AS TO THE ADMISSIBILITY OF

Application No. 25435/94
by Hans-Volker and Gisela Helene PETERS
against Germany

The European Commission of Human Rights sitting in private on 20 February 1995, the following members being present:

MM. C.A. NØRGAARD, President
C.L. ROZAKIS
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
I. BÉKÉS
J. MUCHA
D. SVÁBY
E. KONSTANTINOV
G. RESS

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 19 May 1994 by Hans-Volker and Gisela Helene Peters against Germany and registered on 17 October 1994 under file No. 25435/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they have been submitted by the applicants, may be summarised as follows.

The applicants, both German nationals, are a married couple. The first applicant, born in 1943, is a certified biologist. The second applicant, born in 1946, is a housewife. They are residing in Schwetzingen.

The present application relates to several sets of proceedings.

I. On 7 December 1981 the Heidelberg District Court (Amtsgericht) dismissed the request of a third person, a patent attorney, to place the first applicant under guardianship, as, according to a medical expert opinion, he was only partly incapable of entering into legal transactions, namely in respect of his scientific work and patents.

II. On 30 August 1982 the Karlsruhe District Court, upon the request of the Karlsruhe Public Prosecutor's Office (Staatsanwaltschaft), placed the second applicant under guardianship on account of her mental illness. The Court, referring to S. 645 of the Code of Civil Procedure (Zivilprozeßordnung) and S. 6 of the German Civil Code (Bürgerliches Gesetzbuch), found that the second applicant was suffering from a schizophrenia of a paranoic nature to such an extent that she was not capable of entering into legal transactions and had to be placed under guardianship. In this respect, the Court had regard to the written expert opinion of a psychiatric expert, as amended at a hearing, and the second applicant's statements at that hearing.

In the beginning of 1984 the second applicant requested the Schwetzingen District Court to terminate her placement under guardianship. It appears that this request remained unsuccessful.

III. On 21 August 1984, in the context of provisional injunction proceedings, the Schwetzingen District Court, referring to S. 1674 of the Civil Code, found that the second applicant's right to custody over the spouses' child, born on 2 August 1984, was suspended on account of her placement under guardianship for mental illness. The District Court further provisionally withdrew the first applicant's right to determine the child's place of residence and transferred it to the local Youth Office. The Court ordered that the child be handed over to the Youth Office, whereby the bailiff was authorised, if need be, to use physical force. Having regard to a report of the local Youth Office, the Court found that there was an imminent danger for the child's well-being, necessitating the above decisions without having previously heard the applicants.

On 4 September 1984 the child was placed with foster parents.

On 17 December 1984 the Schwetzingen District Court granted the first applicant the right to visit his daughter once a fortnight in the localities of the Youth Office. On 11 April 1985 the District Court dismissed the request of the Youth Office to reduce the first applicant's right of access. The right to visit the child was later extended to the second applicant.

On 23 October 1985, at a hearing before the District Court, the second applicant, assisted by her guardian and in presence of the first applicant, requested that the proceedings be suspended for one year. The Court decided accordingly.

On 11 October 1985 the Schwetzingen District Court amended its decision of 21 August 1984 to the extent that the first applicant's right to determine the child's place of residence had been withdrawn. The Court ordered that the child be handed over to the first applicant. Moreover, the Court suspended the proceedings regarding the final decision on the right of custody for the period of one year. The Court also gave various instructions as regards the applicants' conduct concerning their child. The Court, having regard to medical expert advice and to reports of the local Youth Office, considered that there were reasons to assume that the applicants' conduct would expose the child concerned to a danger as to her physical, mental and psychological well-being. However, there was also a hope that by more lenient measures such a danger in the applicants' household could be avoided. The Court noted that the local Youth Office had so far failed to offer help to the applicants in order to avoid that the child was separated from the applicants.

On 17 March 1986 the Mannheim Regional Court (Landgericht), upon the respective appeals of the child's foster parents and the Youth Office, quashed the decision of 11 October 1985 regarding the decision that the child be handed back to the applicants. The Regional Court, referring to S. 1666 of the Civil Code, found that due to the second applicant's mental illness the child could not be given back to the

parental household and be brought up in these surroundings. The Court noted that the seriousness of the second applicant's illness had been confirmed by a psychiatric expert opinion of 1982, and that her situation was, according to a report of 1985, only periodically improving. The Court also observed that the second applicant was again staying at a psychiatric hospital. The first applicant could not avert this danger as he could not possibly control his wife and the child at any given time. Thus the question whether the first applicant was himself capable of educating his daughter was irrelevant. The more lenient measures envisaged by the District Court appeared insufficient, as they only consisted in a sporadic control.

On 7 May 1986 the Karlsruhe Court of Appeal (Oberlandesgericht) declared the first applicant's further appeal inadmissible, as it had not been lodged by counsel. The second applicant's appeal was dismissed.

On 23 November 1988 the Schwetzingen District Court found that both applicants' right to custody over their child was suspended on account of their respective mental illness. Having regard to the applicants' conduct in the course of earlier visits, their right of access to the child was withdrawn.

S. 1666 of the German Civil Code provides in particular that, if the physical, mental or psychological well-being of a child is endangered as a consequence of an abuse of the right of custody, or neglect of the child, or a failure of the parents arising through no fault of their own or due to the conduct of a third person, and if the parents are not willing or not able to avert the danger, the competent guardianship court will order the measures necessary to avert the danger concerned.

IV. On 28 August 1990 the Weinheim District Court granted the child's adoption by her foster parents.

The District Court, referring to SS. 1741 - 1746 of the German Civil Code, found that the conditions for adoption were met. The Court considered that the applicants, due to their mental health, were - on a long-term basis - not capable of educating the child. In this respect the District Court had regard to psychiatric expert evidence, in particular a psychiatric expert opinion of 1986 prepared in the context of the above-mentioned proceedings before the Schwetzingen District Court, and to the opinion of the Heidelberg Youth Office of 30 July 1990. The Weinheim District Court found that this assessment had been confirmed upon the hearing of the applicants who, in the context of the adoption proceedings had refused to accept that they were mentally ill. The applicants had requested that their child be soon given back to them, indicating that the second applicant had been able to play with other children. According to the District Court, the applicants thereby overlooked that education of a child required more than playing. The child's adoption by her foster parents was, therefore, the ideal solution, as growing up under the unhealthy influence of the applicants would necessarily result in an unhealthy development of the child.

The District Court, referring to S. 1747 para. 4 of the Civil Code, finally found that the applicants' consent to the adoption was not necessary on the ground that they were permanently suffering from serious mental illness and thus incapable of entering into legal transactions and of giving their valid consent.

S. 1741 of the Civil Code provides for the adoption of a child if it serves the child's well-being and if it can be expected that a parent-child relationship will develop between the child and the adoptive parents. The adoption requires the consent of the child; if the child is not capable of entering into legal transactions or has not attained the age of fourteen, the adoption requires the consent of his

or her guardian (S. 1746). The consent of a parent who is permanently incapable of making such a statement is not necessary (S. 1947). According to S. 1752 the competent guardianship court decides upon the request of the adoptive parents on the adoption. S. 52e of the Code on Non-Contentious Proceedings (Gesetz über die freiwillige Gerichtsbarkeit) excludes an appeal against a court decision granting adoption. SS. 90 seq. of the Federal Constitutional Court Act (Bundesverfassungs-gerichtsgesetz) provide for a constitutional complaint (Verfassungs-beschwerde) with the Federal Constitutional Court (Bundesverfassungs-gericht) regarding alleged violations of the constitutional rights under the German Basic Law (Grundgesetz) which include the right to respect for family life.

The applicants were informed of the decision by letter of 10 September 1990.

On 1 October 1990 the Mannheim Regional Court declared the first applicant's appeal inadmissible on the ground that there was no appeal against an adoption order.

On 19 April 1994 the Federal Constitutional Court refused to admit the applicants' constitutional complaint, as it was lodged out of time and as they had not filed all relevant court decisions.

V. In 1986 and 1987 the Federal Labour Office (Bundesanstalt für Arbeit) dismissed the first applicant's requests for a disability pension on the ground that he did not fulfil the legal conditions regarding the waiting periods. His requests for financial support in view of a professional training were dismissed on the ground that, as shown by medical expert evidence, he was suffering from a schizophrenic psychosis and was therefore permanently unfit for work.

On 4 December 1987 the Mannheim Social Court (Sozialgericht) dismissed the first applicant's action against the Federal Labour Office. His appeal was dismissed by the Baden Wurttemberg Labour Court of Appeal (Landessozialgericht) on 6 September 1988.

The first applicant's repeated requests for a re-opening of the proceedings were to no avail.

COMPLAINTS

The applicants complain in particular about the adoption of their child, and of the proceedings concerned. In this context they also state that in 1984 their child should not have been taken away from them and placed with foster parents. They further submit that following various difficulties and the detrimental influence of psychiatrists the first applicant cannot appropriately pursue his scientific work, and is thus prevented from improving medicine to help thousands of persons. In this respect, they refer to the refusal of payments by the Federal Labour Office, as confirmed by the German Social Courts. They invoke Articles 2, 3, 6, 9 and 10 of the Convention.

THE LAW

The applicants complain about the decision of the Weinheim District Court of August 1990 granting the adoption of their child by the foster parents, and apparently also about the previous decision of the Schwetzingen District Court of August 1984 to withdraw the first applicant's right of custody over the child and to suspend the second applicant's right of custody. The first applicant also complains about the refusal of payments by the Federal Labour Office, as confirmed by German social courts in 1987 and 1988.

The Commission recalls that it is not competent to decide whether or not the facts alleged by the applicants disclose any appearance of

a violation of the Convention, as Article 26 (Art. 26) provides that the "Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken".

The Commission recalls that the six months' rule, in reflecting the wish of the High Contracting parties to prevent the examination of past events after an indefinite lapse of time, serves the interest of legal certainty. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (cf. No. 9587/81, Dec. 13.12.82, D.R. 29 p. 228; No. 10416/83, Dec. 17.5.84, D.R. 38 p. 158; No. 9833/82, Dec. 7.3.85, D.R. 42 p. 53; No. 15213/89, Dec. 1.7.91, D.R. 71 p. 230; see also Eur. Court H.R., De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 30, para. 54).

In the present case, the Commission notes that the decision to withdraw the first applicant's right to determine the child's place of residence and to suspend the second applicant's right of custody was taken in August 1984 and the proceedings concerned terminated in 1986. The final decision on the adoption was taken by the Weinheim District Court in August 1990 and served in September 1990, the decision of the Federal Constitutional Court of 1994 on the applicants' constitutional complaint cannot be regarded as the final decision for the purposes of Article 26 (Art. 26), as the complaint was rejected as having been lodged out of time. The social court proceedings terminated in 1988.

The Commission finds that, since the application was introduced to the Commission on 19 May 1994, it has been presented more than six months after the dates of the final decisions in the respective sets of proceedings.

The Commission has further considered whether there were special circumstances to the effect that the six months' period under Article 26(Art. 26) cannot be held against the applicants.

In view of the purposes of the six months' rule, such circumstances must be based on clear and conclusive evidence (cf. No. 10416/83, loc. cit.; No. 9833/82, loc. cit.).

The Commission notes that according to the German court decisions the first applicant, though a request in 1981 to place him under guardianship was refused, is suffering at least partly from a mental illness, and the second applicant was placed under guardianship on account of her mental illness in 1982.

However, the Commission considers that the state of mental health of both applicants did not prevent them from addressing themselves to the Commission within the time-limit under Article 26 (Art. 27), even having regard to the fact that their submissions reveal some confusion. In reaching this conclusion the Commission took into account that in 1984 the second applicant initiated court proceedings to have the court decision placing her under guardianship set aside. Moreover, the applicants initiated appeal proceedings against the Schwetzingen District Court decision of August 1984. They also lodged an appeal against the adoption order in 1990. Furthermore, the first applicant conducted social court proceedings between 1986 and 1988, and made repeated, though unsuccessful requests for their re-opening. Moreover, there is no indication that, as compared to the preceding years, the applicants' state had changed at the time when they filed their application with the Commission.

The ignorance of applicants about the Convention does not constitute a circumstance justifying the interruption of the running of the six months' period (No. 512/59, Collection 1).

Accordingly, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the six months' period.

It follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)