



Father of child born out of wedlock had no remedy to speed up court proceedings on his right to contact with his son

The case of [Kuppinger v. Germany](#) (application no. 62198/11) concerned the complaint by the father of a child born out of wedlock that the proceedings he had brought to enforce court decisions granting him contact rights with his son were excessively long and ineffective.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights as regards the execution of an interim decision of May 2010 granting Mr Kuppinger the right to see his son, and **no violation of Article 8** as regards both the execution of an order on contact custodianship of September 2010 and the proceedings on the review of the contact regulations.

The Court also held, unanimously, that there had been **a violation of Article 13 (right to an effective remedy) in conjunction with Article 8**.

The Court found that the German authorities had failed to take effective steps to execute the interim contact decision granting Mr Kuppinger the right to see his son. It further found, in particular, that he did not have an effective remedy under German law against the length of proceedings which did not only offer monetary redress, but which could have expedited the proceedings on his contact rights before the family courts.

Principal facts

The applicant, Bernd Kuppinger, is a German national who was born in 1953 and lives in Heidelberg. He is the father of a son born out of wedlock in 2003.

After the mother of his son had refused him any contact with the child since shortly after he was born, Mr Kuppinger obtained an interim decision of the Frankfurt/Main District Court in 2007, ordering weekly meetings between him and the child. The contact rights being suspended in 2009, he obtained another interim decision in May 2010, granting him the right to see his son for three hours on several specific days. Following several requests by Mr Kuppinger, starting in July 2010, to impose an administrative fine of at least 3,000 euros on the mother for having prevented him from meeting with his son on several occasions, the district court imposed an administrative fine of 300 euros on the mother in November 2010 for having prevented such meetings on six occasions.

A decision by the Frankfurt Court of Appeal in the main proceedings, of September 2010, granting Mr Kuppinger the right to see his son every other week, initially under supervision, was not implemented due to disagreements between Mr Kuppinger and the custodian appointed by the court. For several months the court's efforts to appoint a new custodian were unsuccessful. Eventually, in June 2011, the court established that the custodian's term of duty had expired in March 2011.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In fresh proceedings to review the regulation on the contact rights, instituted by the district court in February 2011, Mr Kuppinger's contact rights were suspended until October 2015 – in a decision eventually upheld in September 2014 – on the ground that contact, against the child's will, would be against the child's welfare.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy) in conjunction with Article 8, Mr Kuppinger complained in particular that the proceedings on his requests to enforce the contact orders had been excessively long; that the administrative fine imposed had been too lenient to have any coercive effect on the mother; and that he had not had an effective remedy in respect of the excessive length of the proceedings.

The application was lodged with the European Court of Human Rights on 29 September 2011.

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

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ganna **Yudkivska** (Ukraine),
Vincent A. **de Gaetano** (Malta),
André **Potocki** (France),
Helena **Jäderblom** (Sweden),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

As regards the scope of the case, the Court noted that Mr Kuppinger's complaint about the proceedings concerning his contact rights between May 2005 and March 2010 had already been the subject of a previous application lodged by him (*application no. 41599/09*), in which the Court had found a violation of his right to a trial within a reasonable time under Article 6 § 1. The Court was therefore only competent to examine the proceedings which took place after that date.

Article 8

As regards the interim decision of May 2010 granting Mr Kuppinger the right to see his son for three hours on several specific days, it was the Court's task to determine whether the German authorities had taken all necessary steps to facilitate its execution. Mr Kuppinger had asked the German courts to impose an administrative fine on the mother, as none of the visits had taken place as scheduled. Although the Court had no information about the financial situation of the mother, it could not but observe that the overall fine imposed by the German courts of 300 euros appeared to be rather low, given that the applicable provisions allowed the imposition of a fine of up to 25,000 euros for each case of non-compliance. It was thus doubtful if the sanction could have reasonably been expected to have a coercive effect on the mother, who had persistently prevented contact between Mr Kuppinger and his son.

The Court moreover noted, in particular, that the enforcement proceedings had lasted more than ten months, from July 2010 when Mr Kuppinger had lodged his first request to impose a fine, until June 2011, when the fine was paid. Several delays were attributable to the German courts. In particular, the district court had not given a separate decision on his first request, but had waited for the submissions in reply to the subsequent requests before giving a decision.

In this light, the Court found that the German authorities had failed to take effective steps to execute the interim contact decision of May 2010, in violation of Mr Kuppinger's rights under Article 8.

At the same time, the Court held that there had been no violation of Article 8 as regards either the execution of the order on contact custodianship of September 2010 or the proceedings on the review of the contact regulations. It noted in particular that the proceedings on the discharge of the contact custodian had lasted seven months and two weeks and the proceedings on Mr Kuppinger's request to impose further administrative fines had lasted three months and 17 days, which was not excessive, having regard in particular to the fact that the district court had made considerable efforts to find a contact custodian. Although the length of the proceedings on the review of the contact regulations – more than three years, including the appeal proceedings – had been considerable, the Court could not find that it had been due to the German courts' lack of special diligence; in particular, Mr Kuppinger's alleged inability to take part in some of the hearings had also contributed to the length of the proceedings.

Article 13 in conjunction with Article 8

The Court pointed out that the proceedings at issue – concerning Mr Kuppinger's contact rights with his young child – fell within the category of cases which risked being determined by their length. The Court thus had to determine whether German law, at the time, provided a remedy against the length of proceedings which did not only offer monetary redress, but which was also effective to expedite proceedings before the family courts, thus meeting the more rigid requirements set up by the Court for cases in which the length of the proceedings had a clear impact on the applicant's family life.

The Court noted that the Protracted Court Proceedings and Criminal Investigations Act ("the Remedy Act"), to which the German Government had referred, had only entered into force in December 2011. It had thus become available only when the proceedings at issue had already been ongoing for one year and a half. In a decision in another case (*Taron v. Germany no. 53126/07*) the Court had found that there were no reasons to believe that the new Act would not provide the claimant with adequate and sufficient compensation. However, the Court was not convinced that the possibility to lodge a compensation claim could be regarded as having a sufficient expediting effect on pending proceedings in cases concerning a parent's contact rights with young children. The Remedy Act thus did not meet the specific requirements for a legal remedy designed to meet the State's obligations under Article 8 in such proceedings.

Furthermore, as the Court had already found in previous cases, the possibility of lodging a complaint alleging inaction could not be considered as an effective remedy against the excessive length of proceedings. Finally, a provision of the Act on Procedure in Family Matters, which obliged family courts to treat contact proceedings as a priority and expediently, was merely a recommendation. Without any sanction the provision could not be regarded as an effective preventive remedy against the excessive length of contact proceedings.

In conclusion, Mr Kuppinger did not have an effective remedy, within the meaning of Article 13, which could have expedited the proceedings on his contact rights. There had accordingly been a violation of Article 13 in conjunction with Article 8.

Article 6 § 1

At the same time, the Court declared inadmissible Mr Kuppinger's complaint under Article 6 § 1 about the length of proceedings concerning his contact rights, as he had failed to exhaust the remedies at national level. He would have had the possibility to claim just satisfaction under the Remedy Act after its entry into force in December 2011. The Court had previously found that the Act was in principle capable of providing appropriate redress for the violation of the right to a trial

within a reasonable time, and Mr Kuppinger had not submitted any reason which would allow the Court to conclude otherwise.

Just satisfaction (Article 41)

The Court held that Germany was to pay Mr Kuppinger 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,436.53 in respect of costs and expenses.

The judgment is available only in English.

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