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. 43026/05
by Werner PETERSEN
against Germany

The European Court of Human Rights (Third Section), sitting on 12 January 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mrs R. JAEGER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 27 October 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Werner Petersen, is a German national who was born in 1947 and lives in Neustadt. He is represented before the Court by Mr G. Rixe, a lawyer practising in Bielefeld.

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

1. Background to the case

The applicant is the father of the child S., born out of wedlock on 3 May 1985. He had been living with Ms B.-K., the child's mother, from May 1980 to November 1985. After their separation S. lived with his mother. The applicant had contacts with S. until autumn 1994, when Ms B.-K. prohibited further visits. He subsequently instituted numerous court proceedings concerning access to and custody of his son.

The applicant's repeated motions to be granted access to S. by a court order were to no avail. From April 1998 until S. attained the age of majority on 3 May 2003 proceedings concerning the applicant's renewed request to be granted access to S. were pending in the Bremen Regional Court.

Likewise, the applicant's motion lodged in 1995 to withdraw or restrict Ms B.-K.'s right of custody in order to prevent her from moving abroad for three years with S. and her family was dismissed. The national courts found that there were no indications that there were risks for the child's well-being which could justify an interference with Ms B.-K.'s right of custody. The applicant's motion lodged in 1999 to be granted joint custody of S. was equally rejected.

Two joint applications (nos. 38282/97 and 68891/01) concerning the said access and custody matters are pending with this Court.

On 6 December 2001 the Court declared inadmissible Mr Petersen's application no. 31178/96 concerning the change of S.'s surname after Ms B.-K.'s marriage and compensation for financial losses because of an undue refusal of access.

2. Request to withdraw Ms B.-K.'s right of custody (3 F 523/00)

On 19 August 2000 the applicant lodged a request with the Kirchhain District Court partly to withdraw Ms B.-K.'s custody of S. in order to secure the preparation of an expert report in the access proceedings pending in the Bremen Regional Court since April 1998. He also applied for interim measures to be taken.

On 1 March 2001 the Frankfurt (Main) Court of Appeal dismissed the applicant's motion for bias against District Court judge S. It found that there were no indications whatsoever that the judge challenged was biased. On 15 August 2001 the Frankfurt (Main) Court of Appeal dismissed the applicant's objections against its decision.

On 3 December 2001 the Kirchhain District Court conducted a hearing attended by the applicant and S.'s guardian *ad litem*. It imposed a coercive penalty of 200 Deutschmarks on Ms B.-K. for failure to attend the hearing. It suspended the proceedings in order to await the outcome of the access proceedings pending in the Bremen Regional Court.

On 21 January 2002 the Frankfurt (Main) Court of Appeal, following the applicant's and Ms B.-K.'s appeals, quashed the District Court's order

against Ms B.-K. to pay a coercive penalty for failure to attend the hearing because of a formal mistake. The applicant's objections against this decision were to no avail.

On 5 February 2002 the Frankfurt (Main) Court of Appeal quashed the decision of the Kirchhain District Court ordering the suspension of the proceedings.

On 2 May 2002 the Frankfurt (Main) Court of Appeal, on the applicant's appeal, ordered the Kirchhain District Court to further the proceedings.

On 17 May 2002 the Kirchhain District Court fixed a date for S.'s hearing on 31 May 2002. The date for the hearing was then postponed until June 2002. On 3 June 2002 the Frankfurt (Main) Court of Appeal dismissed as inadmissible the applicant's appeal against the fixing of the dates for a hearing, as no appeal lay against these orders.

On 9 July 2002 the Kirchhain District Court dismissed the applicant's further motion for bias against District Court judge S. as ill-founded. It found that the judge's conduct of the proceedings disclosed no indications of bias on her part. The applicant's objections were to no avail.

On 30 August 2002 the Frankfurt (Main) Court of Appeal, endorsing the reasons given by the District Court, dismissed the applicant's appeal against the District Court's decision of 9 July 2002.

On 28 April 2003 the Federal Constitutional Court refused to admit the applicant's constitutional complaint (1 BvR 1825/02) against the decisions of the Kirchhain District Court and the Frankfurt (Main) Court of Appeal concerning the applicant's motions for bias against District Court judge S. and the length of the proceedings.

On 3 May 2003 S. attained the age of majority. At that time, the proceedings in the Kirchhain District Court had not yet been terminated.

3. The applicant's renewed request for information (33 F 886/02 RE)

In previous proceedings brought by the applicant (3 F 563/99), the Frankfurt (Main) Court of Appeal found on 5 July 2000 that the applicant was entitled to obtain certain information about his son's development. Ms B.-K. was ordered to inform him about the type of school which S. attended, his class and his results, his interests in sports and music and any serious diseases, and to give him a recent photograph of his son. The applicant's requests for further information were dismissed.

On 17 January 2003 the Kirchhain District Court dismissed the applicant's renewed request dated 3 December 2002 (33 F 886/02 RE) for information on S.'s personal situation. It argued that the applicant had received conclusive information about his son's personal situation following his previous requests.

4. Administrative court proceedings

On 11 November 1999 the applicant lodged a motion with the Kassel Administrative Court to be granted access to the files of the Schwalm-Eder-District Youth Office concerning his son S.

On 7 October 2003 the Kassel Administrative Court (5 E 3263/99) dismissed the applicant's motion as inadmissible. It found that the applicant had inspected the entire case-files in November 2000 and therefore had no legitimate interest in being granted access again.

5. Constitutional Court proceedings

On 22 April 2002 the Federal Constitutional Court refused to admit the applicant's constitutional complaints (nos. 1 BvR 278/02 and 1 BvR 406/02) against decisions concerning the applicant's request for access to his son and a request lodged in 2001 for information about his son's development. It imposed a fine of 500 euros (EUR) respectively for abuse of petition on the applicant.

On 18 June 2002 the Registry of the Federal Constitutional Court informed the applicant that the court had decided not to modify its decision of 22 April 2002.

COMPLAINTS

1. Complaints concerning the applicant's request to withdraw Ms B.-K.'s right of custody

The applicant claimed that by the conduct of the proceedings concerning his request partly to withdraw Ms B.-K.'s right of custody and by the proceedings' length the courts had disregarded his rights guaranteed by Articles 6, 8, 13 and 14 of the Convention. He notably complained that District Court judge S., due to her conduct of the proceedings, had proved to have been biased. Moreover, the Court of Appeal, in its decisions on appeal concerning the applicant's motions for bias, had wrongly assessed the facts and had therefore rendered wrong decisions. Furthermore, the Federal Constitutional Court had wrongly refused to admit his constitutional complaint.

2. Complaints concerning the applicant's renewed request for information

Invoking Articles 6, 8, 13 and 14 of the Convention, the applicant complained that Ms B.-K. had not been ordered to grant him the additional information on his son's development he had requested. He claimed that Ms B.-K. had not fully complied with the court order dated 5 July 2000 to

give him information on his son. He further complained that his son and Ms B.-K. had not been heard again in the new proceedings before the District Court. Moreover, he claimed that the length of the proceedings concerning his fresh request for information had exceeded a reasonable time.

3. Complaints concerning the applicant's proceedings in the Administrative Court

Relying on Article 6 alone and in conjunction with Article 14, Article 13 and Article 8 alone and in conjunction with Article 14 of the Convention, the applicant complained about the refusal of the Kassel Administrative Court to grant him access to the files of the Schwalm-Eder-District Youth Office. He further argued that the length of the proceedings in the Administrative Court had exceeded a reasonable time.

4. Complaints concerning the applicant's objection to the fine imposed by the Federal Constitutional Court

Invoking Articles 6, 8, 13 and 14 of the Convention, the applicant complained that he had been imposed a penalty for abuse of petition by the Federal Constitutional Court.

THE LAW

A. Length of the proceedings concerning the applicant's request to withdraw Ms B.-K.'s right of custody

According to the applicant, the length of the proceedings concerning his request partly to withdraw Ms B.-K.'s right of custody of S. exceeded a reasonable time. He relied on Articles 6, 8, 13 and 14 of the Convention. The Court considers that his complaint falls to be examined under Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

1. Period to be taken into consideration

The period to be taken into consideration in determining whether the proceedings complied with the "reasonable time" requirement started on 19 August 2000 when the applicant lodged his motion with the Kirchhain District Court to withdraw partly Ms B.-K.'s right of custody. The proceedings can be taken to have ended on 3 May 2003, when S. attained the age of majority. The applicant's request to withdraw custody,

which cannot be ordered in respect of children of full age, became futile at that moment. The proceedings were therefore pending for more than two years and eight months in the District Court without a decision on the merits having been rendered.

2. The reasonableness of the length of the proceedings

The reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities. On the latter point, the importance of what was at stake for the applicant in the litigation has to be taken into account. It is essential that custody and access cases be dealt with speedily (see, for example, *Nuutinen v. Finland*, no. 32842/96, § 110, ECHR 2000-VIII; *Wimmer v. Germany*, no. 60534/00, § 31, 24 February 2005).

As to the complexity of the applicant's case, the Court observes that the applicant's request to withdraw Ms B.-K.'s right of custody was lodged in order to secure the preparation of an expert report in separate proceedings concerning the applicant's access to his son. The latter proceedings, which had themselves been pending for a considerable amount of time, therefore had to be taken into consideration. Furthermore, ten intermediate decisions had to be taken by the District Court and the Frankfurt (Main) Court of Appeal following the applicant's motions and one motion lodged by Ms B.-K. The District Court also conducted a hearing, which Ms B.-K., however, failed to attend. In these circumstances, the proceedings in question must be considered as quite complex.

As to the applicant's conduct, the Court notes that he lodged two successful motions with the Frankfurt (Main) Court of Appeal to order the District Court to further the proceedings. However, he also lodged two motions for bias against the District Court judge and objected to the Court of Appeal's decision concerning the coercive penalty imposed on Ms B.-K. Even though he had the right to bring these motions, this necessitated several intermediate decisions to be taken, whereby the proceedings were prolonged. Moreover, the applicant delayed the proceedings by lodging an inadmissible appeal against the District Court's order fixing a date for a further hearing. Consequently, the applicant contributed to a measurable extent to the duration of the proceedings.

As regards the conduct of the proceedings by the national courts, the Court concedes that the Frankfurt (Main) Court of Appeal quashed the District Court's decision to suspend the proceedings pending the outcome of the access proceedings instituted by the applicant in the Bremen Regional Court. Despite this, the Court finds that there are no considerable periods of inactivity on part of the District Court. In particular, that court had to await the outcome of the applicant's motions for bias lodged against it on two

occasions, and, as has already been mentioned, a total of ten intermediate decisions had to be taken by the appellate courts.

In these circumstances the Court finds that, even having regard to the special diligence necessary in cases concerning custody of a child, the duration of the proceedings in the national courts can still be considered as reasonable. 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.

B. Remainder of the applicant's complaints

The applicant further complained about the decisions rendered in the proceedings concerning the withdrawal of custody and his request for information on his son's development. He further objected to the proceedings he instituted in the Kassel Administrative Court and about the fine for abuse of petition imposed on him in proceedings before the Federal Constitutional Court. He claimed in particular that he had not had a fair trial in these proceedings. He notably argued that District Court judge S. had been biased and that the courts had rendered arbitrary decisions. He relied on Articles 6, 8, 13 and 14 of the Convention in these respects.

The Court has examined the applicant's complaints as submitted by him. However, having regard to all material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must equally be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President