BGE 20031125_54908_00 vom 25. November 2003

Bundesgericht (BGE), 2003-11-25, FR

Quelle: https://mcp.opencaselaw.ch/entscheid/bge_20031125_54908_00

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Regeste

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Volltext

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Urteilskopf 54908/00 Schälchli Roger gegen Schweiz Urteil no. 54908/00, 25 novembre 2003 Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 35 par. 1 CEDH . Respect du délai de six mois pour introduire une requête. Contenu de l'acte de recours. Le délai de six mois à partir de la date de la décision interne définitive est suffisant pour décider si et comment une requête doit être introduite devant la Cour. Le premier des deux actes introductifs d'instance du requérant, effectué dans le délai, énumère différentes violations de la Convention et demande la prolongation du délai de requête. En revanche, l'objet du litige n'est même pas décrit d'une façon sommaire alors qu'après environ cinq ans de procédure, le requérant aurait raisonnablement dû pouvoir exposer brièvement la nature et l'issue de cette dernière ainsi que les griefs qu'il entendait faire valoir devant la Cour. Conclusion: requête déclarée irrecevable. Sachverhalt The European Court of Human Rights, sitting on 25 November 2003 as a Chamber composed of Mr J.-P.Costa, President , Mr L. Wildhaber, Mr L. Loucaides, Mr C. Bîrsan, Mr K. Jungwiert, Mr V. Butkevych, Mrs W.Thomassen, judges , and Mr T.L. Early, Deputy Section Registrar , Having regard to the above application introduced with the European Commission of Human Rights on 9 November 1999 and registered on 16 February 2000, Having regard to the observations submitted by the

respondent Government and the observations in reply submitted by the applicant, Having deliberated, decides as follows: THE FACTS The applicant, Roger Schälchli, is a Swiss national born in 1927. When filing the application he was detained in Saxerriet prison in Switzerland. He is represented by Mr P. Albrecht, a lawyer practising in Zurich. A. The circumstances of the case The facts of the case, as submitted by the parties, may be summarised as follows. As from 1972 onwards, the applicant and his wife ran a children's home in the Canton of St. Gallen. In 1991 three girls were accepted as boarders, i.e. A, born in 1990, and the two sisters B and C, born in 1990 and 1989, respectively. In May 1994, the three girls left the home and were placed in three different foster families. On 20 July 1994 A's foster parents, Mr and Mrs E., reported to the police that they suspected the applicant of having sexually abused A while she was in the children's home. On 29 July 1994 a policewoman questioned Mrs E. and, in her presence, A, whereupon a criminal report was filed against the applicant, accusing him of having committed sexual acts with A from 1991-1994. On 29 August 1994 A underwent a medical examination. The suspicion then arose that B and C had been sexually abused. On 2 September 1994 a policewoman interviewed B and C. On 5 September 1994 a criminal report was filed accusing the applicant of also having sexually abused B and C from 1991-1994. The report noted that the statements of B and C coincided substantially with those of A. The applicant was remanded in custody on 12 September 1994. Based on the medical examination of the victims on 29 August 1994, the Institute of Forensic Medicine of the Canton of St. Gallen, prepared a report on 12 October 1994. On 24 October 1995, the Psychiatric Service for Juveniles(Kinder- und Jugendpsychiatrischer Dienst) of Eastern Switzerland prepared an expert opinion as to the credibility of the statements made by A, B and C during the various interviews. It concluded that A's previous statements could be confirmed. The statements of B and C as recorded in the minutes most probably reflected what they themselves had experienced. There was no indication of sexual abuse by any other person, and it appeared most unlikely that the children had made up the events themselves. On 31 January 1996 Mrs H. was appointed by the Guardianship Office(Vormundschaftsbehörde) to supervise the fostership of A. On 31 October, Mrs H questioned A alone. A made various statements, pointing out the areas on her body where the applicant had hurt her, and explaining how this had happened. Mrs H. prepared a report on this conversation. She informed the investigating judge first by telephone, later she was questioned by him on 14 November, whereby she was reminded of her duty to tell the truth. On 29 October 1996 the investigating judge interviewed A in the presence of the foster mother. A's statements, referring to various sexual acts by the applicant, coincided with those previously made by her. The case was referred to trial on 10 July 1997. On 18 May 1998 the Cantonal Court(Kantonsgericht) of the Canton of St. Gallen convicted the applicant of having committed sexual acts with children and sentenced him to six years' imprisonment. In its judgment the Court analysed in detail the various statements made by A, B and C during the investigations which had not been called into question by the forensic expert opinion of 12 October 1994. They had been regarded as credible by the Psychiatric Service for Juveniles, and the court considered them to be correct. The court found it established that the applicant had abused the children and did not regard it as necessary to comply with the applicant's request to hear further witnesses, in particular Mrs E., the foster mother. The applicant filed a plea of nullity(Nichtigkeitsbeschwerde) with the Court of Cassation (Kassationsgericht) of the Canton of St. Gallen. Meanwhile, the applicant ordered the preparation of a private expert opinion. The expert opinion, prepared by a psychiatrist and submitted on 13 July

1998, noted deficiencies in the report of the Psychiatric Service for Juveniles of 24 October 1995. The Court of Cassation dismissed the applicant's plea of nullity on 17 December 1998. In its judgment it rejected various elements of evidence as being belated, including the applicant's private expert opinion of 13 July 1998. The applicant filed with the Federal Court(Bundesgericht) a plea of nullity and a public law appeal (staatsrechtliche Beschwerde). In the former he complained of the sentence and in the latter of the unfairness of the proceedings. Both applications were dismissed by the Federal Court on 6 May 1999. The judgments were served on the applicant's lawyer on 19 May 1999. In its judgment concerning the applicant's public law appeal, the Federal Court considered the issue of questioning victims in the absence of the accused; the court found that "while this had not been raised, it has however been addressed(nicht gerügt, aber angesprochen)". In the court's view, in such a case the accused's defence rights had to be ensured in other ways. In respect of the applicant's complaint that the questions had been put in a suggestive manner, the Federal Court noted that this particular matter had been the decisive issue before the lower courts and had received ample consideration. Noting the extensive verbatim minutes, the Federal Court considered that the children had explained themselves in many different ways - verbally and non-verbally. These indications militated against the conclusion that the children had been manipulated or that the questioning had followed any insinuating structure. The Federal Court concluded that the Cantonal Court could on tenable grounds and without arbitrariness conclude that the children's statements had been credible and correct. COMPLAINTS In his submissions to the Court dated 9 November 1999, the applicant, who was then not represented by a lawyer, complained of "breaches of Article 6 § 1 of the Convention (fair trial); Article 6 § 3 of the Convention (right to a legal hearing)". The application continued: "The applicant is aware that according to Article 26 [of the Convention; recte : Article 35 § 1] an application must be filed in Strasbourg within a time-limit of six months after the final domestic decision was handed down. The reason for my incomplete submissions today is that the time-limit of six months should not expire. At the same time, I would ask you to register my application today even though this time-limit (probably) will have been overstepped by a few days. The reasons for this situation is as follows: Since 14 June 1999 I have been ordered to prison to serve an imposed sentence of six years: this occurred only about 10 days after the judgment of the Federal Court which has been served on me and after a period in hospital which was then imminent. After this judgment was served in June 1999 (the exact date is unknown), my wife instructed a lawyer's office in Basel to prepare a complaint under the Convention and to submit it within the time-limit in Strasbourg. Only about two days ago my wife informed me by telephone that, after having inquired at the lawyer's office, they had not complied with the instructions. All the documents of the trial, including all judgments, are today still in this lawyer's office in Basel. These documents will personally be fetched by my wife and brought to me within a week. This will enable me personally to complete my application by means of a supplementary explanation of the facts and a legal motivation, and also to complement the relevant documents by sending in copies." In his submissions of 25 November 1999 the applicant, after explaining the facts of the case, complained that his conviction was exclusively based on the statements of the three victims. He criticised that serious methodical faults had been found in the expert report by his own private expert medical opinion of 13 July 1998. The submissions continued, inter alia : "Article 6 § 3 (d) of the Convention (right to a legal hearing) grants the indicted person expressly the right to request the taking of evidence and to put questions to the witnesses. All requests put by the

lawyer to take evidence, to hear witnesses, to ask for further expert opinions, to hear exonerating witnesses, were refused by the Court, inter alia , on the grounds that 'the statements of the adult foster girls are irrelevant for the question of the conviction. Rather, the statements of the three small girls are of central relevance'. These facts ... not only confirm the one-sided point of view of the court, at the same time they also breach the right of the indicted person to put questions to the witnesses and to present exonerating evidence to the court. Thus, Article 6 § 3 (d) of the Convention was violated." Erwägungen THE LAW The applicant complains under Article 6 §§ 1 and 3 (d) of the Convention that his conviction was based exclusively on the statements of A, B and C, as set out in the minutes of the interviews, without him having had the opportunity to have evidence taken and exonerating witnesses heard, and to ask for further expert opinions. The Government submitted that the application was inadmissible as not having complied with the conditions in Article 35 § 1 of the Convention and in any event as being manifestly ill-founded. The manner in which the authorities in the present case questioned the three victims was in accordance with the requirements of the Convention. The courts carefully assessed the evidence and gave good reasons why they refused the applicant's further requests, for instance as they were belated. The applicant himself never asked for the possibility to question the victims. The applicant considered that he had complied with the various admissibility conditions. He submitted that in the domestic proceedings he had actually asked to question the victims. This issue was also examined by the Federal Court in its judgment of 6 May 1999. The Court has examined whether the applicant complied with the rule in Article 35 § 1 of the Convention according to which it "may only deal with the matter ... within a period of six months from the date on which the final decision was taken." In this respect, the Government noted that the judgments of the Federal Court of 6 May 1999 were served on the applicant's lawyer on 19 May 1999. Thus, his submissions of 25 November 1999 were filed out of time. Moreover, the applicant's first submissions of 9 November contained no reasoning whatsoever as to the alleged violation of the Convention, nor did they summarise the facts or explain why the respondent Government had breached the Convention provisions at issue. It did not appear credible that the applicant had had no contact with the lawyer between June and November, and had only found out shortly before the expiry of the time-limit that the lawyer did not intend to file the application in Strasbourg. The applicant would have had the possibility of explaining the object of the application even without access to the case-file. In the present case, there was also no force majeure , e.g., a serious illness which prevented the applicant from filing his submissions. The applicant replied that he had filed his complaints on time. By stating that on 14 June 1999 he had commenced a prison sentence of six years, he had explained which judgment he had intended to contest. For it was hardly possible that he commenced two prison sentences, each of six years, on the same date. Difficulties arose in that a lawyer, Mr Z., in Basel, had been approached to file an application with the Court, though Z. had failed to do so and only belatedly informed the applicant thereof. Despite the applicant's frequent requests, Z. had not confirmed that this had been the situation. For this reason, it could not be said that the applicant bore the responsibility for the lawyer's conduct. The applicant explained that in November 1999, while in prison, he had met a fellow prisoner who had drafted the first submissions dated 9 November 1999 for him. The applicant's wife had urgently been asked to bring him the case-file which she did by 11 November. It is for this reason, and as Z. had only belatedly stated that he would not file an application with the Court, that the original submissions were incomplete. The Court recalls that the six months'

rule in Article 35 § 1 of the Convention constitutes an element of legal stability (see the De Wilde, Ooms et Versyp v. Belgium judgment of 28 May 1970, Series A no 12, pp. 29-30, § 50). The rule provides the person concerned with sufficient time to evaluate the desirability of submitting an application to the Court and to decide on the content thereof (Worm v. Austria , no 22714/93, Commission decision of 27 November 1995, DR 83, p. 17). Moreover, in reflecting the wish of the Contracting Parties to prevent past decisions being called into question after an indefinite lapse of time, the rule marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (Walker v. the United Kingdom , (dec.) no 34979/97, ECHR 2000-I). Turning to the circumstances of the present case, the Court notes that the Federal Court's judgments of 6 May 1999 were served on the applicant's lawyer on 19 May 1999. It is undisputed that only the applicant's submissions of 9 November 1999 fell within the time-limit of six months, whereas those of 25 November 1999 did not. The issue therefore arises whether the submissions of 9 November satisfied the requirements of Article 35 § 1 of the Convention. In this respect Rule 47 § 4 of the Rules of Court provides: "(t)he date of introduction of the application shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the object of the application. The Court may for good cause nevertheless decide that a different date shall be considered to be the date of introduction." The Court has had regard to the submissions of 9 November, which were prepared by a fellow prisoner of the applicant while in prison. Therein it is stated which articles were allegedly breached, namely "Article 6 § 1 of the Convention (fair trial); Article 6 § 3 of the Convention (right to a legal hearing)"; that the applicant was serving a prison sentence as a result of an unspecified judgment of the Federal Court; that he requested a prolongation of the time-limit; and that an extended application would follow once he had obtained the case-file. The Court considers that these submissions fail to set out, even summarily, the object of the application. It is true that according to the applicant's submissions, the documents pertaining to his case had been with his lawyer, thereby allegedly preventing him, the applicant, from duly filing his submissions with the Court. In this respect, the Court recalls that Article 35 § 1 of the Convention should not be applied in an "excessively formalistic" manner (see Toth v. Austria judgment of 12 December 1991, Series A, no 224, pp. 22-23, § 82). In the Court's opinion, however, even without the case documents and without legal advice the applicant, who had been at the centre of the criminal proceedings against him lasting nearly five years, was in a position to explain at least summarily the nature of the domestic proceedings and their outcome, as well as the complaints he wished to raise before the Court. It follows that the applicant did not raise his complaints in substance in his submissions of 9 November 1999 and that the Government's preliminary objection is, therefore, well-founded. As a result, the application is inadmissible for non-compliance with the six months' rule set out in Article 35 § 1 of the Convention, and it must be rejected pursuant to Article 35 § 4. Entscheid For these reasons, the Court by a majority Declares the application inadmissible. T.L. Early J.-P. Costa Deputy Registrar President

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