



SS Auschwitz camp guard's complaint rejected by European Court

In its decision in the case of **Gröning v. Germany** (application no. 71591/17) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a complaint by a former member of the SS about the length of the criminal proceedings against him for assisting in murder in the Auschwitz extermination camp.

The applicant was questioned in 1978 while being investigated by the Frankfurt public prosecutor's office for crimes committed when serving in the Auschwitz extermination camp. The investigation was discontinued in 1985. The applicant was questioned again in 2014 after the the Hannover public prosecutor's office initiated an investigation and he was convicted in 2015. He argued that the proceedings had been running since 1978 because the authorities had failed to notify him of the discontinuation decision in 1985, making the proceedings excessively lengthy.

The Court ruled, however, that there had been two sets of criminal proceedings against the applicant, the first ending in 1985 at the latest and the second ending in 2016, when the conviction had become final. Although the authorities had failed to notify the applicant of the decision to discontinue the investigation in 1985, it considered that he had known from then on that he no longer had to fear criminal prosecution, in particular due to remarks by a senior public prosecutor that he had only been of interest as a witness for the prosecution.

The applicant's complaint concerning the first set of proceedings had therefore clearly been lodged out of time, while his complaint in respect of the second set of proceedings, lasting only two years for a case of historical and legal complexity, had been ill-founded.

Principal facts

The applicant, Oskar Gröning, was a German national who was born in 1921 and died on 9 March 2018.

From September 1942 until October 1944 Mr Gröning served in the Auschwitz extermination camp as part of a unit which administered the victims' belongings. He was mostly assigned to work at "the ramp" where the deported were "selected": either sent to the concentration camp or to the gas chamber. He was not directly involved in the selection process but was responsible for collecting and securing luggage and other belongings. Between May 1944 and July 1944 approximately 300,000 Hungarian Jews were killed in the gas chamber.

In 1977 the Frankfurt public prosecutor's office initiated an investigation against Mr Gröning on suspicion of assisting in murder in his time at Auschwitz. In January 1978 he was questioned by the police. In 1985 the investigation proceedings were discontinued because there were insufficient grounds to bring charges. Mr Gröning was not notified of the decision.

In November 2013 the Hannover public prosecutor's office initiated an investigation. In February 2014 it questioned Mr Gröning and subsequently charged him with 300,000 counts of aiding and abetting murder in Auschwitz. On 15 July 2015, after a four-month trial, the Regional Court sentenced him to a prison term of four years. It did not allow his sole objection that the proceedings had not been compatible with the reasonable-time requirement of Article 6 § 1 (right to a fair trial within a reasonable time) of the European Convention. It considered in particular that discontinued proceedings could not count as being lengthy.

In October 2015 Mr Gröning lodged an appeal on points of law but it was rejected as manifestly ill-founded in September 2016. The Federal Constitutional Court subsequently decided not to accept his constitutional complaint for adjudication.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 26 September 2017.

Relying on Article 6 § 1, the applicant argued that the length of the criminal proceedings against him, lasting from 1978 to 2016, had been excessive.

The decision was given by a Chamber of seven judges, composed as follows:

Síofra O’Leary (Ireland), *President*,
Mārtiņš Mits (Latvia),
Ganna Yudkivska (Ukraine),
Gabriele Kucsko-Stadlmayer (Austria),
Latif Hüseyinov (Azerbaijan),
Lado Chanturia (Georgia),
Anja Seibert-Fohr (Germany),

and also Victor Soloveytschik, *Section Registrar*.

Decision of the Court

The Court first reiterated that one of the purposes of the right to a fair trial within a reasonable time was to protect an accused from remaining too long in a state of uncertainty about their legal position. That meant that the period to be taken into consideration lasted until the person concerned had ceased to be affected by the charges levelled against him or her and the uncertainty about their legal position had been removed.

The investigation in the applicant’s case had been discontinued in 1985, but the authorities had failed to notify him of that decision. That decision had not therefore ended the period which had begun with his questioning in 1978.

However, that did not prevent the Court from looking at whether the uncertainty of his position had been removed by other factors.

In particular, while both investigations had concerned the applicant’s role in the functioning of the camp, they had been conducted by different public prosecutors’ offices and quite a lengthy period had elapsed between them.

Moreover, there were several indications that the applicant had known that he no longer had to fear criminal prosecution as of 1985, in particular due to remarks made by the senior public prosecutor in charge of the prior proceedings that he had only been of interest as a witness for the prosecution. Indeed, the applicant’s conduct between 1985 and 2013 showed that he had trusted in the senior public prosecutor’s remarks. He had testified as a witness in criminal proceedings against perpetrators from the extermination camps and had openly talked about his role in the camp during interviews for British television and a German newspaper. That interpretation was also consistent with a statement by the public prosecutor who had attended the applicant’s trial, quoting him as saying that he had never realised that he had been an accused.

The Court thus concluded that the applicant had ceased to be affected by the charges levelled against him by the end of 1985, at the latest, meaning that there had been two sets of criminal proceedings against him.

The part of the application concerning the first set of proceedings, beginning in 1978 and ending in 1985 at the latest, was clearly outside of the Court's six-month time-limit and was declared inadmissible.

The second set of proceedings had begun in 2014 and ended in 2016, the date of the Federal Court of Justice's decision to reject the applicant's appeal. The authorities' conduct had not apparently caused any delays in the proceedings. Taking into account the complexity of the case, involving sensitive and intricate questions of a historical and legal nature, and especially the criminal charges of aiding and abetting 300,000 counts of murder, the Court found that the duration of the proceedings had not been excessive. That part of the application was therefore also declared inadmissible, as manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.