FIFTH SECTION

**CASE OF RUMPF v. GERMANY**

*(Application no. 46344/06)*

JUDGMENT

STRASBOURG

2 September 2010

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Rumpf v. Germany,**

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges,*
and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 6 July 2010,

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

## PROCEDURE

1. The case originated in an application (no. 46344/06) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Rüdiger Rumpf (“the applicant”), on 10 November

2006.

2. The applicant, who had been granted legal aid, was represented by Mr S. Schill, a lawyer practising in Wetzlar. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling - Vogel, *Ministerialdirigentin*, Federal Ministry of Justice.

3. On 15 July 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. On 24 November 2009 the Chamber decided to give priority treatment to the above application in accordance with Rule 41 of the Rules of Court and to inform the parties that it was considering the suitability of applying a pilot judgment procedure in the case (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 189-194 and the operative part, ECHR 2004-V, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 231-239 and the operative part, ECHR 2006-VIII). The Chamber also decided to invite the parties, under Rule 54 § 2 (c), to submit further observations on the case.

5. The parties submitted further written observations. The applicant requested the Chamber to hold a hearing. The Government objected to a hearing. The Chamber decided, pursuant to Rule 54 § 3 and Rule 72 §§ 1 and 2, that no hearing was required.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1951 and lives in Ingelheim.

### A. Background to the case

7. Since 1979 the applicant has operated a personal security service (*Personenschutzunternehmen*).

8. On 1 June 1992 he lodged an application for gun licences (*waffenrechtliche Erlaubnis*) with the county of Querfurt (Saxony-Anhalt), which was granted. Subsequent requests for a renewal of these licences in May and October 1993 were only provisionally granted and were finally dismissed on 23 November 1993.

9. On 30 November 1993 the applicant lodged an administrative appeal (*Widerspruch*) against the decision of 23 November 1993, which was dismissed on 18 March 1994.

10. The applicant also applied to the Administrative Court for interim measures. This application was dismissed in January 1994, which decision was confirmed on appeal by the Administrative Court of Appeal in August 1994.

### B. First-instance proceedings

11. On 22 April 1994 the applicant brought an action with Halle Administrative Court, initially without detailed reasoning.

12. On 30 June 1994 the statement of defence and the administrative files were submitted to the court. On 7 October 1994 the applicant appointed additional legal counsel, who resigned again in November 1994.

13. In June 1995 Halle Administrative Court ordered the applicant to reason his action within six weeks. After the applicant's lawyer had twice requested an extension of the time-limit set by the court he submitted the reasoning on 19 September 1995. In October 1995 the applicant appointed additional legal counsel.

14. On 5 March 1996 Halle Administrative Court scheduled a hearing for 11 April 1996, which was subsequently rescheduled for 30 May 1996 upon the defendant's request.

15. After the hearing on 30 May 1996 the judgment was delivered and on 4 and 5 July 1996 served on

the applicant's counsel.

### C. Appeal proceedings

16. On 22 July 1996 the applicant appealed the judgment. On 5 August 1996 the files were transferred to the Administrative Court of Appeal. On 22 October 1996 the reasoning of the appeal was submitted. On 23 December 1996 and 21 February 1997 answers to the appeal were lodged.

17. On 2 July 1997 the Administrative Court of Appeal informed the applicant's counsel, at his request, that it was not foreseeable when a decision would be rendered.

18. On 10 September 1998 a hearing was scheduled for 18 November 1998. On 10 November 1998, after inspection of the files, the applicant's counsel informed the Administrative Court of Appeal that the files were incomplete. On the same day the court started an enquiry in this respect and informed counsel on 12 November 1998 that its investigations had been to no avail. On 16 November 1998 the applicant's counsel asked for the hearing to be postponed in order for the missing files to be reassembled. On 18 November 1998 the hearing took place; however, the case was adjourned.

19. On 8 December 1999 the Administrative Court of Appeal requested the missing files from the administrative authorities without success. In January and March 2000 the applicant's counsel enquired about the state of the proceedings. On 3 August 2000 the Administrative Court of Appeal requested the files from Halle Administrative Court, without success. On 29 May 2001 the court informed counsel that its efforts to locate the missing files had failed and that a hearing was planned for July 2001.

20. On 12 June 2001 a hearing was scheduled for 12 July 2001. On 9 July 2001 the applicant's counsel asked for the hearing to be postponed because he had not yet been able to reassemble the missing documents. The hearing was subsequently cancelled.

21. On 30 October 2002 new counsel for the applicant requested a hearing and repeated this request on 4 December 2002. On 13 February 2003 counsel again asked for an oral hearing to be scheduled and promised to try to reassemble the missing documents. On 18 March 2003, after counsel had inspected the files in early March, he informed the court that he did not deem the missing documents relevant and requested a hearing.

22. On 29 April 2003 the applicant's former counsel applied for legal aid. On 9 May 2003 the applicant's current counsel filed a motion for bias against the presiding judge because no hearing had been scheduled. On 9 July 2003 he enquired about the state of the proceedings.

23. On 30 July 2003 the court asked for a clarification of the applicant's representation and ordered the applicant's counsel to submit a power of attorney, which he submitted on 5 August 2003. On 19 September 2003 the applicant's counsel again enquired about the state of the proceedings. On 21 October 2003 the court asked whether a hearing could be scheduled for 11 December 2003. The parties agreed. On 3 December 2003 the court informed the parties that because of the motion for bias the hearing could not be held on the date agreed upon. On 8 December 2003 the motion for bias was dismissed.

24. On 5 February 2004 and 17 March 2004 applicant's counsel renewed his request for a hearing. On 31 March 2004 the request for legal aid was dismissed. On 7 April 2004 a hearing was scheduled for 13 May 2004. After the hearing the Administrative Court of Appeal dismissed the appeal and refused leave to appeal on points of law. On 30 June 2004 the reasoned judgment was served on the applicant's counsel.

### D. Proceedings regarding leave to appeal on points of law

25. On 16 September 2004 the applicant's counsel objected to the refusal to grant leave to appeal on points of law. On 5 January 2005 the Federal Administrative Court dismissed the objection; this was served on the applicant's lawyer on 21 January 2005.

### E. Constitutional complaint

26. On 7 March 2005 the applicant brought a constitutional complaint against, *inter alia*, the decisions of Halle Administrative Court of 30 May 1996, the Saxony-Anhalt Administrative Court of Appeal of 13 May 2004 and the Federal Administrative Court of 5 January 2005, as well as the decisions of the administrative courts with regard to the interim proceedings. He alleged, *inter alia*, a violation of his right under Article 6 of the Convention because of the length of the proceedings. At the same time he applied for *restitutio in integrum* because he had failed to comply with the one-month time-limit for constitutional complaints.

27. On 15 March 2005 the Registry of the Federal Constitutional Court informed the applicant about doubts as to the admissibility of his complaint and asked him to indicate within one month whether he wanted to pursue his complaint. On 14 April 2005 the applicant, who had in the meantime retained new counsel, requested an extension of the time-limit until 16 May 2005. In May 2005 the Registry of the Federal Constitutional Court informed the applicant's counsel that the case would not be registered as a case requiring a judicial decision but would remain in the general register until further submissions had been made. On 12 October 2005 counsel of the applicant submitted observations. On 22 November 2005 the case was registered as a case requiring a decision.

28. In a partial decision of 27 April 2006 the Federal Constitutional Court (file no. 1 BvR 2398/05) dismissed the constitutional complaint as inadmissible in part. The remainder, regarding the length of the proceedings, was forwarded to the Ministry of Justice of Saxony-Anhalt for comments on 11 May 2006.

29. On 30 August 2006 the Ministry of Justice of Saxony-Anhalt submitted its comments. On 25 April 2007 the Federal Constitutional Court refused to admit the remainder of the applicant's constitutional complaint for examination without examining the application for *restitutio in integrum*. On 7 May 2007 the applicant's lawyer received the Federal Constitutional Court's decision.

## II. RELEVANT DOMESTIC LAW

### A. *De lege lata*

30. Section 82 of the Administrative Court Rules (*Verwaltungsgerichtsordnung*) specifies the requirements that every complaint lodged with the administrative court must comply with, one of which is that the facts and evidence on which the complaint is based should be specified. It further provides that the court shall request the applicant to furnish the necessary information within a determined period of time in the event that the complaint does not meet these requirements.

31. Section 86 (1) of the Administrative Court Rules provides that the court shall investigate the facts of its own motion. Furthermore, it is not bound by the submissions or requests of the parties.

32. Further relevant domestic law, applicable *mutatis mutandis* to proceedings before the administrative courts, is described in the Court's decision of *Sürmeli v. Germany* (see *Sürmeli v. Germany* [GC], no. 75529/01, §§ 62-74, ECHR 2006-VII); regarding special complaints alleging inaction the Federal Administrative Court explicitly decided on 30 January 2003 (file no. 3 B 8/03) that the Administrative Court Rules do not provide for such a remedy.

### B. *De lege ferenda*

33. The draft bill referred to by the respondent State in the case of *Sürmeli* (cited above, § 90), tabled in 2005, was abandoned in 2007. On 15 March 2010 the Government introduced a new draft, namely the Act on legal protection in the event of excessive length of judicial proceedings and preliminary proceedings under criminal statutes (*Gesetz über Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*). Pursuant to this proposed legislation a complaint about a delay in the proceedings must first be lodged in the original proceedings. Where the domestic court subsequently does not provide

redress, an action for damages can be brought.

34. The draft bill was forwarded to all affected institutions in April 2010; comments were expected by early June 2010. Afterwards necessary amendments will have to be agreed upon before the Cabinet deals with the draft bill for the first time. The draft bill will then be forwarded for comments to the *Bundesrat*, the upper house of the German parliament, before being presented to the *Bundestag*, the lower house.

### III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

35. The relevant Council of Europe documents are described in the Court's judgment of *Yuriy Nikolayevich Ivanov v. Ukraine* (see *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 35-37, ECHR 2009-... (extracts)).

## THE LAW

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

36. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

37. The period to be taken into consideration began on 30 November 1993 and ended with the receipt of the second decision of the Federal Constitutional Court on 7 May 2007. It thus lasted thirteen years, five months and one week at four levels of jurisdiction.

#### A. Admissibility

38. The Court notes that the application 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.

#### B. Merits

##### *1. The parties' submissions*

39. The applicant maintained that the overall duration of the proceedings was in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention. Referring to Section 82 of the Administrative Court Rules he submitted that the administrative courts failed to duly expedite the proceedings by setting effective time-limits for the parties' submissions. With regard to the missing files, he argued that since they had been lost while in the possession of the Administrative Court of Appeal every delay in this respect had to be attributed to the respondent State. He further maintained that the engagement of different lawyers on his part should not have led to a delay since there had never been any doubt as to who represented him. The applicant admitted responsibility for a delay of approximately six to seven months.

40. The Government acknowledged that the duration of the proceedings had exceeded the "reasonable time" requirement, as set out in Article 6 § 1 of the Convention. However, they pointed out that the proceedings were complicated by the simultaneous conduct of interim proceedings and by the changes of counsel. They further maintained that the applicant had contributed considerably to the overall length of the

proceedings, *inter alia*, by submitting an unreasoned complaint and requesting extensions of time-limits. As to the proceedings before the Administrative Court of Appeal the Government conceded that the conduct of the court had contributed substantially to the length of the proceedings and that, in particular, the court could have advanced the proceedings by issuing procedural directions (*prozessleitende Verfügungen*). However, they maintained that the applicant's representatives' contradictory behaviour regarding the missing files had also contributed to the delay. The Government acknowledged that due to the applicant's professional situation there was a lot at stake for him, but also emphasised that it was in the first place the refusal to grant the gun licence which had damaged him economically, not the length of the proceedings.

*2. The Court's assessment*

41. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

42. The Court observes that the proceedings did not raise any questions of law or fact of particular complexity. The fact that the applicant also pursued his interest in interim proceedings cannot justify any delay. The Court not only considers this to be a common procedural situation but, in particular, observes that the interim proceedings came to an end already in August 1994, shortly after the main proceedings began and long before the appeal proceedings started. They can thus not have had a delaying effect on the main proceedings.

43. As to the applicant's conduct, the Court, taking note of Sections 82 and 86 (1) of the Administrative Court Rules, finds that it was first and foremost the Administrative Court's duty to set the applicant a time-limit for submission of a more detailed reasoning of his action. Thus, only a delay of approximately two months can be attributed to the applicant, resulting from the two requests for the extension of the time-limit set by the court more than one year after the action was lodged. As to the representation of the applicant the Court notes that only two lawyers were involved before the Administrative Court of Appeal, where the most substantial delay occurred. Furthermore, that court only asked for clarification of the applicant's representation nine months after the second lawyer had intervened. The Court thus cannot find that the additional appointment of legal counsel made the applicant responsible for any delay of the proceedings. Regarding the applicant's conduct before the Federal Constitutional Court the Court observes that he was informed by the Registry of that court that they had doubts as to the admissibility of his constitutional complaint and that the case would remain in the general register until further submissions; a time-limit of 15 April 2005 was set. However, further observations were only submitted six months later. This delay must be attributed to the applicant.

44. Turning to the conduct of the domestic courts, the Court observes in particular that before the Administrative Court of Appeal alone the proceedings were pending for almost eight years. The first substantial delay took place right at the beginning of the appeal proceedings when the court did not advance the proceedings for more than one and a half years. The next delay, from November 1998 to May 2001, was caused by the (unsuccessful) attempt to recover the missing files, which the Court considers to fall within the area of responsibility of the respondent State. The applicant's representative's offer to reassemble the files did not absolve the Administrative Court of Appeal of its duty to continue its efforts to recover the files and to advance the proceedings. But even after the Administrative Court of Appeal had informed the parties that it had been unsuccessful in locating the files it did not conduct the proceedings with due diligence. The hearing scheduled for July 2001 was cancelled; a new hearing was not set until April 2004. The fact that during this time the applicant lodged a motion for bias and applied for legal aid cannot justify the fact that no new hearing was set in almost three years. Rather, the application for legal aid, which was only decided after some eleven months, as well as the motion for bias, which took seven months to decide, should have been dealt with more rapidly.

45. As to what was at stake for the applicant, the Court notes that the applicant's business depended on the outcome of the case, namely the renewal of a gun licence. While the Court accepts that the final refusal of the licence led to an economic loss for the applicant, it was in particular also the length of the proceedings and the resulting uncertainty as to whether he would be able to resume his business that damaged the applicant. If the proceedings had been terminated in a more timely fashion he could have started to reorganise or relocate his business earlier.

46. Having examined all the material submitted and having regard to its case-law on the subject the Court considers, that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant further complained of the lack of effective domestic remedies in respect of his complaint about the excessive length of judicial proceedings. He relied on Article 13 of the Convention which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

48. The Government conceded that the applicant had no effective domestic remedy available to him within the meaning of Article 13 of the Convention with regard to the delay in the proceedings before the Administrative Court of Appeal.

49. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

50. The Court reiterates that Article 13 of the Convention gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal system. It therefore requires that the States provide a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). In the present case, having regard to its conclusion with regard to the excessive length of the proceedings, the Court considers that the applicant had an arguable claim of a violation of Article 6 § 1.

51. The Court reiterates that according to its recent case-law there is no effective remedy under German law capable of affording redress for the
unreasonable length of civil proceedings (see *Sürmeli*, cited above, §§ 103 -108, ECHR 2006-VII, and *Herbst v. Germany*, no. 20027/02, §§ 63-68, 11 January 2007).

52. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

## III. APPLICATION OF ARTICLE 46 OF THE CONVENTION

53. The Court notes that the instant case concerns a recurring problem underlying the most frequent violations of the Convention found by the Court in respect of Germany; more than half of its judgments against Germany finding a violation concerned the issue of excessive length of judicial proceedings. In *Sürmeli* (cited above, §§ 115-117) the Court also concluded that the German legal system offered no effective domestic remedy, as required by Article 13 of the Convention, to prevent excessively long judicial proceedings or to afford redress for the damage created by such proceedings.

54. While the Court takes note of the new draft legislation introduced in March 2010 it is also acutely aware that it is for the time being uncertain whether this legislation will ever enter into force or whether it will in the end be abandoned, as was the case with the bill tabled in 2005 (see Relevant domestic law above, § 33). Unless and until such legislation actually becomes law and proves to be effective the Court finds that the issues of excessive length of proceedings and lack of effective domestic remedies in the German legal system remain unresolved, despite the fact that there has for quite some time been clear case-law urging the Government to take appropriate measures to resolve those issues.

55. In this context the Court reiterates that it has already drawn the respondent State's attention to Article 46 of the Convention in its *Sürmeli* judgment (cited above, § 137):

> 137. The Court reiterates that, in accordance with Article 46 of the Convention, the finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V).

56. In these circumstances the Court considers it necessary to examine this case under Article 46 of the Convention, which, in so far as relevant, reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
>
> ..."

## A. The parties' submissions

57. The applicant submitted that the German authorities' continuing failure to introduce an effective domestic remedy after the Court's judgment in *Sürmeli* (cited above) constituted a systemic problem.

58. The Government submitted that over the past few years the average length of proceedings before the administrative courts continuously decreased across Germany, namely from an average of 14.1 months before the Administrative Courts in 2005 to 12.3 months in 2008. They maintained that these figures did not support the conclusion that there were any systemic problems. While the length of proceedings before the Administrative Courts of Appeal has risen since 2005 from an average of 8.7 months in 2005 to 10.2 months in 2008, the Government argued that theses numbers did not disclose a systemic problem either. They further submitted that with the new draft bill measures have been taken to remedy the situation and fulfil the obligations under the Convention. While the Government, referring to *Burdov v. Russia (no. 2)* (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 140, ECHR 2009-...), further noted that it was not for the Court to assess the overall adequacy of the ongoing reform, they left it to the discretion of the Court whether to apply the pilot judgment procedure.

## B. The Court's assessment

### *1. Application of the pilot judgment procedure*

59. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent State a legal obligation to implement, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the right of the applicant which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicant's position, notably by solving the problems that have led to the Court's findings (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000 VIII; *Lukenda v. Slovenia*, no. 23032/02, §§ 94-95, ECHR 2005-X and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR

2008-...).

60. In its resolution on judgments revealing an underlying systemic problem, adopted on 12 May 2004, the Committee of Ministers invited the Court "to identify in its judgments finding a violation of the Convention what it considers to be an underlying systemic problem and the source of that problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments".

61. In order to facilitate the effective implementation of its judgments along these lines, the Court may adopt a pilot judgment procedure allowing it to clearly identify in a judgment the existence of structural and/or systemic problems underlying the violations and to indicate specific measures or actions to be taken by the respondent state to remedy them (see *Broniowski*, cited above,, §§ 189-194 and the operative part, ECHR 2004-V, and *Hutten-Czapska*, cited above, §§ 231-239 and the operative part, ECHR 2006-VIII).

62. In line with its approach in the case of *Yuriy Nikolayevich Ivanov* (cited above, §§ 81-82), which concerned similar issues albeit with regard to the non-enforcement of domestic decisions, the Court considers it appropriate to apply the pilot judgment procedure in the present case, given notably the recurrent and persistent nature of the underlying problems, the number of people affected by them in Germany and the need to grant them speedy and appropriate redress at domestic level.

63. Contrary to the Government's submissions, the application of the pilot judgment procedure in the present case does not lead to an assessment by the Court of the *adequacy* of the ongoing legislative reform; rather, this procedure (only) allows the Court to conclude that the respondent State must introduce a remedy which secures genuinely effective redress for the violations of the Convention on account of the State authorities' prolonged failure to comply with judicial decisions delivered against the State or its entities (*Burdov (no. 2)*, cited above, § 141).

*2. Existence of a practice incompatible with the Convention*

64. The Court notes that from 1959 to 2009 it has delivered judgments in more than forty cases against Germany finding repetitive violations of the Convention on account of the excessive length of civil proceedings. In 2009 alone thirteen such violations of the reasonable-time requirement of Article 6 § 1 of the Convention were found.

65. Following the judgment in *Sürmeli* (cited above, §§ 115-116) the Court has found a violation of the reasonable-time requirement of Article 6 § 1 of the Convention regarding civil proceedings in numerous further judgments: *Nold v. Germany*, no. 27250/02, 29 June 2006; *Stork v. Germany*, no. 38033/02, 13 July 2006; *Grässer v. Germany*, no. 66491/01, 5 October 2006; *Klasen v. Germany*, no. 75204/01, 5 October 2006; *Herbst v. Germany*, no. 20027/02, 11 January 2007; *Kirsten v. Germany*, no. 19124/02, 15 February 2007; *Laudon v. Germany*, no. 14635/03, 26 April 2007; *Skugor v. Germany*, no. 76680/01, 10 May 2007; *Nanning v. Germany*, no. 39741/02, 12 July 2007; *Glüsen v. Germany*, no. 1679/03, 10 January 2008; *Bähnk v. Germany*, no. 10732/05, 9 October 2008; *Leela Förderkreis e.V. and Others v. Germany*, no. 58911/00, 6 November 2008; *Adam v. Germany*, no. 44036/02, 4 December 2008; *Bozlar v. Germany*, no. 7634/05, 5 March 2009; *Deiwick v. Germany*, no. 7369/04, 26 March 2009; *Hub v. Germany*, no. 1182/05, 9 April 2009; *Ballhausen v. Germany*, no. 1479/08, 23 April 2009; *Evelyne Deiwick v. Germany*, no. 17878/04, 11 June 2009; *Mianowicz v. Germany (no. 2)*, no. 71972/01, 11 June 2009; *Bayer v. Germany*, no. 8453/04, 16 July 2009; *D.E. v. Germany*, no. 1126/05, 16 July 2009; *Kindereit v. Germany*, no. 37820/06, 8 October 2009; *Sopp v. Germany*, no. 47757/06, 8 October 2009; *Abduvalieva v. Germany*, no. 54215/08, 26 November 2009; *Von Koester v. Germany (no. 1)*, no. 40009/04, 7 January 2010; *Wildgruber v. Germany*, nos. 42402/05 and 42423/05, 21 January 2010; *Kurt Müller v. Germany*, no. 36395/07, 25 February 2010; and *Niedzwiecki v. Germany (no. 2)*, no. 12852/08, 1 April 2010.

66. Furthermore, the Court, composed as a Committee of three judges and (initially provisionally) applying the provision of Protocol No. 14 governing the power of three-judge committees to decide on cases

in which there is well-established case-law, has rendered judgments finding a violation of the "reasonable time requirement" of Article 6 § 1 of the Convention in civil proceedings in the following cases: *Kressin v. Germany*, no. 21061/06, 22 December 2009; *Jesse v. Germany*, no. 10053/08, 22 December 2009; *Petermann v. Germany*, no. 901/05, 25 March 2010; *Reinhard v. Germany*, no. 485/09, 25 March 2010; *Ritter-Coulais v. Germany*, 32338/07, 30 March 2010; *Sinkovec v. Germany*, no. 46682/07, 30 March 2010; *Volkmer v. Germany*, no. 54188/07, 30 March 2010; *Kuchejda v. Germany* 17384/06, 24 June 2010; *Schädlich v. Germany*, 21423/07, 24 June 2010; *Afflerbach v. Germany*, 39444/08, 24 June 2010; and *Perschke v. Germany*, 25756/09, 24 June 2010.

67. Also, since the Court's judgment in *Sürmeli* (cited above) the Government concluded friendly settlements in twenty-eight cases and submitted unilateral declarations in eight cases concerning the length of civil proceedings. These applications were subsequently struck out of the list of cases.

68. While the Court welcomes the recent legislative initiative, it also notes that the respondent State has failed so far actually to put into effect any measures aimed at improving the situation, despite the Court's substantial and consistent case-law on the matter.

69. The systemic character of the problems identified in the present case is further evidenced by the fact that some fifty-five applications against Germany, which concern, fully or in part, the above problems, are currently pending before the Court and the number of such applications is constantly increasing.

70. In view of the foregoing, the Court concludes that the violations found in the present judgment were neither prompted by an isolated incident nor were they attributable to a particular turn of events in this case, but were the consequence of shortcomings of the respondent State. Accordingly, the situation in the present case must be qualified as resulting from a practice incompatible with the Convention (see *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V).

*3. Adoption of measures to remedy the systemic problems*

71. The Court reiterates that it is in principle not its task to determine what remedial measures may be appropriate to satisfy the respondent State's obligations under Article 46 of the Convention. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta*, cited above, § 249).

72. The Court notes with satisfaction that the adoption of measures in response to the problem at issue has now been addressed by the respondent State by tabling a draft bill regarding legal protection in the event of excessively long court proceedings. However, it remains currently unclear whether and when this bill will enter into force. Also, as the respondent State explicitly acknowledged, its obligations to introduce into German law a legal remedy against excessively long proceedings have been clear since the Court's *Sürmeli* judgment in 2006; it thus demonstrated an almost complete reluctance to resolve the problems at hand in a timely fashion.

73. The Court stresses that the respondent State must introduce without delay, and at the latest within one year from the date on which this judgment becomes final, a remedy or a combination of remedies in the national legal system in order to bring it into line with the Court's conclusions in the present judgment and to comply with the requirements of Article 46 of the Convention. It must further ensure that the remedy or remedies comply, both in theory and in practice, with the key criteria set by the Court (see *Sürmeli*, cited above, §§ 97-101). In so doing, the German authorities should also have due regard to the Committee of Ministers' recommendations to the member States on the improvement of domestic remedies of 12 May 2004.

*4. Procedure to be followed in similar cases*

74. The Court reiterates that one of the aims of the pilot judgment procedure is to allow the speediest possible redress to be granted at domestic level to the large numbers of persons suffering from the structural

problem identified in the pilot judgment (see *Burdov (no. 2)*, cited above, § 127). While the respondent State's action should primarily aim at the resolution of such a dysfunction and at the introduction of effective domestic remedies in respect of the violations in question, it may also include *ad hoc* solutions such as friendly settlements with the applicants or unilateral remedial offers in line with the Convention requirements. The Court is thus in a position to decide in the pilot judgment on the procedure to be followed in cases stemming from the same systemic problems (see, *mutatis mutandis*, *Broniowski*, cited above, § 198, and *Xenides-Arestis v. Turkey*, no. 46347/99, § 50, 22 December 2005).

75. In the present circumstances the Court does not consider it necessary to adjourn the examination of similar cases pending the implementation of the relevant measures by the respondent State. Rather, the Court finds that continuing to process all length of proceedings cases in the usual manner will remind the respondent State on a regular basis of its obligation under the Convention and in particular resulting from this judgment.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

77. The applicant claimed pecuniary damage in respect of lost profits, claiming that the excessively long court proceedings prevented him from adapting his business activities in a more timely fashion. Without submitting any documentary evidence he requested the Court to make an estimate as to the damage suffered based on an assumed monthly income of 2,500 euros (EUR). In respect of non-pecuniary damage for the excessive length of the proceedings which had negatively affected his conduct of life he claimed EUR 200,000.

78. The Government contested the claim for pecuniary damage, submitting that the applicant had not substantiated this claim. As regards the non-pecuniary damage claimed, the Government maintained that the claim was excessive and left the matter to the Court's discretion.

79. The Court observes that the applicant did not submit any documentary evidence in regard of his claim for pecuniary damage; it therefore rejects this claim. As regards non-pecuniary damage the Court considers that the applicant must have sustained such damage. Ruling on an equitable basis, it awards him EUR 10,000 under that head.

### B. Costs and expenses

80. The applicant, providing documentary evidence, also claimed EUR 4,566.22 for the costs and expenses incurred before the domestic courts. For the proceedings before this Court the applicant, who was granted legal aid in the amount of EUR 850, submitted a fee agreement stipulating an hourly rate of EUR 200 and claimed EUR 2,600.

81. The Government stressed that only reasonable costs for mandating a lawyer, which were caused not by the proceedings as such, but only by their length, could be reimbursed.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that the applicant has not established that the costs and expenses claimed for the proceedings before the domestic courts, with the exception of the costs and expenses for the proceedings before the Federal Constitutional Court, were incurred by him in order to seek prevention or

rectification of the specific violation caused by the excessive length of the proceedings. It therefore finds it reasonable to award the sum of EUR 1,740 for lawyer's fees before the Federal Constitutional Court. Furthermore, seeing that in length of proceedings cases protracted examination of a case beyond a "reasonable time" involves an increase in the applicants' costs (see, among other authorities, *Sürmeli,* cited above, § 148), it finds it reasonable to award the applicant an additional EUR 500 under this head. As regards counsel fees for the proceedings before this Court the Court notes that as far as the applicant was granted legal aid he is not liable to pay them and thus finds it reasonable to deduct this amount and award EUR 1,750 under this head.

**C. Default interest**

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds* that the above violations originated in a practice incompatible with the Convention which consists in the respondent State's recurrent failure to help ensuring that proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to claim redress for excessively long civil proceedings at a domestic level;

5. *Holds* that the respondent State must set up without delay, and at the latest within one year of the date on which the judgment becomes final in accordance with Article 44 § 1 of the Convention, an effective domestic remedy or combination of such remedies capable of securing adequate and sufficient redress for excessively long proceedings, in line with the Convention principles as established in the Court's case-law;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,990 (three thousand nine hundred and ninety euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Peer Lorenzen
Deputy Registrar President



RUMPF v. GERMANY JUDGMENT