CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31178/96
by Werner PETERSEN
against Germany

The European Court of Human Rights (Third Section), sitting on 6 December 2001 as a Chamber composed of

Mr L. CAFLISCH, *President,*
Mr G. RESS,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 8 February 1996 and registered on 25 April 1996,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Werner Petersen, is a German national, who was born in 1947 and lives in Neustadt. He was represented before the Court by Mr Rixe, a lawyer practising in Bielefeld. The respondent Government were represented by their Agents, Mrs H. Voelskow-Thies, *Ministerialdirigentin*, of the Federal Ministry of Justice, at the initial stage of the proceedings, and subsequently by Mr K. Stoltenberg, *Ministerialdirigent*, also of the Federal Ministry of Justice.

Further applications concerning his right of access to his son and related matters are pending before the Court (No. 38282/97 and No. 68891/01).

A. The circumstances of the case

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

1. Factual background

The applicant is the father of the child Sinja Johannes, born out of wedlock in Helmstedt on 3 May 1985. The applicant had been living with Ms S. B., the child's mother, since May 1980. They agreed that the child should bear his mother's surname, i.e. B. After their separation in November 1985, the applicant continued to pay maintenance and he had regular contacts with the child until autumn 1993.

In August 1993 Ms S. B. married Mr K., who was the father of her daughter, born out of wedlock in 1990 and bearing the surname K. They chose the husband's surname name as their family name and she availed herself of the right to put her surname in front of that.

2. Proceedings regarding the change of the child's surname

In November 1993 the applicant asked the Youth Office of the Bremen Municipality whether Ms B.-K. had applied for a change of Sinja's surname. By letter of 20 December 1993 he was informed that she had inquired into this possibility, however, no request had been filed yet. In his letter, the competent administrator, acting for the Youth Office as guardian, added that, should such a request be lodged, he would agree as the step-father had already been living together with Ms. B.-K. and the child for more than one year and the child fully accepted him.

On 30 December 1993 Ms B.-K. and Mr K. had statements recorded at the Bremen Registry Office according to which they gave their family name to Sinja Johannes. They also filed a document issued by the Bremen Youth

Office on 29 December 1993 according to which, on behalf of the child, it agreed to the change of surname. The Bremen Registry Office informed the Helmstedt Registry Office accordingly and the registrar at Helmstedt Registry Office thereupon added the change of the child's surname to the record of his birth.

Following correspondence with the Bremen Youth Office, the applicant filed an action with the Bremen Administrative Court against the Bremen Municipality, complaining that the Youth Office had failed to hear him on the question of the envisaged change of his son's surname.

On 19 May 1994 the Bremen Administrative Court ruled that it was incompetent to entertain the applicant's action and transferred the case to the Braunschweig District Court.

On 21 October 1994 the Braunschweig District Court dismissed the applicant's claim for rectification of the record of his son's birth as far as the entry of the change of surname was concerned. The court found that this entry was correct as the child's surname had been changed in accordance with section 1618 of the Civil Code and the relevant procedural rules. The Court further considered that section 1618 of the Civil Code did not amount to discrimination and was not in breach of Article 8 of the Convention. The Court observed that the legislator was called upon the ensure that children born out of wedlock had the same opportunities for their physical and spiritual development and their place in society as were enjoyed by children born in wedlock. The legislator had meanwhile enacted legislation to this effect. Even assuming that further measures were necessary, on the whole, section 1618 of the Civil Code did not affect the equality between children born out of wedlock and children born in wedlock. Rather, in providing for the possibility of having the same surname, section 1618 secured that the child's status as a child born out of wedlock was not disclosed to the public.

Moreover, as far as procedural matters were concerned, the proceedings for a change of surname in which the natural father did not participate could not be objected to from a constitutional point of view. In particular there was no breach of the applicant's rights as a natural parent as his child had never borne the father's surname. The change of surname served the interests of the child. In any event, a mere right of the natural father to be heard in the proceedings, as argued by the applicant, without a possibility to prevent the change of surname would not be effective because the mother and the step-father would eventually decide.

On 4 January 1995 the Braunschweig Regional Court dismissed the applicant's appeal. The Regional Court endorsed the reasoning of the District Court and stated in particular that there were no indications that the legal provisions applied in the present case were unconstitutional. The Court further confirmed that the change of surname served the interest of the child's well-being which prevailed over the interests of the natural father.

On 10 March 1995 the Braunschweig Court of Appeal dismissed the applicant's further appeal. Referring to case-law of the Federal Constitutional Court, it considered that section 1618 of the Civil Court could not be objected to from a constitutional point of view. The applicant could not derive from his rights as a natural father a right to be heard in the proceedings for the change of his child's surname, because his rights conflicted with the rights of the mother and in particular of the child whom this provision intended to protect. The child's interests are safeguarded in that the Youth Office participates in the proceedings. If the child's mother, her husband and the guardian agree upon the change of the child's surname, this change is generally in the interest of the child's well-being.

2. Compensation proceedings regarding the refusal of access

In January 1994, following problems in having access to his son, the applicant applied to the Bremen District Court for a decision granting him a right of access to Sinja Johannes. In April 1994 the District Court granted him provisionally access. Subsequently, the child's mother no longer fully complied with the decision and prohibited visits as from October 1994.

On 3 January 1995 the applicant instituted proceedings with the Bremen District Court against Ms B.-K. claiming a sum amounting to 370.80 German marks (DEM) as compensation for damages suffered by him, namely costs for travelling, due to her refusal of access to his son on 16 October and 13 November 1994.

On 5 April 1995 the Bremen District Court, following an oral hearing on 22 March 1995, dismissed the applicant's action. The court found that there was no legal basis to claim compensation for an alleged refusal of access to his son. In this respect, the court noted that, pursuant to section 1711 of the Civil Code, the person having custody and care of a child born out of wedlock determines contact arrangements with the father, and that the father can only claim personal contacts if they are in the child's interests. The court also observed that its decision of August 1994 on provisional visiting arrangements was formulated as granting the child a right to visit the applicant, not as a right of access awarded to the applicant.

3. Proceedings before the Federal Constitutional Court

On 17 August 1995 the Federal Constitutional Court refused to entertain the applicant's constitutional complaints against the decisions taken in the above proceedings concerning the change of his son's surname and the refusal of his compensation claim, respectively. The Constitutional Court found that the conditions for admitting these complaints for a decision on their merits were not met.

The Constitutional Court considered in particular that the applicant's complaint about the change of his son's surname did not raise any questions of fundamental importance. Referring to its decision of 7 March 1995, the Constitutional Court recalled that fathers of children born out of wedlock enjoyed the right to the care and upbringing of the children under the Basic Law (*Grundgesetz*) even if they were not living with the child's mother and were not educating the child together with her. However, the legislator was called upon to enact rules in case of conflict between the parents. In the present case, there was no indication that the courts, in interpreting and applying section 1618 of the Civil Code, had disregarded the applicant's right as a parent.

As regards the District Court's decision of 5 April 1995, the Constitutional Court considered that there were no indications that the applicant's constitutional right as a parent to have access to his child had to be safeguarded by means of an action in tort.

The decision was served on 22 August 1995.

B. Relevant domestic law

The statutory provisions on family matters are to be found in the German Civil Code. They have been amended on several occasions and many were repealed by the amended Law on Family Matters (*Reform zum Kindschaftsrecht*) of 16 December 1997 (Federal Gazette 1997, p. 2942), which came into force on 1 July 1998.

1. Matters relating to the surnames of children

a. Legislation in force at the material time

Pursuant to section 1617 of the Civil Code, a child born out of wedlock was given the surname which the mother was bearing at the time of the child's birth. A change of the mother's surname on account of her marriage did not affect the child's surname.

Section 1618 of the Civil Code provided that the mother of a child born out of wedlock and her husband could declare for the record of a registrar that the child, who was bearing a surname in accordance with section 1617 and was not married, should in future bear their family name; and the father of the child could declare for the record of a registrar that the child should in future bear his surname. The child had agree to the change of surname, and, in case that the father declared that the child should bear his surname, the mother also had to agree. A minor child was represented in these matters by the competent Youth Office acting as guardian pursuant to sections 1706, 1709 of the Civil Code.

As regards children born in wedlock, section 1616 of the Civil Code provided that they were given their parents' common family name or, if they have not chosen a family name, the mother's or the father's surname, as chosen by them. In the absence of a determination by them, the competent court transferred the right to choose the surname to one of the parents whose surname would be the child's surname in the absence of a decision within one month. According to section 1616a § 2, a change of the surname of one of the parents on account of marriage did not affect the child's surname.

A change of surnames of children born in wedlock following divorce and remarriage of the parent having the right to custody was governed by the general rules on the change of surnames under the Change of Surnames Act (*Namensänderungsgesetz*). According to section 3 § 1, a surname may only be changed if there is an important reason to justify such a change. The relevant circumstances are to be established ex officio, and all persons directly affected by the envisaged change (*unmittelbar Beteiligte*) as well as the local police office and other persons possibly affected by the envisaged change of the surname shall be heard (section 3 § 2).

b. Legislation currently in force

The relevant provisions of the Civil Code, as amended, distinguish between three situations. Children are given the common family name of their parents (section 1616). If there is no common family name and custody is exercised jointly, both parents determine the child's surname (section 1617 with special rules in the absence of such common determination). If there is no common family name and one parent has the sole custody, the child is given that parent's surname (section 1617a § 1) or, upon the request of the parent exercising custody and in agreement with the other parent, the child can be given the other parent's surname (section 1617a § 2).

Section 1618 provides in particular that a parent, who has the sole custody for an unmarried child, and this parent's spouse who is not a parent of the child, can declare for the record of a registrar that the child shall in future bear their family name. If the child has borne the other parent's surname, that other parent has to agree to the change; the agreement can be replaced by a court decision if necessary in the interest of the child.

2. Matters relating to access

a. Legislation in force at the material time

Before the entry into force of the amended Law on Family Matters, the relevant provisions of the Civil Code concerning custody of and access to a child born out of wedlock were worded as follows (the Court's translation):

Section 1705

"Custody over a minor child born out of wedlock is exercised by the child's mother..."

Section 1711

"1. The person having custody of the child shall determine the father's right of access to the child. Section 1634 § 1, second sentence, applies by analogy.

2. If it is in the child's interests to have personal contact with the father, the guardianship court can decide that the father has a right to personal contact. Section 1634 § 2 applies by analogy. The guardianship court can change its decision at any time.

3. The right to request information about the child's personal circumstances is set out in section 1634 § 3.

4. Where appropriate, the youth office shall mediate between the father and the person who exercises the right of custody."

b. Legislation on family matters currently in force

Section 1626 § 1 reads as follows (the Court's translation):

"The father and the mother have the right and the duty to exercise parental authority (*elterliche Sorge*) over a minor child. The parental authority includes the custody (*Personensorge*) and the care of property (*Vermögenssorge*) of the child."

Pursuant to section 1626 a § 1, as amended, the parents of a minor child born out of wedlock jointly exercise custody if they make a declaration to that effect (declaration on joint custody) or if they marry. According to Section 1684, as amended, a child is entitled to have access to both parents; each parent is obliged to have contact with, and entitled to have access to, the child. Moreover, the parents must not do anything that would harm the child's relationship with the other parent or seriously interfere with the child's upbringing. The family courts can determine the scope of the right of access and prescribe more specific rules for its exercise, also with regard to third parties; and they may order the parties to fulfil their obligations towards the child. The family courts can, however, restrict or suspend that right 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 authority or an association.

3. The Act on Non-Contentious Proceedings

Proceedings in family matters are governed by the Act on Non-Contentious Proceedings (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit*).

According to section 12 of that Act, the court shall, *ex officio*, take the measures of investigation that are necessary to establish the relevant facts and take the evidence that appears appropriate.

Persons with a legitimate interest in a case may apply to the court for leave to inspect and obtain copies of documents or evidence in any particular case (section 34 § 1).

COMPLAINTS

1. The applicant complains about the decisions relating to the change of his son's surname. The applicant alleges that the change of his son's surname violates his right to respect for their family life within the meaning of Article 8 of the Convention. He also invokes Article 14, taken in conjunction with Article 8.

The applicant submits in particular that the change of surname has no legitimate aim as generally the child's well-being requires continuity in his name as means of personal identification. The child's representation by the guardian does not sufficiently safeguard the child's interests as the Youth Office regularly hears only the mother and her husband and not the child concerned. Moreover, his interests as the natural father were not duly taken into account, as neither his consent nor even his participation in these proceedings had been required.

With regard to this procedural aspect, he also contends that there is discrimination as compared to fathers of children born in wedlock who, if the question of a change of the child's surname arises after divorce and remarriage of the mother, are heard in the proceedings under the Change of Surnames Act.

2. The applicant further complains under Article 6 of the Convention that the Bremen Administrative Court, the Braunschweig District and the Braunschweig Regional Court held no oral hearing and did not pronounce their judgments publicly. He submits that he did not raise this issue in his constitutional complaint in view of constant case-law of the Constitutional Court on this point.

3. The applicant also complains under Articles 8 and 14 about the Bremen District Court's decision of 5 April 1995, dismissing his compensation claims for refusal of access to his son. He considers that the German authorities failed to take any appropriate steps to reestablish contacts between him and his son. He contends that a father of a child born in wedlock is entitled to compensation if the mother refuses to comply with his right of access.

THE LAW

1. The applicant raises several complaints about German court decisions concerning his parental rights in his own name, but also on behalf of his child.

As regards the criteria for *locus standi*, Article 34 of the Convention provides as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

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 the event of a conflict over a minor's interests between a natural parent and the person appointed by the authorities to act as the child's guardian, there is a danger that some of those interests will never be brought to the Court's attention and the minor will be deprived of effective protection of his rights under the Convention. In such cases, even though the parent has been deprived of parental rights and this indeed is one of the causes of the dispute referred to the Court, 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, § 169, ECHR 2000-VIII - (13.7.00)).

The present case relates to disputes between the mother who has custody over the child and the applicant, his natural father. Such conflicts concerning parental rights other than custody do not oppose parents and the State on the question of deprivation of custody where the State as holder of custodial rights cannot be deemed to ensure the children's Convention

rights. In cases arising out of disputes between parents, it is the parent entitled to custody who is entrusted with safeguarding the child's interests. In these situations, the position as natural parent cannot be regarded as a sufficient basis to bring an application also on behalf of a child (cf. Sahin v. Germany (dec.), no. 30943/96, 12 December 2000, reported).

Consequently, the applicant has no standing to act on the child's behalf.

2. The applicant alleges that the change of his son's surname violates his right to respect for his family life, as guaranteed by Article 8 of the Convention which reads:

> "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."

The Government admit that the relationship between the applicant and his son comes within the notion of family life under Article 8 § 1. However, they submit that, as the child had been bearing his mother's surname, the change of surname did not affect the applicant's interests. At no point in time was there an identity in name between the applicant and his child.

In the applicant's submissions, Article 8 protects the parents' common choice of a child's surname and applies to any subsequent change. His interests were at stake irrespective of whether his son had his surname. According to the applicant, the change of his child's surname amounted to an interference with his right to respect of his family life, which was not justified under paragraph 2 of Article 8.

The Court recalls that the notion of family under this provision is not confined to marriage-based relationships and may encompass other *de facto* "family" ties where the parties are living together out of wedlock. A child born out of such a relationship is *ipso jure* part of that "family" unit from the moment and by the very fact of his birth. Thus there exists between the child and his parents a bond amounting to family life (see the Keegan v. Ireland judgment of 26 May 1994, Series A no. 290, pp. 18-19, § 44).

Furthermore, the protection afforded by Article 8 continues even if the relationship between the parents has broken down (see, amongst others, the Johansen v. Norway judgment of 7 August 1996, *Reports* 1996-III, pp. 1001-1002, § 52, and *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000-VIII).

In the present case, the applicant and Ms B.-K. were living together since 1980; their son Sinja Johannes was born out of wedlock in 1985. The applicant and Ms B.-K. separated shortly afterwards. The applicant continued to have regular access to his son until autumn 1993.

In these circumstances, the Court considers that from the moment of the child's birth there existed a bond between him and the applicant which amounted to family life and which did not break down following the parents' separation.

As the Court has previously found, an individual's name does concern his or her private and family life, since it constitutes a means of personal identification and a link to a family (cf. Burghartz v. Switzerland judgment of 22 February 1994, Series A no. 280-B, p. 28, § 24; Stjerna v. Finland judgment of 25 November 1994, Series A no. 299-B, p. 60, § 37).

Following the separation of the parents, a parent who does not exercise the right of custody may regard the fact that the child continues to bear a joint surname as an outer sign of the continuing bond between them. In such a situation, the subsequent change of the child's surname may be considered as further weakening the family bond between father and child, thereby amounting to an interference with this parent's right to respect for family life, as guaranteed under Article 8 § 1 (Eur. Commission HR, application no. 28319/95, Dec. 20 May 1996, D.R. 85, p. 153).

The Court observes that, upon his birth, the applicant's son Sinja Johannes was given the surname B., his mother's surname at that time. With this choice, the parents stuck to the general statutory rule according to which, at the material time, children born out of wedlock are given their mother's surname. The applicant did not have resort to the possibility under German law that his child should be given his surname in order to demonstrate the natural link between them. Consequently, the child's surname did, at no stage, constitute an outer sign of a bond between the applicant and his child.

In these circumstances, the connections between the applicant's involvement in the choice of his child's surname at the time of his birth and the later change of this surname are too remote as to be constitute any legitimate interest in the protection of the applicant's family life with his son.

The decisions relating to the change of Sinja's surname therefore to not disclose any failure to respect his family life under Article 8 § 1.

It follows that this part of the application must be rejected as being manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

3. The applicant further complains that the proceedings concerning the change of his son's surname discriminated against him as natural father. In this respect, Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government, referring to the legal situation after the legislative amendments, contend that there had been no discrimination against the applicant. In their view, a continued common identity of name is a precondition for a parent's involvement in the proceedings for the change of the child's name.

The applicant objects to the Government's argument, stating that parents of children born in wedlock have to be heard in proceedings for a change of surname irrespective of whether there was the said identity in name.

As the Court has consistently held, Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions - and to this extent it is autonomous -, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, the Van Raalte v. the Netherlands judgment of 21 February 1997, *Reports* 1997-I, p. 184, § 33).

The Court has found above that in the circumstances of the present case, the specific facts complained about, namely the change of the child's surname, did not directly affect the applicant's family life. He cannot therefore claim that in this respect he had been discriminated against in the enjoyment of his right to respect of his right to family life (see, *mutatis mutandis,* the Marckx v. Belgium judgment of 13 June 1979, Series A no. 31, p. 23, § 50; and Prince Hans-Adam II of Liechtenstein v. Germany [GC], No. 42527/98, § 92, to be published in *Reports* 2001).

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

4. The applicant raises also several procedural complaints regarding the proceedings concerning the change of his son's surname and relies on Article 6 § 1 of the Convention which, as far as relevant, reads:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

As the applicant wished to assert a claim which he considered to relate to his right to respect for his family life, the Court starts with the assumption that Article 6 § 1 in principle applies.

However, as regards the proceedings before the Bremen Administrative Court, the Court notes that that court merely ruled that it had no jurisdiction to entertain the applicant's action. It did not take any decision as to the merits of the applicant's request. This aspect of the proceedings therefore falls outside the scope of Article 6 § 1.

The Court notes that the applicant pursued his request to have the entry into the birth register concerning the change of his child's surname removed in proceedings before the Braunschweig District Court and the Braunschweig Regional Court. Even assuming exhaustion of domestic remedies, as required by Article 35 § 1, the Court finds that the applicant's submissions do not disclose any unfairness of these proceedings.

The Court further considers that the applicant did not show that, at any stage, he requested that there be a hearing. Moreover, given the nature of the proceedings, in particular the applicant's purely legal arguments regarding the application of section 1618 of the Civil Code, it does not appear that the dispute raised issues of public importance such as to make a public hearing necessary (see, *mutatis mutandis,* the Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 20, § 58).

The Court recalls that in assessing the need for publicity, the national authorities should have regard to the demands of efficiency and economy, as in order to ensure compliance with the "reasonable time" requirement of Article 6 § 1 (see, *mutatis mutandis*, the Boddaert v. Belgium judgment of 12 October 1992, Series A no. 235-D, pp. 82-83, § 39; and the Schuler-Zgraggen judgment, *loc. cit.).*

As regards the applicant's complaint that the decisions rendered by the courts were not announced publicly, the Court recalls its long-standing case-law that the form of publicity given under the domestic law to a judgment must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (see the Sutter v. Switzerland judgment of 22 February 1984, Series A no. 74, § 33, and K.S. v. the United Kingdom (dec.), 25 September 2001).

Having regard to the nature of the proceedings, the Court considers that a literal interpretation of the terms of Article 6 § 1 concerning the pronouncement of judgments would be unnecessary for the purposes of public scrutiny. In this context it notes that anyone who can establish an interest may consult or obtain a copy of the full text of the decisions in cases relating to family matters.

The Court concludes that the Convention did not require that the proceedings be conducted in public or that the decisions in the present case should have been announced in public.

It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

5. The applicant lastly complains under Article 8 of the Convention, taken alone and in conjunction with Article 14, about the German court decision dismissing his compensation claims against Ms B.-K.

The Court notes that the applicant had difficulties in obtaining access to his son and that court proceedings to obtain a right of access were pending. The compensation proceedings before the Bremen District Court were not linked to the main proceedings on the question of access. The District Court dismissed the applicant's action on the ground that there was no legal basis to claim compensation for financial losses on account of the allegedly undue refusal of access to his child.

In these circumstances, the Court considers that the dispute between the applicant and Ms B. at issue here concerned primarily a financial matter and did not serve to obtain a decision on access or enforce access. These were issues reserved to the pending proceedings on the applicant's access claims.

This being so, the refusal of compensation did not touch the enjoyment of the applicant's right to respect for his family life, as guaranteed by Article 8 § 1. There is accordingly no room for the application of Article 14.

It follows that this part of the application must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Lucius CAFLISCH
President