CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 34499/04
by Cornelia HAASE and Others
against Germany

The European Court of Human Rights (Fifth Section), sitting on 12 February 2008 as a Chamber composed of:

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Regitrar*,

Having regard to the above application lodged on 14 September 2004,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mrs Cornelia Haase, and her husband, Mr Josef Haase, and seven children, T., L., N., A.-K., S.-K., M.-P. and L.-M, are German nationals. Mrs and Mr Haase, born in 1968 and 1967 respectively, live in Steinfurt. They were represented before the Court by Mr. P. Koeppel, a lawyer practising in München, succeeded by Mr G. Rixe, a lawyer practising in Bielefeld.

A. The circumstances of the case

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

Mrs Haase is the mother of twelve children. While she was married to her first husband, she gave birth to seven children, M., born in 1985, S., born in 1986, R., born in 1987, A., born in 1988, T., born in 1990, and the twins L. and N., born in 1992. Following the spouses' separation, the four elder children stayed with their father, while Mrs Haase obtained sole custody of the three younger children T., L. and N. With her second husband, Mr Haase, she had five children. A.-K. was born in 1995, S.-K. in 1998, M.-P. in 2000, L.-M. in 2001, and A.-J. in 2003.

1. Application No. 11057/02 and the Court's judgment o f 8 April 2004

By decisions of 17 December and 18 December 2001 the Münster District Court (*Amtsgericht*) issued interim injunctions (*einstweilige Anordnungen*) withdrawing Mr and Mrs Haase's parental rights over four of their children and three children of Mrs Haase's first marriage and prohibiting access to all the children. The children were taken from three different schools, a nursery and from home and were placed in three foster homes. The seven-day old daughter, L.-M., was taken from the hospital and since that time has lived with a foster family.

On 6 March 2002 Mr and Mrs Haase submitted an application against Germany to the Court under Article 34 of the Convention complaining about the interim injunctions. In a judgment of 8 April 2004 the Court held that that there had been a violation of Article 8 of the Convention and that there was no separate issue under Article 6 § 1 (*Haase v. Germany*, n° 1057/02, CEDH 2004-III (extracts)). It found in particular (§ 104):

> "...that the Münster District Court's decision of 17 December 2001, the unjustified failure to allow the applicants to participate in the decision-making process leading to that decision, the methods used in implementing that decision, in particular the draconian step of removing the new-born daughter from her mother shortly after birth, and the particular quality of irreversibility of these measures were not supported by relevant and sufficient reasons and cannot be regarded as having been "necessary" in a democratic society."

2. The subsequent main proceedings before the German courts

On 19 April 2002 in the main proceedings concerning parental responsibility and access rights, the Münster District Court appointed a lawyer of the Münster Bar as curator *ad litem* (*Verfahrenspfleger*) to represent the children's interests in the proceedings. It instructed the already appointed experts to submit the results of their investigations obtained so far and discharged them from any further expert activity. It appointed a new expert, Professor K., with a view to determining whether separating the

children from the family was the only way of eliminating all danger for them.

On 11 June 2002 Professor K. interviewed the first and second applicants at their home. The interview lasted for six hours.

On 16 June 2002 the Münster District Court interviewed the children T., L., N., A.-K. and S.-K.

On the same day the Münster Youth Office requested the Münster District Court to prohibit the first applicant from having contacts with the child R. and to impose a coercive fine on her in the event of non-compliance with this prohibition. The first applicant had admitted such contacts which had had detrimental effects on R. requiring the intervention of several staff members of the foster home. Thereafter these proceedings were discontinued with regard to the fact that R. had moved to a foster home in Southern Germany.

On 1 July 2002 the Münster District Court held a hearing attended by the first and second applicants assisted by their lawyer, Mrs Haase's first husband, the curator *ad litem*, a lawyer and representatives of the Münster Youth Office, the experts G. and Professor K. as well as the children's paediatrician Dr J.

Professor K. gave details of her visit to the applicants' home on 11 January 2002 and resumed the content of the interview. She confirmed the findings of the expert G. and stated that there was no alternative to separating the children from the applicants. The children's paediatrician, Dr J., stated that all the children had been his patients since their birth except the daughter born in December 2001. Although he knew about the children's problems, in particular the difficulties with N., the applicants made a quite positive impression on him. It was a big family with many children. However, the applicants were loving parents who took great care of their children. There was no indication that the children had been beaten or otherwise abused. The curator *ad litem* was opposed to contacts between the applicants and the children.

On the same day, the Münster District Court provisionally transferred the custody (*Personensorge*) over the children to the Münster Youth Office and confirmed its decision of 18 December 2001 prohibiting all access between the first and second applicants and the children pending the outcome of the main proceedings. The expert was instructed to add to her report. She was requested to comment in particular on whether, in the best interest of the children, it was necessary to maintain the access prohibition, whether the children should be granted access to the older children of the first marriage, M., S., R. and A., and if appropriate, in what way such contact could be arranged while keeping the children's place of residence secret.

Having found out the address of the foster home in which some of the children had been placed, the first and second applicants met on 19 September 2002 the child L. It was reported that this visit had made feel

L. very insecure and also her brother N. whom she had informed about this event.

On 13 January 2003 Professor K. submitted her report. On 18 February 2003 the Münster District Court held a hearing attended by the parents and their counsel, representatives of the Youth Office, the curator *ad litem* and the experts G. and Professor K. The curator *ad litem* declared that the children had adapted to the changed living conditions and appeared to be comfortable with the new situation. On 4 March 2003 three of the children of the first applicant's previous marriage living with their father, M., S. and A., were heard separately by the Münster District Court. They were opposed to seeing their mother.

By a decision of 6 March 2003 (44 F 2278/01), the Münster District Court withdrew Mr and Mrs Haase's parental rights over their four children L.-M., M.-P., S.-K. and A.-K. It further withdrew Mrs Haase's parental rights over three children of her first marriage, L., N. and T. The parental rights were transferred to the Youth Office. Mr and Mrs Haase were prohibited access to the seven children until the end of June 2004. The Münster District Court relied on Articles 1666, 1666a and 1684 § 4 of the Civil Code (see "Relevant domestic law" below). According to the District Court, the contested measures were justified under Article 6 § 3 of the Basic Law, and necessary in a democratic society for the protection of the health and the rights of the children within the meaning of Article 8 § 2 of the Convention. It found that the domestic situation was difficult and that the children were in danger. Mrs Haase in particular was inflexible and incapable of understanding the children's needs and with her it would be impossible to implement any educative measures. The conditions in which the children had been brought up were highly unsatisfactory. The children had made positive progress in the foster homes in which they had been placed, had gained in confidence and were less affected by behavioural disorders.

The District Court observed that all the children having been in care of the first and second applicants had been affected, some of them seriously, by the couple's poor parenting style. They had been physically and psychologically abused, were short of emotional care and obviously had not sufficiently been acquainted with the basic rules of community life.

Since their separation from the first and second applicants the children had positively developed. They felt well in their new surroundings, experienced for the first time in their life stable socio-economic and emotional support and care and did not wish or even refused to return to the first and second applicants. If they were returned to their former family, as suggested by the first and second applicants, the psychological and physical development of all of the children would be seriously endangered. Even a right of access was not in the interest of the children. It would clearly

endanger the health and development of the children. Therefore the first and second applicants should be further deprived of contacts with the children.

The parents denied respectively minimised the children's distress and disorders and were not capable of meeting the emotional needs of the children. They assigned the causes of the children's deficiencies to the children themselves or invoked the failure of third persons. Despite their verbal commitment, the first and second applicants were not really ready to accept support aimed at reducing their parental deficiencies. Assistance in open care would therefore be inefficient and the children not sufficiently be protected in their parents' household. If the children, and in particular the child L.-M., were to be returned to the first and second applicants the fragile process of settling which had started well would be jeopardised.

All the children, having lived in the household of the Haase family had shown serious psychological problems and conduct disorders resulting from serious shortcomings in the educational ability of both parents. According to the findings of the expert Professor K., both the first and second applicants were victims of their extremely problematic social conditions. Struggling with unmet infantile needs of their own, they did not recognise the needs of their children. That was the major reason for the children's disorders. Contrary to the explanations given by the first applicant, these disorders were not genetic. They were emergency alerts of the children in defence against dramatic shortcomings within the Haase family system. The most characteristic disorders of the children were described as follows:

M.-P. (at the material time 18 months old) had significant behavioural problems and relationship disorders. He had no secure attachment to any particular person. The conclusions of the experts were supported by the declarations of the mother made in the presence of the expert G. She had stated that it had almost been impossible for the parents to cope with M.-P. In the presence of the expert he had shown an extremely aggressive conduct. He slapped his father's face with obvious pleasure. He also punched, kicked or hit the other children. When he hurt himself M.-P. did not look in any way for consolation and help from his parents. He completely withdrew into his shell or stayed with his siblings. He did not tolerate to be touched by his mother.

S.-K. (at the material time 4 ½ years old) was described as a physically well developed, healthy child. She had, however considerable behavioural disorders. She displayed an abnormal willingness to seek physical contact from unfamiliar adults. In a report of 10 February 2003 it was mentioned that the child exhibited symptoms consistent with sexual abuse. Furthermore S.-K. exhibited verbal provocation and showed patterns of extreme behaviour which was a conduct often observed in cases of neglected or abused children. During her stay in the foster home a positive development could be observed.

A.-K. (at the material time six years old) was described by the director of a socio-pedagogical institute in Münster, and by the experts G. and Professor K. as an aggressive child having serious relational and conduct disorders. She did not obey, did not feel guilty for having done something forbidden, was lying, stealing and cheating and was extremely unpopular and generally disliked by the other children. She was a child that instead of love and understanding had experienced solely punishment and emotional denial. In her domestic environment the expert G. found a very irritated and agitated child that was hardly able of making contact with others. The declarations of the mother supported these findings. In the foster home she had important shortcomings in her social behaviour. Continuous conflicts pushed her into the role of an outsider.

L. (nine years old), N.'s twin sister, was described by the expert G. as having extreme behavioural disorders. This conclusion was shared by the expert Professor K. The tests showed that L. feared her mother. She considered her as omnipotent, dominant and aggressive. L. became quickly autonomous as she did not expect to get any moral support from adults in situations she could not cope with. In the presence of her mother the child hardly spoke to the expert and did not look at him. As soon as her mother had left the room, she told the expert that she wished to live with her father, the first applicant's ex-husband, because the children were beaten by the first and second applicants and did not always get enough food. They had to work a lot and to take care of the smaller children. Both experts diagnosed an absence of an emotional relationship between the child and the mother. The educators stated that L. had no feeling of guilt when she was caught lying and stealing. The experts considered that she was not told the rules and that, like her mother, she did everything to fulfil her spontaneous needs.

N. (nine years old), L.'s twin-brother, was also a child with serious behavioural disorders. The results of tests showed very high levels of delinquent, aggressive and anti-social behaviour. In a day care centre maladaptive behaviour, waywardness and serious difficulties in developing relationships with other children had been observed. The mother had stated that the child was often ill, extremely nervous and needed a lot of attention. He experienced many problems when attending the school for mentally handicapped children. He had learning and communication difficulties, toileting problems, ran away, did not obey, was not accepted by the other children, did not feel guilty when he had done something forbidden and showed sexual behaviour problems. A report of the Münster University Clinic for Child- and Youth Psychiatry mentioned after the child's ten-month inpatient treatment in spring 2001 that the global situation of the Haase family did not seem to offer sufficient structures for the child. It had been therefore proposed to place the child in a foster home. A report of N.'s school teacher drawn up in November/December 2001, after the child's stay

in the clinic, noted that N. came to school always tired, unwashed and with uncombed hair, dressed during a week with the same clothes unsuitable for the climate, forgot to bring items, used sexist language against girls, molested boys in the locker room and performed otherwise objectionable conduct.

T. (at the material time 12 ½ years old) was particularly affected by the catastrophic care conditions in the Haase family. According to the investigations of the expert G., this child had extremely strong unfulfilled needs for love and care. He wished in vain to have intensive relations with his mother and the second applicant. He suppressed his needs in order to be "a good boy" and to be recognised and appreciated.

Agreeing with Professor K., the District Court found that the children T. and L. had been "parentified," respectively forced into adult roles too early. They assumed adult roles before they were emotionally or developmentally ready to manage those roles successfully. Such a parentification resulted in the children's feelings of culpability and a negative picture of themselves. T.'s steady unsuccessful efforts to be loved and recognised had affected his self esteem. The parents were responsible for this situation and were also responsible for T.'s conduct and the difficulties in his previous and present environment. T. had complained to the expert G. about the heavy caretaking burden imposed on him by his mother. He had complained in particular that he had to take his younger siblings to bed and that his mother was very angry when she and her husband were disturbed while watching television. It was dramatic for T. to be punished with a reduction of his pocket money or to be accused of being lazy when he did not succeed to cope with his caretaking burden. He considered this as more degrading than being beaten.

There were also serious food supply problems within the family. All the children had eating disorders and developed fears of not getting enough food.

Furthermore, according to Professor K., it resulted from the statements of the children when interviewed by a judge in the various foster homes and reports of the curator *ad litem* that their wish to return to the first and second applicants did not reflect their real intention.

The District Court noted that the child L.-M. had been taken into public care shortly after she was born and had not experienced any difficulty in relation to her emotional well-being. However, in the light of the above circumstances, the health and development of the child would be endangered if she were to be returned into the household of her parents because they were not capable of meeting her emotional needs.

By a separate decision of 6 March 2003 (44 F 401/03) the Münster District Court prohibited contact between Mrs Haase and her four children of her first marriage, M., S., R. and A., before the end of 2004, or in the case of Mrs Haase's eldest son M., before he attained his majority in 2003,

unless the children took the initiative in establishing contact with her mother.

With the exception of R., the children had declared when interviewed on 4 March 2003 that they did not wish to have contact with her mother.

The first and second applicants appealed against the decision of the Münster District Court of 6 March 2003 (44 F 2278/01). They argued that the District Court should not have based its decision on the expert report of G. Contrary to the findings of the expert, the first applicant was willing to co-operate with the authorities. Furthermore the District Court wrongly assessed the declarations of the witnesses, namely the children's paediatrician Dr J. and the child education counsellor Z.-P. The first and second applicants asserted that they were both willing and capable to take care of the children. The withdrawal of the parental authority was not justified as long as the possibility to take alternative measures had not been examined.

The first applicant also appealed against the decision of the Münster District Court (44 F 401/03) concerning the denial of access rights. She maintained in particular that this decision constituted a serious interference with her right to respect for her family life curtailing the family relations between her and the children concerned and was not in the best interests of the children.

On 16 September 2003 the Hamm Court of Appeal (*Oberlandesgericht*) heard the first and second applicants and Professor K., on 4 December 2003 the children M., S., A., T. and L. and on 5 December 2003 the expert G. In agreement with the parties, the Court of Appeal did not hear R. on account of her particular situation (she had moved to Southern Germany, see above), L.-M. because of her young age (approximately two years old) and the children M.-P., S.-K., A.-K. und N. having regard to the fact that it would not enhance the children's development to expose them to a hearing.

By a decision 27 January 2004 (13 UF 143/03 OLG Hamm) the Hamm Court of Appeal dismissed the appeal lodged by the first and second applicants against the decision of the Münster District Court of 6 March 2003 (44 F 2278/01), but allowed them supervised contact with their daughter L.-M. every six weeks for one hour beginning from 15 March 2004. From April 2005 the interval of six weeks could be reduced to once a month and the duration of the visits prolonged. The first applicant was allowed contact with the child T. under the same conditions. The first and second applicants were ordered to attend family therapy to overcome the problems mentioned in the report of Professor K.

The Court of Appeal had regard to the declarations of the children M., S., A., T. und L. and the expert G. in person and rejected any suggestion that the facts on which the expert had based his finding were untrue. It considered it as established that all children except L.-M. had behavioural disorders that were not of genetic origin, but resulted from deficiencies of

the first and second applicants to understand the needs of the children and to respond to them. The comments of the first and second applicants' private experts did not require a new expert opinion. The declarations of the paediatrician Dr J. that the first and second applicants were loving parents who provided good care to the children did not call into question the experts' findings.

In compliance with the principle of proportionality (Article 1666a of the Civil Code), the District Court had to take the necessary measures to protect the children from harm as a result of the first and second applicants' inability to tend to the children's needs irrespective of any fault of their own or not. The first and second applicants' parental rights had to be withdrawn and psychological, physical and pedagogical comfort and care provided by adequate institutions. Since the first and second applicants did not agree with institutional care the separation from the children had to be ordered against their will.

The District Court had correctly decided on the basis of the expert reports. All children, except L.-M., needed pedagogical support that could not be afforded by open-care assistance. Previous initiatives to protect the children had proven unsuccessful.

As to the private expert reports, the Court of Appeal noted that the behavioural disorders of five children had not even been mentioned by the private expert Professor W. The declarations of the witnesses merely confirmed that the first and second applicants had come frequently with the children to the counselling office for children and had followed the advice to send the children to a pedagogical pre-school. This did, however, not prove that the parents were willing to change their own conduct.

According to the Court of Appeal, L.-M., born on 11 December 2001, like her older siblings, if returned to her family, ran a high risk of being affected by behavioural disorders as a result of the parent's insufficient ability to care for her. The separation from her family was therefore the only adequate measure, although it was doubtful whether the moment for the separation had been well chosen.

The Court of Appeal stressed that the principle of proportionality and the protection of the constitutional rights of the parents on the one hand and those of the children on the other hand justified the separation of the parents from the children only as long as it was necessary to securing the best interests of the children. Family measures under Articles 1666 and 1666a of the Civil Code must therefore be aimed at guaranteeing the children to grow up in their family of origin.

Having regard to the fact that the Haase family had been living separated for more than two years without contacts between the parents and children and partially also between the children, it had to be examined carefully whether in the light of the evidence obtained, the continued separation of the children from the first and second applicants was still justified.

According to Professor K., the first and second applicants were not ready to change their conduct. Neither had in particular the first applicant shown in the court hearing of 16 September 2003 any readiness to change her behaviour. According to the reports of the care institutions and the supplementary report of Professor K. all the children had made significant progress in their development during the period of separation from their parents.

As to M.-P. it was reported that he had considerably improved his speech, but that he had still behavioural difficulties that needed further treatment. The Court of Appeal pointed out that prior to the separation from the first and second applicants the aggressive behaviour of the child had been noted by the expert G. and the persons who had taken care of the child. At the utmost the separation could have had, if at all, an additional negative impact on the child's behaviour, but its cause was not the destruction of the parents-child-relationship as asserted by the private expert in her comments in reply to the supplementary expert report of Professor K. of 12 September 2003.

S.-K. had still problems that needed further support. Like M.-P., sanctions did not affect her in the least.

A.-K. needed much love and affection and was not ready to share adults with other children. There was an improvement in her behaviour and she liked her foster home. However, interventions to enhance her well-being were still necessary.

N. had made some progress in the meantime, but further support was required. He liked to stay in the foster home.

The development of L.-M. was also still at risk in spite of an improvement of her behaviour. She did not like her foster home, but had declared that she did not wish to return home. She would prefer to return to her biological father.

T. too had improved. He would likewise prefer to return to his biological father, but not to his mother.

L.-M. was not affected by any disorder at the time of the separation from the first and second applicants. There was thus no risk that contacts with her parents would affect the child's well-being. In the light of these circumstances, the Court of Appeal considered that it would be appropriate to allow the first and second applicants for the time being contact with L.-M. every six weeks during one year beginning in March 2004. However, the parents should undergo a family therapy with a view to reducing their educational shortcomings. Moreover, the modalities of the visits should be carefully prepared. The first and second applicants should seek competent expert advice.

Under the same conditions access rights could also be granted to T., who at the present time was thirteen years old. At the hearing he had stated that he would be interested to have rather contacts with his biological father than

with the first and second applicants. Visiting rights could, however, only be granted to the first applicant, the mother of T. There was no indication that the child's well-being would be affected in the present situation. However, contacts of the child with the second applicant could not be said to be in the interests of the child, as required by Article 1685 of the Civil Code.

In the absence of any contacts between the parents and the children and to some extent also between the children from each other for more than two years, it had to be examined whether a cautious reestablishment of contacts could be envisaged with the goal of reunification of the family in the long term. There must be evidence to show that the situation in the family of origin had changed and that there was no longer a risk that the children would fall back in previous patterns of behaviour or engage in new behavioural disorders. During the two years' separation from their parents the children had made considerable progress in their development. However, in view of the still existing grave behavioural disorders**, c**ontacts with M.-P., S.-K., A.-K. and N. would be contrary to children's well-being and had to be excluded for the time being. The first applicant's unexpected visit in breach of the access prohibition had generated a new crisis in the development of L., and the children N. and A.-K. and demonstrated that contacts could not be envisaged until the children had acquired the stable situation they needed and visits been prepared carefully in advance.

On 17 February 2004 (13 UF 153/03 OLG Hamm) the Hamm Court of Appeal dismissed the first applicant's appeal against the decision of the Münster District Court of 6 March 2002 by which she was prohibited to get into contact with the children M., S., R. and A. The Court of Appeal confirmed that the well-being of the children would be at risk if the first applicant were to be granted access rights. The first applicant had previously misused her access rights obliging the children of her first marriage to do household chores and to take care of the other children. With regard to the testimony of the expert and the children of her first marriage, the Court of Appeal rejected her allegation that the expert report did not correspond to the declarations of the children. It resulted furthermore from the children's declarations that they were afraid of their mother's aggressive conduct and refused to have any contact with her.

On 24 March 2004 the first and second applicants filed a constitutional complaint alleging that their parental rights and their right to a fair hearing had been infringed. They invoked Article 6 § 2 first sentence and Article 103 § 1 of the Basic Law. In their view, the main proceedings were similar to the interlocutory proceedings which the Federal Constitutional in 2002 had found to be in breach of the Basic Law. The first and second applicants asserted in particular that the findings of the experts G. and Professor K. were partial and not based on relevant facts. The experts had not sufficiently taken into consideration the objections of their private experts and their witnesses. Moreover the courts had been partial. When deciding on the first

applicant's parenting ability, the courts should not have relied on the declarations of witnesses made more than eight years ago. When interviewing the children the courts had failed to take into account their particular situation in their respective foster homes. The courts had furthermore failed to examine, as directed by the Federal Constitutional Court, whether in conformity with the principle of proportionality a less serious interference with the applicants' family life could have been envisaged. The authorities had acted without any intention at all to reunite the family.

On 29 September 2005, sitting as a bench of three judges, the Federal Constitutional Court refused to accept the first and second applicants' constitutional complaint for adjudication (1 BvR 715/04).

It found that the applicants' constitutional complaint against the decisions of the Hamm Court of Appeal of 27 January 2004 and the Münster District Court of 6 March 2003 (44 F 2278/01) was ill-founded.

Under Article 6 § 2 first sentence of the Basic Law, parents have a right and duty for the care and upbringing of children. The State was entitled to interfere with this right where the well-being of the child was placed at risk. A separation of the child from the parents against their will constituted the most severe interference with their parental rights. Such a measure was only compatible with the Basic Law if it was in accordance with the law and if the principle of proportionality had been observed.

Contrary to the first and second applicants' view, the contested decisions satisfied these requirements.

Both courts had correctly concluded that the children's well-being was at risk as a consequence of the first and second applicants' parenting style irrespective whether of any fault of their own or not.

According to the findings of two experts, the reports of the care institutions and the curator *ad litem* and the courts' own cognition, all of the seven children placed in foster care, except L.-M., presented considerable behavioural and developmental disorders requiring special pedagogical measures and support which could not be provided within the family. In its decision of 6 March 2003 (44 F 2278/01) the District Court had based these findings on extensive factual descriptions. It had mentioned, *inter alia*, that the children had shown an extreme aggressive and inappropriate sexual behaviour. Several children had a tendency to tell lies, cheat and steal without having any feeling of guilt while others showed symptoms of parentification. Several children had eating disorders. All the children, except L.-M., had relational difficulties. These findings had not directly been contested by the first and second applicants in their constitutional complaint.

According the courts, the behavioural disorders of the children were due to the first and second applicants' inability to identify the children's needs, to react adequately and to enhance the children's well-being.

Insofar as the first and second applicants had alleged that the expert reports were erroneous and that the experts had not sufficiently taken into account the private expert opinions and declarations of witnesses, the Federal Constitutional Court pointed out that the first and second applicants had not sufficiently substantiated their complaint relating to the disorders described by the experts. The courts' conclusions were comprehensible and logical. Moreover, the Court of Appeal had not excluded the possibility of re-establishing contacts with the children and ultimately reuniting the family.

It could not be criticised that the courts imposed the obligation on the first and second applicants to improve their educational abilities. The conclusion of the Court of Appeal that the first and second applicants were not ready to accept psychotherapeutic assistance and advice for the education of their children could not be criticised, since the first applicant had refused in the past to accept such assistance.

As far as the prohibition of contacts was concerned, the Federal Constitutional Court pointed out that the first and second applicants had not respected that prohibition and had had contacts with L. and R. That harmful behaviour had had detrimental effects for R. requiring the intervention of several staff members. Against that background the prohibition of contacts could not be criticised.

As to the children T. and L.-M., the Court of Appeal had authorised supervised contacts. This cautious re-establishment of contacts could not be assumed to be inadequate. However, the Youth Office and the courts would have to examine in future to what extent it would be compatible with the best interests of the remaining children in foster care to re-establish and increase contacts with the first and second applicants.

Furthermore the courts could not be criticised under constitutional law for not having ordered a new expert opinion or for not having amended the already existing expert opinions. The courts had based their decisions on extensive evidence, in particular on the two expert reports, including supplementary information, the reports on the development of the children in the foster homes, reports of the curator *ad litem* based on his personal observations of the children and finally on the declarations of most of the eleven children.

3. Further developments

Since the separation from the first and second applicants, T. had been placed for two years and a half in a foster home in Werne in Schleswig-Holstein, approximately 500 km from the parents' place of residence. The Youth Office had refused to authorise the child to return to the first and second applicants. On 21 October 2004 the first applicant met her son for the first time following the separation. In the course of 2005 five supervised visits followed, each of them for one to one and a half hours.

L.-M. was taken from the hospital and was since that time living with a foster family. Following an interview in the Münster Youth Office in November 2004, the first and second applicants met their daughter for the first time shortly afterwards. In 2005 they had seen their daughter on nine occasions for one hour and a half.

At a meeting on 5 July 2005 Münster Youth Office proposed that the first and second applicants be granted access rights to L.-M. every four weeks for two hours. On 21 October 2005 the first and second applicants filed a formal request to be granted access rights since in the meantime no visits had been organised. In 2006 the parents have seen L.-M. once.

The twins L. and N. were placed in a foster home in Werl. The first and second applicants' efforts to be granted visiting rights to N. were unsuccessful. In 2004/2005 the child was admitted to a psychiatric hospital. Two supervised contacts with L. took place in the foster home in Werl in July and August 2005. Thereafter further contacts have not been authorised.

A.-K. and S.-K. were placed in a foster home in Gelsenkirchen. The first contact took place in June 2005. As from 10 August respectively 17 September 2005 they have been living again with the first and second applicants.

M.-P. was placed in a foster home in Werl. At the end of May 2004 he was transferred to a foster family in Dortmund. The Steinfurt Youth Office was of the opinion that once he had adapted to the foster family he could be informed about the option to return to his parents. In 2005 the first and second applicants had three contacts with him for one to one hour and a half under the supervision of three persons. Since further contacts were not organised any longer, the first and second applicants filed a request with the Münster District Court on 21 October 2005 to be granted access rights every four weeks for four hours.

The first and second applicants moved first to Nordwalde. Thereafter they lived with their daughter A.-J. born on 19 December 2003 in Laer. The then competent Steinfurt Youth Office supplied assistance to the children, including A.-K. and S.-K., and the parents. The parents were granted weekly pedagogical assistance for eight hours and a family therapy of two weeks. They further were given psycho-therapeutic advice from a paediatrician in Hagen.

In separate proceedings (44 F 2103/05) the parents requested the Münster District Court to have meetings organised more frequently in regard to the children L.-M. und M.-P.

As to L.-M., the proceedings were discontinued on 18 April 2006, the first and second applicants having reached an agreement.

At a hearing on 10 July 2006 the disorders experienced by M. –P. and the difficulties of the parents in meeting his difficulties were discussed. The first and second applicants renounced to be granted increased access rights. The Youth Office and the child's guardian stressed that if M.–P.

were to be returned to the parents, they would not be able to cope with that highly affected child.

In August 2006 the Münster Youth Office returned the child L. to her father. She died at her father's home some five months later, having been found drowned in a bath tube filled with water.

By a decision of 30 August 2006 (44 F 2104/05) the Münster District Court retransferred the parental rights over the children A.-K. and S.-K. to the first and second applicants. The District Court ordered the parents to assist support programmes in agreement with the Steinfurt Youth Office and to accept the assistance offered for a period of two years.

The District Court found that the parents still lacked the awareness of their insufficient educational abilities. Therefore educational assistance was strictly necessary. It was important for the positive development of the children that the parents accepted the assistance. However, the parents' conduct raised doubts in this respect. They continued to proclaim that the authorities arbitrarily had destroyed an intact family and denied the serious deficiencies in their educational abilities and were not ready to accept fundamental changes. They requested that M.-P. and the other children be immediately returned to them and their three children living with them, despite the fact that M.-P. had been diagnosed with extremely serious behavioural disorders. The first applicant declared at the court hearing that an additional care person put at their disposal would be sufficient to resolve the problem. However, the guardian of the child had declared that two adults had been occupied full-time to handle the child.

As to the youngest child A.-J., born on 19 December 2003, the District Court noted that the parents had focused all their love and affection on this child in the first twenty months of her life. Since approximately one year she had to share the parents' educational skills with two much elder siblings. In spite of far more favourable conditions than those prevailing in 2001, the parents were responsible for a development of the child that was indicative of significant educational deficiencies of the parents. A.-J.'s behaviour could not be explained by a lack of the child's sleep or by an attention deficit hyperactivity disorder (ADHD) as alleged by the first and second applicants at the court hearing. It was rather an indication of insufficient education and showed striking parallels to the diagnosis of the child M.-P. established in 2001.

It had not been ascertained what had happened with the children with respect to experiences of sexual abuse. Three children, namely the two children A.-K. and S.-K. living again with their parents and in particular N., had shown severe sexual conduct disorders. The competent authorities were called to investigate the causes of this conduct.

The District Court advised the first and second applicants to accept the assistance which was put at their disposal in the best interests of their children.

On 20 December 2006 the first and second applicants appealed against this decision insofar as it concerned the obligation to accept parental support. They submitted that they would accept such support on their own volition. They contested furthermore that the problems of their daughter A.-J. were due to their educational deficiencies. They maintained that she was suffering from an attention hyperactivity disorder. They also complained that the allegation of sexual abuse damaged their honour and reputation.

In a letter of 20 February 2007 the Steinfurt Youth Office informed the Hamm Court of Appeal that despite the distrust that the first and second applicants felt towards the Youth Office, it had been possible to cooperate with them. However, since summer 2006 cooperation was almost impossible. The parents did not meet their son M.-P. as often as discussed at the hearing before the Münster District Court of 12 July 2006. Regrettably they did not contact their son on the two last occasions.

The first and second applicants had moved in the meantime from Laer to Steinfurt-Borghorst. They motivated their removal by defects of the rental house.

The Steinfurt Youth Office finally indicated that, after the tragic death of her daughter L., there was reason to worry about the psychic condition of the first applicant. The question arose to what extent she was still able to take care of her three daughters, be aware of their needs and meet them.

B. Relevant domestic law

Article 6 of the Basic Law (*Grundgesetz*) reads as follows:

> "...
>
> (2) Care and upbringing of children are the natural right of the parents and a duty primarily incumbent on them. The state watches over the performance of this duty.
>
> (3) Separation of children from the family against the will of the persons entitled to bring them up may take place only pursuant to a law, if those so entitled fail in their duty or if the children are otherwise threatened with neglect.

Article 1666 of the Civil Code (*Bürgerliches Gesetzbuch*) provides that the family courts are under an obligation to order necessary measures if a child's welfare is jeopardised (*Gefährdung des Kindeswohls*).

The second sub-paragraph of Article 1666a provides:

> "Full [parental] responsibility may only be withdrawn if other measures have proved ineffective or have to be regarded as insufficient to remove the danger."

According to Article 1684 § 4 of the Civil Code, the family court can restrict or suspend the right of access if such a measure is necessary for the child's welfare. A decision restricting or suspending that right for a lengthy period or permanently may only be taken if otherwise the child's well-being would be endangered. The family courts may order that the right of access

be exercised in the presence of a third party, such as a Youth Office or an association.

COMPLAINTS

The first and second applicants complained, in their own name and on behalf of their four children and the first applicant also on behalf of three of her children of her first marriage, under Articles 8 and 6 of the Convention, about the withdrawal the parental authority, the refusal and restriction of access rights and the separation of the children from each other and the alleged insufficient measures aimed at reuniting the family.

The applicants submitted that the decision to withdraw the parental authority was mainly based on the report of Professor K. of 13 January 2003 which was neither reliable nor credible. The first and second applicants had submitted the reports of private experts challenging the conclusions of Professor K.'s report and the facts on which these conclusions were based. They pointed out in that connection that the private experts knew the couple personally and had accompanied them during a longer period, whereas Professor K. had interviewed the unprepared parents during six hours on 11 June 2002 without making a parent-child interaction assessment which in their view would have constituted a decisive factor. In comparison to the private experts, Professor K. had less effective data at her disposal. The applicants referred in that respect to the situation in the case of Kutzner v. Germany where the Court had found a violation (see *Kutzner v. Germany*, no. 46544/99, § 72, ECHR 2002-I).

The applicants criticised in particular the courts' findings that the behavioural disorders and delays in the development of the children required special pedagogical assistance which could not be supplied within the family.

They also alleged that they did not have been sufficiently involved in the decision-making process on that important question, since the courts were not provided with sufficient material to reach a reasoned decision. They referred in that respect to the case of *Kosmopoulou v. Greece* (no. 60457/00, § 49, 5 February 2004). Insofar as the Professor K. had asserted that the first and second applicants were in no way aware of the problems and were not ready to cooperate, the courts had not sufficiently taken into consideration that they had undergone a psychotherapeutic treatment and sought expert advice. They could not be criticised for not having trusted the Youth Office, since this was a consequence of the expert's conduct.

Furthermore the subsequent development showed that the first and second applicants were able and willing to co-operate with the Youth Office

and to accept support. On 19 December 2003 a further child was born to the first and second applicants. The fact that the Youth Office did not intervene and that the Steinfort Youth Office had returned the children S.-K and A.-K. to them showed that they had adequate educational abilities. They had been supervised by the Youth Office. This clearly too confirmed their educational abilities and their awareness of the needs of their children.

Even though they were co-operating with the Youth Office, were showing a considerable improvement of their conditions and were at no stage endangering the children's development, the authorities never genuinely considered the possibility of reuniting the family. They refused to return the children without convincing reasons, in particular with regard to T., L., N., L.-M., M.-P., whereas the children S.-K. and A.-K. had been returned far too late.

They alleged that the deceased child L. had been forced by the Münster Youth Office to return to her father although she had declared to wish to return to her mother. This decision had been taken without involving the first and second applicants in the proceedings. They came to know about the decision when the child had already been returned to her father.

They further complained that in breach of Article 8 of the Convention access rights had sporadically been restricted and meetings not been sufficiently prepared by the Youth Office.

The restriction of access rights entailed the danger that, with the exception of the children S.-K. and A.-K., the family relations would be effectively curtailed and as a result of the inactivity of the authorities the children could not be returned because they would have become strangers.

The first and second applicants complained that apart from the authorised access rights they were not allowed to contact the children in writing or by telephone and that the children had had no contact among each other.

Moreover, the applicants complained that the first applicant was refused access rights to the children M., S., R., and A.

Invoking Article 6 of the Convention, the applicants complained about the length of the proceedings. Both the Hamm Court of Appeal and the Federal Constitutional Court had not decided within a reasonable time. They stressed that it was of fundamental importance that especially child care cases were dealt with speedily.

The applicants finally complained under Article 46 of the Convention that the German courts had neither respected the binding effect of the Court's judgment of 8 April 2004 relating to their first application nor the judgment in the case of Kutzner v. Germany. It resulted from the wording of Article 46 of the Convention that the binding effect of the judgments did not only concern the parties to the proceedings, but generally all the State organs of the Contracting Party. The finding of a violation of the Convention obliged the Contracting Party to prevent a violation of the Convention in respect of other persons in the same situation. The courts had

the duty to consider the relevant decisions of the European Court of Human Rights and to examine to what extent they were binding for them. The Federal Constitutional Court had confirmed that principle in its decision of 14 October 2004 (2 BvR 1481/04)

THE LAW

A. *Locus standi*

The first and second applicants have brought the application in their own name and in the name of their four children and the first applicant also on behalf of three of her children of her first marriage.

The Court recalls that in principle a person who is not entitled under domestic law to represent another may nevertheless, in certain circumstances, act before the Court in the name of the other person. In particular, minors can apply to the Court even, or indeed especially, if they are represented by a parent who is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention. In such cases, the standing as the natural parent suffices to afford him or her the necessary power to apply to the Court on the child's behalf, too, in order to protect the child's interests (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII, *Iglesias Gil and A.U.I. v. Spain* (dec.), no. 56673/00, 5 March 2002 and *Sylvester v. Austria* (dec.), nos. 36812/97 and 40104/98 (joined), 26 September 2002).

The question arises whether a distinction should be drawn in cases where, on account of the conflicting interests, a curator *ad litem* was appointed to represent the children and defend their interests in the course of the domestic proceedings and chose not to lodge on their behalf a constitutional complaint with the Federal Constitutional Court nor an application before the Court.

However, this matter can be left open in the circumstances of the present case, as the application must in any event be rejected for the reasons set out below.

B. Complaints under Article 46 in conjunction with Article 8 of the Convention

The applicants complained under Article 46 in conjunction with Article 8 of the Convention that the German authorities had failed to comply with the judgments of the European Court of Human Rights of 8 April 2004 (*Haase v. Germany*, no. 11057/02, ECHR 2004-III (extracts) and

Kutzner v. Germany, no. 46544/99, ECHR 2002-I), because when deciding in the main proceedings they did not take account of the Convention as interpreted by the Court in the above mentioned judgments.

The Court observes that under Article 46 of the Convention the Contracting Parties undertake to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). It is not for the Court to verify whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments.

It follows that this part of the application must be rejected as incompatible *ratione materiae* with the provisions of the Convention in accordance with Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

C. Complaints concerning the outcome and conduct of the custody proceedings

The Court notes that the present application concerns the decisions issued in the main proceedings, namely those of the Münster District Court of 6 March 2003 and the subsequent decisions of the Hamm Court of Appeal including the decision of the Federal Constitutional Court of 29 September 2005. There is nothing to prevent the Court from examining a subsequent application raising a new issue undecided by the judgment (see the following judgments: *Pailot v. France*, 22 April 1998, *Reports* 1998-II, p. 802, § 57; *Leterme v. France*, 29 April 1998, *Reports* 1998-III; and *Rando v. Italy*, no. 38498/97, § 17, 15 February 2000; *Mehemi v. France (no. 2)*, no. 53470/99, § 43, ECHR 2003-IV). That was the applicants' position during the period following the Court's judgment of 8 April 2004 to which this application relates.

The applicants complained that the withdrawal of the first and second applicants' parental rights respectively, the separation of the children from each other and from the first and second applicants, the delayed retransferral of these rights in respect of two children, the refusal respectively restriction of access rights to the children as well as the failure to take proper steps to reunite the family violated their right to respect for

family life as guaranteed by Article 8 of the Convention, which provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. Whether there was an interference with the applicants' right to respect for their family life and, if so, whether it was in accordance with the law and pursued a legitimate aim

As is well established in the Court's case-law, the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention (see, among others, *Johansen v. Norway*, judgment of 7 August 1996, *Reports* 1996-III, pp. 1001-02, § 52). The impugned measures evidently amounted to interferences with the applicants' right to respect for their family life as guaranteed by paragraph 1 of Article 8 of the Convention. Any such interference constitutes a violation of this Article unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as "necessary in a democratic society".

The Court is satisfied that all impugned measures had a basis in national law, namely Articles 1666, 1666a and 1684 § 4 second sentence of the Civil Code. In the Court's view, the relevant German law was clearly aimed at protecting "health or morals" and "the rights and freedoms" of children. There is nothing to suggest that it was applied for any other purpose in the present case.

2. Necessity of the interference in a democratic society

a. General principles

The Court reiterates that in order to determine whether the impugned measures were "necessary in a democratic society", it has to consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient for the purposes of Article 8 § 2 (see, among many other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII; *Kutzner v. Germany*, no. 46544/99, § 65, ECHR 2002-I; *P., C. and S. v. the United Kingdom*, no. 56547/00, § 114, ECHR 2002-VI; all with a reference to *Olsson v. Sweden (no. 1)*, judgment of 24 March 1988, Series A no. 130, p. 32, § 68). Undoubtedly, consideration of what is in the best interests of the child is in every case of crucial

importance. Moreover, it must be borne in mind that the national authorities have the benefit of direct contact with all the persons concerned (see *Olsson v. Sweden (no. 2)*, judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90), often at the very stage when care measures are being envisaged or immediately after their implementation. It follows that the Court's task is not to substitute itself for the domestic authorities in the exercise of their responsibilities for the regulation of the public care of children or contact questions, but rather to review under the Convention the decisions taken by those authorities in the exercise of their power of appreciation (see, for example, *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55, *Johansen*, cited above, pp. 1003-04, § 64, *Kutzner*, § 66, and *P., C. and S v. the United Kingdom*, § 115, and *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299-A, p. 20, § 55).

In so doing, it must determine whether the reasons purporting to justify any measures taken with regard to an applicant's enjoyment of his right to respect for family life are relevant and sufficient (see, amongst other authorities, *Olsson v. Sweden*, judgment of 24 March 1988, Series A no. 130, p. 32, § 68).

The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake. In particular when deciding on custody, the Court has recognised that the authorities enjoy a wide margin of appreciation. However, a stricter scrutiny is called for as regards any further limitations, such as restrictions placed by those authorities on parental rights of access, and as regards any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between a young child and one or both parents would be effectively curtailed (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII, *Kutzner v. Germany,* no. 46544/99, § 67, ECHR 2002-I, and *Görgülü v. Germany*, no. 74969/01, § 42, 26 February 2004).

Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents and that, in the balancing process, particular importance should be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parents. In particular, a parent cannot be entitled under Article 8 of the Convention to have such measures taken as would harm the child's health and development (*Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 169, ECHR 2000-VIII, *P., C. and S. v. the United Kingdom*, no. 56547/00, § 117, ECHR 2002-VI, *Görgülü v. Germany*, cited above § 43).

Other important factors in proceedings concerning children are that time takes on a particular significance as there is always a danger that any

procedural delay will result in the *de facto* determination of the issue before the court (*H. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 120, pp. 63-64, §§ 89-90), and that the decision-making procedure provides requisite protection of parental interests (*W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, pp. 28-29, §§ 62-64). The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right under Article 8 of the Convention to enjoy a family life with their child (*K. and T. v. Finland*, cited above, § 173).

It is against this background that the Court will examine whether the measures constituting the interferences with the applicants' exercise of their right to family life could be regarded as "necessary".

b. Application of the principles to the present case

i. Custody

In its judgment of 8 April 2004 the Court examined the question whether there existed circumstances justifying the abrupt removal of the children from the care of the first and second applicants without any prior consultation by virtue of interim injunctions. Its conclusion was that the interim measures could not be regarded as "necessary" in a democratic society. Accordingly, it held that the taking of the children in foster care constituted a breach of the first and second applicants' right to respect for family life.

The present case concerns the court decisions taken in the main proceedings which were the product of a separate decision-making process.

In reviewing whether the domestic courts, in the exercise of their margin of appreciation, based their decision to withdraw the first and second applicants' parental authority over seven children on relevant grounds, the Court observes that three courts, namely the Münster District Court, the Hamm Court of Appeal and finally the Federal Constitutional Court have carefully examined the situation of the applicants in detailed decisions. Each court came to the conclusion that the first and second applicants' inability to give the children satisfactory care and education and an abusive exercise of parental authority jeopardised the physical, mental and psychological well-being of the children to the extent that their separation from the first and second applicants appeared to be the only possible solution to protect them. They had based their decisions on extensive evidence, in particular on two expert reports, including supplementary information, the reports on the development of the children in the foster homes, reports of the curator *ad litem* based on his personal observations of the children and finally on the declarations of the children. The Federal

Constitutional Court further observed that the courts could not be criticised under constitutional law for not having ordered a new expert opinion or for not having amended the already existing expert opinions. Keeping in mind that the courts' primary task was to safeguard the interests of the children, the Court has no reason to doubt that the first and second applicants were unable to provide the care, guidance and protection necessary for the well-being of the children and that it was in the children's best interest that custody be transferred.

ii. Access

As regards the question of access rights, the Court recalls that it is in a child's interest for its family ties to be maintained, as severing such ties means cutting a child off from its roots, which can only be justified in very exceptional circumstances (see *Gnahoré v. France*, no. 40031/98, § 59, ECHR 2000-IX, *Johansen*, cited above, pp. 1008-1009, § 78, and *P.,C. and S. v. United Kingdom*, cited above, § 118).

Even assuming that the first and second applicants had correctly exhausted domestic remedies with regard to their visiting rights, the Court considers that the competent German courts adduced relevant reasons to justify their decisions refusing or restricting access, namely the risk that visits would affect the children and interfere with their undisturbed development. They confirmed that in principle, for a harmonious development, a child must have contact with both parents, to the extent that this was consistent with the best interests of the children. Thus, it was clear that maximum contact was not an unlimited objective, and that it had to be curtailed wherever the children's welfare required it.

The Court notes that by its decision of 6 March 2003 the Münster District Court prohibited the first and second applicants access to seven children and by a separate decision of the same day prohibited the first applicant access to her four children of her first marriage on the ground that contacts would not be in the best interests of the children. The fragile process of settling which had started would be jeopardised. On the first and second applicants' appeal, the Hamm Court of Appeal, by a decision of 27 January 2004 modified the access rights in favour of the first and second applicants granting them supervised visits to their daughter L.-M. and authorising the first applicant to have supervised contact with her son T. with the possibility of increasing the access rights as from April 2005. The Court of Appeal found that during the two years of separation from the first and second applicants the conduct of all the children had improved. Having regard to the children's risk of falling back into previous patterns of behaviour only supervised visits could be envisaged in respect of the two children L. and T. Contacts with the other children could not be authorised until the children had acquired the stable situation they needed and visits been carefully prepared. The first applicant's unexpected visit of 19 September 2002, in

breach of the access prohibition, had had negative impacts on the behaviour of L.-M., R., N. and A.-K. That harmful behaviour had had in particular detrimental effects on R. requiring the intervention of several staff members of the foster home. L.'s well-being was also still at risk in spite of an improvement of her behaviour. Furthermore it resulted from the statements of the children of the first marriage that they were afraid of their mother's aggressive conduct and had refused to have any contact with her. There were undoubtedly valid reasons for the refusal or the restriction of the first and second applicants' access rights and all the evidence indicates that the decisions were indeed taken in the interest of the children.

iii. Decision-making process

The Court considers that it cannot satisfactorily assess whether the reasons adduced by the competent courts were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the decision-making process, seen as a whole, provided the applicants with the requisite protection of their interests (see *W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, pp. 28-29, § 64; *Elsholz*, cited above, § 52; and *T.P. and K.M. v. the United Kingdom*, cited above, § 72).

The first and second applicants have made numerous criticisms about the procedures. They argued in particular that the courts had failed to consider their arguments and evidence, basing their decisions on the reports of the officially assigned experts without taking sufficiently into account the findings of the private experts.

The Court notes that both the District Court and the Court of Appeal had heard the first and second applicants in person and considered their submissions and objections, which they addressed in their decisions. In order to have their own interests represented in the proceedings, the children were appointed a curator *ad litem* who had been heard by the District Court and again by the Court of Appeal. The evidential basis for the decision further comprised the submissions of a representative of the Youth Office, two expert reports as well as expert reports submitted by the first and second applicants, but not considered by the courts as convincing. The Münster District Court heard testimony from the children of the first applicant's previous marriage M., S. and A. and of the children T., L., N. A.-K. and S.-K. The Hamm Court of Appeal had again interviewed the children M., S., A., and L. and T. It did not interview L.-M., because of her young age of approximately two years, and the children M.-P., S.-K., A.-K. and N. considering that it would not enhance their development to expose them to a hearing. Furthermore, in agreement with the first and second applicants, R. was not interviewed by the Court of Appeal on account of her particular situation. In the light of the foregoing, the Court is satisfied that the applicants were properly involved in the decision-making process in the main proceedings and that they were provided with the requisite protection

of their interests. Furthermore they could and did appeal to the Court of Appeal and lodge a constitutional complaint with the Federal Constitutional Court.

In so far as the first and second applicants alleged that the child L. had been returned to her biological father against her will and that they had not been involved in the decision-making process in this respect, the Court attaches special weight to the overriding interest of the child, who at the material time aged nine, respectively eleven, has firmly indicated both before the Münster District Court and the Hamm Court of Appeal that she did not wish to return to the first and second applicants, but would prefer to return to her biological father. The Münster Youth Office accordingly decided in August 2006 to terminate public care and to return her to her biological father. The Court further notes that the Münster Youth Office and the courts have been constantly dealing with the question of the first and second applicants' parental and access rights and had the benefit of direct contact with all the persons participating in the proceedings.

In these circumstances, the Court cannot impugn the authorities for any culpable disregard, discernable bad faith or lack of will. Bearing in mind that as a general rule it is for the national courts to assess the evidence before them (*Sahin and Sommerfeld v. Germany*, cited above § 73 and 71 respectively), the Court is satisfied that the procedural requirements implicit in Article 8 of the Convention were complied with and that the applicants were involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests.

iii. The alleged failure to take steps to reunite the family

The Court reiterates that the taking of a child into public care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and any measures implementing such care should be consistent with the ultimate aim of reuniting the natural parent and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child. After a considerable period of time has passed since the child was originally taken into public care, the interest of a child not to have his or her *de facto* family situation changed again may override the interests of the parents to have their family reunited (*K.A. v. Finland*, no. 27751/95, § 138, 14 January 2003).

The minimum to be expected of the authorities is to examine the situation anew from time to time to see whether there has been any improvement in the family's situation. The possibilities of reunification will be progressively diminished and eventually destroyed if the biological parents and the child are not allowed to meet each other at all, or only so

rarely that no natural bonding between them is likely to occur (see *K. and T. v. Finland,* cited above, §§ 151, 154-155, 173, 178-179).

The Court notes that in its decision of 27 January 2004 the Hamm Court of Appeal stated that, having regard to the fact that the Haase family had been living separated for more than two years without contacts between the parents and children and partially also between the children, it had to be examined whether the circumstances had changed to a degree making it possible to consider cautiously re-establishing the contacts and even in the long term of re-establishing family re-union. It had to be ascertained that the conditions in the family of origin had changed, that it had not to be feared that the conditions having caused the behavioural disorders of the children still existed and on the other hand that the described behavioural disorders had been reduced in as much as allowing to re-establish contacts.

Having examined the circumstances of the case, the Court of Appeal granted the first and second applicants supervised access rights to their daughter L.-M. and the first applicant to her child T. to be increased as from April 2005. Contacts with the other children had been refused as not being in their best interests for the time being. However, the Court of Appeal had not excluded the possibility of re-establishing contacts with the children and ultimately reuniting the family.

Thereafter the authorities re-assed the situation at regular intervals and gave decisions stating full reasons. The first and second applicants had supervised contacts with T., L.-M. and M.-P. in 2005.

A request of the parents to have meetings organised more frequently in respect of L.-M. was settled on 18 April 2006. At a hearing of 10 July 2006 before the Münster District Court the first and second applicants renounced to be granted more extensive access rights in respect of M.-P. having regard to the declarations of representatives of the Steinfurt Youth Office according to which the child should be restored to the family. The first and second applicants were granted access rights every eight weeks.

Contacts with the twins L. and N. had not been authorised with the exception of two supervised visits to L. in July and August 2005. N. had been placed in a psychiatric hospital for a certain time.

The first and second applicants met A.-K. and S.-K. in June 2005. Since 17 September 2005 they are living again with the first and second applicants.

In the light of the above facts, the Court notes that the authorities envisaged to re-establish contact between the children and the first and second applicants and attempted to set a process in motion that would gradually allow the children's return home although this was for the time being excluded in respect of N. They had had regard in this respect to the first and second applicants' conduct finding that they still lacked the awareness of their insufficient educational abilities and were reluctant to accept educational assistance indispensable for the children's positive

development if they were be to returned home. The Münster District Court referred in its decision of 30 August 2006 to behavioural disorders of the youngest child A.-J. who had been in the applicant's care since her birth. In the District Court's view, the child's behaviour could not be explained by an attention hyperactivity disorder (AHDH) as explained by the first and second applicants, but was rather indicative of significant educational deficiencies of the parents.

The fact that not all the children had been returned to the first and second applicants and that the authorities have confined themselves to taking the measures described above does not, however, suffice to justify finding that they have infringed the rights guaranteed by Article 8. In that connection, the Court reiterates that it is not its role to substitute its assessment for that of the relevant national authorities regarding the measures which should have been taken. The authorities are in principle better placed to carry out such an assessment, in particular as they have knowledge of the context of each case and the parties concerned.

In these circumstances, and noting also that the authorities sought as far as possible the children's view and had regard to their interest all the times, the Court cannot but conclude that the authorities took all the measures that could reasonably be demanded of them to facilitate the family's reunion.

In view of the foregoing, the Court concludes that in the circumstances of the present case the German courts based their decisions interfering with the applicants' right to respect for their family life on relevant and sufficient grounds and struck a fair balance between the competing interests. The interference can therefore be regarded as "necessary in a democratic society".

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.

C. Complaints concerning the length and the alleged unfairness of the proceedings

The applicants further complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down 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 fair... hearing within a reasonable time by [a] ... tribunal..."

The applicants complained in particular that on 19 April 2002 the Münster District Court appointed an expert, but that the expert report had not been submitted before 13 January 2003. Furthermore, they contended that both the Hamm Court of Appeal and the Federal Constitutional Court had not decided within a reasonable time. They stressed that it was of

fundamental importance that especially child care cases were dealt with speedily.

The period to be taken into consideration began on 17 December 2001, when the Münster Youth Office applied for an interim injunction. It ended on 29 September 2005 when the Federal Constitutional Court declined to accept the case for adjudication. It therefore lasted three years and approximately nine months for three levels of jurisdiction.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Cocchiarella v. Italy* [GC], cited above, § 68; and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The proceedings were somewhat complex on account of the need to obtain expert evidence in respect of seven children. The applicants have not contributed to the length of the proceedings.

With regard to the conduct of the national authorities the Court notes that the proceedings before the Münster District Court lasted from 17 December 2001 to 6 March 2003, thus one year and almost three months, which do not appear excessive for such a case. As to the delay for the submission of the expert opinion, the Court reiterates that the expert's work in the context of judicial proceedings is supervised by a judge, who remains responsible for the preparation and speedy conduct of proceedings (see, among many other authorities, *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2774, § 44). The Court notes that Professor K. submitted her first findings orally at the hearing of 1 July 2002 before the Münster District Court and that at the same date the District Court instructed her to add to her report. She submitted her amended report on 13 January 2003. In these circumstances the Court finds that the proceedings before the Münster District Court did not disclose any periods of unacceptable inactivity for which the national authorities can be blamed.

The proceedings before the Hamm Court of Appeal lasted from 21 March 2003 until 27 January respectively 17 February 2004. Accordingly, those proceedings lasted approximately ten respectively eleven months. In the Court's view the length of this period cannot be criticised. Similar considerations apply to the proceedings before the Federal Constitutional Court lasting from 24 March 2004 to 29 September 2005, thus approximately one year and six months. The Federal Constitutional Court has dealt with the matter in a fully reasoned decision of approximately 20 pages.

As to what was at stake for the applicants, the Court recalls that in cases of this kind the authorities are under a duty to exercise exceptional diligence since there is always the danger that any procedural delay will result in the

de facto determination of the issue submitted to the court *(see H. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 120, p. 62-63, § 85).

However, making an overall assessment of the complexity of the case, the conduct of all concerned as well as the total length of the proceedings before three court instances, these proceedings did not, in the Court's view, go beyond what may be considered reasonable in this particular case.

In so far as the applicants complained that the courts did not fully establish the relevant facts necessary for a decision on the question of access and arbitrarily assessed the evidence, the Court considers that, in view of its findings above concerning the procedural obligations inherent in Article 8 of the Convention, no separate issue arises under Article 6 § 1 of the Convention.

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