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

FIFTH SECTION

CASE OF STORK v. GERMANY

(Application no. 38033/02)

JUDGMENT

STRASBOURG

13 July 2006

FINAL

13/10/2006

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

In the case of Stork v. Germany,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,
Having deliberated in private on 19 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 38033/02) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two German nationals, Mr Alois-Wilhelm Stork and Mrs Brigitte Stork ("the applicants"), on 18 October 2002.

2. The applicants were represented by Mr C. Lenz, a lawyer practising in Stuttgart. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialrätin*, of the Federal Ministry of Justice.

3. On 27 January 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are German nationals and live in Hamminkeln.

5. They are owners of a real estate in Hamminkeln. On 22 October 1985 the Municipality ordered the applicants to pay a contribution amounting to DEM 4,470.52 (approximately 2,285 €) for the construction of a street adjacent to their land. The contribution was based on the Municipality's decree on contributions for the construction of local public infrastructure

(*Erschließungsbeitragssatzung*). The Municipality repeatedly amended this decree (in 1986, 1889 and 1994 respectively).

6. On 7 November 1985 the applicants lodged an administrative appeal (*Widerspruch*). They contested the amount to be paid and alleged that the street had not been duly constructed. The Municipality should have requested the company which had been commissioned to construct the street to reduce the price on account of the defective construction. Furthermore the applicants referred to Section 133 of the Federal Building Act (*Baugesetzbuch*) pursuant to which the contribution for a local public infrastructure facility was only due after its final construction (*endgültige Herstellung*). The street had not been finally constructed because it did not meet the conditions for the final construction of a facility as laid down in the Municipality's decree on contributions for the construction of local public infrastructure.

7. The applicants moreover accused the employees of the Municipality of having acted for their own unjustified enrichment as they commissioned a firm which had evidently offered its service for speculative prices (*Spekulationspreise*). These allegations led to criminal investigations of the Duisburg Public Prosecutor during which two expert opinions were furnished concerning the construction of the impugned road. The criminal investigations, instituted in 1986, were discontinued in May and August 1989.

8. On 13 November 1985 the applicants requested that the execution of the order be stayed (*Aussetzung der Vollziehung*). The Municipality rejected their motion on the same day. On 19 November 1985 the applicants filed a motion for an interim injunction to stay the execution. On 11 June 1986 the Düsseldorf Administrative Court ordered the stay of the execution. On 20 September 1988 the Münster Administrative Court of Appeal rejected the Municipality's appeal.

9. On 27 October 1988 the applicants lodged a complaint for failure to act (*Untätigkeitsklage*) with the Düsseldorf Administrative Court pursuant to Section 75 of the Code of Administrative Court Procedures (*Verwaltungsgerichtsordnung* – see "Relevant domestic law" § 20 below) because the Municipality had not yet decided upon their administrative appeal of 7 November 1985. The Administrative Court asked the Duisburg Public Prosecutor to submit the two expert opinions prepared in the course of the criminal investigations against the employees of the Municipality. In February 1989 at the latest the Duisburg Public Prosecutor submitted the expert opinions to the Administrative Court.

10. In 1989 the Municipality instituted proceedings to preserve evidence (*Beweissicherungsverfahren*) before the Wesel District Court. On 12 May 1989 the court ordered an expert opinion on the defects of the road construction. Upon the inquiry of the Düsseldorf Administrative Court on 12 February 1992 the District Court announced that the expert opinion was

to be furnished at the end of that year. On 23 November 1992 the expert opinion dated 28 October 1992 was submitted to the Administrative Court.

11. On 11 May 1993 the Düsseldorf Administrative Court quashed the order of the Municipality dated 22 October 1985 *inter alia* because the street had not been constructed in conformity with the Municipality's decree. The Court based its decision on one of the expert opinions prepared in the course of the criminal investigations, on the expert opinion prepared in the proceedings before the Wesel District Court and on two expert opinions prepared in the context of the proceedings before it. The court also heard two of the experts as expert witnesses.

12. On the Municipality's appeal, the Münster Administrative Court of Appeal quashed the judgment on 29 November 1996, rejected the applicants' complaint and refused leave to appeal on points of law (*Nichtzulassung der Revision*). At the oral hearing on the appeal, the applicants filed fourteen requests for the taking of evidence.

13. On 1 September 1997 the Federal Administrative Court granted the applicants' request for leave to appeal, quashed the decision of the Administrative Court of Appeal and remitted the matter to it, without deciding separately upon the admissibility of the appeal on points of law in order to expedite the proceedings. It held that the Administrative Court of Appeal had not provided sufficient reasons for its decision, in particular it had failed to expose why it had not considered the applicants' submissions.

14. On 30 December 1997 the Münster Administrative Court of Appeal rejected the applicants' appeal without holding a hearing.

15. On 19 April 1999 the Federal Administrative Court quashed this decision and remitted the case again to the Münster Administrative Court of Appeal. It held *inter alia* that the latter had not sufficiently justified why it had not examined the applicants' offers of proof, even it might have been troublesome to deal with each of the offers of proof ("*auch wenn es mühselig ist (...), sich mit jedem einzelnen Beweisantrag auseinanderzusetzen"*). It observed moreover that the decision of the Administrative Court of Appeal not to hold a hearing without informing the parties was not in conformity with the procedural requirements.

16. On 11 January 2001 a hearing was held in the resumed proceedings before the Münster Administrative Court of Appeal during which the applicants filed forty-four requests for the taking of evidence. The Municipality reduced the amount to be paid by the applicants to DEM 3,951.54 and the parties declared the case settled in respect of the amount in excess (*Erledigung des Rechtsstreits*). On 23 January 2001 the Münster Administrative Court of Appeal discontinued the proceedings as to the amount exceeding DEM 3,951.54 and dismissed the applicants' complaint as to the remainder.

17. On 6 August 2001 the Federal Administrative Court rejected the applicants' request for leave to appeal on points of law.

18. On 25 September 2001 the applicants lodged a constitutional complaint and argued *inter alia* that the length of proceedings had been excessive.

19. On 10 April 2002 the Federal Constitutional Court, sitting as a panel of three judges, refused to admit the constitutional complaint without giving any reasons. The decision was served on the applicants' representative on 19 April 2002.

II. RELEVANT DOMESTIC LAW

20. Section 75 of the Code of Administrative Court Procedures (*Verwaltungsgerichtsordnung*) provides *inter alia* that an application to set aside an order (*Anfechtungsklage*) can be lodged with the Administrative Court if the administrative authorities fail without sufficient justification to decide upon the administrative appeal against this order within a reasonable time-limit, in general three months.

21. The Federal Building Act (*Baugesetzbuch*) establishes *inter alia* that infrastructure development shall be the task of the Municipality (Section 123) but that the latter may assign the infrastructure development to a third party by agreement (Section 124). Furthermore, the Municipality shall charge an infrastructure contribution to cover the costs for the infrastructure facilities not otherwise covered (Section 127) but it shall assume at least 10 % of the infrastructure expenditures subject to contribution (Section 129).

THE LAW

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

22. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. Compatibility ratione materiae

23. The Government maintained that the proceedings did not fall within the scope of Article 6 § 1 of the Convention. The impugned contributions were "other contributions" within the meaning of Article 1 of Protocol No. 1 and accordingly – as taxes – part of the hard core of public authority prerogatives (*Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII). They further noted that according to German law the construction of public infrastructure as well as its maintenance and regulation was the Municipality's task which had to bear at least 10 % of the costs of the construction. Finally, the contributions in question substituted a funding of the construction by means of general taxes and were comparable to them.

24. The applicants contested that view.

25. As it is common ground that there was a "dispute", the Court's task is confined to determining whether it was over "civil rights and obligations".

26. The Court has on several occasions affirmed that the concept of "civil rights and obligations" cannot be interpreted solely by reference to the domestic law of the respondent State because that concept is "autonomous", within the meaning of Article 6 § 1 of the Convention (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, pp. 29-30, §§ 88-89, and *Baraona v. Portugal*, judgment of 8 July 1987, Series A no. 122, pp. 17-18, § 42). Furthermore, as the Court stated in the case of *Ferrazzini* (cited above, § 27), relations between the individual and the State have clearly evolved in many spheres during the fifty years which have elapsed since the Convention was adopted, with State regulation increasingly intervening in private-law relations. This has led the Court to find that procedures classified under national law as being part of "public law" could come within the purview of Article 6 under its "civil" head if the outcome was decisive for private rights and obligations (see *Ferrazzini,* cited above, § 27; *König*, cited above, p. 32, §§ 94-95; *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 29, § 79; *Allan Jacobsson v. Sweden (no. 1)*, judgment of 25 October 1989, Series A no. 163, pp. 20-21, § 73; *Benthem v. the Netherlands*, judgment of 23 October 1985, Series A no. 97, p. 16, § 36).

27. In the case of *Ferrazzini* (cited above, § 29) the Court confirmed that tax disputes regularly fall outside the scope of civil rights and obligations – despite the pecuniary effects which they necessarily produce for the taxpayer – because tax matters still form part of the hard core of public-authority prerogatives.

28. In the present case, the applicants were requested to pay a contribution for the construction of local infrastructure which had an impact on their real estate. The contributions were imposed only on persons who had a personal interest in and took advantage of the construction. Thus, while taxes are levied to cover the general financial requirements of public funding, the contributions in question were destined to finance a specific project, namely the construction of a particular road.

29. In these circumstances, the Court considers these contributions were not taxes but rather "other contributions" within the meaning of Article 1 Protocol No. 1. Therefore, the Court finds that Article 6 § 1, under its civil head, is applicable to the proceedings in question.

2. Exhaustion of domestic remedies

30. The Government submitted that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention since their constitutional complaint had been declared inadmissible for the lack of a specific legal interest (*Rechtsschutzinteresse*). Furthermore, the applicants had not availed themselves of the opportunity to lodge a constitutional complaint during the proceedings before the lower courts in order to expedite the proceedings and had failed to complain about the length of proceedings before the Federal Administrative Court and the Administrative Court of Appeal.

31. The applicants contested these submissions. They referred *inter alia* to a decision of the Federal Administrative Court of 30 January 2003 (No. 3 B 8/03) pursuant to which the Code of Administrative Court Procedures did not provide for complaint for failure to act against the inaction of an administrative court.

32. The Court recalls that under Article 35 of the Convention, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Dalia v. France*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 87, § 38; *Horvat v. Croatia*, no. 51585/99, § 38, ECHR 2001-VIII; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 142, ECHR 2006-...). Furthermore, in the area of exhaustion of domestic remedies, it is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Horvat*, cited above, § 39).

33. The Court notes that the Federal Constitutional Court did not give any reasons for refusing to admit the applicants' complaint. In particular, there is no indication that it refused the complaint as being inadmissible. In these circumstances, the Court is not in a position to take the place of the Federal Constitutional Court and to speculate why it had decided not to admit the complaint (see *Keles v. Germany*, no. 32231/02, § 44, 27 October 2005).

34. Furthermore, bearing in mind that the Federal Constitutional Court refused to admit the applicants' complaint about a length of over sixteen years, it is uncertain whether an earlier complaint about – correspondingly shorter proceedings – would have had more prospects of success. In any event, a constitutional complaint is not capable of affording redress for the excessive length of pending civil proceedings (see *Sürmeli v. Germany* [GC], no. 75529/01, § 108, ECHR 2006-...).

35. Finally, the Government failed to demonstrate that a complaint about the length of proceedings before the lower courts would have been capable of providing redress. In this respect, it has to be observed that the Federal Constitutional Court did not declare the applicants' constitutional complaint about the length of proceedings inadmissible for failure to exhaust domestic remedies within the meaning of the first sentence of Section 90(2) of the Federal Constitutional Court Act.

36. Therefore, the Court concludes that the applicants must be regarded as having exhausted domestic remedies.

37. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The period to be taken into consideration began on 7 November 1985 when the applicants lodged an administrative appeal and ended on 19 April 2002 when the Federal Constitutional Court served its decision on the applicants' lawyer. It thus lasted over sixteen years and five months for four levels of jurisdiction and the preliminary administrative proceedings.

39. The reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the litigation (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II; *Gast and Popp v. Germany*, no. 29357/95, § 70, ECHR 2000-II).

1. Submissions made before the Court

40. The Government maintained that the case had been especially complex. In particular, they referred to the technical details concerning the proper construction of the road, the applicants' convoluted submissions and their numerous offers of proof. Several periods were not attributable to the national courts who had – as a measure of procedural efficiency – awaited the outcome of parallel proceedings such as the summary proceedings before the Düsseldorf Administrative Court, the criminal investigations against the employees of the Municipality and the proceedings to preserve evidence. The Government further argued that the applicants' appeals to the Federal Administrative Court had delayed the proceedings. In any event, the applicants had not suffered any damage due to the length of the proceedings.

41. In the applicants' view, the case had not been of a complex nature. Furthermore, all expert opinions used in the impugned proceedings had been available to the courts on 23 November 1993 at the latest. The applicants underlined that their appeals to the Federal Administrative Court and their offers of proof had only been the legitimate exercise of their procedural right to proper proceedings and thorough clarification of the facts. The delays in the proceedings had to be ascribed to the courts' inaction, their incorrect application of the procedural law and to the Hamminkeln Municipality who had changed three times the decree on the contribution for the construction of local public infrastructure in the course of the proceedings. The applicant conceded that the impugned proceedings concerned a relatively modest sum. They however underlined that their outcome affected a large number of landowners.

2. The Court's assessment

42. The Court observes that – despite the relatively low amount in dispute – the case was of some factual complexity, *inter alia* due to the nature of the evidence to be taken and assessed. In particular, the national decisions were based on several expert opinions concerning technical details of the alleged defects in the road construction.

43. As to the conduct of the applicants, the Court observes that they used the domestic proceedings as a platform for presenting their numerous requests for the taking of evidence, in particular for demanding expert opinions and specialists' hearings on each and every point in spite of the disproportion between the procedural costs involved and the value in dispute. Furthermore, during the first three years the applicants only requested the indication of interim measures before the German courts. They lodged their action with the Administrative Court more than two years and eleven months after having lodged their administrative appeal although it could have been lodged three months after the introduction of the

administrative appeal pursuant to Section 75 of the Code of Administrative Court Procedure (see "Relevant domestic law" § 20 above). In this respect the applicants failed to expedite the proceedings during a period of two years and eight months. Considering the total duration of the proceedings, this prolongation must however be regarded as small.

44. As to the conduct of the authorities, the Court considers that it might be reasonable for national courts to await under certain circumstances the outcome of parallel proceedings as a measure of procedural efficiency. However, this decision must be reasonable having regard to the special circumstances of the case (see *König v. Germany*, cited above, § 110; *Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 39; and *Pafitis and Others v. Greece*, judgment of 26 February 1998, *Reports* 1998-I, § 97). In the present case, the Municipality abstained from deciding on the applicants' administrative appeal in view of the summary proceedings. Subsequently, the Administrative Court awaited the outcome of the criminal investigations and the outcome of the proceedings to preserve evidence. As a result, the German authorities required altogether more than seven and a half years to decide on the applicants' administrative appeal. This delay cannot be justified by considerations of procedural efficiency. At second and third instance, the proceedings lasted about seven and a half years because the Federal Administrative Court twice remitted the case to the Court of Appeal who repeatedly failed to provide sufficient reasons for its decisions. This substantial delay is likewise attributable to the national courts which should have acted with particular expedience given the length of proceedings at that stage.

45. In the light of these factors and having regard to the overall duration of about sixteen years and five months, the Court finds that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. Article 41 of the Convention provides:

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

47. The applicants claimed compensation for pecuniary and non-pecuniary damage, and the reimbursement of his costs and expenses.

A. Damage

48. The applicants claimed 25,198.38 DEM (12,883.73 EUR) in respect of pecuniary damages. They argued that the excessive length of the proceedings had enabled the Municipality to change the decree which laid down the requirements of the road construction and therefore had caused the rejection of their action. The applicants further claimed 500 EUR per applicant and per year of the proceedings, i.e. 16,416.67 EUR, for non-pecuniary damage because the excessive length had constituted a psychological burden for the applicants who moreover risked to be regarded as troublemakers.

49. The Government contested these claims.

50. As regards the applicants' claim for pecuniary damages, the Court recalls that it cannot speculate as to what the outcome of the proceedings at issue might have been if the violation of Article 6 § 1 of the Convention had not occurred (see, *inter alia*, *Schmautzer v. Austria*, judgment of 23 October 1995, Series A no. 328-A, p. 16, § 44; *Wettstein v. Switzerland*, no. 33958/96, § 53, ECHR 2000-XII; *Janssen v. Germany*, no. 23959/94, § 56, 20 December 2001). It further notes that there is insufficient proof of any causal connection between the excessive duration of the proceedings as such and the pecuniary damage allegedly sustained by the applicants. There is, therefore, no ground for an award under this head.

51. As to the non-pecuniary damage claimed, the Court finds that it has to consider all the factors before it and that the applicant's behaviour might be relevant in this respect (see *Gisela Müller v. Germany*, no. 69584/01, § 93, 6 October 2005). The Court recalls the lack of proportionality in the applicants' attitude who consecutively requested the taking of new evidence and thereby contributed to the length of the proceedings (see § 43 above). The Court therefore considers that, having regard to all circumstances of this specific case, the finding of a violation of Article 6 § 1 constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants.

B. Costs and expenses

52. The applicants, relying on documentary evidence, sought the reimbursement of 50 % of the costs and expenses (a total of 8,659.24 EUR) incurred in the proceedings before the Federal Constitutional Court for the services of their lawyer. They further claimed 10,221.80 EUR for costs and expenses incurred for the services of their lawyer representing them in the proceedings before the Court and for the translation service.

53. The Government left the matter to the Court's discretion but underlined that the constitutional complaint served for the most part to foster material legal protection on the merits.

54. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Concerning the domestic proceedings, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of 900 EUR covering costs for the constitutional complaint to the extent that it related to the breach found.

55. As regards the applicants' legal expenses incurred in the proceedings before this Court, the Court, having regard to its case-law and making its own assessment, awards 2,000 EUR, plus any value-added tax that may be chargeable.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

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

3. *Holds* by four votes to three that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds* unanimously
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,900 in respect of costs and expenses, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following joint dissenting opinion of Mr Butkevych, Mrs Tsatsa-Nikolovska and Mrs Botoucharova is annexed to this judgment.

P.L.
C.W.

JOINT DISSENTING OPINION OF JUDGES BUTKEVYCH, TSATSA-NIKOLOVSKA AND BOTOUCHAROVA

To our regret, we cannot join the majority in their decision not to award any sums in respect of non-pecuniary damage under Article 41 of the Convention.

An award in respect of non-pecuniary damages was refused essentially on the basis of the finding that the applicants had "used the domestic proceedings as a platform for presenting their numerous requests for the taking of evidence, in particular for demanding expert opinions and specialists' hearings on each and every point in spite of the disproportion between the procedural costs involved and the value in dispute" (see paragraph 43 of the judgment).

There is no need to comment on the above question because it is evidently the right of each party to the proceedings to request the taking of any kind of evidence. However, it is ultimately for the national courts to assess in each and every situation whether such requests are justified and whether it is necessary, for the proper administration of justice, to admit the evidence proposed (see *Rizova v. the former Yugoslav Republic of Macedonia*, 41228/02, § 50).

The conduct of the applicant is undoubtedly relevant to the assessment of the reasonableness of the length of the proceedings. In cases where that conduct "explains" all delays or the length of the proceedings as a whole, the Court has not hesitated to find that Article 6 has not been breached (see, for example, *Ciricosta and Viola v. Italy*, judgment of 4 December 1995, in which the proceedings had lasted sixteen years, but the conduct of the applicants was the primary reason for the delays and *Z.G. v. Bulgaria* (dec.), no. 48459/99, 21 November 2000, in which they had lasted approximately six years and nine months, but "the applicant [was] responsible not only for certain delays due to his numerous and apparently belated requests for submission of additional evidence but also in respect of the length of the proceedings as a whole "as he constantly changed his position on a relevant issue".

In the present case, however, the Court found that there had been a violation of Article 6, notably because, as stated in paragraph 44, a delay of more than seven and a half years occurred as a result of the courts' failure to give reasons, which resulted in the case being repeatedly remitted. The authorities were responsible for the ensuing delay. Thus, the impugned behaviour of the applicants – noted in paragraph 43 – was the

cause of only some of the numerous delays in the proceedings under examination.

We consider that in these circumstances it was unjustified to reject the applicants' claim for an award in respect of non-pecuniary damage. The fact that they had contributed to some of the delays in the proceedings might warrant a reduction of the award, but not a flat denial of any award. Finally, in our view, the overall length of the proceedings, which lasted more than sixteen years, should also be taken into consideration when determining whether an award should be made.