

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

FORMER FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 497/09
by Ulrich KOCH
against Germany

The European Court of Human Rights (Former Fifth Section), sitting on 23 November 2010 and 31 May 2011 as a Chamber composed of:

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 22 December 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by two third-party interveners in the case, DIGNITAS, an association based in Switzerland aimed at securing to its members a life and death in line with human dignity, represented by Mr L. A. Minelli, and *Aktion Lebensrecht für alle e. V.* (AlfA), an association based in Germany dedicated to the protection of human life from conception to natural death, represented by the Alliance Defense Fund, the latter being represented by Mr R. Kiska, counsel,

Having regard to the parties' oral submissions at the hearing on 23 November 2010,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ulrich Koch, is a German national who was born in 1943 and lives in Braunschweig. He is represented before the Court by Mr D. Koch, a lawyer practising in Braunschweig. The respondent Government are represented by Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice. At the oral hearing on 23 November 2010 the applicant was represented by Mr D. Koch. The respondent Government were represented by Mrs A. Wittling-Vogel and by Mr C. Walter, professor of public law, assisted by Mr M. Indenhuck, Mrs V. Weißflog, and Mr V. Giesler, advisers.

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

A. The circumstances of the case

The applicant and his late wife, born in 1950, had lived together since 1978 and married in 1980. From 2002 onwards the applicant's late wife had been suffering from total sensorimotor quadriplegia after falling in front of her doorstep. She was almost completely paralysed and needed artificial ventilation and constant care and assistance from nursing staff. She further suffered from spasms. According to the medical assessment, she had a life-expectancy of at least fifteen more years. She wished to end what was, in her view, an undignified life by committing suicide with the applicant's help. The couple contacted the Swiss assisted-suicide organisation, Dignitas, for assistance.

In November 2004 the applicant's wife requested the Federal Institute for Drugs and Medical Devices (*Bundesinstitut für Arzneimittel und Medizinprodukte* – "the Federal Institute") to grant her authorisation to obtain 15 grams of pentobarbital of sodium, a lethal dose of medication that would enable her to commit suicide at her home in Braunschweig.

On 16 December 2004 the Federal Institute refused to grant her that authorisation, relying on section 5(1)(6) of the German Narcotics Act (*Betäubungsmittelgesetz* – see "Relevant domestic law" below). It found that her wish to commit suicide was diametrically opposed to the purpose of the Narcotics Act, which was aimed at securing the necessary medical care for the individuals concerned. Authorisation could therefore only be granted for life-supporting or life-sustaining purposes and not for the purpose of helping a person to end his or her life.

On 14 January 2005 the applicant and his wife lodged an administrative appeal with the Federal Institute.

In February 2005 the applicant and his wife, who had to be transported lying on her back on a stretcher, travelled for approximately ten hours over a distance of more than 700 kilometres from Braunschweig to Zurich in

Switzerland. On 12 February 2005 the applicant's wife committed suicide there, assisted by Dignitas.

On 3 March 2005 the Federal Institute confirmed its earlier decision. In addition, it expressed doubts as to whether a State-approved right of an individual to commit suicide could be derived from Article 8. In any event, Article 8 could not be interpreted as imposing an obligation on the State to facilitate the act of suicide with narcotic drugs by granting authorisation to acquire the lethal dose of medication. Furthermore, a right to commit suicide would be inconsistent with the higher-ranking principle enshrined in Article 2 § 2 of the German Basic Law (see "Relevant domestic law" below), which laid down the "comprehensive" obligation of the State to protect life, *inter alia* by refusing to grant authorisation to obtain a lethal dose of a drug for the purpose of committing suicide.

Finally, the Federal Institute "informed" the applicant that he had no standing to lodge an administrative appeal as he lacked the need for legal protection (*Rechtsschutzbedürfnis*). In particular, the applicant could not improve his own position through an appeal, as his legal position had not been the subject of the administrative proceedings.

On 4 April 2005 the applicant lodged an action for a declaration that the decisions of the Federal Institute had been unlawful (*Fortsetzungsfeststellungsklage*) and that it had thus had a duty to grant his wife the requested authorisation.

On 21 February 2006 the Cologne Administrative Court (*Verwaltungsgericht*) declared the applicant's action inadmissible. It found that he lacked standing to lodge the action as he could not claim to be the victim of a violation of his own rights. Accordingly, the Federal Institute's refusal to grant his wife authorisation to obtain a lethal dose of medication did not interfere with his right to protection of his marriage and family life as guaranteed by Article 6 § 1 of the Basic Law (*Grundgesetz* – see "Relevant domestic law" below). Any other interpretation would lead to the assumption that each infringement of the rights of one spouse would automatically also be an infringement of the rights of the other spouse. That assumption would water down the separate legal personality of each spouse, which was clearly not the purpose of Article 6 § 1 of the Basic Law. Furthermore, the contested decisions did not interfere with his own right to respect for family life under Article 8 of the Convention as they did not affect the way in which the applicant and his wife lived together.

Moreover, the applicant could not rely on his wife's rights, as the right to be granted authorisation to obtain the requested dose of drugs was of an eminently personal and non-transferable nature. Furthermore, even assuming that there had been a violation of his late wife's human dignity by the Federal Institute's refusal, according to the Federal Constitutional Court's case-law (see "Relevant domestic law and practice" below) the refusal could not produce effects beyond her life as it did not contain

elements of disparagement capable of impairing the applicant's wife's image in the eyes of posterity.

Finally, the court held that in any event the refusal of the Federal Institute to grant the applicant's wife the requested authorisation had been lawful and in compliance with Article 8 of the Convention. In particular, any interference with her right to respect for private life was necessary in a democratic society for the protection of health and life and thus also for the protection of the rights of others. Referring to the Court's judgment in the case of *Pretty* (see *Pretty v. the United Kingdom*, no. 2346/02, § 74, ECHR 2002-III), the court held that the domestic authorities had a wide margin of appreciation to assess the danger and risks of abuse. Therefore, the fact that the provisions of the Narcotics Act permitted exceptions only for what was medically needed could not be considered disproportionate.

On 22 June 2007 the North-Rhine Westphalia Administrative Court of Appeal (*Oberverwaltungsgericht*) dismissed the applicant's request for leave to appeal. It found, in particular, that the right to protection of marriage and family life under Article 6 § 1 of the Basic Law and Article 8 § 1 of the Convention did not confer a right to have the spouses' marriage terminated by the suicide of one of them. Moreover, it considered that the decisions of the Federal Institute had not interfered with the applicant's right to respect for private life within the meaning of Article 8 § 1 of the Convention. Even if the right to die had existed, its very personal character would not allow third persons to infer from Article 6 § 1 of the Basic Law or Article 8 § 1 of the Convention a right to facilitate another person's suicide. Finally, the applicant could not rely on Article 13 as he had no arguable claim to be the victim of a violation of a right guaranteed under the Convention.

On 4 November 2008 the Federal Constitutional Court (*Bundesverfassungsgericht*) declared a constitutional complaint lodged by the applicant inadmissible as he could not rely on a posthumous right of his wife to human dignity. It held that the posthumous protection of human dignity extended only to violations of the general right to respect, which was intrinsic to all human beings, and of the moral, personal and social value which a person had acquired throughout his or her own life. However, such violations were not at stake in respect of the applicant's wife.

Furthermore, the applicant was not entitled to lodge a constitutional complaint as legal successor to his deceased wife. In particular, it was not possible to lodge a constitutional complaint to assert another person's human dignity or other non-transferable rights. A legal successor could only introduce a constitutional complaint in cases which primarily involved pecuniary claims and where the complaint was aimed at pursuing the successor's own interests.

B. Relevant domestic law and practice

1. The Basic Law

Article 6 § 1 of the Basic Law provides that marriage and family enjoy the special protection of the State.

Under Article 2 § 2 of the Basic Law every person has the right to life and physical integrity.

The Federal Constitutional Court has accepted the posthumous protection of human dignity in cases where the image of the deceased person had been impaired in the eyes of posterity by ostracism, defamation, mockery or other forms of disparagement (see decision of 5 April 2001, no. 1 BvR 932/94).

2. The Narcotics Act

The Narcotics Act governs the control of narcotic drugs. Three annexes to the Act enumerate the substances which are considered as drugs, including pentobarbital of sodium in Annex III.

According to section 4 (1) no. 3 (a) of the Narcotics Act it is permissible to obtain the substances listed in Annex III if they are prescribed by a medical practitioner. In all other cases, section 3(1)(1) of the Act provides that the cultivation, manufacture, import, export, acquisition, trade and sale of drugs are subject to authorisation from the Federal Institute for Drugs and Medical Devices.

In accordance with section 5(1)(6) of the Act, no such authorisation can be granted if the nature and purpose of the proposed use of the drug contravenes the purposes of the Narcotics Act, namely, to secure the necessary medical care of the population, to eliminate drug abuse and to prevent drug addiction.

Doctors may only prescribe pentobarbital of sodium if the use thereof on or in the human body is justified (section 13 (1) (1) of the Narcotics Act).

3. Provisions governing doctors' duties at the end of a patient's life

(a) Criminal responsibility

Section 216 of the Criminal Code reads as follows:

Killing at the request of the victim; mercy killing

"(1) If a person is induced to kill by the express and earnest request of the victim the penalty shall be imprisonment from six months to five years.

(2) Attempts shall be punishable"

Committing suicide autonomously is exempt from punishment under German criminal law. It follows that the act of assisting an autonomous suicide does not fall within the ambit of section 216 of the Criminal Code and is exempt from punishment. However, a person can be held criminally

responsible under the Narcotics Act for having provided a lethal drug to an individual wishing to end his or her life.

According to the case-law of the Federal Court of Justice (compare judgment of 13 September 1994, 1 StR 357/94) the discontinuation of a life-prolonging treatment of a terminally ill patient with the patient's consent does not engage criminal responsibility. This applies irrespective of the fact that the interruption of the treatment has to be effected by actively stopping and switching off the medical device (Federal Court of Justice, judgment of 25 June 2010, 2 St/R 454/09).

(b) Professional rules for doctors

The professional codes of conduct are drawn up by the medical associations under the supervision of the health authorities. The codes are largely similar to the Model Professional Code for German Doctors, section 16 of which provides as follows:

(Assisting the dying)

"(1) Doctors may – prioritising the will of the patient – refrain from life-prolonging measures and limit their activities to the mitigation of symptoms only if postponement of an inevitable death would merely constitute an unacceptable prolongation of suffering for the dying person.

(2) Doctors may not actively curtail the life of the dying person. They may not put their own interests, or the interests of third parties, above the well-being of the patient."

Contraventions against the Professional Code of Conduct are sanctioned by disciplinary measures culminating in a withdrawal of the licence to practise medicine.

In connection with the demand for doctor-assisted suicide, the 112th German Medical Assembly of May 2009 resolved that doctors should provide assistance in and during the process of dying, but should not help patients to die, as the involvement of a doctor in suicide would contravene medical ethics.

THE LAW

I. ALLEGED VIOLATION OF THE APPLICANT'S WIFE'S RIGHTS UNDER ARTICLE 8 OF THE CONVENTION

The applicant complained that the refusal to grant his late wife authorisation to obtain a lethal dose of pentobarbital of sodium violated her right to respect for private and family life under Article 8 of the Convention, which reads 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. The Government's submissions

The Government considered that the applicant could not claim to be a victim of a violation of his Convention rights within the meaning of Article 34 of the Convention. They pointed out that the applicant himself was not the subject of the State measure complained of; neither could he qualify as an "indirect victim". Relying on the Court's decision in the case of *Sanles Sanles* (see *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI), the Government submitted that the asserted right to end one's own life was of an eminently personal and non-transferable nature and that the applicant could therefore not assert this right in the name of his deceased wife. There was no reason to depart from this case-law. The applicant's participation in the domestic proceedings could not turn an eminently personal right, such as the alleged right to assistance in order to end one's life, into a right which could be enforced by others.

But even if the asserted right were to be considered transferable, the applicant could not complain of a violation of his deceased wife's right under Article 8 of the Convention. Under the pertinent case-law of the Court, close relatives complaining of a violation of a transferable Convention right had to be personally affected to a degree and in a manner which went beyond the emotional impact that inevitably ensued from the violation of Convention rights of close relatives. There was no indication that the applicant's suffering had gone beyond a burden that was inevitable when a spouse faced obstacles in organising his or her suicide. In contrast to those cases in which the victim was hindered by State action in lodging an application, the applicant's wife had been in a position to lodge a complaint with the Court herself even after the alleged violation of the Convention. The fact that she had ended her life of her own accord before lodging an application could not result in an extension of the entitlement to lodge an application, having particular regard to the fact that she had not availed herself of the possibility to accelerate the proceedings by requesting interim measures.

The Government further considered that the applicant could not plead that a decision on the application was in the public interest, because the Court had already clarified the relevant issues regarding Article 8 of the Convention in its *Pretty* judgment (cited above), and Article 37 § 1 of the Convention was not applicable to a case in which the immediate victim of a

measure taken by the State had died before lodging an application with the Court.

According to the Government, Article 8 of the Convention was not applicable in the instant case. They considered that the instant case had to be distinguished from the *Pretty* case in that the applicant's wife had not sought protection from State interference with the realisation of her wish to end her life, but had sought to oblige the State to facilitate the acquisition of a specific drug so that she could take her life in the manner she desired. Such a duty would be diametrically opposed to the values of the Convention, and especially to the State's duty under Article 2 to protect life.

Even if the claimed right should fall within the ambit of Article 8, the Government considered that the refusal to grant authorisation had been justified under paragraph 2 of that Article. The decision taken by the Federal Institute for Drugs and Medical Devices had a legal basis in the relevant provisions of the Narcotics Act and pursued the legitimate aim of protecting health and the right to life.

As regards the question whether the decision was necessary in a democratic society, the Government considered that they should be granted a broad margin of appreciation, having particular regard to the fact that the legal situation in the Member States varied considerably. They further referred to the ethical dimension of the question whether and to what extent the State should facilitate or support suicide, which was demonstrated by the fact that the questions at stake had been examined by the German National Ethics Council (*Nationaler Ethikrat*). Finally, the fundamental importance which the German legal order attached to the protection of life against inflicted euthanasia also had strong historical reasons which had led to a particularly forceful legal concept of human dignity.

The Government further submitted that Mrs Koch had other possibilities at her disposal to end her life painlessly. In particular, she could have demanded that her doctor switch off the respiratory equipment while being treated with palliative measures. Under the law as applied by the domestic courts at the relevant time (see “Relevant domestic law and practice”, above) her doctor would not have risked criminal responsibility.

The Government finally submitted that it was primarily for the authorities to assess what risks were entailed in the granting of unrestricted access to drugs. They considered that granting unrestricted access to a lethal drug could create an appearance of normality and ultimately make the elderly and the seriously ill feel under pressure “not to become a burden”. Summing up, the Government considered that the overriding interest of protecting life had justified the refusal to grant the applicant's wife authorisation to obtain a lethal dose of pentobarbital of sodium.

2. The applicant's submissions

The applicant submitted that the Court had previously considered closest family members to be victims within the meaning of Article 34 of the Convention because of their close relationship to the person mainly concerned, if the interference had implications for the family member lodging the application. In the case at hand, the applicant and his wife had found themselves in a terrible situation, which also concerned the applicant as a compassionate husband and devoted carer. As the relationship between husband and wife was extremely close, any infringement directed against the rights and liberties of one partner was directed against the rights which were shared by both partners. It followed that each partner in the marriage was entitled to defend the joint rights and liberties of both partners and that the applicant was himself a victim of a violation of his late wife's Convention rights.

In the present case, denying the right of the widower to complain about the conduct of the German authorities would mean that the applicant's late wife would have been forced to stay alive – with all the suffering this implied – until the entire proceedings before the domestic courts, as well as before the Court, were terminated, in order not to lose her right to submit her complaint. As the applicant's wife had died shortly after lodging the administrative appeal in January 2005, she had had no factual possibility of accelerating the court proceedings by requesting interim measures.

As a consequence, the questions raised in the present application would never be answered unless a patient endured many years of additional suffering. This would be in direct contradiction to the essence of the Convention, which was the protection of human dignity, freedom and autonomy and to the principles emphasised in the *Artico* judgment (*Artico v. Italy*, 13 May 1980, Series A no. 37).

The applicant further considered that the instant case could be distinguished from the *Sanles Sanles* case. In particular, he shared a much closer relationship with the deceased person than the sister-in-law who lodged the complaint in the above-mentioned case. Furthermore, the applicant, in the instant case, could claim a violation both of his deceased wife's rights and of his own rights under Article 8.

It was decisive that the applicant and his wife had jointly submitted an administrative appeal against the Federal Institute's decision. After his wife's death he had pursued the proceedings before the courts. It followed that he had a legitimate interest to pursue this case before the Court. The applicant further emphasised that there was a particular general interest in a ruling on the issues raised by the instant case.

According to the applicant, Article 8 of the Convention encompassed the right to end one's own life. The right to life in the sense of Article 2 did not contain any obligation to live until the “natural end”. Mrs Koch's decision to end her biological life did not imply that she waived in any way her right to

life. The lethal dose of medication requested by the applicant's wife would have been necessary in order to allow her to end her life by a painless and dignified death in her own family home. As a consequence of the refusal to authorise the purchase, she had been forced to travel to Switzerland in order to end her life.

There were no other means available which would have allowed her to end her life in her family home. In particular, the pertinent rules would not have allowed Mrs Koch to end her life by interrupting life-supporting treatment in a medically assisted way, as she was not terminally ill at the time she decided to put an end to her life. The pertinent law in this area was and remained unclear and only allowed the interruption of life-support for patients suffering from a life-threatening illness.

The decisions had failed to pursue a legitimate aim and were not necessary within the meaning of paragraph 2 of Article 8. The applicant accepted that a measure of control was necessary in order to prevent abuse of lethal medication. However, suicide should be allowed if it was justified on medical grounds. The applicant further considered that assisted suicide was not incompatible with Christian values and was more broadly accepted by society than the Government might assume. In this respect, the applicant referred to several public statements issued by individual persons and non-governmental organisations in Germany.

The applicant further emphasised that he did not advocate the provision of unrestricted access to lethal drugs, but merely considered that his wife should have been authorised the requested dose in this individual case. There was no indication that the decision of an adult and sane person to end his or her life ran counter to the public interest. The rules set out by the German Medical Association, which prohibited the prescription of lethal doses of drugs, were regulations laid down by a private association setting strict limits to the personal liberty of every German doctor.

There was no risk that the requested authorisation would lead to an abuse of narcotic substances. In this connection, the applicant pointed out that pentobarbital of sodium was widely prescribed as a means of assisted suicide in Switzerland without this having any negative effects.

3. The third party's submissions

(a) Dignitas

The third party submitted that a person's decision to determine the manner of ending his or her life was part of the right to self-determination protected by Article 8 of the Convention. A Contracting State should only regulate the right of an individual who independently decided on the time or methods of his or her demise in order to prevent hasty and insufficiently considered actions. In so far as the associations working in this field already had preventive mechanisms in place, governmental measures were not

necessary in a democratic society. The third party further considered that the requirements laid down in the *Artico* judgment of the Court (cited above) could only be fulfilled if pentobarbital of sodium was made available to persons wishing to end their life and if at the same time experienced personnel ensured its correct application. The third party finally submitted that the option of an assisted suicide without having to face the heavy risk inherent in commonly known suicide attempts was one of the best methods of suicide prevention.

(b) *Aktion Lebensrecht für Alle* e. V. (*AlfA*)

Referring to the Court's case-law in the cases of *Sanles Sanles* (cited above) and *Biç and Others v. Turkey* (no. 55955/00, 2 February 2006), this third party submitted that the applicant could not claim to be a victim of a violation of his late wife's Convention rights. Neither the Convention nor any other document governing the right to life had ever recognised the converse right to die. The liberalisation of assisted suicide in the Netherlands had led to an alarming number of abuse cases, in which lethal injections were given without the patient's consent.

Furthermore, a blanket ban on assisted suicide was not a disproportionate restriction on the right to privacy enshrined in Article 8 of the Convention as such law reflected the importance of the right to life. The restrictions existing in Germany were necessary in the overriding interest of protecting life until natural death. Doctors overwhelmingly concurred that palliative care improvements rendered assisted suicide unnecessary.

4. The Court's assessment

The Court considers that the question of the applicant's victim status raises an issue which falls to be examined together with the complaint about the lack of an effective remedy, and accordingly joins it to the merits.

The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that the Government's objection should be joined to the merits. No other ground for declaring the complaint inadmissible has been established.

It follows that this complaint is to be declared admissible.

II. ALLEGED VIOLATION OF THE APPLICANT'S OWN RIGHTS UNDER ARTICLE 8 OF THE CONVENTION

1. The applicant's submissions

Relying on Article 8 of the Convention, the applicant complained that the domestic authorities' refusal to authorise his wife to acquire a lethal dose of pentobarbital of sodium had infringed his own right to respect for private and family life as his wife had been prevented from ending her life within

the privacy of their family home, as originally planned by the couple, and instead he had been forced to travel to Switzerland to enable his wife to commit suicide.

There had been no pressing social need to deny the applicant's wife the right to acquire the drug. It would not have entailed any risk for public health or the health of any third individual to allow her to acquire the drug. In particular, the measure had been disproportionate as the German Narcotics Act, as interpreted by the domestic courts, did not allow for any exceptions to the ban on acquiring the drug with the aim of allowing persons wishing to end their life to assert their autonomy.

2. The Government's submissions

The Government did not dispute the fact that the applicant had been emotionally affected by his wife's suicide and the surrounding circumstances. It was true that the Court had accepted that under very specific circumstances serious violations of the Convention rights guaranteed in Articles 2 and 3 might give rise to additional violations of close relatives in view of the emotional distress inflicted upon them if their distress went beyond what was inevitably caused to relatives of a victim of a serious human rights violation. However, there was no indication that, in terms of degree and manner, the applicant's suffering went beyond the burden that was inevitable when a spouse faced obstacles in organising his or her suicide.

Furthermore, the couple's final journey to Switzerland could only have been prevented if there had been a legal duty for the State to provide Mrs Koch with the desired drug to end her life. As such duty did not exist with respect to Mrs Koch, neither could it exist with respect to the applicant.

3. The Court's assessment

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. No other ground for declaring it inadmissible has been established.

It follows that this complaint is to be declared admissible.

III. ALLEGED VIOLATION OF THE APPLICANT'S RIGHTS UNDER ARTICLE 13 OF THE CONVENTION

Relying on Article 13 in conjunction with Article 8 of the Convention, the applicant complained that the German courts had violated his right to an effective remedy when denying his right to challenge the Federal Institute's

refusal to grant his wife the requested authorisation. Article 13 of the Convention reads as follows:

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

Referring to their submissions on the applicant's status as a victim, the Government submitted that Article 13 was not applicable in the present case because the applicant could not claim to be a victim of a violation of a Convention right. Both the Administrative Court and the Administrative Court of Appeal had examined a possible violation of the applicant's own rights under Article 8 of the Convention but had come to the conclusion that the applicant could not rely on this provision. The fact that the applicant's complaint had been rejected on admissibility grounds did not mean that Article 8 had not been taken into account.

Furthermore, there was no indication that the domestic proceedings, if they had been pursued further by Mrs Koch herself, would have lasted as long as the current proceedings, which had only been started after her death and which, precisely for that reason, did not require a particularly expeditious treatment. There was, moreover, no indication that Mrs Koch had availed herself of the possibility to request interim measures in order to obtain a speedy decision.

The Government finally submitted that the applicant, following his wife's death, did not have an ongoing individualised legal interest in having his wife's case examined by the courts.

The applicant contested these arguments.

The Court considers that the question of the applicability of Article 13 in conjunction with Article 8 raises an issue which falls to be examined together with the complaint about a violation of the applicant's rights under Article 8 and accordingly joins it to the merits. The Court, as master of the characterisation to be given in law to the facts of the case (see *Kutzner v. Germany*, no. 46544/99, § 56, ECHR 2002-I), further considers that the instant complaint might also fall to be examined under Article 6 § 1 of the Convention with respect to the right of access to a court.

The Court considers that the complaint about the denial to allow the applicant to challenge the Federal Institute's refusal to grant his wife the requested authorisation is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. No other ground for declaring it inadmissible has been established.

It follows that this complaint is likewise to be declared admissible.

For these reasons, the Court by a majority,

Decides to join to the merits the questions whether the applicant has the legal standing to complain about a violation of his late wife's Convention rights and whether Article 13 in conjunction with Article 8 is applicable in the instant case;

Declares the application admissible, without prejudging the merits of the case.

Claudia Westerdiek
Registrar

Peer Lorenzen
President