CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45181/99
by Stephan VOLKWEIN
against Germany

The European Court of Human Rights (Fourth Section) sitting on 14 September 1999 as a Chamber composed of

Mr M. Pellonpää, *President*,
Mr G. Ress,
Mr I. Cabral Barreto,
Mr V. Butkevych,
Mrs N. Vajić,
Mr J. Hedigan,
Mrs S. Botoucharova, *Judges*,

with Mr V. Berger, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 July 1998 by Stephan Volkwein against Germany and registered on 5 January 1999 under file no. 45181/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a German national, born in 1962 and living in Dreieich.

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

On 5 August 1992 the Groβ-Gerau District Court (*Amtsgericht*), in summary proceedings, issued a "payment order" (*Mahnbescheid*) against the applicant regarding the payment to Mr F. of a sum amounting to 1,304.72 DM plus interest and costs for damages caused to Mr F.'s car in a traffic accident.

On 8 October 1992, after the applicant's objection against the order of 5 August 1992, Mr F. instituted contentious proceedings against the applicant.

On 14 December 1992 the Groβ-Gerau District Court appointed an expert who was requested to prepare an opinion regarding the accident.

On 16 April 1993, at a public hearing, the expert orally explained his opinion. He was subsequently ordered to submit his opinion in writing.

On 25 April 1997 the expert delivered his written opinion, explaining the delay by shortcomings of one of his employees who had failed to inform him about the court's inquiries.

On 23 December 1997 the Darmstadt Regional Court (*Landgericht*) rejected the applicant's motion to challenge for bias the judge of the Groβ-Gerau District Court. On 18 December 1997 the Frankfurt am Main Court of Appeal (*Oberlandesgericht*) rejected the applicant's appeal against the decision of 23 December 1997. On 14 September 1998 the Federal Constitutional Court (*Bundesverfassungsgericht*) refused to entertain the applicant's constitutional complaint in this respect.

On 6 May 1998 the Groβ-Gerau District Court ordered the applicant to pay 650 DEM to Mr F. In its one-page reasoning, the court found that the applicant had been responsible for the accident in question. The court valued the damage as any further taking of evidence was unreasonable in view of the claim at issue.

On 1 October 1998 the Federal Constitutional Court refused to entertain the applicant's constitutional complaint.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the length of the compensation proceedings.

2. The applicant further complains under Article 6 § 1 of the Convention about the alleged unfairness of these proceedings, in particular the taking and assessment of the evidence. According to him, the judge at the Groβ-Gerau District Court was biased. Furthermore, the applicant invokes Articles 6 § 3, 2, 3 and 7 of the Convention as well as Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

THE LAW

1. The applicant complains that the District Court proceedings exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention. Article 6 § 1, so far as relevant, provides:

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

The Court considers, that it cannot, on the basis of the file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

2. The applicant further complains under Art. 6 § 1 of the Convention that the compensation proceedings were unfair. He also invokes various other provisions of the Convention and its protocols.

The Court recalls that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many other authorities, the Pérez de Rada Cavanilles v. Spain judgment of 25 September 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3255, § 43). Moreover, as a general rule, the assessment of the facts is within the province of the national courts (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, pp. 19-20, § 60). Article 6 § 1 places the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see the above-mentioned Van de Hurk judgment, p. 19, § 59).

In the present case there is no appearance of a breach of the applicant's rights under the Convention and its protocols, in particular his right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention.

It follows, that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint about the length of proceedings;

DECLARES INADMISSIBLE the remainder of the application.

Vincent Berger
Registrar

Matti Pellonpää
President