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Meeting: 1531st meeting (June 2025) (DH)

Item reference: Action Report (11/03/2025)

Communication from Germany concerning the case of Krebs v. Germany (Application No. 68556/13)

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Réunion : 1531^e réunion (juin 2025) (DH)

Référence du point : Bilan d'action (11/03/2025)

Communication de l'Allemagne concernant l'affaire Krebs c. Allemagne (requête n° 68556/13) (**anglais uniquement**)



Berlin, 11 March 2025

Application K. v. Germany (No. 68556/13)

Updated Action Report on the execution of the judgment of the European Court of Human Rights delivered on 20 February 2020, final 20 June 2020

The Action Report has been extensively revised and updated.

A. Case description

- 1 The applicant is a German national who was born in 1979. The case concerned his complaint that the Weiden Regional Court, when hearing his appeal lodged with regard to the sentencing following his first conviction, declared him guilty of crimes in relation to which separate criminal proceedings were pending. The applicant was found guilty in August 2010 of fraud and forgery after ordering documents and services through the Internet under a false name and using someone else's bank account details for payment. He was given a prison sentence of 10 months, with no suspension on probation. On appeal against the sentence, the competent Regional Court held hearings. In one of them, the court heard testimony from a police officer who was investigating new charges of fraud against the applicant, allegedly committed after his first sentence. The appeal court upheld the 10-month sentence with no probation, stating in particular that it was convinced of the applicant's guilt of the further offences the police were investigating. The applicant appealed on points of law, arguing that the Regional Court had breached his right to be presumed innocent. His appeal was unsuccessful, as was a complaint about being denied the right to be heard. He was convicted in August 2012 on further counts of fraud and forgery and given a global sentence of one year and six months' imprisonment for both sets of crimes. In July 2013, the Federal Constitutional Court declined to consider a complaint by the applicant about his initial 10-month sentence. Relying in particular on Article 6 (2) of the Convention (presumption of innocence), the applicant complained about the Regional Court's statements on his being guilty of further offences of fraud.

- 2 The Court unanimously determined that there had been a violation of Article 6 (2) of the Convention (presumption of innocence) and awarded the applicant € 3,570.00 for reimbursement of costs in addition to € 5,000.00 in damages for the non-pecuniary damage suffered. The Court has based its assessment, in a first step, on the language used by the Regional Court: The Court found that the unambiguous statements made indicated that the Regional Court found the applicant guilty of having committed further offences of fraud and did not contain any explicit reservation clarifying that the further fraudulent behaviour of the applicant was still being examined in a separate set of criminal proceedings. Examining, in a second step, the nature and the context of the proceedings in which these statements were made, the Court found that the Regional Court had not limited itself to assessing certain elements of a penal provision in the context of proceedings concerning a civil compensation claim or solely relied on the applicant's admission of guilt, but had assumed the role of a criminal trial court in respect of these further offences and had heard witness testimony before reaching its unambiguous conclusion on the applicant's commission of the further criminal offences. In this respect, the Court stressed that also the observance of due process in proceedings before a tribunal which is not competent to adjudicate the further offences at issue cannot rebut a violation of the presumption of innocence. The Court thus concluded that the Regional Court's statements to the effect that the applicant was guilty of having committed further offences were contrary to the presumption of innocence with respect to the pending criminal proceedings as regards those further offences.

B. Individual measures

1. Payment of compensation

- 3 The compensation awarded by the Court for reimbursement of costs (€ 3,570.00) was received on 18 September 2020 by the Applicant's legal representative, who had submitted a power of attorney authorising him to receive the compensation. The compensation awarded by the Court for the non-pecuniary damage suffered (€ 5,000.00) was received on 18 September 2020 by the applicant. Please find attached photocopies of the relevant transfer receipts.

2. Possibility to request a retrial

- 4 According to Article 359 no. 6 of the Code of Criminal Procedure, the reopening of the proceedings concluded by a final judgment for the convicted person's benefit is admissible, if the Court has held that there has been a violation of the Convention and the judgment was based on that violation. The applicant applied for retrial under the abovementioned legal basis through his criminal defence lawyer by letter of 23 June 2020, but withdrew his application by

a letter dated 30 July 2020. To date (27 February 2025), no new application has been submitted.

C. General measures

1. Identification and assessment of the source of the violation

- 5 As detailed in paragraph 2 above, the violation of Article 6 (2) of the Convention was caused by the wording of the Regional Court's judgment as well as the nature and the context of the proceedings: The Regional Court's judgment – without containing any explicit reservation regarding the ongoing separate set of criminal proceedings – included unambiguous statements indicating that the applicant was guilty of having committed further offences of fraud. Moreover, to reach these unambiguous statements, the Regional Court (while observing due process) assumed the role of a criminal trial court in respect of these further offences and heard witness testimony without being competent to adjudicate the further offences at issue.

2. Implementation by the national courts

- 6 From the Federal Government's point of view, no legislative measures are required in order to implement the judgment and to address the underlying issue. The relevant provision of the German Criminal Code (*Strafgesetzbuch* – **StGB**) allows for a convention-compatible interpretation: Section 56 (1) StGB provides that the enforcement of a prison sentence not exceeding one year is suspended on probation

“if there are reasons to believe that the sentence itself will serve as sufficient warning to the convicted person and that the convicted person will commit no further offences even without having to serve the sentence. The court is, in particular, to take account of the convicted person's character and previous history, the circumstances of the offence committed, the convicted person's circumstances and conduct in the period following the offence, and the effects to be expected from the suspension.”
(emphasis added)

Section 56 (1) StGB does not require the court deciding upon the suspension of a prison sentence to assume the role of a criminal trial court in respect of potential further offences. Hence, section 56 (1) StGB can be interpreted – and in fact (given the constitutional obligation to interpret German law in a convention-compliant manner and considering the Court's case law) can be expected to be interpreted – in a way that precludes a prognosis which violates a convicted person's presumption of innocence regarding (potential) further offences.

- 7 To the Federal Government's knowledge, since the Court's Krebs judgment, no case-law has been rendered in a comparable case yet. Moreover, there are no similar cases pending before the Court.

- 8 However, the Federal Government would like refer to the case of ***Böhmer vs. Germany (no. 37568/97)*** which is similar to the case at hand in so far as the Court also found a violation of a convicted person's presumption of innocence with regard to further offences by a decision relating to a suspension of sentence. Clearly, this case differs from the case at hand in so far as it did not relate to an "initial" decision on a suspension (pursuant to section 56 (1) StGB), but rather to the revocation of a granted suspension (pursuant to section 56f (1) no. 1 StGB), which is subject to different conditions under German criminal law. The Court's Böhmer judgment was therefore not readily transferable to the interpretation of section 56 (1) StGB – and accordingly was not taken into account by the Regional Court in the case of Krebs. However, the fact that the Court's Böhmer judgment was promptly taken up by German case law and has led to a convention-compliant interpretation and application of section 56f (1) no. 1 StGB,¹ shows very clearly that the German courts pay close attention to the Court's judgments in this field and implement them accordingly.
- 9 The fact that the German courts have certainly taken note of the Court's Krebs judgment may also be demonstrated by the fact that the Saarland Higher Regional Court – albeit in a decision concerning the revocation of a suspension pursuant to section 56f (1) no. 1 StGB – has made explicit reference to the Court's Krebs judgment.²
- 10 Against this background and also considering the wide publication and dissemination of the judgment (see below), there is every reason to expect that the German courts will take up the Court's Krebs judgment and implement it as soon as they are presented with a respective case – as they have done in the case of the Court's Böhmer judgment.

3. Publication and dissemination of the judgment

- 11 The courts and authorities that were involved in the proceedings and whose decisions formed the basis of the application, have been notified of the judgment. Furthermore, a German

¹ See e.g. Federal Constitutional Court, decisions of 9 December 2004 (2 BvR 2314/04), 23 April 2008 (2 BvR 572/08) or 12 August 2008 (2 BvR 1448/08), Higher Regional Court Jena, decision of 26 March 2003 (1 Ws 100/03), Higher Regional Court Celle, decision of 23 July 2003 (1 Ws 250/03), Higher Regional Court Nurnberg, decision of 17 May 2004 (Ws 558, 559/04), Higher Regional Court Stuttgart, decision of 26 July 2004 (4 Ws 180/04) or Higher Regional Court Hamm, decision of 17 July 2012 (III-1 Vollz (Ws) 323/12). Section 56f (1) no. 1 StGB is now interpreted to provide that - if the convicted person does not confess to the further offence – a revocation of a suspension of sentence with view to a further offence that has not yet been adjudicated inadmissible.

² See Saarland Higher Regional Court, Decision of 6 February 2024, 1 Ws 17/24, para. 14: "*Most recently, the European Court of Human Rights also confirmed in its decision of 20 February 2020 – 68556/13 – on the violation of the presumption of innocence when taking into account offences unrelated to the proceedings in the context of a decision on a suspension of sentence on probation (available via juris) confirmed that the presumption of innocence is not violated if a court does not make its own findings on the guilt of the person concerned, but only bases its decision on that person's confession (see ECtHR judgment of 20 February 2020 - 68556/13 -, juris para. 50).*"

translation of the judgment has been sent to all the ministries of justice of the *Länder* for notification within their remit.

- 12 In addition, a German translation of the judgment was published in anonymous form in the Court's database (<https://hudoc.echr.coe.int/fre?i=001-206606>). Furthermore, the translation has been sent to several important publishing houses that bring out legal periodicals. As a consequence, the Court's Krebs decision was repeatedly cited in German legal literature, especially in commentary literature.³
- 13 Moreover, the judgment was included in the report drawn up by the Federal Ministry of Justice, entitled "*Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte und die Umsetzung seiner Urteile in Verfahren gegen die Bundesrepublik Deutschland im Jahr 2020*" ("*Report on the Case-Law of the European Court of Human Rights and on the Execution of its Judgments in Cases against the Federal Republic of Germany in 2020*"). This report was widely disseminated and is published on the Federal Ministry of Justice website at https://www.bmj.de/DE/themen/menschenrechte/eu_gerichtshof/EGMR_Verfahren/egmr_verfahren_node.html.

D. Conclusion

- 14 With respect to individual measures, the Federal Government considers that, in light of circumstances of the case and the findings of the Court, the payment of the compensation to the applicant is appropriate and sufficient to remedy the violation of his rights. In addition, the Federal Government has taken general measures to prevent a recurrence of the violation of Article 6 (2) of the Convention in similar cases. The Court's judgment was translated into German and widely disseminated. From the Federal Government's point of view, no further individual or general measures are necessary to execute the judgment.
- 15 Accordingly, Germany has fulfilled its obligations under Article 46 (1) of the Convention.

³ See e.g. Gaede, in: Münchener Kommentar zur StPO, 2nd edition 2025, EMRK Article 6, para. 139; Lohse/Jakobs, in: Karlsruher Kommentar zur Strafprozessordnung, 9th edition 2023, EMRK Article 6, para. 78; Gaede, in: Hilgendorf/Kudlich/Valerius, Handbuch des Strafrechts, 1st edition, 9/2023, § 76, para. 48; Meyer, in: Karpenstein/Mayer, Konvention zum Schutz der Menschenrechte und Grundfreiheiten: EMRK, 3rd edition 2022, Article 6 para. 178, Pauly, Anmerkung zu EGMR, Krebs/D, 20.2.2020, 68556/13, in: StV 2021, 631 ff.