



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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28782/04
by Herbert LUIG
against Germany

The European Court of Human Rights (Fifth Section), sitting on
25 September 2007 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having regard to the above application lodged on 2 August 2004,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Herbert Luig, is a German national who was born in 1947 and lives in Gütersloh. He was represented before the Court, as throughout the proceedings before the domestic courts, by Mr G. Rixe, of the law firm Baltes & Rixe, lawyers practising in Bielefeld.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background to the case

The applicant and C.H. are the parents of L., who was born out of wedlock on 10 June 1988. Since their separation in 1993, their daughter has been living with her mother, who had sole custody of her. C.H. subsequently remarried.

In view of the parents' continuous disputes, the applicant's access to L. was regulated by several court orders following the consultation of a psychological expert in 1995. At last the applicant was granted a right of access to his daughter once per month in the presence of a representative of the Youth Office. The dates and times for the meetings were fixed until January 2000. Thereafter, the applicant's access to his daughter should be regulated by a new court order. However, in practice the applicant had only occasional contacts with his daughter because, as found by the courts, C.H. persistently refused to comply with the orders on access. On 13 December 1999 the applicant met his daughter for the last time. Since then, L. has refused to meet her father.

2. The proceedings before the District Court

On 3 February 2000 the applicant lodged an application with the Pfaffenhofen District Court requesting to amend the existing court orders on access and to fix meetings with his daughter on the first Monday afternoon of every month. He requested to order these contacts by way of an interim injunction.

The Pfaffenhofen District Court subsequently sent the case-files twice to the Augsburg Public Prosecutor's Office and once to the Munich General Public Prosecutor for a total of approximately two months for consultation in the course of investigation proceedings involving C.H. and related to the access proceedings.

On 25 July 2000 the Pfaffenhofen Youth Office, on the court's request, submitted a report on L.'s past contacts with her father in the presence of one of its staff members. It stated that at every meeting, L. had refused to stay for more than twenty minutes with her father and had accused and insulted him before returning to her mother.

On 7 February 2001 the custody division of the Pfaffenhofen District Court decided to transfer the case to the family division of that court. It found that since the amendments enacted by the Law on Family Matters in 1998, it was the family division which had jurisdiction for the proceedings.

On 7 March 2001 the Pfaffenhofen Youth Office submitted a new report on request of the family division of the District Court who had taken over the case. It agreed with the findings in previous psychological expert reports that L. had at least taken over her mother's negative image of her father and found that she vigorously rejected any contacts with him. However, separating L. from her new family in order to make contacts with her father possible could lead to her rejecting her father even more. Even assuming a massive manipulation by her mother, a suspension of contacts was presently in L.'s best interests.

A hearing fixed for 5 April 2001 had to be cancelled due to C.H.'s illness.

On 21 May 2001 the applicant, in addition to his request for access, applied to order a family therapy and, if necessary, to transfer custody of L. partly to the Youth Office and to place L. in a day-time foster family in order to prevent C.H. from further manipulating L. and to enable L. to have contacts with him.

On 7 June 2001 the Pfaffenhofen District Court heard L. and her parents in person. The applicant withdrew his application for interim measures and proposed to appoint L. a curator *ad litem*.

On 27 July 2001 the Pfaffenhofen District Court, having regard to the fact that the case-file already ran to more than 900 pages, asked the applicant on his repeated request to further the proceedings to abstain from lodging further submissions, essays and documents in person every week.

On 31 July 2001 the District Court appointed L. a curator *ad litem* after both the applicant and C.H. had objected to the appointment of a different person, alleging a conflict of interests.

On 22 October 2001 the Berlin Pankow-Weißensee District Court, to whose judicial district C.H. and L. had moved in the meantime, refused to take over the case, a proposal made by the Pfaffenhofen District Court on the parties' request.

On 12 March 2002 the Pfaffenhofen District Court, having consulted the parties, discharged L.'s initial curator *ad litem* from office and appointed a new curator *ad litem* at her new place of residence.

On 3 May 2002 the new curator *ad litem*, having heard L., her parents and C.H.'s husband in person in March and April 2002, submitted her observations to the court. In view of the fact that L., who was in her puberty, had again clearly stated that she did not want to have contacts with her father and that she wanted him to leave her alone, the curator proposed to suspend the applicant's access to her for the time being.

On 7 June 2002 the Pfaffenhofen Youth Office sent another report to the court in which it equally recommended suspending the applicant's access to L.

On 30 July 2002 the Pfaffenhofen District Court, relying on section 1684 § 4 of the Civil Code (see 'Relevant domestic law', below), suspended the

applicant's access to his daughter L. until 10 June 2003, L.'s fifteenth birthday.

The District Court had held a hearing in the presence of the applicant, C.H.'s counsel and a representative of the Pfaffenhofen Youth Office. Having regard to the reports of L.'s curator *ad litem* and of the Pfaffenhofen Youth Office, to the parents' and notably to L.'s own statements at the hearing in June 2001, it found that the relationship between the applicant and L. was presently so tense that contacts with her father would be totally against L.'s will. L., who was in her puberty, had vigorously refused any contacts with her father even only by phone or post. Due to L.'s age and her adolescence, forcing her to see her father at the moment would endanger her well-being. On expiry of the period during which access was suspended, the court could re-examine whether, having regard to L.'s stage of development at that time, contacts with her father could be resumed.

In the District Court's view, it was unnecessary to consult a psychological expert as to L.'s best interests. Having L. examined by an expert would only submit her to further pressure which would make her reject her father even more.

The District Court dismissed the applicant's requests partly to transfer custody of L. to the Youth Office and to place L. in a day-time foster family in order to make contacts with him possible and to start a family therapy. It conceded that L.'s rejection of contacts with the applicant could have been caused by her mother. However, this did not alter the fact that granting the applicant's motions would not be in L.'s best interests and would not serve to develop a normal relationship between them.

3. The proceedings before the Court of Appeal

On 2 September 2002 the applicant lodged an appeal against the Pfaffenhofen District Court's decision, which he reasoned on 5 November 2002 after having been granted access to the case-files.

On 17 November 2002 L.'s curator *ad litem* submitted her report to the Munich Court of Appeal. She confirmed that in her view it was in L.'s best interests to suspend contacts with her father for a year to ease the existing tensions.

In its submissions dated 13 January 2003 the Pfaffenhofen Youth Office referred to its report dated 7 March 2001 and noted that it could not make any fresh observations as L. had moved to Berlin.

On 16 January 2003 the judge rapporteur of the Munich Court of Appeal heard L. in person. Claiming that her interests should outweigh those of her father, she affirmed that she did not want to see him. He subsequently heard the applicant, L.'s curator *ad litem* and C.H., who stated that she would not oppose contacts of L. with her father provided that L. would wish to have such contacts.

On 3 February 2003 the Munich Court of Appeal dismissed the applicant's appeal without granting leave to appeal on points of law. It confirmed that in view of L.'s strong opposition, contacts between the applicant and her should be suspended until 10 June 2003. Following the hearing of L. and her parents by its judge rapporteur, the court was convinced that granting the applicant access to L. would presently endanger her well-being. L., who was almost fifteen years old, had expressed a strong aversion to contacts with her father. By his request to have L. placed in a day-time foster family, the applicant had moreover nourished L.'s fears that he wanted to separate her from her new family. The hearing had also confirmed the view of L.'s curator *ad litem*, who had argued that forcing L. to see her father would only make L. reject her father even more. The court agreed with the District Court that it was not necessary to consult an expert. As the will of L., in view of her age, had a decisive impact on the decision on access, an expert report as requested by the applicant, whatever its conclusions, could not outweigh her firm will not to see her father.

The Court of Appeal further rejected as inadmissible the applicant's request for a declaration that the length of the proceedings before the District Court had exceeded a reasonable time. It argued that the District Court had not been inactive, but had given a final decision on the applicant's motions.

On 4 April 2003 the Munich Court of Appeal dismissed the applicant's remonstrance, arguing that in its decision it did not diverge from decisions of courts of higher instance.

4. The proceedings before the Federal Constitutional Court

On 26 February 2003 the applicant, represented by counsel, lodged a constitutional complaint with the Federal Constitutional Court. In his submissions (running to 49 pages) he argued that his right to respect for his family life and his right to be heard as guaranteed by the Basic Law had been violated by the fact that and the manner in which access to his daughter had been suspended by the family courts. In particular, the latter had failed to consult a psychological expert and had not given valid grounds for the duration of the suspension of access. Moreover, the length of the proceedings before the family courts had been excessive and he had not had an effective judicial remedy to complain about this length. Furthermore, his right to be heard by the court having jurisdiction had been violated in that the Court of Appeal had refused to grant him leave to appeal on points of law even though its decision diverged from the decisions taken by other courts of appeal and by the European Court of Human Rights.

On 9 May 2003 the applicant extended his constitutional complaint to the decision of the Munich Court of Appeal of 4 April 2003.

On 11 January 2005 the Federal Constitutional Court declined to consider the applicant's constitutional complaint "because of its

inadmissibility”, without giving any reasons for its decision (1 BvR 987/03). This decision was served on the applicant’s counsel on 21 January 2005.

B. Relevant domestic law

After the entry into force of the amended Law on Family Matters (*Reform zum Kindschaftsrecht*) on 1 July 1998, the applicable provision of the Civil Code concerning access to a child (born in or out of wedlock) was worded as follows:

Section 1684

“1. The child is entitled to have access to both parents; each parent is obliged to have contact with, and entitled to have access to, the child.

2. The parents must not do anything that would harm the child’s relationship with the other parent or seriously interfere with the child’s upbringing. ...

3. The family courts can determine the scope of the right of access and prescribe more specific rules for its exercise, also with regard to third parties. They may order the parties to fulfil their obligations towards the child.

4. The family courts may restrict or suspend the right of access or the enforcement of previous decisions on access if this is necessary for the child’s welfare. A decision restricting or suspending the right of access or its enforcement for a longer period of time or permanently may only be taken if the child’s well-being were endangered otherwise. The family courts may order in particular that contacts may only take place in the presence of a cooperating third party.”

COMPLAINTS

1. The applicant complained under Articles 8 and 6 of the Convention that the domestic courts had suspended access to his daughter due to an alleged danger to her well-being. He argued that this interference with the right to respect for his family life had not been necessary in a democratic society. In particular, the courts had failed to give relevant and sufficient reasons why they had not consulted a psychological expert on L.’s true will and best interests concerning contacts with him. He claimed that L. had been manipulated by her mother and, as she had hardly had any contacts with him for years, she had not been able to express her own view on access. Moreover, the courts had failed to give valid grounds for the duration of the suspension of contacts.

2. The applicant further complained under Articles 6 and 8 of the Convention about the length of the proceedings before the German courts. He argued in particular that the District Court had only belatedly appointed

a curator *ad litem* and had not sufficiently furthered the proceedings despite L.'s continuous estrangement from him.

3. Moreover, in view of the refusal of the domestic courts to adjudicate on his complaint about the duration of the proceedings, he had not had at his disposal an effective remedy within the meaning of Article 13 of the Convention to complain about this duration before the national authorities.

4. Invoking Article 6 § 1 of the Convention, read in conjunction with Articles 1 and 46 of the Convention, the applicant further claimed that his right of access to court had been violated by the Court of Appeal's failure to grant him leave to appeal on points of law without good cause. He argued that the Court of Appeal had been obliged to grant such leave as its decision diverged from the decisions taken by other courts of appeal and from this Court's judgments (for example, the judgments of the Chamber in the cases of *Sommerfeld v. Germany* and *Elsholz v. Germany*).

THE LAW

A. Complaints concerning the outcome and conduct of the access proceedings

The applicant claimed that the decisions of the German courts to suspend access to his daughter and the decision-making process involved violated his rights under Articles 8 and 6 of the Convention.

The Court considers that these complaints fall to be examined under Article 8 of the Convention alone, which, in so far as relevant, provides:

“1. Everyone has the right to respect for his ... family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. Exhaustion of domestic remedies

The Court notes at the outset that the Federal Constitutional Court considered the applicant's constitutional complaint to be inadmissible without, however, giving any indication which admissibility requirement the applicant failed to comply with.

In determining whether, in these circumstances, the applicant can be considered to have exhausted domestic remedies, the Court reiterates that, whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it normally requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic courts, at least in substance and

in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34; *Elçi and others v. Turkey*, nos. 23145/93 and 25091/94, § 604, 13 November 2003; *Jalloh v. Germany* (dec.), no. 54810/00, 26 October 2004).

Having regard to the material before it, the Court notes that the applicant, represented by counsel, in his submissions to the Federal Constitutional Court (running to 49 pages), raised in substance the complaints he then brought before this Court. It is not obvious that he failed to comply with a particular formal requirement or the one-month time-limit for lodging his constitutional complaint. The Court recalls in this connection that it has previously considered, in the special circumstances of several cases, that domestic remedies have been exhausted for the purposes of Article 35 § 1 of the Convention despite the fact that the applicant's constitutional complaint had been dismissed as inadmissible (see, *inter alia*, *Uhl v. Germany* (dec.), no. 64387/01, 6 May 2004; *Jalloh*, cited above; *Schwarzenberger v. Germany*, no. 75737/01, § 31, 10 August 2006).

As the Court is not in a position in the present case to establish the reason why the applicant's constitutional complaint has been considered as inadmissible, it is not satisfied that he failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention.

2. Substance of the applicant's complaints

As to the substance of the applicant's complaints under Article 8, the Court finds that the decisions of the domestic courts to suspend the applicant's access to his daughter L. interfered with his right to respect for his family life as guaranteed by Article 8 § 1.

Any such interference with this right will constitute a violation of Article 8 unless it is "in accordance with the law", pursued an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as "necessary in a democratic society".

The decisions of the domestic courts had a basis in national law, namely section 1684 § 4 of the Civil Code. They were aimed at protecting L.'s well-being, that is, her "health or morals" and her "rights and freedoms". Accordingly, they pursued legitimate aims within the meaning of paragraph 2 of Article 8.

In determining whether the suspension of the applicant's access to his daughter was "necessary in a democratic society" the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify this measure were relevant and sufficient for the purposes of paragraph 2 of Article 8. Undoubtedly, consideration of what lies in the best interest of the child is of crucial importance in every case of this kind. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned. It follows that the Court's task is not

to substitute itself for the domestic authorities in the exercise of their responsibilities regarding access issues, but rather to review, in the light of the Convention, the decisions taken by those authorities in the exercise of their margin of appreciation (see, *inter alia*, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55; *Elsholz v. Germany* [GC], no. 25735/94, § 48, ECHR 2000-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII).

The Court further recalls that whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. The Court cannot satisfactorily assess whether the reasons adduced by the national courts to justify these measures were “sufficient” for the purposes of Article 8 § 2 without at the same time determining whether the parent has been involved in the decision-making process, seen as a whole, to a degree sufficient to provide him with the requisite protection of his interests (see, *inter alia*, *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 72, ECHR 2001-V; *Sommerfeld*, cited above, § 66; *C. v. Finland*, no. 18249/02, § 56, 9 May 2006).

In reviewing whether the domestic courts, in the exercise of their margin of appreciation, based their decisions to suspend the applicant’s access to L. on relevant grounds the Court notes that both the District Court and the Court of Appeal had taken the view that ordering contacts between them would at that time endanger L.’s well-being. When heard by the family courts, the applicant’s then fourteen-year-old daughter, whose relationship with the applicant had been very tense already for a considerable time, had firmly and consistently expressed her will not to have any contacts with her father. In their reports, both the Youth Office and the curator *ad litem* had confirmed that L. had vigorously refused having contacts with her father. The domestic courts had argued that even though L., in adopting that view, could have been influenced by her mother, forcing L. to see the applicant would only make her reject him even more and would not serve to develop a normal relationship between them.

The domestic courts limited the suspension of access to less than a year, until L.’s fifteenth birthday, and confirmed that they could thereafter re-examine whether, having regard to L.’s stage of development at that moment, contacts were in her best interests. They were thus aware of their duty to preserve the uniting bonds between father and daughter and of the danger that the family relation between them could be effectively curtailed by a long suspension of access (see, *mutatis mutandis*, *Nekvedavicius v. Germany* (dec.), no. 46165/99, 19 June 2003). In view of this, the Court is satisfied that the domestic courts’ decisions can be taken to have been made in L.’s best interests which, due to their serious nature, must override the

applicant's interests. Therefore, the national courts adduced relevant reasons for their decisions refusing access.

In assessing whether those reasons were also sufficient for the purposes of Article 8 § 2, the Court will notably have to determine whether the decision-making process, seen as a whole, provided the applicant with the requisite protection of his interests.

The Court notes that the applicant, assisted by counsel, was in a position to put forward all his arguments in favour of granting him access to L. as he was heard in person by the District Court and the judge rapporteur of the Court of Appeal and availed himself of the opportunity to make submissions in writing. The evidential basis for the District Court's decision further included the statements of L., her mother and a representative of the Youth Office in court and a report of L.'s curator *ad litem*, who had herself heard L. and her parents in person. The judge rapporteur of the Court of Appeal heard C.H., L. and her curator *ad litem* in person and that court also had before it the written submissions of the Youth Office and of L.'s curator *ad litem*.

The Court observes that despite the applicant's request, the family courts refused to consult a psychological expert in order to evaluate L.'s wishes and thus to assess her best interests. However, as a general rule it is for the domestic courts to assess the evidence before them, including the means to ascertain the relevant facts. It would be going too far to say that domestic courts are always required to involve a psychological expert on the issue of access to a parent not having custody, but this issue depends on the specific circumstances of the case, having due regard to the age and maturity of the child concerned (see, in particular, *Sommerfeld*, cited above, § 71, and *Elsholz*, cited above, § 52).

The Court notes that when heard in court, L. was already fourteen years old. The family courts, which had the benefit of direct contacts with her and, as shown above, consulted also her parents, her curator *ad litem* and the Youth Office, were well placed to evaluate her statements and to establish whether or not she was able to make up her own mind. It is true that in previous decisions of the domestic courts, which were based on a psychological expert report drawn up in 1995, contacts between the applicant and his daughter were considered as being in L.'s best interests despite the tense relationship between her parents. However, the family courts agreed that in view of L.'s age and her stage of development, disrespecting her expressed will and forcing her to have contacts with her father would now endanger her well-being even if an expert found that contacts were objectively beneficial to her. On that basis the domestic courts could reasonably reach the conclusion that psychological expert advice was not relevant to the outcome of the proceedings and did not, therefore, have to be obtained.

Even though the States enjoy a more restricted margin of appreciation as regards limitations placed by the domestic authorities on parental rights of access (see *Elsholz*, cited above, § 49; *Sommerfeld*, cited above, § 63; *Görgülü v. Germany*, no. 74969/01, § 42, ECHR 2004-...), the Court is therefore satisfied that the German courts' procedural approach provided sufficient material to reach a reasoned decision on the question of access in the particular case.

It follows that this part of the application must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

B. Complaint about the length of the access proceedings

Relying on Articles 6 and 8 of the Convention, the applicant further claimed that the duration of the proceedings before the German courts concerning his access to L. had been excessive.

The Court finds that this complaint falls to be examined under Article 6 § 1 of the Convention alone which, in so far as relevant, reads:

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

The Court observes that the proceedings started on 3 February 2000 when the applicant lodged his request for access to L. They ended on 21 January 2005 when the decision of the Federal Constitutional Court was served on the applicant's counsel. The proceedings thus lasted for more than four years and eleven months in three levels of jurisdiction.

The Court recalls that 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. On the latter point, the importance of what was at stake for the applicant in the litigation has to be taken into account. It is thus essential that custody and access cases be dealt with speedily (see, *inter alia*, *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII; *Niederböster v. Germany*, no. 39547/98, § 39, ECHR 2003-IV).

The Court accepts that, not least due to the persistent and heated struggle between the applicant and C.H., the access proceedings were quite complex. A curator *ad litem* had to participate in the proceedings and the voluminous case-file had to be sent for consultation to the Public Prosecutor's Office on several occasions for investigation proceedings related to the access proceedings. Moreover, as C.H. and L. moved to a different town while the proceedings were pending, a further decision on local jurisdiction had to be taken and the District Court had to appoint a new curator *ad litem*.

As for the applicant's conduct, the Court observes that he did not contest the District Court's finding that he lodged further submissions and

documents to that court in person on a weekly basis. Moreover, the applicant extended his initial motion to be granted access to the District Court to further, albeit related, motions concerning, *inter alia*, custody of L., only at a later stage of the proceedings. He also availed himself of the opportunity to object to the appointment of the curator *ad litem* proposed by the court. In view of this, the Court is convinced that the applicant's conduct contributed in part to the duration of the proceedings at least before the District Court (see, *a contrario*, *Skugor v. Germany*, no. 76680/01, § 71, 10 May 2007).

As regards the conduct of the proceedings by the domestic courts, the Court does not overlook that the proceedings at issue concerned the applicant's access to his daughter and thus had to be treated with special diligence as the passage of time could lead to growing estrangement between parent and child and could thus have irreversible consequences. It notes that the proceedings were pending before the District Court for some two and a half years. It took approximately one year before the case was transferred from the custody division of the District Court to the competent family division of that court. However, during that period the case-file had to be sent to the prosecution authorities for consultation on three occasions for a total of approximately two months. Thereafter, the District Court held two hearings, consulted the Youth Office and, following the first hearing of L. and her parents, appointed L. a curator *ad litem* who herself heard the applicant, C.H., her husband and L. in person. Apart from the delay caused at the outset by the fact that initially the case had not been dealt with by the competent division of the District Court, the Court cannot discern any substantial periods of inactivity.

The Court further notes that the Court of Appeal conducted the proceedings before it speedily. It took that court only some three months to render a decision on the applicant's reasoned appeal, following a consultation of the Youth Office and a hearing of L., her parents and her curator *ad litem* by the judge rapporteur. The proceedings were then pending before the Federal Constitutional Court for approximately one year and eleven months before being dismissed as inadmissible, a duration which, even though it cannot yet be qualified as excessive, was long and must be considered as being the maximum length acceptable in cases concerning matters of family law (compare *Mark v. Germany* (dec.), no. 45989/99, 31 May 2001).

However, the Court recalls in this connection that a delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, *inter alia*, *Pretto and Others v. Italy*, judgment of 8 December 1983, Series A no. 71, p. 16, § 37; *Nuutinen*, cited above, § 110). Even assuming a certain delay, in particular in the proceedings before the District Court, the Court finds that the overall duration of the

proceedings can still be considered as reasonable, taking into consideration that the applicant was, in part, responsible for the delays caused.

It follows that this part of the application must likewise be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

C. Complaint about the lack of an effective remedy concerning the length of the access proceedings

Furthermore, the applicant claimed that he had not had at his disposal an effective remedy in order to complain about the length of the access proceedings before the German courts. He invoked Article 13 of the Convention which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

According to the Court’s case-law, Article 13 applies only where an individual has an “arguable claim” to be the victim of a violation of a Convention right (see, among others, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52; *Voyager Limited v. Turkey* (dec.), no. 35045/97, 4 September 2001; *Ivison v. the United Kingdom* (dec.), no. 39030/97, 16 April 2002; and *Petersen v. Germany* (dec.), nos. 38282/97 and 68891/01, 12 January 2006).

The Court has found above that the substantive complaint under Article 6 of the Convention about the duration of the proceedings is manifestly ill-founded. For similar reasons, the applicant did not have an “arguable claim” for the purposes of Article 13, which is therefore not applicable to his case. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

D. Complaint about the refusal of access to court

In the applicant’s view, his right of access to court guaranteed by Article 6 § 1 of the Convention, read in conjunction with Articles 1 and 46 of the Convention, had been violated in that the Court of Appeal had refused to grant him leave to appeal on points of law.

The Court has examined the applicant’s complaint as submitted by him. However, having regard to all material in its possession, the Court finds that this complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must likewise be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President