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EGMR Nr. 21698/06 (5. Kammer) – Entscheidung vom 23. Oktober 2010 (Kriegisch v. Deutschland)

Unabhängiges und unparteiliches Gericht (Befangenheitsrügen bei Verständigungsangeboten und Vorbefassung; Verfahrensabsprachen; unzulässiger Druck; Selbstbelastungsfreiheit; Rechtswegerschöpfung; Mehrheitsentscheidung).

Art. 6 Abs. 1 Satz 1 EMRK; Art. 35 EMRK; § 257c StPO

Leitsätze des Bearbeiters

1. Unterbreitet ein vorsitzender Richter in einem früheren, anderen Verfahren wegen unerlaubten Handeltreibens mit Betäubungsmitteln ein Verständigungsangebot nach deutschem Recht, das zu einem Schuldspruch und zu einem Urteil führt, in dem Drogenverkäufe an den jetzigen Angeklagten und Beschwerdeführer festgestellt werden ohne sich zu dessen konkreter Schuld und Beteiligungsform zu äußern, ist der Richter in dem späteren Verfahren nicht zwingend als befangen anzusehen.

2. Ein Verständigungsangebot, nach dem ein Verfahren im Gegenzug gegen ein Geständnis unter dem Zugeständnis einer erheblichen Strafmilderung beendet werden kann, kann durch das Gebot zu einer zügigen und effizienten Verfahrensführung gerechtfertigt sein. Eine beträchtliche Differenz zwischen dem verhängten und dem zuvor angebotenen Strafmaß kann aber den Eindruck hervorrufen, der Richter habe einen unzulässigen Geständnisdruck auf den Angeklagten ausgeübt.

3. Das Zusammentreffen der Vorbefassung und eines unterbreiteten Verständigungsangebots kann im Einzelfall legitime Zweifel an der Unparteilichkeit des Richters wecken. Zur Anwendung des EGMR auf einen deutschen Einzelfall.

4. Eine Besorgnis der Befangenheit kann vor dem EGMR nicht auf Umstände gestützt werden, die im nationalen Verfahren nicht vorgetragen worden sind.

THE FACTS

The applicant, Mr Klaus-Peter Kriegisch, is a German national who was born in 1967 and lives in Heilbronn. He is represented before the Court by Ms Sylvia Schwaben, a lawyer practising in Pfinztal. The respondent Government were represented by their Agent, Mrs A. Wittling-Vogel, Ministerialdirigentin, of the Federal Ministry of Justice. 1

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows. 2

1. The applicant's arrest and the criminal proceedings against H.

The applicant was arrested on 9 December 2003 on suspicion of having bought cocaine from H. and of having subsequently sold it to unknown consumers. H. had previously acquired the drugs in the Netherlands where he had travelled for this purpose in the company of B. and S. 3

In the course of preliminary investigations against the drug supplier H., B. and S., who had both been involved only in the importing of the drugs by H. but not in the subsequent sale to the applicant, were questioned by police officer P. and gave, inter alia, hearsay evidence about statements made by H. and other circumstances indicating that H. had subsequently sold part of the imported drugs to the applicant. 4

On 14 May 2004 a chamber of Mosbach Regional Court (Landgericht), with judge G. presiding, convicted H. of drug trafficking, sentenced him to eleven years' imprisonment and ordered him to undergo treatment in a detoxification centre. The judgment was primarily based on a full confession made by H. following an unrecorded plea bargain 5

reached with the court providing for mitigation of H.'s expected prison sentence in return for a confession. The veracity of the confession was confirmed by the testimony given by police officer P. regarding the statements made by B. and S. during previous police questionings.

The judgment enumerates the several clients to which H. had sold drugs on various occasions and among them mentions a person called "Jürgen Kriegisch", to whom he had sold cocaine on three occasions. The related passages of the judgment establishing the facts of the case which refer to the said person read as follows: 6

"... he [H.]... brought the narcotics to Wertheim and sold them there as follows:

- to Jürgen Kriegisch at least 150 grams of cocaine at a price of 40 euros per gram;

- to ...; ... ... he [H.]... brought the narcotics to Wertheim and sold them there as follows:

- to Jürgen Kriegisch at the day of its acquisition at least 750 grams but at most 1,125 kilograms of cocaine at a price of at least 30 and at most 40 euros per gram;

- to ...; ... He [H.] brought the narcotics to Wertheim. From the quantity he had purchased in this manner, he sold a gross amount of 1.5 kilograms of cocaine directly following his return to Jürgen Kriegisch, who is being prosecuted separately, at a price of at least 30 and at most 40 euros per gram and to ..."

2. The criminal proceedings against the applicant before Mosbach Regional Court

On 6 May 2004 the main hearing in three cases against the applicant on charges of drug trafficking was opened before a chamber of Mosbach Regional Court presided over by the same judge, G., who had previously presided over the trial against H. The applicant was represented by counsel throughout the proceedings. 7

On 22 July 2004 the Regional Court heard evidence from, inter alia, police officer P., regarding the statements made by S. and B. when questioned earlier by the police. H. refused to give evidence regarding the case as such and, on a request by the applicant to testify, stated that all he could do for the applicant was to remain silent. 8

During a break the presiding judge made an offer to the applicant that if he confessed, any prison sentence imposed on him would not exceed six years; otherwise the hearing would be adjourned and should the charges brought against the applicant prove true in the course of the resumed proceedings, a term of imprisonment of twelve years was to be discussed. The applicant refused the offer, which was not recorded. 9

Evidence was also heard from B. and S. as hearsay witnesses. B. refrained from making statements about the case as such. S. gave hearsay testimony on statements made by H. in relation to the sale of the drugs to the applicant following their importation but stated that he could not give any information regarding the sale of the drugs by H. to the applicant as such. 10

By a decision of 2 September 2004 the Regional Court, sitting as a panel of three judges including G., ordered the continuation of the applicant's detention pending trial on the ground that the outcome of the main hearing had confirmed the suspicion of drug trafficking against the applicant. The court based its decision essentially on the information given by police officer P., the hearsay testimony given by S., and on H.'s refusal to testify. 11

At the opening of the resumed hearing on 21 October 2004 the applicant objected to the participation of the presiding judge, G., on the ground of possible bias. He argued, in particular, that G. had already presided in the previous trial against H. and had obtained a confession from the latter after having indicated that if H. confessed he would not impose preventive detention (Sicherungsverwahrung) on him. Pursuant to German law, a ruling on preventive detention constituted a legal consequence that was not subject to the discretion of the judge, and any such plea bargain was therefore unlawful. Furthermore, the assessment of the evidence given by the witnesses during the hearing of 22 July 2004 and the interpretation of H.'s refusal to testify as reflected in the court's decision to continue the applicant's detention had been partial. Finally, the applicant maintained that the offer to terminate the trial made by the presiding judge at the hearing of 22 July 2004 showed that the judge had sought to exert undue pressure on the applicant with a view to expediting the proceedings and avoiding a proper investigation of the case. 12

The applicant's objection against presiding judge G. was dismissed by the substitute chamber (Vertreterkammer) of Mosbach Regional Court the same day. As regards the court's order continuing the applicant's detention pending trial, the court found that it was based on the outcome of the discontinued hearing of 22 July 2004 and did not anticipate the judges' assessment following examination of the case in the course of the proceedings. As regards the offer to terminate the proceedings, the substitute chamber found that an accused person would reasonably presume that such an offer by the presiding judge could only mean that in the event of a confession the accused would not face a sentence longer than six years and that otherwise he could be acquitted or face a sentence of up to twelve years, depending on the outcome of the trial. Under no circumstances could the offer be interpreted to imply that in respect of 13

the same facts and circumstances the applicant would be liable to six or twelve years' imprisonment depending on whether or not he made a confession.

At subsequent hearings, on 25 and 29 October and on 4 and 8 November 2004, the Court again heard H., S., B. and police officer P. The court also heard E., who had been a non-presiding judge (beisitzender Richter) during the previous hearing of 22 July 2004 and whose testimony gave an account of the statements made by H. and S. at that hearing. S. again stated that he could not give any information regarding the sale of the drugs by H. to the applicant as such, and withdrew any statements previously made to police officer P. during the police interview, indicating that H. had mentioned the applicant as purchaser of the drugs. H. himself denied having been involved in drug trafficking with the applicant. The court heard a number of further witnesses called by the applicant in his defence, but refused the applicant's request for expert opinions, with a view to verifying the credibility of B.'s testimony. The applicant refrained from making statements regarding the case as such throughout the proceedings. 14

On 8 November 2004 Mosbach Regional Court convicted the applicant of drug trafficking in one case and acquitted him in the other two cases. He was sentenced to nine years' imprisonment. The Regional Court based its judgment mainly on the testimony given by B., police officer P. and judge E. The court pointed out that B. had only been a hearsay witness but had also testified as to her own perception of the events. The court stated that it was aware that the credibility of B.'s statements required particular scrutiny, and gave reasons as to why the content and circumstances of her testimony before the court had confirmed its credibility. The Regional Court further reasoned that its finding was supported by H.'s refusal to testify in order to protect the applicant and the evidence given by S. during his interview with police officer P. The court further pointed out that H.'s confession during his own trial had not been taken into consideration in the trial against the applicant. 15

3. The proceedings before the Federal Court of Justice

On 2 February 2005 the applicant lodged an appeal on points of law with the Federal Court of Justice (Bundesgerichtshof) arguing that the presiding judge had been biased and should have been excluded from the trial. He further complained, inter alia, that the admission of evidence and the assessment of the witnesses' statements by the court had been arbitrary. 16

On 1 June 2005 the Federal Court of Justice rejected the appeal as unfounded, following a statement of the Federal Public Prosecutor (Generalbundesanwalt). 17

4. The proceedings before the Federal Constitutional Court

On 6 July 2005 the applicant lodged a constitutional complaint alleging that the decisions of the Regional Court and the Federal Court of Justice infringed his right under Article 101 § 1, second sentence, of the German Basic Law (Grundgesetz), which provided that no one should be deprived of his right to a decision rendered by the court established by law (gesetzlicher Richter), on the ground that the presiding judge had been biased and the refusal to exclude him from the trial had been arbitrary. The conduct of the proceedings against H. and the plea bargain offered to the applicant at the beginning of his trial showed that the presiding judge had been convinced of the applicant's guilt from the beginning of the proceedings. He further complained that H.'s confession had been obtained in violation of Article 136a § 1 of the Code of Criminal Procedure and should therefore not have been admissible as evidence in his own trial. 18

By a decision of 16 November 2005 the Federal Constitutional Court declined to consider the applicant's constitutional complaint on the ground that it was unfounded. It held that the dismissal of the applicant's objection to the presiding judge by the relevant courts had not been based on arbitrary considerations and did not therefore constitute a violation of the applicant's right under Article 101 § 1, second sentence, of the German Basic Law. As regards the participation of the presiding judge in the proceedings against H., the Federal Constitutional Court pointed out that the lower courts could rely on the principle that the participation of a judge in separate proceedings did not generally give rise to bias on that judge's part. 19

The Federal Constitutional Court specified that even though the considerable difference in the length of the prison sentences mentioned by the presiding judge in his offer to the applicant might give cause for concern, the alternatives given were only meant to indicate the scope within which a possible sentence was "to be discussed" and not to give binding alternatives regarding the length of a possible prison sentence depending on whether the applicant confessed or not. An indication by the presiding judge that a confession might entail a substantial mitigation of sentence and an offer of an upper limit on the prison sentence did not in itself constitute an attempt by the presiding judge to unduly influence the applicant. The fact that the offer was made by the presiding judge at a time when important witnesses had not yet made a statement during the main hearing, but only during police interviews, did not establish bias on his part 20

either, particularly as the Regional Court had already heard the police officer who had previously interviewed those witnesses.

The Federal Constitutional Court further held that the presiding judge's attempt to reach a plea bargain with the applicant with a view to terminating the proceedings did not amount to a violation of his basic rights, since in any event it had been to no avail and the judgment of the Regional Court had thus not been based on it. The same applied to the alleged violation of the provisions of the Code of Criminal Procedure in connection with the confession obtained from H., since the Regional Court did not base its judgment in the proceedings against the applicant on H.'s previous confession. 21

B. Relevant domestic law

The relevant provisions of the Code of Criminal Procedure read as follows: 22

Article 24 § 2

"An objection can be raised on the ground of fear of bias if there is a reason which may justify doubts regarding the impartiality of a judge."

Article 136a

"(1) The accused's freedom to make up his mind and to manifest his will shall not be impaired by ill-treatment, induced fatigue, physical interference, administration of drugs, torture, deception or hypnosis. Coercion may be used only as far as this is permitted by the statutory criminal procedure. Threatening the accused with measures not permitted under its provisions or holding out the prospect of an advantage not envisaged by statute shall be prohibited.
..."

Article 333

"An appeal on points of law may be lodged against judgments of the penal chambers..."

Article 338

"A judgment shall always be considered to be based on a violation of the law

...3. if a professional judge or lay judge has participated in the drafting of a judgment after being challenged for bias and if the application to challenge was either declared to be well-founded or erroneously rejected...".

Article 101 § 1, second sentence, of the German Basic Law (Grundgesetz) provides that no one shall be deprived of his right to a decision rendered by the court established by law (gesetzlicher Richter). In its case-law, the Federal Constitutional Court has consistently dealt with the issue of whether a judge should be excluded for suspicion of bias as a problem of the right to a decision rendered by the legally competent judge. 23

COMPLAINTS

Relying on Article 6 § 1 of the Convention, the applicant alleged a violation of his right to a fair trial. 24

The applicant maintained that the conduct of his trial by the presiding judge showed that the latter had been biased and that the Regional Court had therefore not been impartial. 25

The applicant also contended that H.'s confession, made during his previous separate trial, had been obtained in breach of Article 136a § 1 of the Code of Criminal Procedure and had therefore not been admissible as evidence in his own trial. 26

The applicant further complained that the presiding judge had exerted pressure on him with a view to inducing him to waive his right to remain silent and that his privilege against self-incrimination had been infringed. Invoking Article 6 § 2 of the Convention, he also complained of a violation of the principle of the presumption of innocence. He alleged, finally, that his right to examine or have examined witnesses against him pursuant to Article 6 § 3 (d) of the Convention had been infringed. 27

THE LAW

A. The alleged lack of impartiality of the Regional Court

In the applicant's submissions his case had not been heard by an "impartial tribunal". The manner in which the presiding judge, G., of Mosbach Regional Court had conducted the trial of H., as well as the applicant's trial, showed that he had been convinced of the applicant's guilt from the beginning of his trial and was therefore biased. He relied on 28

Article 6 § 1 of the Convention which, in so far as relevant, provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

1. The parties’ submissions

In the Government’s view the applicant’s doubts as to the presiding judge’s impartiality were neither subjectively nor objectively justified. They argued that the fact that judge G. had previously dealt with the facts of the case in the proceedings against H. could not raise any objective doubts as to his impartiality. While it was correct that the judgment against H. mentioned that a person named Kriegisch had purchased cocaine from H., these findings were indispensable for - and only served the purpose of - assessing H.’s guilt, but did not anticipate the assessment of the applicant’s case by the Regional Court. 29

The Government further submitted that the offer made by judge G. to terminate the applicant’s proceedings by means of a plea bargain as such did not raise objectively justified doubts as to the latter’s impartiality, nor did the point in time at which the offer was made or its content. There was no indication that when making the offer, the presiding judge had formed a definite opinion on the applicant’s guilt or the possible outcome of the proceedings. Furthermore, an offer of a substantial mitigation of sentence could not be perceived as placing undue pressure on the applicant with a view to obtaining a confession. 30

Finally, the Government, relying in particular on official statements (dienstliche Stellungnahmen) by judge G. as well as a further judge who sat in the proceedings against H. - contested that the plea bargain reached with H. on the occasion of his previous trial dealt with the issue of preventive detention. They maintained that any concerns in respect of partiality of the presiding judge in this respect were unfounded. Furthermore, since the judgment in H.’s trial had become final, he did not have the right to remain silent in the subsequent proceedings against the applicant and the fact that the Regional Court interpreted his refusal to give evidence as an attempt to protect the applicant could not be regarded as arbitrary and did not cast doubts on the judge’s impartiality. 31

The applicant conceded that the mere fact that the judge had presided in the proceedings against H. as well as in the applicant’s subsequent trial did not as such raise concerns as regards his impartiality. However, the judge had obtained a confession from H. after indicating that in return he would not impose preventive detention on him, in breach of domestic law. In support of these allegations the applicant refers to a statement by H.’s lawyer giving an account of negotiations with judge G. that had led to the plea bargain terminating H.’s trial. The applicant submitted that it could not be ruled out that H. had made a false confession in order not to be exposed to the possibility of preventive detention. In the applicant’s subsequent trial, H. might then have felt obliged to uphold his confession also as regards his statements concerning the applicant, in order not to be exposed to further prosecution on charges of, inter alia, false testimony, which could have led to a re-examination of the question whether preventive detention should be imposed. Judge G. had thus created a conflict situation for H. which showed that while H.’s trial was going on he was already acting with a view to enabling a subsequent conviction of the applicant and that he was persuaded of the latter’s guilt from the beginning. These doubts as to judge G.’s willingness to conduct a proper investigation of his case were further supported by the fact that the offer to terminate the proceedings against the applicant had already been made at the beginning of his trial and that H.’s refusal to testify in the applicant’s proceedings had been interpreted by judge G. as constituting an attempt to protect the applicant even though the judge himself had previously created the aforementioned conflict situation for H. 32

The applicant finally maintained that the substantial mitigation of sentence offered to him could not be justified by the mitigating effect of a confession, but constituted an attempt to put pressure on the applicant with a view to obtaining a confession. 33

2. The Court’s assessment

The Court reiterates that in its consistent case-law 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 beliefs and behaviour of a particular judge in a given case, and also according to an objective test, that is ascertaining whether he or she offered guarantees which were sufficient to exclude any legitimate doubt in this respect (see, among many other authorities, Kyprianou v. Cyprus [GC], no. 73797/01, § 118, ECHR 2005...). 34

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 Kyprianou, cited above, § 119, and Morel v. France, no. 34130/96, § 41, ECHR 2000VI). Having regard to the material in its possession, the Court finds that there is nothing to establish that the presiding judge at Mosbach Regional Court acted with any personal prejudice. 35

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 Morel, cited above, § 42). 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 Wettstein v. Switzerland, no. 33958/96, § 44, CEDH 2000-XII). 36

In the present case the judge who presided over the chamber of Mosbach Regional Court which conducted the applicant's trial on charges of drug trafficking had also presided over the previous separate trial convicting the supplier of the drugs, H., at which the latter had made a full confession following a plea bargain reached with the court providing for mitigation of H.'s expected prison sentence in return for a confession. This same judge made an offer to the applicant at the first hearing of his subsequent trial whereby the criminal proceedings instituted against him would be terminated and he would receive a substantial mitigation of his sentence in return for a confession on his part. 37

The Court reiterates that 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 Poppe v. the Netherlands, no. 32271/04, § 26, 24 March 2009, and Schwarzenberger v. Germany, no. 75737/01, § 42, 10 August 2006). 38

The Court also considers that the offer made by judge G. at the first hearing of the applicant's trial, whereby the criminal proceedings instituted against him would be terminated and he would receive a substantial mitigation of his sentence in return for a confession on his part, may be justified with a view to expeditious conduct of the proceedings and the proper administration of justice. 39

The Court nevertheless accepts that the concurrence of the aforementioned circumstances could raise doubts as to whether the Regional Court had already reached a preconceived view as to the merits of the applicant's case at an early stage of the latter's trial. It is the Court's task to decide whether in consideration of the circumstances of the specific case these doubts were objectively justified (see Morel v. France, no. 34130/96, § 44, ECHR 2000VI). 40

In this context the Court is satisfied that there is nothing to establish that the previous trial and the judgment delivered against H. prejudiced the question of the applicant's guilt or led to a preconceived view on the merits of his case by Mosbach Regional Court. 41

Firstly, while noting that a person named Kriegisch is mentioned in the judgment delivered against H. as a purchaser of the drugs among others, the Court observes that the established facts were based on H.'s confession and the submissions of police officer P., and that the references to H.'s clients had been relevant to his conviction. The judgment does not imply any specific qualification of the involvement of the applicant or of acts committed by him, criminal or otherwise, nor does it contain an assessment of his guilt (see Poppe, cited above, § 28; Schwarzenberger, cited above, § 43; and, a contrario, Ferrantelli and Santangelo v. Italy, 7 August 1996, § 59, Reports of Judgments and Decisions 1996III, and Rojas Morales v. Italy, no. 39676/98, § 33, 16 November 2000). 42

Secondly, as regards the plea bargain reached between H. and the Regional Court on the occasion of the latter's trial, the Court is of the opinion that the circumstances of the case as they had been submitted to the domestic courts do not disclose objectively justified grounds for the applicant to fear that such a plea bargain dealt with the issue of preventive detention and had been entered into in violation of national law or with a view to, inter alia, enabling a later conviction of the applicant. 43

The Court notes that in support of his related allegations the applicant in his submissions to the Court in reply to the Government's observations on the application refers for the first time to a statement of H.'s lawyer obtained in 2009, giving an account of the negotiations with judge G. that had led to the plea bargain terminating H.'s trial in 2004. Such submissions constitute new factual information which has not been brought to the attention of the domestic courts in the course of the proceedings at issue and the content of which is furthermore contradicted by official statements of judge G. as well as a further judge who had participated in the proceedings against H. The applicant did not provide the domestic courts with the opportunity to examine the case under this aspect and the related submissions can therefore also not be considered as being relevant for the Court's assessment of the instant application. 44

Consequently, according to the circumstances of the case as they had been presented to the national courts, there is 45

nothing to establish that judge G. had created a situation that made it impossible for H. to testify freely in the applicant's subsequent proceedings. The Regional Court's interpretation of H.'s refusal to testify during the applicant's trial as being an attempt to protect the latter does therefore not cast objectively justified doubts on the Regional Court's impartiality.

In view of these considerations, the Court is also not convinced that the offer made at the first hearing of the applicant's trial by judge G. calls into question the impartiality of the Regional Court and its willingness to conduct a proper investigation of the case. The Court notes that at the time the Regional Court had already heard police officer P. regarding the statements made by B. and S. and had tried to obtain evidence from H., who had stated that all he could do for the applicant was to remain silent. The Regional Court's offer at that point was not made on the face of the record but in the light of the submissions of these witnesses. 46

As regards the content of the offer made, the Court points out that the Federal Constitutional Court's finding that the alternatives given in the offer had to be interpreted as indicating the scope within which a possible sentence was "to be discussed" and that no specific sentences regarding the length of a possible prison sentence depending on whether or not the applicant confessed were mentioned, is in principle not contested by the parties. 47

However, the Court accepts that, as submitted by the applicant, the considerable difference in length of the prison sentences mentioned by the presiding judge in his offer to the applicant might raise doubts as to whether judge G. had offered a particularly light sentence in return for a confession and had thereby exercised undue pressure on the applicant in order to obtain a confession and avoid a further investigation of the case. 48

The Court points out that it is not its task to deal with the interpretation of national law and in the instant case to assess whether the sentence offered by judge G. in the event of a confession was calculated in line with the guidelines resulting from domestic law and practice (see among other authorities, Tejedor García v. Spain, 16 December 1997, § 31, Reports of Judgments and Decisions 1997VIII). It can also not speculate as to whether the sentence finally imposed in the judgment against the applicant reflected the considerations on which the previous offer was based, as had been invoked by the applicant. The Court observes in this context that the domestic courts when examining the case came to the conclusion that the mitigation of sentence offered to the applicant, even though considerable, was still compatible with the requirements of national law and practice. The Court therefore finds that there is no indication that the judge, in offering a substantial mitigation of the applicant's sentence in return for a confession went beyond his competence and did subject the applicant, who was represented by counsel throughout the proceedings, to undue pressure. 49

Finally, the Court is satisfied that the conduct of the applicant's trial following his refusal to accept the offer by judge G. to terminate the proceedings does not raise doubts as to the impartiality of Mosbach Regional Court. The Regional Court heard numerous witnesses, some of whom had been named by the applicant, during a total of six hearings and read out several documents as requested by the defence. The judgment contains an assessment of the credibility and probative value of the witness statements obtained and explicitly points out that H.'s confession at his previous trial has not been taken into account. In the light of the obtained evidence, the applicant was convicted of drug trafficking in one case and acquitted in the two other cases. The Court further notes that the judgment delivered against the applicant does not contain any references to the previous judgment against H. (see Schwarzenberger v. Germany, no. 75737/01, § 43, 10 August 2006; and, a contrario, Ferrantelli and Santangelo, cited above, §59). The Court is therefore satisfied that the final analysis of the applicant's case was carried out when the judgment in his own trial was delivered and based on the evidence produced and the arguments heard during his trial (see Morel, cited above, § 45). The applicant's allegations regarding a possible impartiality of Mosbach Regional Court are based on a series of assumptions that have neither been sufficiently substantiated before the domestic courts nor before this Court. 50

Having regard to all circumstances of the case, the Court concludes that the applicant's concerns with regard to the impartiality of Mosbach Regional Court were not objectively justified and that there is no appearance of a violation of Article 6 § 1 of the Convention. The Court therefore holds that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. 51

B. The remainder of the applicant's complaints

The applicant further complained that he had not had a fair trial before the Mosbach Regional Court within the meaning of Article 6 § 1 of the Convention. He alleged in particular that H.'s confession, made during his previous and separate trial, had been obtained on the basis of a plea bargain in breach of Article 136a § 1 of the Code of Criminal Procedure and had therefore not been admissible as evidence in his own trial. The Regional Court should have advised H. accordingly or assessed the statements made by H. during the applicant's trial in the light of his previous unlawfully obtained confession. He further argued that his privilege against self-incrimination had been infringed by Judge G.'s 52

attempt to coerce him into making a confession. Invoking Article 6 § 2 of the Convention, he also complained of a violation of the principle of the presumption of innocence. He alleged, finally, that his right to examine or have examined witnesses against him pursuant to Article 6 § 3 (d) of the Convention was infringed.

The Court has examined the remainder of the applicant's complaint as submitted by him. However, having regard to all the material in its possession, the Court finds that, even assuming 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. 53

It follows that the remainder of the application must likewise be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention. 54

For these reasons, the Court by a majority 55

Declares the application inadmissible.