

BGE 20131210_61780_10 vom 10. Dezember 2013

Bundesgericht (BGE), 2013-12-10, FR

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Volltext

Bundesgericht (BGE) EGMR 10.12.2013 20131210_61780_10 (Schmutz Stephan gegen Schweiz) Tribunal fédéral (ATF) CEDH 10.12.2013 20131210_61780_10 (Schmutz Stephan gegen Schweiz) Tribunale federale (DTF) CEDU 10.12.2013 20131210_61780_10 (Schmutz Stephan gegen Schweiz)

Urteilstkopf 61780/10 Schmutz Stephan gegen Schweiz Abschreibungsbeschluss no. 61780/10, 10 décembre 2013 Sachverhalt SECOND SECTION DECISION Application no. 61780/10 Stephan SCHMUTZ against Switzerland The European Court of Human Rights (Second Section), sitting on 10 December 2013 as a Chamber composed of: Guido Raimondi, President, Peer Lorenzen, Dragoljub Popović, Nebojša Vučinić, Paulo Pinto de Albuquerque, Helen Keller, Egidijus Kūris, judges, and Stanley Naismith, Section Registrar, Having regard to the above application lodged on 14 October 2010, Having deliberated, decides as follows: FACTS AND PROCEDURE 1. The applicant, Mr Stephan Schmutz, was a Swiss national, who was born in 1981 and who died on 16 April 2013. He was represented before the Court by Mr R. Ineichen, a lawyer practising in Luzern. 2. The Swiss Government ("the Government") were represented by their Agent, Mr F. Schürmann, of the Federal Office of Justice. A. The circumstances of the case 3. In 2008, the applicant was the subject of a criminal investigation by the public prosecutor of the Canton of Zug. On 25 June 2008, he was detained and put in pre-trial detention, which was regularly prolonged. The applicant was also granted legal aid and Mr P.H., a lawyer practising in Zug, was appointed by the Court to defend him. 4. On 29 January 2009 the public prosecutor of the Canton of Zug brought criminal charges against the applicant in the Criminal Court of the Canton of Zug (hereafter "the Criminal Court"). 5. On 3 April 2009 the Criminal Court held a hearing which the applicant attended in the presence of his lawyer. By a decision of the same day, the Criminal Court declared the applicant guilty of endangering a person's life, assault, offences against property, threatening behaviour, threats and violence against public authorities and public officials, breach of the Arms Act, and abusive use of a registration plate. He was sentenced to 30 months of imprisonment less the time already spent in pre-trial detention. Since he was diagnosed with a mental disorder, the custodial sentence was deferred in favour of an in-patient measure carried out in a secure psychiatric institution. 6. The applicant, represented by his lawyer, appealed against this decision to the Supreme Court of the Canton of Zug (hereafter "the Cantonal Supreme Court"). On 2 March 2010 a hearing took place which the applicant attended with his lawyer. By a judgment of the same day the Cantonal Supreme Court dismissed the applicant's appeal and upheld the judgment of the Criminal Court. 7. On 29 April 2010 the applicant wrote a letter to the Federal Supreme Court (hereafter "the FSC") in which he complained in particular about the conduct of his lawyer, who had refused to prepare an appeal to the FSC despite of the applicant's requests, because he had considered it as void. He asked the FSC to dismiss his former lawyer and to appoint a new one to whom an

extension for the time-limit to submit the appeal should be granted. He explained that his financial situation had not changed since the criminal proceedings at the cantonal level and that he was therefore in need of free legal assistance. In the event that the FSC did not grant his requests, he maintained that the same letter should be regarded as an appeal and the claims made in the proceedings before the Cantonal Supreme Court should be taken as an integral part of it. He furthermore complained that the Cantonal Supreme Court had refused him access to his file. He alleged that he had therefore been hindered in properly exercising his right to defend himself before the FSC. Lastly, he complained about the in-patient measure which was, according to him, an unjustified interference with his personal rights. He claimed that the expert who had been appointed by the Criminal Court had not been independent. 8. By a decision of 13 July 2010 the FSC dismissed the applicant's appeal. Regarding the applicant's claim for legal assistance before the FSC, it held that the appeal written by the applicant proved that he was able to defend himself and to properly establish his claims; therefore, the appointment of a lawyer was not necessary. It further indicated that a summary referral to the claims made in the criminal proceedings before the Cantonal Supreme Court was not a sufficient reasoning for an appeal to the FSC. In that respect, the appeal had to be dismissed. The FSC then went on to establish that the applicant had only asked his lawyer but not the Cantonal Supreme Court to give him access to the file of the criminal proceedings. The alleged refusal of his former representative could however not be part of the appeal proceedings in criminal matters. The FSC also ruled that the partiality of the expert who had conducted the psychiatric examination of the applicant was not evident and that the applicant fulfilled the conditions for an in-patient measure. 9. On 11 October 2010 the applicant complained to the Court that the decision of the FSC violate his rights under Article 6 of the Convention. He also complained under Articles 5, 9, 10 and 13 of the Convention. 10. On 23 May 2012 the application was communicated under Article 6 of the Convention. Both parties submitted observations to the Court. 11. On 23 April 2013 the applicant's representative informed the Court that the applicant, who was still in custody, had died in hospital on 16 April 2013 as the consequence of a hunger strike. The representative did not inform the Court of any intention on the part of the applicant's heirs to continue the application. COMPLAINTS 12. The applicant complained under Article 6 § 3 b) and c) as well as under Article 13 of the Convention that he was not provided with an effective domestic remedy to file an appeal to the FSC. He alleged that the FSC should have appointed him a lawyer to represent him in the appeal proceedings and that he had been denied the right to personally consult the file of the cantonal proceedings. 13. Under Articles 5, 9 and 10 of the Convention the applicant complained about the lawfulness and the validity of the judgment which ordered his in-patient measure. He alleged that he was detained in a normal prison because there was not sufficient place available in the secure psychiatric institution. Erwägungen THE LAW 14. The Court observes that the applicant has died and that no request has been submitted by his heirs to pursue the examination of the application. Under Article 37 § 1 of the Convention the Court has, however, power to assess whether it is appropriate to continue its examination for the purpose of protecting human rights (*Karner v. Austria* , no. 40016/98 , §§ 25 and seq, ECHR 2003-IX). These powers are subject to the existence of a question of general interest (*Karner* , § 27; *Marie-Louise Loyer and Bruneel v. France* , no. 55929/00 , § 29, 5 July 2005). This may arise, in particular, where the application concerns legislation or a legal system or practice in the respondent State (see, *mutatis mutandis* , *Karner* §§ 26 and 28; see also *Léger v. France (striking out)* [GC], no. 19324/02 , § 51, 30 March 2009).

15. Article 37 of the Convention provides: "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that (a) the applicant does not intend to pursue his application; or (b) the matter has been resolved; or (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application. However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires. 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

16. In the Court's view, the particular circumstances of this application are such that it is no longer justified to continue their examination. The application raised questions under the Convention which related to the particular circumstances of the case but did not reveal a question of general interest which the Court considers necessary to examine for the purpose of protecting human rights as provided in Article 37 § 1 of the Convention. 17. The Court therefore finds it appropriate that the application be struck out. Entscheid For these reasons, the Court unanimously Decides to strike the application out of its list of cases. Stanley Naismith Registrar Guido Raimondi President

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