AS TO THE ADMISSIBILITY OF

Application No. 25047/94
by E. L.
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 22 February 1995, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. A.S. GÖZÜBÜYÜK
A. WEITZEL
B. MARXER
B. CONFORTI
I. BÉKÉS
E. KONSTANTINOV
G. RESS

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

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

Having regard to the application introduced on 22 June 1994 by E. L. against Germany and registered on 31 October 1994 under file No. 25047/94;

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 applicant, may be summarised as follows.

The applicant, born in 1939, is a German national and residing in Frankfurt/Main.

The present application relates to several sets of court proceedings.

I. On 7 January 1986 the Koblenz District Court (Amtsgericht), upon the request of the Koblenz Youth Office, provisionally withdrew the applicant's right to determine the place of residence (Aufenthalts-bestimmungsrecht) of five of her eight children born out of wedlock, i.e. the children born in 1976, 1977, 1982, 1983, 1985 and living at that time with their grandmother, and appointed the Koblenz Youth Office as guardian in this respect.

The District Court, having heard the applicant, found that the provisional measure was necessary in view of the disputes between the applicant and her mother regarding the children, which had continued for years. Both the applicant and the grandmother were stressed by the situation, whereby the applicant hoped for an improvement as soon as she had renovated her apartment in Koblenz, but could not indicate an alternative beforehand.

On 12 February 1986 the Koblenz Regional Court (Landgericht) dismissed the applicant's appeal. The Regional Court, referring to SS. 1666 and 1666a of the German Civil Code (Bürgerliches Gesetzbuch)

found that the decision complained of had been necessary in the interest of the children concerned. The Regional Court, having regard to a report of a social worker having visited the applicant on 27 January 1986, noted in particular that the applicant had meanwhile partly furnished her apartment, however, the hygienic and sanitary conditions of this apartment from where the children born in 1976 and 1977 had already once run away, were insufficient to an extent that the children could not be returned to the applicant for the time being. Moreover, the children had to be protected against the aggressive disputes between the applicant and her mother.

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. According to S. 1666a, measures resulting in a separation of the child from the parental family are only permitted, if there are no other means, including public welfare, to avert the danger. The right of custody may only be withdrawn, if other measures proved to be unsuccessful or if it can be assumed that they are not sufficient to avert the danger.

On 18 March 1986 the Koblenz District Court confirmed the above measure as definite. The District Court considered that, when taking the provisional decision, it had considered that the applicant had been nervous due to her furnishing a new apartment and that the situation would improve. However, on the contrary the applicant's psychological situation had further deteriorated. Moreover, she had meanwhile given up her new apartment and left Koblenz for Frankfurt, assuming that she could thereby circumvent the competence of the Koblenz authorities in the case.

On 24 July 1987 the Koblenz District Court dismissed the applicant's request to quash the decision of 18 March 1986. The District Court, referring to the earlier decisions, considered that the applicant's psychological conditions had deteriorated at an increased speed, as her numerous court submissions showed and as was confirmed by the both Frankfurt and the Koblenz Youth Office. The District Court stated that it had refrained from taking a decision of the applicant's request at an earlier stage in order to give her a chance to settle her problems. However, the applicant had failed to do so.

On 19 October 1988 the Koblenz District Court, having taken expert evidence, dismissed the applicant's request to order visits of her children. On 25 April 1990 the Koblenz Regional Court, upon the applicant's appeal (Beschwerde), arranged for visits between the applicant and her children at a local social service. However, these visits were discontinued in October 1990 as regards two of the children, born in 1976 and 1977, who did not wish to continue contacts. Further visits of the child born in 1985 took place until August 1991.

On 13 January 1993 the Koblenz Regional Court, following negative reports of the social service concerned and to problems as to the organisation of these visits, withdrew the applicant's right of access to the child born in 1985. The Regional Court, in this respect, had regard to the statements of the parties and to an expert opinion of November 1992. The decision was confirmed upon appeal by the Zweibrücken Court of Appeal (Oberlandesgericht) on 24 February 1993.

II. On 4 November 1993 the Koblenz District Court withdrew the applicant's right of custody (Sorgerecht) regarding her children born in 1976, 1977 and 1985, pursuant to SS. 1666, 1666 a of the German Civil Code (Bürgerliches Gesetzbuch). The right of custody over the children born in 1976 and 1977, who were living with their grandmother,

was transferred to the Koblenz Youth Office. The right of custody over the child born in 1985 was transferred to a meanwhile adult and married daughter of the applicant where the child had already been living for some years. The applicant's request that the right to determine these children's place of residence be transferred back to her was dismissed.

The District Court considered the development of the relationship between the applicant and her children in the light of the previous court decisions on matters related to the applicant's parental rights. It had also regard to the expert opinion of November 1992 and to the statements of the persons involved in the proceedings.

The District Court noted in particular that for years the applicant had pursued the aim to take her children back to her. However, she had no concrete ideas about planning a daily life with the children. Upon questioning, she had replied in a stereotype manner that she had suffered injustice in the past and had rights regarding the children. She regarded the wishes of her children as a result of the influence exercised by third persons and therefore irrelevant. Her constant attempts to raise allegations of psychological problems against her mother and one of her elder daughters, where the children were living, and to enforce the return of the five children concerned impaired their normal development in an atmosphere free of fear.

On the basis of all material, the Court concluded that the applicant, due to her personality, was not, and would in future not be, capable to exercise her custody rights as a parent to the well-being of her children, in particular to understand their needs regarding their development in private as well as in school and future professional matters.

In these and the following proceedings, the applicant was represented by counsel.

On 7 February 1994 the Koblenz Regional Court dismissed the applicant's appeal.

On 3 March 1994 the Zweibrücken Court of Appeal dismissed her further appeal.

On 25 April 1994 the Federal Constitutional Court (Bundes-verfassungsgericht) refused to admit her constitutional complaint (Verfassungsbeschwerde). The Constitutional Court considered that the impugned court decisions were based on the consideration that, if the children were returned to the applicant, their well-being would be considerably impaired, and that, in view of the applicant's conduct, a more lenient measure than the withdrawal of her right of custody did not exist.

III. Moreover, in 1992 the applicant requested the Frankfurt District Court to order that her child born in 1982 and living with foster parents should, instead of the monthly visits so far, visit her every fortnight at her home.

In May 1992 the District Court ordered that an expert opinion be prepared on the questions whether the continuation of the monthly visits served the well-being of the child concerned, whether these contacts could be intensified or whether they had to be discontinued.

On 18 May 1993 the District Court suspended the applicant's right to visit her child for a period of seven months, i.e. until the end of the year 1993. During this period, the child should, accompanied by a suitable employee at the local Youth Office, or a person designated by them as assistant, take up visiting her disabled sister, born in 1983 and living in a home for disabled children. The applicant and the foster parents were prohibited from assisting in these visits. Following these contacts, a first visit of one hour should take place

between the applicant and her child born in 1982, in the presence of the child born in 1983 and the assistant chosen by the Youth Office at the home for disabled children; and the Youth Office was ordered to report about this visit. Further visits of that kind should then follow once a month. The applicant was asked not to talk about the child's return to her household in the course of the envisaged visits.

The applicant's further request as to her right of access and her request that the right to determine the child's place of residence be transferred back to her were dismissed.

In taking these decisions, the District Court had regard to the expert opinion of December 1992 and the result of two hearings. In particular, at a court hearing in April 1992 the child concerned had objected to visits by the applicant.

On 9 August 1993 the Frankfurt Regional Court dismissed the applicant's appeal.

The Regional Court found that the decisions taken by the District Court struck a fair balance between the interests of the applicant and her child born in 1982. The Court considered that, in suspending the applicant's right of access to this child and arranging for visits of her younger sister, the disabled child born in 1983, an attempt was made to build a bridge between the child concerned and the applicant. The possible success of this arrangement was largely dependant upon the attitude and conduct of the applicant herself. Should she continue to request access without taking the wishes of the child concerned into account and, by constantly repeating her wish to take the child back to her household, destabilise the child's development, she would herself obstruct a positive development. The capability of the applicant to understand these matters still appeared doubtful. The decisions were based upon the expert's recommendations, and the child's objections called for a cautious approach by means of preceding contacts with the child's younger sister.

On 26 October 1993 the Frankfurt Court of Appeal dismissed the applicant's appeal. The Court of Appeal, referring to S. 1634 of the German Civil Code, found that the Regional Court had taken the parties' submissions and the expert opinion of 1992 duly into account. Considering the objections of the child concerned, the suspension of the applicant's right of access could not be objected to. In view of all circumstances, the right to determine the child's place of residence could not be given back to the applicant and the child could not return to her household, for the time being.

On 2 March 1994 the Federal Constitutional Court refused to admit the applicant's constitutional complaint. The Constitutional Court, leaving open the question whether the complaint was inadmissible on the ground that the applicant had failed to submit the decisions of the Frankfurt District Court and Regional Court, found no indication that the Court of Appeal had disregarded the applicant's parental rights or that the interference with these rights was disproportionate. The Constitutional Court noted in particular that according to the expert opinion a decision to separate the child concerned from her foster parents would seriously impair her well-being. The Court of Appeal's conclusion that for the time being the child could not return to the applicant could therefore not be objected to.

COMPLAINTS

The applicant complains about the above court decisions on her parental rights and requests that the right of custody over her children born in 1982 and 1985 be restored to her. She does not invoke any particular provision of the Convention.

THE LAW

1. The applicant's complaints relate to the decisions taken by the Koblenz District Court of January 1986 and July 1987, respectively, to withdraw first provisionally and then definitely her right to determine the place of residence of five of her children. Moreover, she complains that in January 1993 the Koblenz Regional Court, as confirmed by the Zweibrücken Court of Appeal in February 1993, withdrew her right of access to the child born in 1985.

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".

In the present case, the Commission notes that these complaints relate to court decisions taken in 1986 and 1987 as well as in January and February 1993. No constitutional complaint was lodged against the decision of the Zweibrücken Court of Appeal of 24 February 1993. Therefore the domestic remedies available to the applicant have not been exhausted so far.

The Commission, even assuming exhaustion of domestic remedies, finds that, since the application was introduced to the Commission on 22 June 1994, it has been presented more than six months after the dates of the final decisions in the respective sets of proceedings. Moreover, 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 this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant further complains about the Koblenz District Court decision of 4 November 1993 to withdraw her right of custody regarding three of her children.

The Commission has examined this complaint under Article 8 (Art. 8) of the Convention which provides, so far as relevant, as follows:

> "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 the rights and freedoms of others."

The decision to withdraw the applicant's right of custody over three of her children constitutes an interference with her right to respect for her family life which is in breach of Article 8 (Art. 8) of the Convention, unless it is justified for the reasons set out in paragraph 2 of this provision as being in accordance with domestic law and necessary in a democratic society for one of the aims mentioned in this paragraph.

The Commission considers that the interference at issue was in accordance with SS. 1666 and 1666a of the German Civil Code. It served the purpose of the children's well-being, which is a legitimate aim under Article 8 para. 2 (Art. 8-2).

As regards the question whether the measure complained of was necessary in a democratic society, the Commission recalls that, according to the established case-law, it must be determined whether

the reasons given for the interference were relevant and sufficient (Eur. Court H.R., W. v. United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, para. 60; Olsson judgment of 24 March 1988, Series A no. 130; recent authority the Olsson (No. 2) judgment of 27 November 1992, Series A no. 250, p. 34, para. 87).

The decision of the Koblenz District Court of 4 November 1993 to withdraw the applicant's right of custody over three of her children was upheld by the Koblenz Regional Court and the Zweibrücken Court of Appeal, and further confirmed by the Federal Constitutional Court. Based on expert advice and the statements of the children as well as of the applicant and the other persons involved in the proceedings, the German courts concluded that the applicant was not capable of exercising her parental rights to the well-being of the children concerned, in particular to understand their needs regarding their development in private as well as in school and future professional matters. In this respect, the previous development of the relations between the applicant and her children was duly taken into account. Thus the German courts considered that the applicant, while pursuing for years the aim to take her children back to her, had no concrete ideas about planning a daily life with the children, but stated in a stereotype manner that she had suffered injustice in the past and had rights regarding the children. The courts also noted her disregard for the wishes of her children as well as the fears which her conduct created for her children.

These decisions have to be seen against the background of the earlier decisions taken by the German courts on matters related to the applicant's parental rights. Thus in 1986 her right to determine the place of residence of inter alia these three children was withdrawn, first provisionally and then definitely, whereby the Courts took into account not only the applicant's deteriorating psychological conditions and the aggressive relationship between her and her mother where the children were living at that time, but also the insufficient hygienic and sanitary conditions at the applicant's apartment, from where the children born in 1976 and 1977 had run away. The decision was confirmed in July 1987 as the applicant had not managed to settle her problems. Subsequent visit arrangements between the applicant and her children at a local social service were discontinued as regards two of the children, born in 1976 and 1977, who did not wish to continue contacts, and as regards the third child born in 1985 following negative reports of the social service concerned and problems as to the organisation of these visits.

Against this background, the reasons for the interference were both relevant and sufficient.

Moreover, the Commission finds that the applicant, assisted by counsel, was involved in the decision-making process, seen as a whole, to a degree sufficient to provide her with the requisite protection of her interests. The procedural requirements implicit in Article 8 (Art. 8) were therefore complied with (see W. v. United Kingdom judgment, loc. cit., p. 29, para. 64; Olsson judgment, loc; cit., p. 33, para. 71).

In these circumstances, the decision of November 1993 to withdraw the applicant's right of custody over three of her children does not disclose any appearance of a violation of her right to respect for her family life under Article 8 para. 1 (Art. 8-1) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant's further complaints concern the decision of the Frankfurt District Court of 1993 to suspend her right of access to one of her children.

The Commission recalls that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and the natural family relationship is not terminated by the fact that a child is taken into public care (cf. Olsson judgment, loc. cit., p. 29, para. 59). The court decisions on the applicant's right of access to her child born in 1982 thus constituted an interference with her right to respect for her family life under Article 8 para. 1 (Art. 8-1).

The Commission has examined whether this interference was justified under Article 8 para. 2 (Art. 8-2), i.e. whether it was in accordance with German law and necessary in a democratic society for one of the aims set out in this provision.

The measures complained of were taken in accordance with S. 1634 of the German Civil Code. The Commission also finds that they pursued the protection of the interests of the child concerned.

As to the question of necessity, the Commission notes that the Frankfurt District Court, as confirmed by the Frankfurt Regional Court and the Frankfurt Court of Appeal, suspended the applicant's right of access to her child, born in 1982 and living with foster parents, for a period of seven months. For that period the Courts made arrangements for visits between the child concerned and her younger sister, born in 1983 and living at a home for disabled children, and they envisaged ensuing visits between the two children and the applicant. When doing so, the Frankfurt Courts had regard in particular to the negative attitude of the then eleven-year-old child vis-à-vis the applicant, and pursued, on the basis of expert opinions the plan of improving their relationship with the help of the child born in 1983. The applicant could properly present her views in the course of these court proceedings.

The Commission finds that in the above circumstances the impugned court decisions were supported by relevant and sufficient reasons. The Courts took their decisions in the light of the well being of the children and the interest of their mother of improving the relationship to them on the basis of a well elaborated plan. The Commission considers that, the interference with the applicant's right to respect for her family life was appropriate and necessary in a democratic society for the protection of the rights and interests of the applicant's child born in 1982.

Consequently there is no appearance of a violation of Article 8 (Art. 8) of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)