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EGMR Nr. 24062/13 - Urteil der 5. Kammer vom 1. September 2016 (Marc Brauer v. Deutschland)

Konkretes und wirksames Recht auf Zugang zu einem Gericht (Anwendbarkeit auf Rechtsmittelgerichte; Einschränkung durch Fristen: grundsätzliche Zulässigkeit, Gebot der Verhältnismäßigkeit und der konkreten und wirksamen Auslegung der EMRK, Vereinbarkeit der einwöchigen Revisionseinlegungsfrist nach deutschem Recht mit der EMRK, Wiedereinsetzung in den vorigen Stand).

Art. 6 Abs. 1 EMRK; § 341 Abs. 1 StPO; § 44 StPO

Leitsätze des Bearbeiters

1. Die Festlegung einer gesetzlichen Frist für die Revisionseinlegung ist zur Sicherstellung einer geordneten Rechtspflege und insbesondere zur Wahrung der Rechtssicherheit unerlässlich. Wegen der geringen Anforderungen an die Revisionseinlegung und der Möglichkeit der Wiedereinsetzung in den vorherigen Stand wirft die sehr kurze Revisionseinlegungsfrist von einer Woche nach § 341 Abs. 1 StPO deshalb keine Fragen nach Art. 6 Abs. 1 EMRK auf.

2. Besondere Umstände können aber - vorliegend das Zusammentreffen der psychischen Erkrankung des Beschwerdeführers, seine rechtlich wie persönlich schwierige Lage, die Unterbringung in einem psychiatrischen Krankenhaus und Zustellungsprobleme bei der Revisionseinlegung sowie darüber hinaus die fehlende aktive Unterstützung durch seinen Verteidiger - das Verschulden des Beschwerdeführers bei der Revisionseinlegung bei einem falschen Gericht derart verringern, dass eine verwehrte Wiedereinsetzung in den vorigen Stand im Hinblick auf den Zweck, der mit einer Revisionseinlegungsfrist verfolgt wird, unverhältnismäßig ist und eine Verletzung von Art. 6 Abs. 1 EMRK darstellt.

3. Art. 6 EMRK verpflichtet die Vertragsstaaten nicht, Rechtsmittel- oder Kassationsgerichte vorzusehen. Bestehen solche Gerichte jedoch, so müssen die Garantien des Art. 6 EMRK erfüllt sein.

4. Das „Recht auf ein Gericht“, welches das Recht auf Zugang zu einem Gericht als einen Teilaspekt miteinschließt, ist kein absolutes Recht; es unterliegt implizit zulässigen Einschränkungen. Dies gilt insbesondere, wenn es um die Voraussetzungen der Zulässigkeit eines Rechtsmittels geht. Gleichwohl müssen Einschränkungen des Gerichtszugangs einer Person ein rechtmäßiges Ziel verfolgen, sie müssen verhältnismäßig sein und sie dürfen den Zugang nicht dergestalt oder soweit einschränken, dass das Recht in seinem Kerngehalt beeinträchtigt wird. Dies gilt insbesondere für die gerichtliche Auslegung von Verfahrensvorschriften wie beispielsweise Fristen zur Einreichung von Unterlagen oder zur Einlegung von Rechtsmitteln.

5. Im Interesse der Rechtssicherheit und der geordneten Rechtspflege sind die nach dem innerstaatlichen Recht geltenden Fristen im Allgemeinen einzuhalten und durchzusetzen. Sie müssen allerdings in außergewöhnliche Fällen mit Flexibilität gehandhabt werden, damit gewährleistet ist, dass der Gerichtszugang nicht konventionswidrig eingeschränkt wird. Eine rein formalistische Betrachtung kann insofern dem Grundsatz einer praktikablen und wirksamen Anwendung der Konvention zuwiderlaufen.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and lives in Rheine. 1

6. On 26 June 2012 the applicant was arrested on the spot for having damaged with a hammer a number of vehicles parked in the Bocholt courthouse’s car park, and resisting a court’s clerk. As a preliminary measure he was confined to a psychiatric hospital. The court appointed defence counsel to the applicant, who had a previous history of psychiatric treatment going back as far as 1999. 2

7. On Tuesday 18 December 2012, the Münster Regional Court delivered its judgment and ordered the applicant’s confinement to a psychiatric hospital. It held that the applicant could not be held criminally responsible and was 3

mentally ill. According to the court's psychiatric expert, he was psychotic and aggressive, did not show any awareness of his illness and it was likely that he would commit further, even more serious crimes.

8. When the judgment was delivered in the presence of the applicant, his court-appointed defence counsel and the applicant's custodian (gesetzlicher Betreuer), the applicant became agitated. He told the court-appointed lawyer that he wished for a change in representation and declared that he wanted to appeal against the decision himself. He was informed that this was not possible on the spot. The presiding judge instructed him about the time and form for lodging an appeal on points of law. He was then returned to the forensic hospital where, when in contact with others, he showed no more signs of agitation. 4

9. On Friday 21 December 2012 the applicant received a letter from the court-appointed lawyer, dated 19 December 2012, who advised him as follows: 5

"... You already announced immediately after the hearing that you wanted to appeal against the court's decision and also to mandate new defence counsel. We respect your wish for new counsel and hereby terminate the mandate. Regarding the remedy you wished for, we give the following advice: You may appeal on points of law against the decision of the Münster Regional Court (Bocholt Chamber) within one week after the judgment was delivered, thus until 27 December 2012 at the latest. Appeal on points of law may be lodged either with the record of the registry or in writing. Since you are not at liberty, the special provision of Article 299 of the CCP applies to you. This means that you can make statements relating to appellate remedies to the record of the registry of the District Court in whose district the institution is located. Thus, the Rheine District Court would be competent. According to Article 299 § 2 of the CCP, in order to meet the time-limit it suffices if the record is taken within the time-limit. In your own interest you should take care that the appeal is lodged in time. For the sake of completeness we refer to Article 345 of the CCP which prescribes that the specific grounds of the appeal shall be submitted to the court whose judgment is being contested no later than one month after expiry of the time-limit for seeking the appellate remedy. If the judgment has not been served by the expiry of that time-limit, the time-limit shall start to run upon the service thereof. In your case this may only be done in the form of a notice signed by defence counsel or by an attorney, or to be recorded by the court registry." 6

10. Still, on 21 December 2012 the applicant typed and signed an appeal letter to the Rheine District Court and asked the clinic's staff to post it. This was done on the following day (Saturday 22 December). 7

11. On Friday 28 December 2012 the applicant's appeal letter reached the Rheine District Court, and was forwarded to the Münster Regional Court where it was received on 3 January 2013. 8

12. On 8 January 2013 the Regional Court informed the applicant that his appeal was belated. It underlined that the applicant had been instructed after the judgment's delivery that an appeal could only be recorded by the registry of the District Court but could not be lodged in writing. 9

13. On 14 January 2013 the court-appointed lawyer, who had resumed his activity for the applicant, requested a reinstatement of the proceedings in accordance with Article 44 of the Code of Criminal Procedure (Wiedereinsetzung in den vorherigen Stand - see paragraph 19 below) and lodged an appeal on points of law. He explained that the applicant had misunderstood his counsel's instruction on how to lodge an appeal. The applicant had believed that he was able to choose whether he wanted to lodge the appeal in writing or have it recorded by the registry either at the Rheine District Court or the Münster Regional Court. He could also have expected the appeal, posted on 22 December, to reach the Rheine District Court by 27 December 2012. 10

14. On 11 March 2013 the Federal Prosecutor General observed, inter alia, that: 11

„He [defence counsel] referred to Article 299 of the Code of Criminal Procedure by using wording which was not per se wrong but potentially misleading because it could be understood that the appeal on points of law might be lodged either (by the applicant himself) with the record of the Rheine District Court's registry or in writing with the same court." 12

However, according to the Federal Prosecutor General, the oral instruction on the day of the hearing was sufficient. 13

15. On 9 April 2013 the court-appointed lawyer submitted that: 14

"... already at the time of trial the applicant was confined to a psychiatric clinic because of his mental illness. It may be that the oral instructions on the right to appeal given after the delivery of the judgment were correct and complete. However, when judgment was passed which ordered his confinement to a psychiatric hospital, the applicant was not 15

in his right mind. Communication between the applicant and his defence counsel was impossible. The applicant was obviously in an exceptional mental state. In such a situation, taking into account the applicant's psychiatric illness, it must be assumed that he had not understood the oral instructions on the right to appeal which were given immediately after the delivery of the judgment."

16. On 24 April 2013 the Federal Court of Justice rejected the applicant's request for reinstatement and consequently dismissed his appeal on points of law as inadmissible because it had been lodged out of time. It held that it was not necessary to examine whether, with regard to the Christmas holidays, the applicant should have expected his letter to be delivered only on 28 December 2012. Rather, it found decisive that the applicant had been expressly instructed on the day of the judgment's delivery that an appeal could only be lodged with the Rheine District Court to the record of the registry, but not in writing. An accused who misunderstood the oral instruction and therefore lodged an appeal out of time was himself responsible for this. The Federal Court of Justice distinguished the applicant's case from case-law which made exceptions for a foreigner who was not defended by counsel. Moreover, the applicant's defence counsel had given him instructions on the form and time-limit for an appeal. According to the Federal Court of Justice, the content of this letter was not misleading but reflected correctly the applicable law. There was nothing to show that the applicant might not have understood the oral instructions by the presiding judge for mental health reasons. He misunderstood the subsequent written instructions of his defence counsel in the same way. 16

17. The applicant filed a constitutional complaint to the Federal Constitutional Court. He stated, inter alia, that another lawyer had advised him that his court-appointed defence counsel had been under an obligation to file the appeal on points of law. 17

18. On 29 June 2013 the Federal Constitutional Court declined to consider the applicant's constitutional complaint for adjudication, without providing reasons (no. 2 BvR 1243/13). 18

II. RELEVANT DOMESTIC LAW

19. The provisions of the German Code of Criminal Procedure (CCP) which are relevant to the present case read as follows: 19

Article 44 20

„If a person was prevented from observing a time-limit through no fault of his own, he or she shall be granted a reinstatement of the proceedings upon application." 21

Article 140 22

"(1) The participation of defence counsel shall be mandatory if 1. the main hearing at first instance is held at the Court of Appeal or at the Regional Court; ... 4. remand detention pursuant to Articles 112 or 112a or provisional placement pursuant to Article 126a or Article 275a subsection (6) is executed against an accused; 5. the accused has been in an institution for at least three months based on judicial order or with the approval of the judge and will not be released from such institution at least two weeks prior to commencement of the main hearing; ..." Article 341 "(1) The appeal on points of law shall be filed with the court whose judgment is being contested, either to be recorded by the registry or in writing, within one week after pronouncement of judgment. ..." 23

Article 297 24

„Defence counsel may file an appellate remedy on behalf of the accused, but not against the latter's express will." 25

Article 299 26

"(1) An accused who is not at liberty may make statements relating to appellate remedies to be recorded by the registry of the District Court in whose district the institution where he is detained upon official order is located. (2) For observance of a time-limit it shall be sufficient for the record to be made within the time-limit." 27

THE LAW

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

20. The applicant complained in essence that by not granting him reinstatement, the Federal Court of Justice 28

violated his right of access to court as provided in Article 6 § 1 of the Convention, which reads as follows: „In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

21. The Government contested that argument. 29

A. Admissibility

22. The Government raised objections concerning the exhaustion of domestic remedies. 30

23. They pointed out that the applicant, in the reinstatement proceedings, had never complained of his court-appointed counsel refusing to lodge an appeal on points of law, nor stated that he had been suffering from a particular illness on the day the judgment was delivered. The Federal Court of Justice therefore did not find any indications in the court files that he had been agitated for medical reasons at the hearing. 31

24. They further contended that, in so far as the applicant complained that the Federal Court of Justice had disregarded his submissions concerning his medical condition, he should have lodged a request to be heard (Anhörungsrüge) before the Federal Court of Justice. 32

25. Lastly, the Government stressed that the applicant had not submitted his complete constitutional complaint with appendices to the Federal Constitutional Court within the statutory time-limit of one month. His first letter to the Federal Constitutional Court of 20 May 2013 only indicated that he wanted to lodge a constitutional complaint against the Federal Court of Justice's decision. On 1 June 2013 he submitted a copy of that decision. None of these submissions contained the mandatory arguments as to why he considered the German Basic Law to be infringed. His submissions were amended by letter of 17 June 2013 which reached the Federal Constitutional Court on 21 June 2013, outside the one-month time-limit. The Federal Constitutional Court therefore had not had a chance to assess his constitutional complaint on its substance. 33

26. The applicant did not comment on the objections. 34

27. The Court takes note that the Government limit their first objection to the fact that some of the arguments raised by the applicant were not or were insufficiently presented in the reinstatement proceedings. The Court finds that the nature of this objection addresses the merits of the case and should not be dealt with under the aspect of admissibility of the complaint. 35

28. The Court also observes that the applicant has not complained that the Federal Court of Justice overlooked his submissions regarding his medical condition. The Court therefore cannot share the Government's view that, in order to exhaust domestic remedies, the applicant should have lodged a request to be heard. 36

29. Finally, the Court notes that the Federal Constitutional Court, in its decision of 29 June 2013, did not give any reasons for declining to accept the applicant's complaint for adjudication. There are no indications that the Federal Constitutional Court considered that the applicant had not complied with formal requirements. Under these circumstances, the Court is not in a position to take the place of the Federal Constitutional Court and to speculate why that court decided not to admit the complaint (see Keles v. Germany, no. 32231/02, § 44, 27 October 2005; mutatis mutandis Epple v. Germany, no. 77909/01, § 26, 24 March 2005). This constellation has to be distinguished from the one in Colak and Tsakiridis v. Germany (dec.), nos. 77144/01 and 35493/05, 11 December 2007) in which the relevant domestic court, a court of appeal, had thoroughly explained why the applicant had not met the admissibility requirement. 37

30. In conclusion, the Court rejects the Government's other objections as to admissibility. It further notes that the complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) nor inadmissible on any other grounds. It must therefore be declared admissible. 38

B. Merits

1. The parties' submissions

31. The applicant complained under Article 6 § 1 of the Convention that his appeal on points of law concerning the Münster Regional Court's judgment of 18 December 2012 was declared inadmissible and his request for reinstatement of the proceedings dismissed. He claimed that he was unable to understand the oral instructions of the presiding judge due to his mental state on the day when the judgment was delivered. Furthermore he alleged that the subsequent written instruction by his court-appointed defence counsel, who undertook no activities to defend him at that time, was unclear and led him to lodge his written appeal with the wrong court. 39

32. The Government argued that the applicant had not shown that his illness prevented him from lodging his written 40

appeal with the competent court. The applicant had been fit to stand trial and was in the presence of his court-appointed counsel, his custodian and the court's psychiatric expert, none of whom noticed that his mental state at the time rendered him unfit to stand trial. The information counsel provided him on how to lodge an appeal was not misleading. If he still erred on the manner of lodging the appeal, it had been his own fault.

2. The Court's assessment

33. The Court, at the outset, reiterates that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the guarantees of Article 6 must be complied with (Delcourt v. Belgium, 17 January 1970, § 25, Series A no. 11). 41

34. The Court further points out that the „right to a tribunal", of which the right of access is one aspect (see Golder v. the United Kingdom, 21 February 1975, Series A no. 18, p. 18, § 36), is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic rules of a procedural nature. However, limitations to a person's access to court must pursue a legitimate aim and be proportionate and must not restrict access to court in such a way or to such an extent that the very essence of the right is impaired (see, mutatis mutandis, Levages Prestations Services v. France, 23 October 1996, § 40, Reports of Judgments and Decisions 1996-V; Tricard v. France, no. 40472/98, §§ 29, 33, 10 July 2001). This applies in particular to the interpretation by the courts of rules of a procedural nature such as time-limits governing the filing of documents or the lodging of appeals (see Freitag v. Germany, no. 71440/01, § 36, 19 July 2007 and the case-law cited therein). 42

35. Turning to the facts of the present case, the Court notes that the Federal Court of Justice declined to examine the applicant's appeal on the merits as the latter had failed to lodge his appeal within the one-week time-limit prescribed by law, rejecting at the same time his request for reinstatement of the proceedings. The Court holds that the setting of a statutory time-limit for filing an appeal on points of law is essential to ensure the proper administration of justice and compliance with, in particular, legal certainty. 43

36. The Court observes that the time-limit of only one week pursuant to Article 341 § 1 CCP (see relevant domestic law paragraph 19 above) is rather short, having regard to the fact that the applicant was detained. However, the Court also notes that this time-limit does not concern the motivation of the appeal which is subject to another time-limit, set in motion, in general, upon receipt of the reasoned judgment. For lodging an appeal on points of law a single written line suffices. What is more, the applicant had the right, and in fact availed himself of the possibility, to apply for the reinstatement of the proceedings. Therefore the short time-limit itself does not raise an issue under Article 6 § 1 (compare Homann v. Germany (dec.), no. 12788/04, 9 May 2007; see also Tricard, § 31 cited above and Mamikonyan v. Armenia, no. 25083/05, § 29, 16 March 2010 concerning time-limits of five and ten days respectively). 44

37. The Court further observes that the Federal Court of Justice found that the applicant, under domestic law, could not lodge a valid appeal in writing with the Rheine District Court. Article 341 § 1 of the CCP (see paragraph 19 above) prescribes that in general an appeal, in writing or to the record, must be filed with the court whose judgment is being contested. In the instant case that was the Münster Regional Court. Article 299 § 1 of the CCP (see paragraph 19 above) allows for an exception only if the convicted person is detained and prefers to make an oral declaration to the record. In that case the district court at the place of detention is also competent. In the applicant's case that was the Rheine District Court. However, the applicant lodged a written appeal with that latter court which was competent only to take an oral statement to be recorded. Consequently, the Federal Court of Justice's finding that the appeal was lodged out of time was primarily based on the fact that the applicant addressed his written appeal to the wrong court. 45

38. It remains to be determined whether, in the special circumstances of the case, the Federal Court of Justice's refusal to grant reinstatement restricted the applicant's access to court in such a way or to such an extent that the very essence of the right was impaired. For this purpose the Court considers it decisive whether the applicant's mistake, in lodging the appeal with the wrong court, and the amount of negligence attributable to the applicant in this regard, justified denying him access to a second instance court (see mutatis mutandis, Miragall Escolano and Others v. Spain, nos. 38366/97, § 38, ECHR 2000-I). 46

39. In this connection, the Court observes that the applicant, at the time in question, was particularly vulnerable as he was deprived of his liberty in a psychiatric hospital and was considered to be a person of unsound mind who needed psychiatric treatment, and therefore had not been responsible for the actions with which he was charged. Even though counsel to the applicant had only briefly mentioned the applicant's mental health problems in his observations of 9 April 2013 (see paragraph 15 above) the circumstances of his illness, leading to the applicant's admission to hospital, were well documented in the case files available to the Federal Court of Justice. 47

40. The Court further acknowledges that the applicant was defended by counsel. However, the Court notes that counsel „terminated" the „mandate" with the applicant (see paragraph 9) at the time when the applicant wanted to lodge his appeal. Under German law neither the accused nor court-appointed counsel may terminate mandatory appointment of defence counsel, pursuant to Article 140 of the CCP (see paragraph 19 above). Counsel to the applicant had therefore still been in office at the time the appeal had to be lodged. This does not imply that counsel had the obligation to lodge an appeal on points of law proprio motu. Counsel may only lodge an appeal if the accused does not disagree (see Article 297 of the CCP - paragraph 19 above). In the instant case, the applicant had made it clear that he did not want counsel to act, but preferred to lodge the appeal himself. However, knowing the applicant's confusion at the time the judgment was delivered, as well as his mental illness and commitment to hospital, counsel still did not ensure that the applicant was indeed able to lodge the appeal alone. Counsel limited himself to written advice about the possibilities of how to lodge the appeal. While the Court finds, with the Federal Court of Justice, that the advice which counsel gave does not appear incorrect, it takes the view that it was potentially misleading. The letter's third paragraph (see paragraph 9) begins with the sentence: „Appeal on points of law may be lodged either with the record of the registry or in writing." It further contains remarks about the special provision under Article 299 CCP and is followed by the fourth paragraph which provides: „Thus, the Rheine District Court would be competent." A legal layperson thus might deduce that an appeal could also be lodged in writing before the Rheine District Court. 48

41. The Court also considers that commitment to hospital of the applicant, who had typed the appeal on the very day he received counsel's advice, stalled the letter for one day until the hospital staff posted it on Saturday 22 December, that is five days before the expiry of the time-limit. Furthermore, the letter was delayed as postal services, already strained during Christmas time, observed holidays. Lastly, at the Rheine District Court the appeal was received and forwarded to reach the Münster Regional Court five days later, while it could have reached the Regional Court on the same day if it had been sent by fax to Münster, a form of communication not only acceptable under German law but which seems to be common practice. 49

42. While the Court emphasises that, in the interest of legal certainty and the proper administration of justice, time-limits prescribed in domestic law, in general, need to be respected and enforced, it stresses that in exceptional cases flexibility must be applied to ensure that access to court is not limited in breach of the provisions of the Convention. 50

43. In the Court's opinion, the abovementioned particular circumstances may not necessarily fall under the responsibility of the respondent State. However, they reduce the amount of negligence attributable to the mentally-ill applicant who was facing not only a complicated legal and difficult personal situation, confinement to a psychiatric hospital and practical delivery problems, but in addition was no longer actively aided by counsel. In the light of the accumulation of extraordinary factors affecting the lodging of the applicant's appeal, and bearing in mind that the applicant in instant case had already announced in the courtroom that he wished to appeal, the Court takes the view that the Federal Court of Justice's decision to refuse reinstatement of the proceedings was not proportionate to the purpose of the procedural limitation at issue. To hold otherwise would be too formalistic and contrary to the principle of practical and effective application of the Convention (see, mutatis mutandis, Peretyaka and Sheremetyev v. Ukraine, nos. 17160/06 and 35548/06, § 40, 21 December 2010). 51

44. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's right of access to a court was restricted in such a way and to such an extent that the very essence of the right was impaired. 52

45. There has accordingly been a violation of Article 6 § 1 of the Convention. 53

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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." 54

47. The applicant made no claim in respect of pecuniary or nonpecuniary damage nor in respect of costs or expenses and the Court sees no reasons to make any such award. 55

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;

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