



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (PLENARY)

CASE OF DEUMELAND v. GERMANY

(Application no. 9384/81)

JUDGMENT

STRASBOURG

29 May 1986

In the Deumeland case*,

The European Court of Human Rights, taking its decision in plenary session in pursuance of Rule 50 of the Rules of Court and composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. R. RYSSDAL,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. G. LAGERGREN,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,
Mr. A. SPIELMANN,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 31 May 1985, 2 October 1985 and from 21 to 24 April 1986,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 October 1984, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). The case originated in an application (no. 9384/81) against the Federal Republic of Germany lodged

* Note by the Registrar: The case is numbered 9/1984/81/128. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

with the Commission on 15 April 1981 under Article 25 (art. 25) by a German citizen, Mr. Klaus Dieter Deumeland.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Federal Republic of Germany recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the inquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, Mr. Deumeland stated that he wished to take part in the proceedings before the Court. The President of the Court gave him leave to present his case in person and to use the German language (Rule 30 para. 1, second sentence, and Rule 27 para. 3).

3. The Chamber of seven judges to be constituted included, as *ex officio* members, Mr. R. Bernhardt, the elected judge of German nationality (Article 43 of the Convention) (art. 43), and Mr. Wiarda, the President of the Court (Rule 21 para. 3 (b)). On 22 October 1984, the President of the Court drew by lot, in the presence of the Deputy Registrar, the names of the five other members, namely Mr. L. Liesch, Mr. E. García de Enterría, Mr. L.-E. Pettiti, Mr. R. Macdonald and Mr. J. Gersing (Article 43 in fine of the Convention (art. 43) and Rule 21 para. 4). Subsequently, Mr. J. Cremona, substitute judge, replaced Mr. Liesch who was prevented from taking part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. Having assumed the presidency of the Chamber (Rule 21 para. 5), Mr. Wiarda, acting through the Registrar, consulted the Agent of the German Government (the "Government"), the Delegate of the Commission and the applicant with regard to the procedure to be followed. On 29 November 1984, he decided that the Agent and the applicant should each have until 29 March 1985 to file a memorial, and that the Delegate should be entitled to reply in writing within two months from the date on which the Registrar transmitted to him whichever of the two memorials should last be filed (Rule 37 para. 1). On 25 March 1985, he extended the first of these time-limits until 15 April 1985.

5. On 27 February 1985, the Chamber decided to relinquish jurisdiction forthwith in favour of the plenary Court (Rule 50).

6. The applicant's memorial was received in the registry on 27 March and that of the Government on 18 April. On 24 April, the Secretary to the Commission informed the Registrar that the Delegate did not intend to reply in writing.

7. After consulting, through the Registrar, the Agent of the Government, the Delegate of the Commission and the applicant, the President directed on 8 March 1985 that the oral proceedings should open on 29 May 1985 (Rule 38). On 17 April, he gave leave to the Agent and her advisers to use the German language on that occasion (Rule 27 para. 2).

8. The hearings were held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately prior to their opening, the Court had held a preparatory meeting.

There appeared before the Court:

- for the Government

Mrs. I. MAIER, Ministerialdirigentin,

Federal Ministry of Justice,

Agent,

Mr. J. MEYER-LADEWIG, Ministerialrat,

Federal Ministry of Justice,

Mr. H. KREUZBERG, Administrative Court Judge,

Federal Ministry of Justice,

Mr. R. SCHMITT-WENKELBACH, Director

of the Berlin Industrial Accident Insurance Office,

Advisers;

- for the Commission

Mr. B. KIERNAN,

Delegate;

- for the applicant

Mr. K.D. DEUMELAND, Rechtsanwalt,

Applicant.

The Court heard addresses by Mrs. Maier for the Government, by Mr. Kiernan for the Commission and by Mr. Deumeland.

9. On various dates between 23 May and 3 June 1985, the Registrar received from the Commission and the Government several documents whose production had been requested on behalf of the Court.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

10. Mr. Klaus Dieter Deumeland, a German national, was born in 1940 and resides in Berlin.

As heir to his mother, who died on 8 December 1976, he continued the proceedings she had commenced before the social courts against the Land, represented by the Berlin Industrial Accident Insurance Office (Eigenunfallversicherung - "the Berlin Insurance Office").

Mrs. Johanna Deumeland applied for a widow's supplementary pension (Hinterbliebenenrente), claiming that the death of her husband Gerhard on 25 March 1970 had been the consequence of an industrial accident. Coming home on 12 January 1970 from an appointment with an ear-nose-and-throat specialist whom he had consulted on leaving his workplace, he had slipped on a snow-covered pavement, breaking his left thigh-bone. As an employee

(Angestellter) of the Berlin City Authorities, he was compulsorily insured against accidents.

1. Proceedings in the Berlin Social Court (16 June 1970 - 7 December 1972)

11. Represented by her son, Mrs. Deumeland commenced proceedings in the Berlin Social Court (Sozialgericht) on 16 June 1970.

On 18 June 1970, the presiding judge of the competent chamber ordered communication of the originating claim to the defendant, who was given one month to comment on it. On 9 July, the Berlin Insurance Office submitted written pleadings, accompanied by a file on the accident, to which Mr. Klaus Dieter Deumeland replied on 9 September.

Wishing to elucidate certain points, the presiding judge sent a list of questions on 17 September 1970 to the ear-nose-and-throat specialist, who replied in writing on 22 October 1970. On 29 September, the applicant had himself produced a photocopy of a certificate issued by the doctor.

On 8 January 1971, Mr. Deumeland inspected the file on the case but was not allowed to take it away.

He was asked, on 5 February 1971, whether his father's superiors had spoken to his father about his hearing problem and had asked him to seek treatment in the interests of the service; he replied on 22 February. The Social Court also asked the Berlin Barmer Ersatzkasse to supply certain details; on 24 March, the latter provided a schedule of the periods of incapacity for work.

12. Two days later, the presiding judge gave instructions to the registry for re-submission of the case-file in six weeks' time. On 11 May 1971, he declared the case ready for hearing. His successor, appointed on 1 June 1971, did likewise on 24 June. A third presiding judge, who was appointed on 1 January 1972, declared the case ready for hearing on 15 March 1972; the same day, he wrote to Mr. Deumeland, who had telephoned on 28 January to ask how matters stood, stating that he could not yet fix a date for the hearing since the chamber's programme was too full. On 1 April 1972, the case was transferred to a newly-established chamber. On 26 June 1972, its presiding judge declared in turn that the case was ready for hearing; on 21 September 1972, he decided that the oral proceedings should open on 25 October. In a memorandum dated 16 June and received on 26 June, the applicant had requested that a date be fixed for the hearing and that it be held in a court-room sufficiently large to accommodate members of the public, since he expected students, whom he would be lecturing in the autumn and winter, to attend.

13. At the close of the hearing, the Social Court rejected Mrs. Deumeland's claim, holding that the accident in question had been neither an industrial accident nor an accident on the way to or from work within the

meaning of sections 548 (1), first sentence, and 550 (1) of the Reich Insurance Code (Reichsversicherungsordnung).

On 26 October 1972, the Social Court sent the parties a copy of the record of the previous day's hearing, including the operative provision of the judgment. On 7 December 1972, Mr. Deumeland received the full text of the judgment, which was six pages long.

14. In June 1970, when Mrs. Deumeland brought her action, the Berlin Social Court had two chambers responsible for dealing with industrial-accident insurance claims. Three further chambers were set up in October 1970, January 1971 and April 1972.

According to statistics supplied by the Government, the number of such claims pending was 713 at the end of 1969, 778 at the end of 1970, 766 at the end of 1971 and 668 at the end of 1972. As far as the chamber hearing Mrs. Deumeland's action was concerned, there were 324 cases on its pending list on 1 January 1972.

2. First set of proceedings in the Berlin Social Court of Appeal (23 November 1972 - 14 September 1973)

15. Mrs. Deumeland appealed against the judgment on 23 November 1972.

On 4 December, the Social Court sent the case-file to the Berlin Social Court of Appeal (Landessozialgericht), where Mr. Deumeland inspected it on 10 January 1973.

Having been asked on 21 February 1973 to state his reasons for appealing, the applicant submitted his arguments on 12 March; the defendant replied on 19 April 1973. On 24 April, the presiding judge of the chamber directed that this reply be communicated to Mr. Deumeland for information and comment.

16. Judge Matuczewski was appointed reporting judge on 25 April and declared, on 28 May 1973, that the case was ready for hearing; the presiding judge confirmed this on the following day.

On 13 July 1973, Judge Matuczewski asked the Charlottenburg District Authority (Bezirksamt) to send him the personal file on Mr. Deumeland's father, which was received on 6 August.

On 23 July, he set the case down for hearing on 14 August 1973.

On the day before the hearing, the applicant filed further written pleadings, seeking for his mother a death grant (Sterbegeld) as well as a widow's pension (see paragraph 10 above).

17. On 14 August 1973, the Appeal Court dismissed the appeal: it had been unable to establish, on a sufficient balance of probability, any causal link between Mr. Deumeland Senior's visit to a doctor and his employment by a public authority.

After telephoning the registry six days later, the applicant was immediately sent a copy of the record of the hearing and, on 14 September 1973, a copy of the judgment, which was eleven and a half pages long.

On 17 September, he asked the Appeal Court to rectify the statement of facts, but the Court refused his request on 15 October 1973. This decision was communicated to the applicant on 27 October and also provoked a request for rectification, which the presiding judge of the third chamber rejected on 29 October 1973.

3. First set of proceedings in the Federal Social Court (11 October 1973 - 15 May 1975)

18. On 2 October 1973, the applicant's mother entered an appeal on points of law (Revision) to the Federal Social Court (Bundessozialgericht) and this was registered on 11 October 1973. She also asked for extension of the time-limit for submission of supplementary written pleadings, since the Berlin Social Court of Appeal had not yet decided on the request for rectification (see paragraph 17 above).

The file was dispatched on 5 November 1973 and reached the Federal Social Court on 7 November. The previous day, Mr. Deumeland had asked for a further extension of the time-limit so that he could consult the document supplied by the Charlottenburg District Authority (see paragraph 16 above).

19. The applicant filed written pleadings on 13 November 1973. The following day's date was affixed to the document by the Court, which sent it to the defendant with two months to reply.

On 7 December 1973, Mr. Deumeland wrote to ask what action had been taken on his written pleadings of 13 November and his request of 6 November. Judge Küster replied by letter of 13 December 1973 that the written pleadings had been received, but a regrettable error in the registry had delayed examination of the request.

20. In the meantime, the presiding judge of the second chamber had, amongst other things, ordered the transmission of the case-file to the Berlin Social Court and asked the Berlin Insurance Office and the Land Administrative Authority (Verwaltungsamt) to send certain documents directly to the court, so that Mr. Deumeland could study them.

When informed that various files were open to him, Mr. Deumeland told the Social Court, on 17 December 1973, that he would inspect them after Christmas, since the documents to be furnished by the Berlin Insurance Office had only been obtained that afternoon. He consulted the files on 4 January 1974.

21. An order was made on 14 January 1974, giving the defendant until 20 March to submit its arguments (see paragraph 19 above). These were filed at the Federal Social Court on 4 February.

On 5 February, the reporting judge decided to transmit them to Mr. Deumeland. Mr. Deumeland requested, on 1 July 1974, that a date be fixed for the hearing, preferably 6 December 1974, and the judge wrote to him on 4 July, stating that the chamber's workload made it impossible to say when this decision would be taken and that he had noted the applicant's wish to consult the case-file on 5 or 6 December.

On 4 December 1974, the applicant inspected the file in Kassel, seat of the Federal Social Court.

22. On 22 January 1975, Mr. Deumeland challenged Judge Küster, whom he suspected of delaying the proceedings. Judge Küster rejected the allegation of partiality in a declaration dated 31 January. The applicant, who was entitled to submit observations on this point up to 21 February 1975, repeated his allegations by letter on 15 February. In a decision adopted on 20 February and notified on 28 February, the second chamber of the Federal Social Court dismissed the challenge.

On 25 February 1975, Judge Küster, replacing the presiding judge, set the case down for hearing on 13 March.

23. As soon as the hearing began, Mr. Deumeland challenged Judge Küster. The sitting continued with Judge Friedrich presiding. Having heard Judge Küster and deliberated, the chamber rejected the application. Under the presidency of Judge Küster and with the same membership, it proceeded with examination of the case. On the same day, it set aside the decision of the Berlin Social Court of Appeal and referred the case back to that Court on the ground that Mrs. Deumeland's case had not been given a proper legal hearing.

Notice of the record of the hearing, of the decision on the challenge and of the judgment, which was fourteen and a half pages long, was given on 15 May 1975.

4. Second set of proceedings in the Berlin Social Court of Appeal (16 May 1975 - 15 March 1979)

24. On 16 May 1975, the Federal Social Court transmitted to the Social Court of Appeal authentic copies of the judgment and the decision of 13 March, as well as the files of the Social Court, the Social Court of Appeal and the Charlottenburg District Authority. On 6 June 1975, it sent the Social Court of Appeal the documents relating to the appeal on points of law, specifying 1 May 1977 as the date for the return of those documents.

25. In written pleadings dated 17 May 1975 and received on 26 May, Mr. Deumeland challenged Judge Matuczewski for partiality; he held Judge Matuczewski responsible for the defect found by the Federal Social Court (see paragraph 23 above), complaining that the judge had asked for documents without his mother's knowledge and had arranged for the disappearance of a photocopy produced at the hearing on 14 August 1973 (see paragraph 17 above). He also requested police intervention, if that

proved necessary, and supervision of the challenged judge's access to the case-file.

On 27 May 1975, the presiding judge of the third chamber of the Berlin Social Court of Appeal transmitted the pleadings to the President of the Court, who contacted the Bar Association.

On 29 May 1975, he requested that the case-file be sent to the Berlin Labour Court (Arbeitsgericht), which had, on 29 March 1971, granted Gerhard Deumeland entitlement to a special bonus for twenty-five years of service.

26. By order dated 3 June 1975, the presiding judge directed the applicant to tell him which documents he had submitted on 14 August 1973 (see paragraph 17 above): if these were photocopies, he could be presumed to have the originals. The applicant replied on 16 July 1975 that he could supply no further information. The presiding judge reminded him on 12 August 1975 that he had, according to his written pleadings of 12 November 1973 to the Federal Court, supplied a copy of one of the Court's judgments, and asked him to confirm this. He also invited him to reconsider his applications of 17 May 1975 (see paragraph 25 above) and, if he wished to uphold his challenge, to state his reasons.

27. In the meantime, the parties had been notified that the case-file had been received from the Berlin Labour Court and the defendant had inspected it on 16 July 1975.

28. On 28 August 1975, the public prosecutor's department attached to the Berlin Court of Appeal (Kammergericht) asked the Social Court of Appeal to send it the case-file. This was received on 12 September 1975 and returned on 18 September.

29. In written pleadings dated 9 September 1975 and received on 15 September, Mr. Deumeland explained why he challenged Judge Matuczewski.

30. On 6 January 1976, the presiding judge appointed Judge Brämer reporting judge and asked him to ascertain whether the case was ready for hearing.

On 12 January 1976, Judge Brämer wrote to the administrative authorities of the Land, asking them to transmit to him any documents in their possession concerning Mr. Deumeland Senior. He forwarded copies of this letter to the parties for information and asked the applicant whether he would consent to the case-file's being communicated to the Barmer Ersatzkasse.

Mr. Deumeland objected to this on 23 January 1976, arguing that the Barmer Ersatzkasse should be joined as a third party; he also enquired what measures had been taken to prevent Judge Matuczewski from having access to the case-file. The judge wrote on 26 January, asking him why he wished such a joinder and pointing out that Judge Matuczewski was no longer acting as reporting judge in the case. In the absence of any reaction from

Mr. Deumeland, the judge wrote a further letter on 22 March 1976. The applicant replied on 21 April that he refused to comment on this point before the filing of the defendant's written pleadings. Under an order issued on 28 April 1976, a copy of this letter was sent for information to the defendant.

In the meantime (26 January 1976), the Land administrative authorities had indicated that they had no documents relating to Mr. Deumeland's father, apart from the personal file which they had already produced. By decision of the judge, taken on 30 January 1976, their letter was communicated to the parties for information.

31. On 8 June 1976, the applicant's mother personally complained to the presiding judge of the third chamber, alleging that photocopies had been made of documents in the case-file for transmission to a third party. The president denied this by letter on 23 June; he explained, however, that the case-file had been passed to the public prosecutor's department in execution of a request for the taking of evidence on commission (see paragraph 28 above). On 29 June 1976, Mrs. Deumeland declared that communication of the case-file in this way was improper. The reporting judge forwarded this second letter to the presiding judge of the chamber, but since the latter was away on holiday the case-file came before the deputy presiding judge, Judge Matuczewski, who, being subject to challenge (see paragraph 25 above), felt unable to deal with the matter. Considering that the letter required no action, the reporting judge ordered re-submission of the case-file to the presiding judge on his return from holiday.

In a letter dated 14 July 1976 and received on 26 July, the public prosecutor's department attached to the Berlin Regional Court (Landgericht) asked for the case-file. This was dispatched on 29 July in accordance with an order issued on 27 July, and was returned on 9 December 1976.

32. On 28 July 1976, Mr. Deumeland visited the Social Court of Appeal, wishing to remove the case-file and study it. The reporting judge allowed him only to inspect it on the spot.

33. On 4 August 1976, the applicant challenged Judge Brämer. On 6 August, the presiding judge of the third chamber replied that the chamber could not take a decision on this matter for the time being, since the case-file was with the public prosecutor's department attached to the Regional Court. Judge Brämer was invited on 16 December 1976 to submit observations, and did so on 20 December. On 20 June 1978, the third chamber rejected the challenge against this judge, as well as the challenge against the presiding judge, Judge Arndts (see paragraphs 35, 36 and 37 below).

34. On 4 November 1976, Mr. Deumeland filed written pleadings.

On 8 November, the presiding judge ordered that the case-file be re-submitted on its return (see paragraph 31 above).

In a letter dated 3 December 1976 and received on 9 December, the applicant stated, *inter alia*, that he would continue to appear in the proceedings, but not as counsel. The president replied on 4 January 1977.

35. Three days later, the Land administrative authorities informed the Social Court that Mrs. Deumeland had died on the night of 7 to 8 December 1976. The presiding judge of the chamber asked the applicant, on 18 January 1977, whether he wished to pursue the case; the applicant replied, on 20 January, that he did so wish. Since he also challenged the presiding judge, Judge Arndts, the case-file was passed to Judge Sander, who requested the applicant on 28 January to produce a certificate of heredity.

On 22 February 1977, Mr. Deumeland pointed out that, as an only son, he was his mother's sole heir and was thus not obliged, in the absence of property and a will, to bring proceedings to obtain a certificate. On 25 April 1977, Judge Sander wrote to inform the applicant that he could claim succession if he had been living in the same house as his mother at the time of her death, but that he would have to produce evidence of this. The applicant confirmed by letter on 21 June 1977 that he had in fact lived with his mother, and referred to an attestation by a neighbour.

36. On 25 February 1977, Judge Sander asked Mr. Deumeland to give reasons for his challenge of the presiding judge, Judge Arndts, and told him that he would take a decision with two members of the eleventh chamber. The applicant wrote on 8 March - his letter was received on 14 March - asking the names of these two other judges; Judge Sander replied that there was no way of knowing their names in advance. On 24 March 1977, he forwarded the case-file to the presiding judge of the third chamber, asking him to comment on the challenge. In a memorandum dated 7 April 1977, the judge rejected the allegations of partiality made against him. In an order dated 19 August 1977, the third chamber dismissed the challenge.

After receiving the order, Mr. Deumeland telephoned the Social Court of Appeal on 4 October, demanding correction of the heading, which referred to his professional status as a lawyer; he renewed his demand in writing on 28 December 1977 and again on 27 April 1978, on which date he also asked when the case would be set down for hearing. On 5 May 1978, the presiding judge of the third chamber replied that the Berlin Bar Association, which he had consulted on 2 January 1978, had confirmed on 6 February that the applicant was a member of the Bar. He requested the applicant to comment on this point.

37. On 31 May 1978, Mr. Deumeland again challenged the presiding judge, Judge Arndts, complaining that he had contacted the Bar Association without his knowledge. In a memorandum dated 7 June 1978, the judge rejected any accusation of partiality. By order dated 20 June 1978, the third chamber dismissed the challenge, as well as the challenge of Judge Brämer (see paragraph 33 above).

38. On 10 July 1978, the Federal Social Court enquired when judgment was likely to be given and was told that it might be given in October 1978.

39. Two weeks later, the reporting judge, considering the case ready for hearing, forwarded the case-file to the presiding judge. The case was registered as such on 25 July.

40. On 6 September 1978, the presiding judge fixed 17 October as the date for the opening of the oral proceedings.

With this in view, Mr. Deumeland submitted written pleadings dated 16 October. At the hearing, he stated that his challenge of Judge Matuczewski had become devoid of object (see paragraph 25 above). Deliberating immediately after the hearing, the chamber decided that further information was required (Sachaufklärung).

On 23 October 1978, the court summoned the Barmer Ersatzkasse to appear; in addition, the reporting judge asked the Charlottenburg District Authority to comment on four points which concerned the state of health of Mr. Deumeland Senior at the time of the accident and which seemed to require elucidation. A reminder was sent on 12 December 1978, and the said authority replied the same day with a letter, dated 30 November, accompanied by appendices. On 13 December 1978, the presiding judge decided to send a copy of this to the parties. The reporting judge transmitted the case-file to him: he considered the case ready for hearing but thought that two witnesses should be heard as a precaution.

41. On 15 December 1978, the presiding judge set the case down for hearing on 16 January 1979 and summoned the witnesses to appear on that date.

The Social Court of Appeal delivered judgment at the close of the hearing: it declared the appeal inadmissible as regards the death grant and unfounded as regards the widow's pension. It refused leave to appeal on points of law.

On 21 February 1979, Mr. Deumeland expressed surprise that he had still not received the text of the judgment. The reporting judge replied by letter on 27 February that the text had been drawn up. The applicant received a copy on 15 March 1979; the text was sixteen pages long.

5. Second set of proceedings in the Federal Social Court (25 March 1979 - 17 December 1980)

42. On 16 March 1979, Mr. Deumeland appealed against the decision refusing him leave to appeal (Nichtzulassungsbeschwerde); his appeal, posted in East Berlin, reached the Federal Social Court on 25 March.

On 27 March 1979, the Federal Social Court asked the Berlin Social Court of Appeal to forward it the case-file, which arrived on 11 April.

In a letter dated 21 April, again posted in East Berlin and received on 25 April, Mr. Deumeland sought a one-month extension of the time-limit for

submission of written pleadings. On 26 April, the presiding judge extended the time-limit to 15 June 1979.

On 28 May 1979, the applicant visited the registry of the second chamber of the Federal Social Court, where he inspected the files of the Federal Court and of the Court of Appeal.

43. On 13 June 1979, he submitted supplementary written pleadings, which the reporting judge transmitted to the defendant on the same day. The defendant replied on 4 July, enclosing with its observations a file on the accident.

On 5 July 1979, the reporting judge directed that the counter-pleadings and their appendix be communicated to Mr. Deumeland and to the Barmer Ersatzkasse (see paragraph 40 above).

The following day, the Barmer Ersatzkasse lodged its administrative file and stated that it did not intend to comment on the appeal. On 9 July, the reporting judge ordered the communication of this statement to the two parties. He scheduled a further submission of the case-file for 1 September.

On 19 November 1979, the Charlottenburg District Authority and the Berlin Labour Court were asked to submit files. The Charlottenburg Authority replied on 29 November that, for reasons of competence, it had passed the request on to the Land Administrative Authority. After a reminder had been sent to the latter on 21 December 1979, the file was received at the Federal Social Court on 2 January 1980. The file requested from the Labour Court had been lodged on 30 November 1979.

In a letter dated 1 April 1980, the reporting judge notified Mr. Deumeland that the documents requested had been received and that the chamber expected to give a decision in June-July 1980.

On 11 June 1980, the applicant inspected the case-file in Kassel. On 3 June, he had written complaining that the personal file on his father was incomplete.

This letter was received on 10 June and forwarded the following day to the defendant, who was entitled to submit observations. The court sent the defendant a reminder on 16 July 1980; on 12 August, it set the defendant a time-limit until 1 September for the lodging of observations.

On 19 August 1980, the defendant produced new documents provided by the Charlottenburg District Authority. It specified that since the Land authority probably possessed further documents, it had asked for these and would forward them as soon as they were received. Its letter was sent to the parties the following day.

On 2 September 1980, the defendant produced certain documents, which the reporting judge ordered on 9 September to be communicated to the parties.

On that day, Mr. Deumeland visited the registry of the second chamber and was given permission to inspect the file on the premises. He did not, however, do so.

44. The Federal Social Court dismissed Mr. Deumeland's appeal on 11 December 1980. In its judgment, which was nine pages long, it ruled that his procedural complaints were partly unfounded and partly inadmissible; and that, furthermore, the case raised no issue of general interest (grundsätzliche Bedeutung).

In a letter dated 18 December 1980, the applicant unsuccessfully contested this decision, which had been notified to him the day before.

6. Proceedings in the Federal Constitutional Court (23 December 1980 - 9 February 1981)

45. On 23 December 1980, Mr. Deumeland referred the case to the Federal Constitutional Court (Bundesverfassungsgericht) and, on 3 January 1981, submitted supplementary written pleadings. He complained that the Federal Social Court had refused him access to the files; that its decision of 11 December 1980 had taken him by surprise; that it was aware that the lower court judges lacked the requisite personal and objective independence; and that it had been mistaken in holding that the case raised no issue of general interest. On 9 February 1981, the Federal Constitutional Court decided not to entertain the complaint, since, even assuming it to be admissible, its chances of succeeding were insufficient.

7. Application to have the proceedings re-opened (10 March 1981 - 23 November 1981)

46. On 10 March 1981, the Berlin Social Court of Appeal registered an application from Mr. Deumeland, dated 25 February, to have the proceedings re-opened (Wiederaufnahme des Verfahrens). It rejected this application on 6 August 1981, after a hearing which had also dealt with challenges of various judges, and fined Mr. Deumeland 800 DM for bringing vexatious proceedings (mutwillige Prozessführung).

47. On 23 November 1981, the Federal Social Court rejected the appeal on points of law which the applicant had brought against the latter judgment.

II. RELEVANT LEGISLATION

1. General

48. The German social security system is principally governed by the Reich Insurance Code (Reichsversicherungsordnung), which covers sickness, accident and old-age insurance. Dating from 1911, it is rooted in laws passed between 1883 and 1889. Subsequently, social protection was extended by legislation to new categories of person and of risk.

2. Industrial accident insurance scheme

49. In the Federal Republic of Germany, everyone employed on contract (die auf Grund eines Arbeits-, Dienst- oder Lehrverhältnisses Beschäftigten) by private firms or a public authority is compulsorily insured against industrial accidents (section 539(1)(1) of the Reich Insurance Code). Civil servants (Beamte) are in a different position and are covered by the Federal, Land or local authority regulations, depending on their employer.

50. Employees who are not civil servants are very broadly protected against industrial accidents, and are not obliged to prove fault, to bring legal proceedings or to suffer the consequences of an employer's insolvency. The victim - or his beneficiaries (sections 589 and 590 of the Reich Insurance Code) - receive the benefits specified in section 547 (allowances, pensions, etc.), even when the victim was partly responsible for the accident. He only loses his rights if he has caused the accident intentionally.

The notion of industrial accidents, defined in section 548 of the Code, includes accidents on the way to or from work (section 550).

51. Employees (who are not civil servants) do not contribute to the accident insurance scheme, which is wholly financed by employers (section 723 of the Code). The amount of their contributions depends essentially on the salaries of the persons covered and on the likelihood of accidents (section 725(1)).

52. For employees of private firms, the bodies (Träger) responsible for insurance against industrial accidents are the occupational associations (Berufsgenossenschaften); employees in the public sector are covered by the Federation, the Länder, the local authorities or the Federal Labour Office (Bundesanstalt für Arbeit), as the case may be (sections 646-657 and 767 of the Code). Every occupational association has a compulsory membership extending to all undertakings, including those in the craft sector, whose activities are carried on in the same economic field and whose company or trading centre is based in the association's catchment area.

53. In Berlin, Land employees are covered by the Industrial Accident Insurance Office (Eigenunfallversicherung), a public body directly controlled by the Land authority. Its funds come chiefly from a sum included annually in the Land budget and otherwise from contributions paid by certain public concerns.

3. Social Courts

54. Under German law, disputes concerning application of the social security legislation are decided by specialised courts. There are three levels of jurisdiction: the Social Courts (Sozialgerichte), the Social Courts of Appeal (Landessozialgerichte) and the Federal Social Court (Bundessozialgericht) (Article 96 of the Basic Law; Social Courts Act 1953 - Sozialgerichtsgesetz). These courts are empowered to review all decisions

taken in this field by the administrative authorities and contested by those concerned. The relevant procedure is very similar to that before the administrative courts.

PROCEEDINGS BEFORE THE COMMISSION

55. In his application of 15 April 1981 (no. 9384/81), Mr. Deumeland complained that the social courts had not given the case a fair hearing within a reasonable time, contrary to the requirements of Article 6 para. 1 (art. 6-1) of the Convention.

56. The Commission declared the application admissible on 15 November 1983. In its report of 9 May 1984 (Article 31) (art. 31), it came to the conclusion that Article 6 para. 1 (art. 6-1) did not apply to the instant case, that it was not necessary to determine whether the proceedings in question had complied with that provision and, by eight votes to six, that there had been no breach of the provision in question.

The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

57. At the hearings on 29 May 1985, the Government maintained the final submissions set out in their memorial, whereby they requested the Court to find

"that Article 6 para. 1 (art. 6-1) of the Convention is not applicable to the present case and that the Court cannot deal with the merits of the case, on the ground of non-compatibility with the provisions of the Convention;

or, alternatively

that the Federal Republic of Germany has not violated Article 6 (art. 6) of the Convention".

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art 6-1)

58. Article 6 para. 1 (art. 6-1) of the Convention reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The applicant claimed that the German social courts had not given the case a fair hearing within a reasonable time.

In view of the submissions made, the first issue to be decided concerns the applicability of paragraph 1 of Article 6 (art. 6-1), this being a matter disputed by the majority of the Commission and by the Government.

A. Applicability of Article 6 para. 1 (art. 6-1)

1. Existence of a "contestation" (dispute) over a right

59. As to the existence of a "contestation" (dispute) over a right, the Court would refer to the principles enunciated in its case-law and summarised in its Bentham judgment of 23 October 1985 (Series A no. 97, pp. 14-15, para. 32).

In the present case, it appears clear that a "contestation" (dispute) arose at the latest on the institution of proceedings before the Berlin Social Court on 16 June 1970 (see paragraph 11 above). This "contestation" was genuine and serious, and concerned the actual existence of the right asserted by Mrs. Deumeland to receive a widow's supplementary pension. The outcome of the relevant proceedings was capable of leading - and in the event did lead - to confirmation of the decision being challenged, namely the refusal of the Land of Berlin to grant the pension; it was thus directly decisive for the right in issue.

The competent courts therefore had to determine a contestation (dispute) concerning a right claimed by Mrs. Deumeland.

2. Whether the right at issue was a civil right

(a) Introduction

60. According to the case-law of the Court, "the notion of 'civil rights and obligations' cannot be interpreted solely by reference to the domestic law of the respondent State" (see the König judgment of 28 June 1978, Series A no. 27, pp. 29-30, paras. 88-89).

In addition, Article 6 (art. 6) does not cover only "private-law disputes in the traditional sense, that is disputes between individuals or between an individual and the State to the extent that the latter had been acting as a private person, subject to private law", and not "in its sovereign capacity" (see the same judgment, loc. cit., p. 30, para. 90). "The character of the legislation which governs how the matter is to be determined ... and that of the authority which is invested with jurisdiction in the matter ... are ... of little consequence": the latter may be an "ordinary court, [an] administrative body, etc." (see the Ringeisen judgment of 16 July 1971, Series A no. 13, p.

39, para. 94). "Only the character of the right at issue is relevant" (see the above-mentioned König judgment, Series A no. 27, p. 30, para. 90).

61. As in previous cases, the Court does not consider that it has to give on this occasion an abstract definition of the concept of "civil rights and obligations".

This being the first time that the Court has had to deal with the field of social security, and more particularly the industrial-accident insurance scheme in the Land of Berlin, the Court must identify such relevant factors as are capable of clarifying or amplifying the principles stated above.

(b) Supplementary factors disclosed by the subject matter of the litigation

62. Under German legislation, the right in issue is treated as a public-law right (see paragraphs 49-52 above). This classification, however, provides only a starting point (see notably, *mutatis mutandis*, the Engel and Others judgment of 8 June 1976, Series A no. 22, p. 35, para. 82); it cannot be conclusive of the matter unless corroborated by other factors. In its König judgment of 28 June 1978, the Court stated in particular:

"Whether or not a right is to be regarded as civil ... must be determined by reference to the substantive content and effects of the right - and not its legal classification - under the domestic law of the State concerned. In the exercise of its supervisory functions, the Court must also take account of the object and purpose of the Convention and of the national legal systems of the other Contracting States" (Series A no. 27, p. 30, para. 89)

63. There exists great diversity in the legislation and case-law of the member States of the Council of Europe as regards the juridical nature of the entitlement to industrial-accident insurance benefits under social security schemes, that is to say as regards the category of law to which such entitlement belongs. Some States - including the Federal Republic of Germany - treat it as a public-law right, whereas others, on the contrary, treat it as a private-law right; others still would appear to operate a mixed system. What is more, even within the same legal order differences of approach can be found in the case-law. Thus, in some States where the public-law aspect is predominant, some court decisions have nevertheless held Article 6 para. 1 (art. 6-1) to be applicable to claims similar to the one in issue in the present case (for example, the judgment of 11 May 1984 by the Brussels Labour Court of Appeal, *Journal des Tribunaux* 1985, pp. 168-169). Accordingly, there exists no common standard pointing to a uniform European notion in this regard.

64. An analysis of the characteristics of the German system of industrial-accident social insurance discloses that the claimed entitlement comprises features of both public law and private law.

(i) Features of public law

65. A number of factors might tend to suggest that the dispute in question should be considered as one falling within the sphere of public law.

(1) Character of the legislation

66. The first such factor is the character of the legislation. The rules governing social security benefits in the context of industrial-accident insurance differ in many respects from the rules which apply to insurance in general and which are part of civil law. The German State has assumed the responsibility of regulating the framework of the industrial-accident insurance scheme and of overseeing the operation of that scheme. To this end, it specifies the categories of beneficiaries, defines the limits of the protection afforded, lays down the rates of the contributions and the allowances, etc.

In several cases (see notably König; Le Compte, Van Leuven and De Meyere; Benthem), State intervention by means of a statute or delegated legislation has nonetheless not prevented the Court from finding the right in issue to have a private, and hence civil, character. In the present case likewise, such intervention cannot suffice to bring within the sphere of public law the right asserted by the applicant.

(2) Compulsory nature of the insurance

67. A second factor of relevance is the obligation to be insured against industrial accidents or, more precisely, the fact of being covered by insurance in the event of fulfilling the conditions laid down by the legislation (see paragraph 72 below). In other words, those concerned cannot opt out of the benefits under the scheme.

Comparable obligations can be found in other fields. Examples are provided by the rules making insurance cover compulsory for the performance of certain activities - such as driving a motor vehicle - or for householders. Yet the entitlement to benefits to which this kind of insurance contract gives rise cannot be qualified as a public-law right. The Court does not therefore discern why the obligation to belong to an industrial-accident insurance scheme should change the nature of the corresponding right.

(3) Assumption by the State of responsibility for social protection

68. One final aspect to be considered is the assumption, by the State or by public or semi-public institutions, of full or partial responsibility for ensuring social protection. There was an assumption of responsibility of this kind in the present case by the Berlin Industrial Accident Insurance Office. Whether viewed as the culmination of or a stage in the development of the role of the State, such a factor implies, *prima facie*, an extension of the public-law domain.

On the other hand - and the Court will revert to the point later (see paragraph 73 below) -, the present case concerns a matter having affinities with insurance under the ordinary law, which insurance is traditionally governed by private law. It thus seems difficult to draw from the consequences of the extent of State intervention any firm conclusion as to the nature of the right in issue.

69. In sum, even taken together the three foregoing factors, on analysis, do not suffice to establish that Article 6 (art. 6) is inapplicable.

(ii) Features of private law

70. In contrast, various considerations argue in favour of the opposite conclusion.

(1) Personal and economic nature of the asserted right

71. To begin with, the widow of Mr. Deumeland Senior was not affected in her relations with the public authorities as such, acting in the exercise of discretionary powers, but in her personal capacity as a private individual. She was claiming a right flowing from specific rules laid down by the legislation in force. The right in question was a personal, economic and individual right, a factor that brought it close to the civil sphere.

(2) Connection with the contract of employment

72. Secondly, the position of Mr. Deumeland Senior was closely linked with the fact of his being a member of the working population, having been a salaried employee of the Land.

The legal basis of his work was a contract of employment governed by private law. Whilst it is true that the insurance provisions derived directly from statute and not from an express clause in the contract, these provisions were in a way grafted onto the contract. They thus formed one of the constituents of the relationship between employer and employee. In addition, the supplementary pension claimed by the widow of Mr. Deumeland Senior and then by his son was an extension of the salary payable under the contract, the civil character of this salary being beyond doubt. This pension shared the same nature as the contract and hence was also invested with a civil character for the purposes of the Convention.

(3) Affinities with insurance under the ordinary law

73. Finally, the German industrial-accident insurance is similar in several respects to insurance under the ordinary law. In general, under the German industrial-accident insurance scheme, recourse is had to techniques of risk-covering and to management methods which are inspired by those current in the private insurance sphere. Salaried employees of private firms belong to occupational associations (see paragraph 52 above) which conduct

their dealings, notably with those insured, in the same way as a company providing insurance under the ordinary law, for example as regards calculation of risks, verification of fulfilment of the conditions for receipt of benefits, and payment of allowances. Employees of the Land of Berlin are admittedly dependent on the Industrial Accident Insurance Office and are thus subject to a different scheme from that applicable in the private sector. This fact is not, however, such as to preclude reference being made to the latter scheme in order to give a legal qualification to the legislation in issue. In point of fact, whilst the Land provides the greater part of the funding of the Insurance Office (see paragraph 53 above), it does so in its capacity as employer and not as public authority.

Such differences as may exist between private sector insurance and social security insurance do not affect the essential character of the link between the insured and the insurer.

(c) Conclusion

74. Having evaluated the relative cogency of the features of public law and private law present in the instant case, the Court finds the latter to be predominant. None of these various features of private law is decisive on its own, but taken together and cumulatively they confer on the asserted entitlement the character of a civil right within the meaning of Article 6 para. 1 (art. 6-1) of the Convention, which was thus applicable.

B. Compliance with Article 6 para. 1 (art. 6-1)

75. The Court must therefore inquire whether the proceedings brought by Mrs. Deumeland and continued by her son before the German social courts satisfied the conditions laid down in Article 6 para. 1 (art. 6-1).

1. Reasonable time

76. The applicant complained firstly of the length of these proceedings.

(a) Period to be taken into consideration

77. The starting point of the period in issue is 16 June 1970, the date on which the action was instituted before the Berlin Social Court (see paragraph 11 above).

As far as the close of the period is concerned, the "time" whose reasonableness is to be reviewed covers in principle the entirety of the litigation, including the appeal proceedings (see the above-mentioned König judgment, Series A no. 27, pp. 33-34, para. 98). The Federal Constitutional Court is to be taken into account in this respect (see paragraph 45 above), in that, although it had no jurisdiction to rule on the merits, its decision was capable of affecting the outcome of the claim. On the other hand, the time

spent by the Berlin Social Court of Appeal in examining the application for re-opening of the proceedings is not material (see paragraphs 46-47 above), because this application involved a fresh set of proceedings.

Consequently, the close of the period is 9 February 1981, when the Federal Constitutional Court rejected Mr. Deumeland's constitutional complaint (see paragraph 45 above).

The period to be considered thus lasted ten years, seven months and three weeks (16 June 1970 - 9 February 1981).

(b) Relevant criteria

78. The reasonableness of the length of proceedings is to be assessed in each instance according to the particular circumstances of the case and having regard to the criteria stated in the case-law of the Court (see notably the Buchholz judgment of 6 May 1981, Series A no. 42, pp. 15-16, para. 49, and the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 11, para. 24).

(i) Degree of complexity of the case

79. The main issue raised by the case consisted in determining whether the fall of Mr. Deumeland's father when returning home from an appointment with an ear-nose-and-throat specialist whom he had consulted on leaving his workplace (see paragraph 10 above) constituted an industrial accident or an accident on the way to or from work for the purposes of the Reich Insurance Code. The competent social courts had in particular to satisfy themselves that the work superiors of the father had spoken to him about his hearing problems and asked him to seek treatment in the interests of the service (see paragraph 11 above). This was above all a question of fact to be elucidated by taking evidence from a few witnesses. Furthermore, no difficult legal issue was involved. The Government, moreover, did not contest this.

(ii) Behaviour of the applicant

80. At various stages, Mr. Deumeland Junior took steps that slowed the progress of the proceedings. Certain of these steps disclosed, if not a wish to obstruct, at least an attitude of non-cooperation.

This was so, for example, as regards the challenges he made - five in total - against one judge on the Federal Social Court and three judges on the Berlin Social Court of Appeal (see paragraphs 22, 25, 33, 35 and 37 above). These challenges were dismissed as unfounded, with the exception of one which was withdrawn by the complainant. In addition, several acts or omissions on the part of the applicant were such as to complicate the task of the courts. The Court need only cite the most noteworthy, namely the filing of written pleadings the day before hearings (see paragraphs 16 and 40 above), making requests for extension of time-limits (see paragraphs 18 and

42 above) or for rectification of the statement of facts included in a judgment and subsequently in the decision rejecting the original request (see paragraph 17 above), being incapable of helping the court to trace a document lodged by himself and asserted by him to be of importance (see paragraph 26 above), objecting to the communication of files and declining to submit comments (see paragraph 30 above), refusal to produce an inheritance certificate (see paragraph 35 above).

In sum, the applicant did not display the diligence to be expected of a party to litigation of this kind. He thereby contributed to prolonging the proceedings (see, *mutatis mutandis*, the Pretto and Others judgment of 8 December 1983, Series A no. 71, p. 15, para. 34).

(iii) Conduct of the competent courts

(1) Berlin Social Court

81. The proceedings before the Berlin Social Court began on 16 June 1970 and ended on 7 December 1972, that is two years, five months and three weeks later. Yet on three occasions the case was declared to be ready for hearing, on 11 May 1971, then on 15 March 1972 and finally on 26 June 1972 (see paragraph 12 above). The case was thus dormant for one year, one month and two weeks. The Government acknowledged the existence of some delay, but attributed this primarily to the creation of a new chamber as a result of the increase in the court's workload, and to successive changes of presiding judge. The Government also stated that the nature of the case did not warrant its being given priority treatment.

82. According to the Court's established case-law, a temporary backlog of court business does not engage the international responsibility of the State concerned, provided that the State takes effective remedial action with the requisite promptness (see, as the most recent authority, the Guincho judgment of 10 July 1984, Series A no. 81, p. 17, para. 40).

The evidence adduced by the Government does not support the conclusion that in the present case there occurred a sudden and unforeseeable increase in the number of actions being brought, thereby generating a temporary backlog of business.

The changes of presiding judge represent a natural part of the life of a court and may occasion a degree of delay. The frequency of the changes within a very short period served to aggravate the situation as it already was in the circumstances.

(2) Berlin Social Court of Appeal (first set of proceedings)

83. The case having been brought before it on 23 November 1972, the Berlin Social Court of Appeal notified its judgment to Mr. Deumeland on 14 September 1973, that is after nine months and three weeks. On the evidence, the procedure before this court was not subject to any delay.

(3) Federal Social Court (first set of proceedings)

84. The first set of proceedings before the Federal Social Court ended one year and seven months after it had been commenced (11 October 1973 - 15 May 1975). There was a period of inactivity from 5 February 1974 (transmission to Mr. Deumeland of the defendant's pleadings) until 6 December 1974 (hearing). However, the applicant had expressed the wish on 1 July 1974 that the hearing should be held on 6 December (see paragraph 21 above). This being so, the interval in question is only partially attributable to the Federal Social Court.

(4) Berlin Social Court of Appeal (second set of proceedings)

85. Of the five sets of proceedings brought by the applicant before the social courts, the second set before the Berlin Social Court of Appeal is the longest and most complicated. Three years and ten months elapsed between the notification of the judgment by the Federal Social Court (16 May 1975) and receipt by Mr. Deumeland of the judgment by the Social Court of Appeal (15 March 1979).

86. Two requests for communication of the case-file interrupted the course of the main proceedings; the first came from the public prosecutor's department attached to the Berlin Court of Appeal, and the second from the public prosecutor's department attached to the Berlin Regional Court (see paragraphs 28 and 31 above). The periods in question nevertheless remained relatively brief, that is to say, three weeks in one instance (28 August - 18 September 1975) and four months and two weeks in the other (29 July - 9 December 1976). These requests did not therefore have an appreciable incidence on the conduct of the proceedings.

As far as the challenges of judges submitted by Mr. Deumeland to the Berlin Social Court of Appeal are concerned, the time it took to reject them was often considerable and, at first sight, surprising; thus, it took three years, four months and three weeks (26 May 1975 - 17 October 1978) in the case of Judge Matuczewski, one year, ten months and two weeks (4 August 1976 - 20 June 1978) in the case of Judge Brämer, and seven months (20 January - 19 August 1977) and three weeks (31 May - 20 June 1978) in the case of Judge Arndts (see paragraphs 25, 33, 35-37 and 40 above). Although these challenges did not perhaps greatly slow the progress of proceedings, the time taken to decide them would nonetheless appear to be excessive.

(5) Federal Social Court (second set of proceedings)

87. The second set of proceedings before the Federal Social Court was commenced on 25 March 1979 and it terminated on 17 December 1980, that is to say, one year, eight months and three weeks later. Three periods of lack of activity merit attention (see paragraphs 43-44 above). The first runs from 9 July 1979 (dispatch to the parties of a statement by the Barmer

Ersatzkasse) until 19 November 1979 (request to the Charlottenburg District Authority for documents), the second from 2 January 1980 (receipt of a file from the Land Administrative Authority) until 1 April 1980 (dispatch to Mr. Deumeland of a letter informing him of receipt of documents), and the third from 9 September 1980 (transmission of documents to the parties) until 11 December 1980 (hearing). The Government limited their observations to pointing out that in so far as the Federal Social Court had ordered communication of all the various files, this had been done at the request of the applicant.

88. It suffices to note that the intervals of time in question, considered on their own, do not seem unreasonable, especially in view of the fact that the longest interval coincided largely with the court's vacation.

(6) Federal Constitutional Court

89. The Federal Constitutional Court, for its part, dealt with the matter with great expedition, since it took only six weeks to deliver its ruling.

(c) Overall assessment

90. In all, the litigation in issue extended over almost eleven years. Whatever might have been the value of the benefit being claimed, an interval of such length is abnormal for the circumstances, especially having regard to the particular diligence required in social security cases. It is true that the period under consideration is divided into six distinct phases, corresponding to six sets of proceedings, and that responsibility for its duration rests to a large degree with Mr. Deumeland himself. Nevertheless, a number of delays are attributable to the competent courts, primarily the Berlin Social Court and Social Court of Appeal (second set of proceedings). As a result of these delays, viewed together and cumulatively, the applicant's case was not heard within a reasonable time, as required by Article 6 para. 1 (art. 6-1). There has accordingly been a violation under this head.

2. Fair trial before an impartial tribunal

91. The applicant further complained that the claim had not been given a "fair hearing" before an "impartial tribunal". In his submission, the judges on the social courts exhibited a hostile attitude towards him for political reasons, failed in the duties incumbent upon them and delivered incorrect decisions in his case.

The Government did not comment on these claims.

92. The Court would merely point out that Mr. Deumeland has not adduced a shred of evidence capable of supporting his allegations.

II. APPLICATION OF ARTICLE 50 (ART. 50)

93. Article 50 (art. 50) of the Convention provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

94. In his memorial of 27 March 1985 (see paragraph 6 above), Mr. Deumeland alleged "considerable material and non-material damage". Specifying that he would quantify the prejudice at a later date, he listed the following items: rejection by the German courts of all his claims; harmful effect of the conduct of the proceedings on his mother's health; award made against him of all the court costs incurred before the different social courts; attempts to hamper the practice of his profession; time devoted to the proceedings before the national courts, at the expense of his other activities; injury to his reputation.

At the hearing, the applicant declared his readiness to deal in writing with the question of the possible application of Article 50 (art. 50) and to reach "an inexpensive settlement". In response to a request by the President, he stated that he would subsequently file written submissions; he has not done so, however.

Neither the Agent of the Government nor the Delegate of the Commission commented on his claims.

95. The breach of Article 6 para. 1 (art. 6-1) found by the Court relates essentially to a period of time when Mrs. Deumeland was still alive and had entrusted the defence of her case to her son (see paragraph 90 above). The latter, although he was living under the same roof as his mother (see paragraph 35 above), did not at that stage have the status of an "injured party" for the purposes of Article 50 (art. 50). He did, however, acquire that status on 8 December 1976 on the death of his mother, whose sole heir he is (see paragraph 35 above).

96. In respect of the material damage alleged, the applicant has not provided sufficient information. Accordingly, the Court rejects the claim under this head.

97. As far as the alleged non-material damage is concerned, it cannot be excluded that Mr. Deumeland's mother suffered some psychological distress during the period when the reasonable time had been exceeded. However, even supposing that she might have obtained financial compensation on this score, the Court sees no reason to grant any to the applicant himself since the present judgment affords him adequate just satisfaction.

98. The applicant made no other claim, in particular no claim for legal costs incurred in the proceedings before the Convention institutions. In the context of Article 50 (art. 50), the Court looks only to the items actually claimed; since no question of public policy is involved, the Court will not of its own motion inquire whether the applicant has been otherwise prejudiced (see the Sunday Times judgment of 6 November 1980, Series A no. 38, p. 9, para. 14). There is thus no call to award reimbursement of costs.

FOR THESE REASONS, THE COURT

1. Holds, by nine votes to eight, that Article 6 para. 1 (art. 6-1) was applicable to the circumstances of the present case;
2. Holds, by nine votes to eight, that there has been a breach of Article 6 para. 1 (art. 6-1) as regards compliance with the requirement of trial within a reasonable time;
3. Holds, unanimously, that the foregoing finding in itself constitutes adequate just satisfaction for the purposes of Article 50 (art. 50).

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 29 May 1986.

Gérard WIARDA
President

Marc-André EISSEN
Registrar

The separate opinions of the following judges are annexed to the present judgment in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 para. 2 of the Rules of Court :

- joint dissenting opinion of Mr. Ryssdal, Mrs. Bindschedler-Robert, Mr. Lagergren, Mr. Matscher, Sir Vincent Evans, Mr. Bernhardt and Mr. Gersing;

- dissenting opinion of Mr. Pinheiro Farinha;

- concurring opinion of Mr. Pettiti and Mr. Russo.

G.W.
M.-A.E.

JOINT DISSENTING OPINION OF JUDGES RYSSDAL, BINDSCHEDLER-ROBERT, LAGERGREN, MATSCHER, SIR VINCENT EVANS, BERNHARDT AND GERSING

1. We agree with the view of the majority of the Court as to the existence in the present case of a "contestation" (dispute) over a right claimed by the applicant's mother, Mrs. Deumeland. In our opinion, however, the dispute did not involve the determination of her "civil rights and obligations" ("droits et obligations de caractère civil"), within the meaning of Article 6 para. 1 (art. 6-1) of the Convention. Our conclusion, therefore, is that Article 6 para. 1 (art. 6-1) is not applicable in the present case.

2. The majority finds that various "features of private law" comprised in the particular social security benefit claimed by Mrs. Deumeland so outweighed the "features of public law" as to confer on her claimed entitlement the character of a "civil right" for the purposes of Article 6 para. 1 (art. 6-1) (see paragraph 74 of the judgment). The relevant "features of private law" identified by the majority are, firstly, the personal and economic nature of the asserted right; secondly, the connection with the contract of employment; and, thirdly, the affinities with insurance under the ordinary law. In our view, the weakness in this reasoning is that the majority is taking as determining factors matters which may vary as between different social security systems and even from one category of benefit to another under the same system. We fear that this will give rise to uncertainty as to the obligations undertaken by the Contracting States in the field of social security by virtue of Article 6 para. 1 (art. 6-1) of the Convention.

3. Our reasons for finding Article 6 para. 1 (art. 6-1) to be inapplicable to the kind of right asserted by Mrs. Deumeland are as follows.

1. "Civil rights and obligations" - a limitative concept

4. Article 6 para. 1 (art. 6-1) lays down a procedural guarantee for the adjudication of certain disputes. The use of the expression "civil rights and obligations" must have been intended by the drafters of the Convention to set some limit on the application of Article 6 para. 1 (art. 6-1). The expression cannot be read as applying to disputes over the whole range of "rights and obligations" recognised by domestic law: the right or obligation in issue must be one that can be qualified as "civil". This adjective, however, is capable of bearing several meanings. The text of the Article (art. 6) is not sufficiently clear for it to be said, without more, which meaning was intended.

2. The Court's case-law

5. The Court's existing case-law gives some guidance as to where the line is to be drawn.

6. The starting point must in each case be the character attributed to the rights and obligations in question under the legal system of the respondent State. This, however, provides no more than an initial indication, as the notion of "civil rights and obligations" is an "autonomous" one within the meaning of the Convention and "cannot be interpreted solely by reference to the domestic law of the respondent State": "whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right - and not its legal classification - under the domestic law of the State concerned" (see the König judgment of 28 June 1978, Series A no. 27, pp. 29-30, paras. 88-89).

For this purpose, account should also be taken of the legal systems of the other Contracting States, notably to see whether there exists any uniform concept of "civil rights and obligations" such as would either embrace or exclude the facts of the present case (see the above-mentioned König judgment, Series A no. 27, p. 30, para. 89).

7. The Court has held that the phrase "contestations" (disputes) over "civil rights and obligations" covers all proceedings the result of which is decisive for private rights and obligations, even if the proceedings concern a dispute between an individual and a public authority acting in its sovereign capacity and irrespective of whether under the domestic legal system of the respondent State they fall within the sphere of private law or of public law or indeed are of a mixed character (see the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 39, para. 94; the above-mentioned König judgment, Series A no. 27, pp. 30 and 32, paras. 90 and 94). Moreover, it is not enough for the dispute or the proceedings to have a tenuous connection with or remote consequences affecting civil rights or obligations: "civil rights and obligations must be the object - or one of the objects - of the 'contestation' (dispute); the result of the proceedings must be directly decisive for such a right" (see the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 21, para. 47).

Beyond this, the Court has expressly reserved for future consideration the question whether the concept of "civil rights and obligations", within the meaning of Article 6 para. 1 (art. 6-1), extends beyond those rights which have a private nature (see the above-mentioned König judgment, Series A no. 27, p. 32, para. 95; and the above-mentioned Le Compte, Van Leuven and De Meyere judgment, Series A no. 43, p. 22, para. 48 in fine).

8. The Court's existing case-law has thus identified certain areas to which Article 6 para. 1 (art. 6-1) is applicable, whilst leaving open whether or not there might be other such areas.

3. Application of the Court's existing case-law to the particular facts

9. Under German law, the entitlement to a widow's supplementary pension asserted by Mrs. Deumeland is not private in character but is classified as a public-law right.

Undoubtedly, under the statutory insurance scheme to which Mr. Deumeland Senior was subject, certain connections exist between the entitlement to industrial-accident allowances and the insured's current or former contract of employment, which contract does clearly fall within the domain of private law. Nonetheless, the provisions governing industrial-accident allowances do not constitute clauses incorporated by law in, or deriving from, the contract of employment; the claim is enforceable against a third party not privy to the contract; and the outcome of the claim does not directly affect the private legal relationship between the employer and employee created by the contract of employment, although it may have a certain incidence on performance of that contract.

Hence it cannot be said that the proceedings brought by Mrs. Deumeland to enforce her claim to a widow's supplementary pension concerned, or entailed a result directly decisive for, a private right recognised by German law. Such consequences as there were for private rights were, in our view, too remote and tenuous to attract the application of Article 6 para. 1 (art. 6-1) on that ground alone.

10. We agree with the majority that the classification under German law, whilst it provides an initial indication, cannot be decisive, especially if it is out of line with the legal systems of the other Contracting States. However, as the majority concluded in paragraph 63 of the judgment, there exists no common European standard as regards the juridical nature of entitlement to industrial-accident allowances under statutory social security schemes. In particular, such entitlement is not generally recognised as being private in character.

11. Accordingly, the facts of the present case fall outside the private-right criteria for the application of Article 6 para. 1 (art. 6-1) as established under the Court's existing case-law. What remains to be determined is whether those facts nonetheless do come within the scope of Article 6 para. 1 (art. 6-1) on other grounds.

4. Relevant principles of interpretation

12. In order to ascertain the meaning of the "autonomous" notion of "civil rights and obligations" in Article 6 para. 1 (art. 6-1), regard must be

had to the object and purpose of the Convention (see the above-mentioned König judgment, Series A no. 27, p. 30, para. 89). As a matter of general approach, in the interpretation of the Convention, which is an international treaty, it is appropriate for the Court to be guided by the 1969 Vienna Convention on the Law of Treaties (see the Golder judgment of 21 February 1975, Series A no. 18, p. 14, para. 29). The "general rule of interpretation", as set out in Article 31 para. 1 of the Vienna Convention, reads:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

Article 32 of the Vienna Convention further specifies that

"recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31 ...".

The Court has also recognised the need to construe the European Convention on Human Rights in the light of modern-day conditions obtaining in the democratic societies of the Contracting States and not solely according to what might be presumed to have been in the minds of the drafters of the Convention (see, *inter alia*, the Marckx judgment of 13 June 1979, Series A no. 31, p. 19, para. 41).

5. Characteristics of the asserted right

13. The pension right claimed by Mrs. Deumeland was an economic right deriving, not from the private contract between her husband and his employer, but from a collective scheme of protection of the working population set up by the legislature. An allocation of society's resources as generated within the employment context has been decided upon by the domestic legislature; and Mr. Deumeland Senior, as a member of the section of society concerned, was compelled to participate in that scheme. Such schemes represent performance of society's duty to protect the health and welfare of its members; they are not merely examples of the State taking on or regulating an insurance activity equally capable of being carried on by the private sector.

Admittedly, concerning as it does the employment sphere, the German statutory scheme of industrial-accident insurance is bound to have some repercussions on, connections with or features in common with "civil rights and obligations" existing under the ordinary law in that sphere. Thus, the availability of industrial-accident allowances under the relevant provisions of the Reich Insurance Code is dependent upon there having been a contract of employment; the pension itself may be analysed as a kind of extension of the salary payable by the employer under the contract of employment; the statutory scheme of industrial-accident insurance could be said to have some

affinity with classic insurance in the private sector. In our opinion, however, none of these factors alters the essential public character of the relationship between the individual and the collectivity which lies at the heart of the claimed statutory entitlement.

6. Context, object and purpose

14. It must therefore be determined, in the context of the provision and in the light of the object and purpose of the Convention, whether this kind of entitlement, despite its essential public character, is included within the notion of "civil rights and obligations", within the meaning of Article 6 para. 1 (art. 6-1).

15. The object and purpose of the Convention as pursued in Article 6 para. 1 (art. 6-1) are, to some extent, discernible from the nature of the safeguards provided.

The judicialisation of dispute procedures, as guaranteed by Article 6 para. 1 (art. 6-1), is eminently appropriate in the realm of relations between individuals but not necessarily so in the administrative sphere, where organisational, social and economic considerations may legitimately warrant dispute procedures of a less judicial and formal kind. The present case is concerned with the operation of a collective statutory scheme for the allocation of public welfare. As examples of the special characteristics of such schemes, material to the issue of procedural safeguards, one might cite the large numbers of decisions to be taken, the medical aspects, the lack of resources or expertise of the persons affected, the need to balance the public interest for efficient administration against the private interest. Judicialisation of procedures for allocation of public welfare benefits would in many cases necessitate recourse by claimants to lawyers and medical experts and hence lead to an increase in expenses and the length of the proceedings.

The nature of the safeguards afforded thus tends to show that the object and purpose of Article 6 para. 1 (art. 6-1) do not go so far as to guarantee judicial control of the administration of statutory collective schemes for the distribution of public welfare.

16. We have not overlooked the fact that the overall object of the Convention is the humanitarian one of the protection of the individual and that, for the man or woman in the street, entitlement to social security benefits is of extreme importance for his or her daily life. However, as the Delegate of the Commission submitted, the economic importance for Mrs. Deumeland's livelihood of the allowance claimed is insufficient, on its own, to bring into play the applicability of Article 6 para. 1 (art. 6-1) and its specific judicial guarantees. Of course, it is equally essential that in the administrative field justice should be done and the individual's claims

should be investigated in a responsible and objective manner in accordance with the rules laid down, but that is not to say that all the various requirements of Article 6 para. 1 (art. 6-1) of the Convention are therefore applicable. Indeed, as pointed out above in the present opinion (at paragraph 15), there exist underlying considerations justifying special procedures in social welfare cases.

17. This being so, the juxtaposition of "civil" and "criminal" in the context of Article 6 para. 1 (art. 6-1) cannot reasonably be taken to be a comprehensive reference to all systems of adjudicative proceedings under domestic law. On this construction, the use of the adjective "civil" would not therefore imply the applicability of Article 6 para. 1 (art. 6-1) to disputes over all matters other than "criminal" even where, as in social security disputes, the outcome is crucial for the personal life of the individual concerned.

18. These considerations point to the conclusion that, in principle, the collective and public features of the statutory insurance scheme giving entitlement are so predominant as to take the rights and obligations in issue outside the "civil" domain, within the meaning of Article 6 para. 1 (art. 6-1).

7. Supplementary means of interpretation

19. The foregoing analysis is corroborated by the fact that the relevant legislation predates the elaboration of the Convention by some decades, and there existed similar legislation predating the Convention in many other of the Contracting States. It is therefore reasonable to assume that the intention of the drafters of Article 6 para. 1 (art. 6-1) was not to include such statutory schemes of collective social protection within its ambit. On examination, the drafting history confirms this reading of the text.

20. The adjective "civil" was added to the English version of Article 6 para. 1 (art. 6-1) in November 1950 on the day before the Convention was opened for signature, when a committee of experts examined the text of the Convention for the last time and "made a certain number of formal corrections and corrections of translations" (Collected Edition of the Travaux préparatoires of the European Convention on Human Rights, vol. VII, p. 12, para. 6). Whilst no specific explanation was given for the last-minute change to Article 6 para. 1 (art. 6-1), it is a fair inference that the reason was merely to align the English text more closely with the language of the French text: prior to the change, although the French version had spoken, as now, of "droits et obligations de caractère civil", the English version had read "rights and obligations in a suit of law" (*ibid.*, vol. V, p. 148).

These two expressions had first been introduced at a meeting (March 1950) of the Committee of Experts on Human Rights of the Council of

Europe and were evidently taken directly from the equivalent Article of the then existing draft of the International Covenant on Civil and Political Rights of the United Nations (*ibid.*, vol. II, p. 296; vol. III, pp. 30, 160, 284, 290, 316; vol. IV, p. 60). It is therefore relevant to trace their history in the travaux préparatoires of the International Covenant.

21. The crucial discussion on the draft International Covenant took place on 1 June 1949 during the fifth session of the United Nations Commission on Human Rights. The French and Egyptian delegations had presented an amendment that referred to "droits et obligations"/"rights and obligations", without qualification. The reaction of the Danish representative (Mr. Sørensen) to this amendment was reported as follows:

"The representatives of France and Egypt proposed that everyone should have the right to have a tribunal determine his rights and obligations. Mr. Sørensen considered that that provision was much too broad in scope; it would tend to submit to judicial decision any action taken by administrative organs exercising discretionary power conferred on them by law. He appreciated that the individual should be ensured protection against any abuse of power by administrative organs but the question was extremely delicate and it was doubtful whether the Commission could settle it there and then. The study of the division of power between administrative and judicial organs could be undertaken later. ... Mr. Sørensen asked the representatives of France and Egypt whether the scope of the provision in question might be limited to indicate that only cases between individuals and not those between individuals and the State were intended." (summary record of the 109th meeting, doc. E/CN.4/SR.109, pp. 3-4)

The French representative (Mr. Cassin), speaking in French, replied that "the Danish representative's statement had convinced him that it was very difficult to settle in that article all questions concerning the exercise of justice in the relationships between individuals and governments" (*ibid.*, p. 9). He was therefore prepared to let the words "soit de ses droits et obligations" in the first sentence of the Franco-Egyptian amendment be replaced by the expression "soit des contestations sur ses droits et obligations de caractère civil" (rendered in the English version of the summary record as "or of his rights and obligations in a suit of law"). He agreed that the problem "had not been fully thrashed out and should be examined more thoroughly".

Later the same day, a drafting committee produced a text which contained the expressions "in a suit of law" in English and "de caractère civil" in French (doc. E/CN.4/286). The formula employed in this text is the one that was ultimately adopted for Article 14 of the International Covenant in 1966.

22. It thus seems reasonably clear that the intended effect of the insertion of the qualifying term "de caractère civil" in the French text of the draft International Covenant was to exclude from the scope of the provision certain categories of disputes in the field of administration "concerning the

exercise of justice in the relationships between individuals and governments".

8. State practice and evolutive interpretation

23. It is not the case that, since the entry into force of the Convention, State practice has developed to the point where the Contracting States can be said to treat entitlement to industrial-accident allowances under statutory social security schemes as giving rise to "civil rights and obligations" for the purposes of Article 6 para. 1 (art. 6-1). Indeed, as noted above (see paragraph 10), no common ground can be identified in the legal systems of the Contracting States as to the "civil" or other character of such entitlement. In sum, there is no uniform European approach in this regard such as to run counter to the interpretation we have reached on the basis of the other foregoing considerations. On the contrary, the diversity of approach existing even today tends to show that whether judicial protection of the kind guaranteed by Article 6 para. 1 (art. 6-1) should be afforded to claims, such as Mrs. Deumeland's, for industrial-accident allowances is a policy decision for the Contracting States to take in the light of the various merits and disadvantages involved, but it is not as such required by Article 6 para. 1 (art. 6-1) itself.

24. Neither does an evolutive interpretation of Article 6 para. 1 (art. 6-1) lead to a different conclusion. The Convention is selective in the protection it affords, as is shown by the recital in the Preamble wherein the signatory Governments expressed their underlying resolve to be "to take the first steps for the collective enforcement of certain of the rights stated in the [United Nations] Universal Declaration" of Human Rights (see the above-mentioned Golder judgment, Series A no. 18, p. 16, para. 34). An evolutive interpretation allows variable and changing concepts already contained in the Convention to be construed in the light of modern-day conditions (see, for example, the Tyrer judgment of 25 April 1978, Series A no. 26, pp. 15-16, para. 31; the above-mentioned Marckx judgment, Series A no. 31, pp. 19-20, para. 41; the Dudgeon judgment of 22 October 1981, Series A no. 45, pp. 23-24, para. 60), but it does not allow entirely new concepts or spheres of application to be introduced into the Convention: that is a legislative function that belongs to the member States of the Council of Europe. The desirability of affording proper safeguards for the adjudication of claims in the ever-increasing field of social security is evident. There are, however, limits to evolutive interpretation and the facts of the present case go beyond those limits as far as Article 6 para. 1 (art. 6-1) is concerned.

We do not find the considerable developments witnessed in the social welfare field since the elaboration of the Convention to be such as to alter

the essential character of the rights and obligations in issue in the action instituted by Mrs. Deumeland.

9. Conclusion

25. Having regard to the text of Article 6 para. 1 (art. 6-1), to its object and purpose and to its drafting history, the conclusion of principle which we draw is that there exist areas within the field of public administration subject to special institutional regimes, such as that relating to social security, under which the rights and obligations of the individual not of a private nature may justifiably, for various reasons (see paragraph 15 above), be determined by special procedures of adjustment rather than by tribunals complying with all the requirements of Article 6 para. 1 (art. 6-1). In our view, the guarantees of Article 6 para. 1 (art. 6-1) attaching to "contestations" (disputes) over "civil rights and obligations" do not apply to disputes within such areas unless, as stated in the Court's case-law (see paragraph 7 above), the outcome of the dispute is directly decisive for private rights.

In the light of all the various considerations set out above, we accordingly conclude that the proceedings brought by Mrs. Deumeland and subsequently continued by her son before the German social courts did not involve determination of "civil rights and obligations", within the meaning of Article 6 para. 1 (art. 6-1); and that the judicial guarantees of this provision were therefore not applicable to the circumstances of the instant case.

DISSENTING OPINION OF JUDGE PINHEIRO FARINHA

(Translation)

1. Article 6 para. 1 (art. 6-1) of the Convention guarantees a fair trial in the determination of a person's "civil rights and obligations" and of "any criminal charge against him".

2. No question of a "criminal charge" arises in the present case. Did the facts involve the determination of civil rights and obligations?

3. Mr. Deumeland Senior was an employee (Angestellter) of the Berlin City Authorities and he was compulsorily insured against industrial accidents (see paragraph 10 of the judgment).

For employees of private firms, the bodies responsible for insurance against industrial accidents are the occupational associations (Berufsgenossenschaften) (see paragraph 52 of the judgment), whose funds are provided by the employers by means of private contributions which depend essentially on the salaries of the persons covered and on the likelihood of accidents (see paragraph 51).

In Berlin, Land employees are covered by the Industrial Accident Insurance Office (Eigenunfallversicherung), a public body directly controlled by the Land authority and financed chiefly by a sum included annually in the Land budget, that is by public monies, and for the rest by contributions paid by certain public concerns (see paragraph 53). The contract of employment constituted a mere condition of entitlement and Mr. Deumeland Senior had not paid any contributions towards the insurance.

4. I conclude - by reason of the lack of dependence on the occupational associations, the connection with a public body under the direct control of the Land, and the funding of this industrial-accident insurance which was chiefly provided from the budget of the Land - that one cannot speak of a determination of a "civil right" and that Article 6 (art. 6) was not applicable and hence not breached.

CONCURRING OPINION OF JUDGES PETTITI AND
RUSSO*(Translation)*

We have voted with the majority in favour of the applicability and violation of Article 6 (art. 6). What was crucial for our vote was the predominance of the features of civil law in the succession of very different proceedings brought by the members of the Deumeland family.

1. At the origin of the affair was a street accident suffered by Mr. Deumeland Senior. The fact of his being granted or not being granted benefits as the victim of an industrial accident on the way to or from work does not alter the nature of the right at issue. The damage sustained as a result of the accident could raise an issue of civil liability or criminal liability entailing civil consequences on the part of the owner of the building in front of which the snow-covered pavement caused the fall of Mr. Deumeland Senior.

2. The principal litigation was concerned with the possible causal link between the accident on the way home from work (in so far as treated as an industrial accident) and the death of Mr. Deumeland Senior. This, if established, would have entailed the attribution of additional years of service between the date of the accident and the date of the death, which would in turn have increased to a certain extent the old-age pension received by Mrs. Deumeland. What was at stake was not a supplementary insurance, but the basis of calculation of a pension.

3. A further feature of civil law is to be found in the procedural incident concerning the proof of Mr. Deumeland Junior's status as heir.

4. The action for recovery of damages that could have been brought against the owner of the building as a result of the Industrial Accident Insurance Office being subrogated to the rights of Mr. Deumeland Senior related to a civil liability claim. It was for those concerned to reserve their right of action against the building owner. The final refusal of responsibility by the Insurance Office could have raised another issue of liability. All these features - subrogation, surrender of rights, exercise of the right to sue - are features of civil law.

The Court has situated the unreasonable length of the proceedings mainly in the period relating to the litigation concerning the causal link and to the subsequent procedural incidents, and not in the first stage of the social insurance dispute which dealt with whether the accident on the way home from work should be classified as an industrial accident.

The Deumeland case does not, in our view, involve putting in issue the German system for settlement of social insurance disputes concerning industrial accidents. The extremely interesting controversy - which is remarkably expounded in the separate opinion of the minority - surrounding

the interpretation of the travaux préparatoires of the United Nations and the Council of Europe in connection with the expression "civil rights and obligations" does not necessarily furnish a crucial element of appraisal, having regard to the particular circumstances of the present case and to the predominant features of private law described above.