in writing were their personal declarations. 10

16. On 19 February 2001 the three professional judges of the Regional Court dismissed the applicant's motion for bias as ill-founded. They argued that, assessing the case in a reasonable manner, there were no grounds to doubt the lay judges' impartiality (compare Articles 24 § 2 and 31 of the Code of Criminal Procedure in paragraph 30 below). Having regard to the diverging views taken by the criminal courts and by legal writers on the question as to whether lay judges could be provided with the essential results of the investigations (see paragraph 35 below), they took the view that Article 249 § 2 of the Code of Criminal Procedure (see paragraph 34 below) presupposed that lay judges took note of the contents of the case file. As the lay judges had explained in their declarations made following the applicant's complaints of bias, they were aware, due to the explanations given by the professional judges, that the copy of the part of the bill of indictment containing the essential results of the investigations expressed the view taken by the prosecution. The lay judges understood that this document was not to be confused with the results of the main hearing, on which alone the judgment should later be based. Therefore, the defendant had no reason to fear that the lay judges could consider their reading of the document in question part of the proceedings against him. 11

17. On 26 February 2001 the applicant lodged a complaint of bias against the three professional judges. He argued that they had failed to take account of his fears that the lay judges were no longer impartial and that the presiding judge had formulated the written declarations made by the lay judges. The court dismissed this complaint as inadmissible on the 12

same day, arguing that it was in substance an appeal against the decision of 19 February 2001 against which however no appeal lay to the Regional Court.

18. In a total of forty-two hearings, the Regional Court read out numerous minutes of tape recordings of intercepted telecommunications, which had been made in Albanian and translated into German, and heard many witnesses, some of whom had been named by the applicant, as well as two experts on the question of his mental condition. 13

19. On 8 October 2001 the Berlin Regional Court, while acquitting him of having planned a robbery, convicted the applicant, inter alia, of human trafficking, acting on a commercial basis and as a member of a gang, and sentenced him to four years and six months' imprisonment. It found that the applicant had been party to numerous offences of human trafficking by storing and handing over passports belonging to the persons smuggled into Germany by other gang members. It based its findings on the submissions of the applicant, who had admitted having stored and handed over passports in cooperation with his sister. Moreover, the court considered the testimony of a police officer who had reported on the results of the interception of the telephone conversations made from the applicant's phone and that of the café he ran with his sister. Furthermore, a witness who had been smuggled into Germany had testified that he had picked up his passport at the applicant's café. When searching his home, the police had found 450 Yugoslavian passports. In fixing the sentence, the Regional Court considered as a mitigating factor that the applicant had acted also with the intention of helping his fellow countrymen who had become refugees following the ethnic persecution of residents of Albanian origin in Kosovo. 14

20. The applicant was released from prison the same day. 15

C. The proceedings before the Federal Court of Justice

21. On 29 January 2002 the applicant lodged an appeal on points of law. He claimed that the lay judges adjudicating on his case had been biased. He submitted that Article 249 § 2 of the Code of Criminal Procedure only allowed documents serving as evidence to be brought to the notice of lay judges. However, the essential results of the investigations were not such documents within the meaning of that Article. Pursuant to Article 126 § 3 of the Directives for Criminal Proceedings and Proceedings concerning Regulatory Offences, it was expressly prohibited to allow lay judges to take note of this part of the indictment. The fact that it was impossible for the lay judges to distinguish between the proceedings against the applicant and those against his sister was illustrated by the fact that even in the judgment drafted by the professional judges the two separate proceedings had been confused (by referring to the wrong person as being the defendant). 16

22. Moreover, the applicant claimed that the Regional Court had not fulfilled its duty to investigate the matter. In particular, it had not played the recorded telephone conversations in the main hearing and had merely questioned a police officer on their contents instead. In addition, the Regional Court had failed to take into consideration relevant submissions of an expert on the cultural background and situation in Kosovo. 17

23. On 26 November 2002 the Federal Court of Justice, without giving further reasons, dismissed the applicant's appeal on points of law as ill-founded. 18

D. The proceedings before the Federal Constitutional Court

24. On 6 January 2003 the applicant lodged a complaint with the Federal Constitutional Court. Referring to his submissions before the Federal Court of Justice, he claimed that his trial before the Berlin Regional Court had been unfair and that his right to liberty as guaranteed by the Basic Law had been infringed. 19

25. On 13 February 2003 the Federal Constitutional Court declined to consider the applicant's constitutional complaint. 20

E. The applicant's further detention

26. Following an order issued by the Public Prosecutor's Office, the applicant served the remainder of his prison sentence from 31 October 2003. In December 2004 he was again released from prison on probation, the remaining part of his sentence having been suspended. 21

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The bill of indictment

27. Article 200 of the Code of Criminal Procedure regulates the contents of the bill of indictment. Pursuant to Article 200 § 1, first sentence, the bill of indictment shall indicate the accused, the criminal offence he is charged with, the time and 22

place of its commission, its statutory elements and the applicable criminal provisions (the charges). Moreover, the evidence, the court before which the main hearing shall be held and the defence counsel shall be indicated (Article 200 § 1, second sentence).

28. According to Article 200 § 2, first sentence, of the Code of Criminal Procedure, the essential results of the investigations shall also be presented in the bill of indictment. 23

B. Provisions concerning lay judges

29. The Regional Courts, when sitting as a grand criminal division, are composed of three professional judges, including the president, and two lay judges (Article 76 § 1 of the Courts Organisations Act - Gerichtsverfassungsgesetz). Pursuant to Article 30 § 1 of the Courts Organisation Act lay judges exercise full judicial function during the main hearing and have the same voting rights as professional judges in so far as there are no exceptions provided for by law. 24

30. Article 24 § 2 of the Code of Criminal Procedure provides that a judge may be challenged for fear of bias if there is reason to doubt his impartiality. The provision applies, mutatis mutandis, to lay judges (Article 31 § 1 of the Code of Criminal Procedure). 25

31. The Directives for Criminal Proceedings and Proceedings Concerning Regulatory Offences (Richtlinien für das Strafverfahren und das Bußgeldverfahren - RiStBV) set out recommendations for the prosecution authorities concerning the conduct, in particular, of criminal proceedings. These Directives are not statutory provisions, but administrative guidelines agreed upon by the Ministers of Justice of all Länder. 26

32. Article 126 § 3 of these Directives provides that the bill of indictment may not be disclosed to the lay judges. However, notably in proceedings concerning extensive or complex facts, they may be provided with a copy of the charges during the main hearing after these have been read out in court. 27

C. Provisions concerning the conduct of the trial

33. Article 243 of the Code of Criminal Procedure regulates the course of the trial. After the presiding judge has ascertained that the defendant and his counsel as well as witnesses and experts summoned are present and has questioned the defendant on his personal situation (§§ 1 and 2), the Public Prosecutor shall read out the charges (§ 3). 28

34. According to Article 249 § 1 of the Code of Criminal Procedure, title deeds and other documents serving as evidence shall be read out at the main hearing. Article 249 § 2 of the Code of Criminal Procedure provides that the reading out may be dispensed with if the professional and lay judges have taken note of the wording of the title deed or document and if the other participants had an opportunity to do so (so-called self-reading procedure - Selbstleseverfahren). 29

D. Case-law on the question whether lay judges may have knowledge of the essential results of the investigations

35. In its judgment of 26 March 1997 (no. 3 StR 421/96, Collection of the Decisions of the Federal Court of Justice (Criminal Division) (BGHSt), vol. 43, pp. 36 et seq., 38-39), the Federal Court of Justice reiterated: 30

"Access to case files for lay judges - just as for associate professional judges - is not regulated by law. It appears that until now the courts only dealt with the specific case of providing a report by the Public Prosecutor's Office on the essential results of the investigations to lay judges, which they considered as unlawful. The Supreme Court of the German Reich, referring to the legislator's will as apparent from the law's drafting history, specified in this respect that providing [the report to lay judges] contravened the principles of oral proceedings and immediacy. Lay judges risked mixing up their impressions from that report with those from the main hearing whereas professional judges, as a rule, were able to distinguish between the two sources of information due to their training and professional experience (see Collection of the Decisions of the Supreme Court of the German Reich (RGSt), vol. 69, pp. 120, 124). The Federal Court of Justice has until now shared this legal opinion (BGHSt, vol. 5, pp. 261 et seq.; ... BGHSt, vol. 13, pp. 73 et seq. ...; Juristische Rundschau (JR), 1987, p. 389). However, the First Senate, in an obiter dictum, raised doubts as to whether it would further follow these precedents, because different treatment for professional and lay judges was not provided for by law and no convincing reasons could be given for it. Lay judges, who were called upon to decide on all difficult factual and legal issues together and of equal rank with the professional judges, could well be believed to be capable of understanding the sense and meaning of the bill of indictment (Federal Court of Justice, judgment of 23 February 1960, no. 1 StR 648/59).

On the contrary, the majority of legal writers today consider granting lay judges access to the case files to be lawful ...

The Senate does not have to decide in the present case whether the existing practice of the Federal Court of Justice on

providing the essential results of the investigations to lay judges can be upheld or whether the doubts expressed by the First Senate and the dissenting opinion of legal writers have to be preferred, what it indeed tends to do. In any event, it considers providing minutes of tape-recordings as a means to facilitate the better understanding of the taking of evidence about intercepted telecommunications in the main hearing to be lawful. It may adjudicate on this issue ... because providing such documents is vitally different from taking note of the essential results of the investigations, which essentially involves the evaluation of the suspicion of a criminal act on the part of the Public Prosecutor's Office."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION DUE TO A LACK OF IMPARTIALITY OF THE REGIONAL COURT

36. The applicant complained that his case had not been heard by an "impartial tribunal" because the lay judges participating in his trial were biased after they had been provided with a copy of the part of the bill of indictment containing the essential results of the prosecution's investigations. He relied on Article 6 § 1 of the Convention which, in so far as relevant, reads as follows: 31

"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."

37. The Government contested that argument. 32

A. Admissibility

38. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. 33

B. Merits

1. The parties' submissions

39. The applicant argued that his fears as to the lay judges' impartiality were objectively justified as the latter had taken note of the essential results of the investigations drawn up by the Public Prosecutor's Office, which contained its evaluation of the evidence and of the prevailing suspicion against him. As confirmed not only by Article 126 § 3 of the Directives for Criminal Proceedings and Proceedings Concerning Regulatory Offences, but in particular by the well-established case-law of the Federal Court of Justice, lay judges risked being unduly influenced by this pre-assessment of the evidence made by the prosecution and thus risked being prejudiced against a defendant if they took note of this part of the bill of indictment before or during the trial. Even in complex proceedings, lay judges could therefore, as again confirmed by Article 126 § 3 of the Directives for Criminal Proceedings and Proceedings Concerning Regulatory Offences, only be provided with a copy of the part of the bill of indictment containing the charges. 34

40. Moreover, in the applicant's submission, the evaluation of the evidence made by the Public Prosecutor's Office in the present case had been drafted in a partial manner. This evaluation, in which the latter set out why the defendant should be convicted as charged, had a strong impact on the lay judges and was thus not comparable to biased media coverage of criminal proceedings, even though the latter could also lead to a breach of a defendant's right to a fair trial. Despite having been cautioned by the professional judges, the lay judges could not be considered as having been able to distinguish between the criminal proceedings against the applicant and those against his sister. This was proved by the fact that even the professional judges had confounded the different defendants and the assessment of the evidence in the two sets of proceedings in their judgment against the applicant. The court should therefore have verified the confession made in general terms by the applicant's sister by taking evidence at her trial instead of providing the lay judges with a copy of the essential results of the investigations. 35

41. In the Government's view, the applicant's fear as to the lay judges' impartiality was neither subjectively nor objectively justified. They argued that the status of lay judges in the criminal proceedings in general permitted them to have knowledge of the contents of the entire case file, without this raising an issue of partiality. Lay judges had equal status as professional judges during the trial. There was no statutory provision which precluded giving lay judges a full copy of the bill of indictment. On the contrary, the exercise of their functions with equal voting rights (see Article 30 of the Courts Organisation Act) warranted that they disposed of the same information as professional judges. Article 126 § 3 of the Directives for Criminal Proceedings and Proceedings Concerning Regulatory Offences only lay down recommendations which were not binding for the courts and of which the Public Prosecutor's Office could diverge if the special circumstances of a case called for such divergence. After all, lay judges were also considered capable of basing their judgment only on the admissible evidence taken at the trial in other circumstances, for example in cases of 36

biased media coverage of the proceedings or in cases in which the use of evidence taken at the trial later proved to be prohibited.

42. The Government further submitted that, in any event, providing the lay judges with a copy of the entire bill of indictment had been justified in the circumstances of the present case because of the complexity of the proceedings. Moreover, the applicant's sister had made a confession by referring only in general terms to the contents of the bill of indictment. The contents of the latter therefore had to be introduced into her trial. This had been done by providing the lay judges with a copy of the bill of indictment, instead of reading the bill out in its entirety in open court, in order to help the lay judges with the performance of their task. By cautioning the lay judges that the essential part of the investigations reflected the prosecution's view and could not be considered as a basis for the judgment in the applicant's case, the professional judges had taken the necessary measures to enable the lay judges to distinguish between the two sets of proceedings. The lay judges were thus aware that in the proceedings against the applicant only the evidence taken during the trial was relevant. 37

2. The Court's assessment

43. The Court reiterates that 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 of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge has offered guarantees sufficient to exclude any legitimate doubt in this respect (see *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255-A, p. 12, § 28; *Saraiva de Carvalho v. Portugal*, judgment of 22 April 1994, Series A no. 286-B, p. 38, § 33; and *Morel v. France*, no. 34130/96, § 40, ECHR 2000-VI). 38

44. As to the subjective test, the Court notes that the applicant did not dispute the lay judges' personal impartiality and there is nothing to indicate that they acted with any personal bias against him. 39

45. Under the objective test, when applied to a body sitting as a bench, it must be determined 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. It follows that 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 this fear can be held to be objectively justified (see, *inter alia*, *Morel*, cited above, § 42; *Kyprianou v. Cyprus* [GC], no. 73797/01, § 118, ECHR 2005-XIII; and *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 77, ECHR 2007-...). 40

46. The Court finds that in the present case it must first examine whether the procedure chosen in disclosing to the lay judges the essential results of the investigations drawn up by and giving the view of the prosecution was, as suggested by the applicant, illegal, or amounted to such a radical or unusual departure from the normal practice in criminal proceedings to his detriment that it must be considered to raise objectively justified fears as to the court's impartiality for that very reason (see, *mutatis mutandis*, *Academy Trading Ltd. and Others v. Greece*, no. 30342/96, § 46, 4 April 2000). 41

47. The Court observes in this respect that the question of access by lay judges to the case files (which includes the entire bill of indictment) is not regulated by the Code of Criminal Procedure. Article 30 § 1 of the Courts Organisation Act provides that lay judges exercise full judicial function in the main hearing and have the same voting rights as professional judges and thus does not provide for a different treatment of professional and lay judges. Even though it recently expressed doubts as to whether it would uphold that case-law in the future, the Federal Court of Justice has nevertheless consistently found until the 1980s that providing the essential results of the investigations to lay judges would contravene the Code of Criminal Procedure as lay judges risked mixing up the contents of the essential results of the investigations, containing the prosecution's evaluation of the evidence, with the matters from the main hearing. Likewise, Article 126 § 3 of the Directives for Criminal Proceedings and Proceedings Concerning Regulatory Offences provides that that part of the indictment may not be disclosed to lay judges. 42

48. In the present case, the part of the bill of indictment in question was disclosed to the same lay judges in the proceedings against the applicant's sister, which had been separated from the applicant's proceedings in order to speed up the proceedings against her following her confession. Moreover, the reason for this disclosure was not to provide the lay judges with the prosecution's evaluation of the available evidence but to give them the necessary information on the exact contents of a confession made in the court hearing itself: The applicant's sister had made a general statement that she confessed to the offences as described in the essential results of the investigations without, however, being willing to set out her confession in a more detailed manner. It was therefore necessary to clarify at the 43

trial the full contents of her confession which she had made by merely referring to a part of the bill of indictment. Normally this would be done by reading out the essential results of the investigations in open court. Instead of reading out the information, the lay judges read it themselves. They were the only participants in the proceedings who had not yet received a full copy of the bill of indictment.

49. In these circumstances, the Court is not convinced that the procedure chosen in disclosing the impugned part of the bill of indictment was objectively unjustified in the context of these proceedings. 44

50. The Court shall further examine whether there were objectively justified grounds for the applicant to fear that the lay judges, by this procedure, had already reached a preconceived view as to his guilt at an early stage of his trial. It reiterates in this connection that the fact that a judge has previously obtained detailed knowledge of the case file alone does not entail any prejudice on his part that would prevent his being regarded as impartial when the decision on the merits is taken (see Saraiva de Carvalho, cited above, p. 39, § 38, and Morel, cited above, § 45). 45

51. In the circumstances of the case, the lay judges' impartiality was ensured by sufficient safeguards (compare also Ekeberg and Others v. Norway, nos. 11106/04, 11108/04, 11116/04, 11311/04 and 13276/04, § 48, 31 July 2007). It emerges from the lay judges' declaration made following the applicant's motion for bias against them that the president of the chamber had explained to them the nature of the essential results of the investigations prior to providing them with a copy. They had understood that the prosecution's view expressed therein was not the basis for the judgment to be rendered in the applicant's case, which was to be grounded on the evidence taken in the main hearing alone. The Court further notes that the lay judges had knowledge of the impugned part of the bill of indictment since the fifteenth day of the hearing in the applicant's case and that more than twenty further hearings were held afterwards in which evidence was taken before the Regional Court delivered its judgment in the applicant's case. In view of this, it does appear that the lay judges made their final assessment as to the applicant's guilt on the basis of the evidence produced and the arguments heard at the hearings. 46

52. The Court further observes that the applicant did not challenge the Regional Court's impartiality due to the fact that the latter, sitting in the same composition, had previously convicted his sister, an accomplice. 47

53. Therefore, the applicant's fears as to the impartiality of the lay judges cannot be regarded as objectively justified. Thus, the Court does not have to determine whether such fears could only legitimately concern the two lay judges finally adjudicating on the applicant's case, or also extend to the two substitute lay judges who participated throughout the trial. It further does not have to decide on the general question under Article 6 § 1 of the Convention whether lay judges should not rather be treated on an equal footing with professional judges, whose knowledge of the entire bill of indictment is not considered to raise any doubts as to their impartiality. 48

54. There has accordingly been no violation of Article 6 § 1 of the Convention. 49

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant further complained that he had not had a fair trial before the Berlin Regional Court within the meaning of Article 6 § 1 of the Convention. That court had failed to comply with its duty properly to investigate each of the numerous charges against him of human trafficking and to observe the principle of contradictory taking of evidence, in particular as it did not listen to the recorded intercepted telecommunications at the hearing and failed to take into consideration the relevant submissions of an expert. Moreover, the Regional Court had disregarded the presumption of innocence guaranteed by Article 6 § 2 of the Convention in that it had obtained its conviction of his guilt from other sources than the taking of evidence in the hearing itself. Furthermore, the order made by the Public Prosecutor's Office that he had to serve the remainder of his prison sentence had violated Article 5 § 1 (a) of the Convention because his conviction had been imposed following unfair proceedings by a partial tribunal. 50

56. The Court has examined the remainder of the applicant's complaints as submitted by him. However, having regard to all the material in its possession, the Court finds that, even assuming the exhaustion of domestic remedies in all respects, these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. 51

57. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention. 52

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Declares the complaint concerning the lack of impartiality of the Regional Court admissible and the remainder of the application inadmissible;
2. Holds that there has been no violation of Article 6 of the Convention.