CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF ADAM v. GERMANY

(Application no. 44036/02)

JUDGMENT

STRASBOURG

4 December 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Adam v. Germany,

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

Peer Lorenzen, *President,*
Rait Maruste,
Volodymyr Butkevych,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Regstrar,*

Having deliberated in private on 13 November 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 44036/02) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three German nationals, Mr Eberhard Adam, Mrs Hiltrud Adam and Mr Henri Adam ("the applicants"), on 7 December 2002.

2. The applicants were represented by Mr C. Rummel until 10 January 2008 and thereafter by Mr I. Alberti, lawyers practising in Munich and Delbrück respectively. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin,* of the Federal Ministry of Justice.

3. On 21 June 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. Mr Henri Adam was born in 1968 and lives in Berlin. Mrs Hiltrud Adam and Mr Eberhard Adam were born in 1940 and live in Güstrow.

A. Factual background

5. The first applicant is the father of a son (C.), born out of wedlock on 20 March 1995. The second and third applicants are C.'s paternal grandparents. The second and third applicants were the child's main carers during the first three years of his life because his mother (S.) was working full-time. In February 1998 the first applicant and S. separated. From January 1999 onwards C. remained with his mother, who had custody of him.

B. Proceedings relating to the first applicant's access rights

1. First set of proceedings (nos. 75 F 131/99 and 72 F 86/01)

6. On 15 April 1999, following problems in obtaining access to his son, the first applicant applied to the Güstrow District Court for access to C.

7. On 9 June 1999 the parents agreed before the District Court that the first applicant should have contact with C. for a trial period of four months on those Sundays on which S. had to work. In view of the difficult relationship between S. and C.'s grandparents, the latter were to be allowed to attend C.'s visits only from the third Sunday onwards for one hour.

8. On 29 September 1999 the District Court provisionally decided that pending the next hearing (on 8 December 1999) the first applicant would be entitled to have contact with his son on 31 October 1999 and once in November. His grandparents would be excluded from those visits. The first applicant failed to comply with that decision as he brought C. to see his grandparents during his first visit. The second contact visit did not take place.

9. On 1 October 1999 the first applicant lodged a hierarchical complaint (*Dienstaufsichtsbeschwerde*) against the sitting judge of the District Court, which was rejected by the Rostock Court of Appeal on 29 November 1999.

10. On 8 December 1999 the District Court granted the first applicant accompanied access (*begleiteter Umgang*) to C. for two hours on Fridays

with the assistance of the Güstrow Youth Office. C.'s grandparents were not allowed to attend those visits.

11. On 3 February 2000 the first applicant appealed to the Rostock Court of Appeal.

12. On 24 October 2000 the parents provisionally agreed that pending the next hearing (on 9 January 2001) three further accompanied visits should take place on the premises of the Youth Office.

13. On 9 January 2001 the Court of Appeal heard evidence from the parents and a representative of the Youth Office.

14. On 23 January 2001 it quashed the District Court's decision and remitted the case to that court for fresh consideration.

15. Following the remittal to the District Court, the court files (initially no. 75 F 131/99) were given a new file number (no. 72 F 86/01).

16. On 7 March 2001 the District Court heard evidence from C., who stated that he could imagine meeting his father even without the presence of the Youth Office representative.

17. On 25 April 2001 the parents agreed that for a transitional period of six months the first applicant should have the right to take C. home one Saturday afternoon per month. Again, C.'s grandparents were excluded. Visits took place in accordance with that decision until July 2001, when C. refused to see his father any longer.

18. On 19 September 2001 and on subsequent occasions the applicant requested the District Court to schedule a new hearing.

19. On 18 February 2002 the District Court heard evidence from C., who confirmed that he did not wish to see his father any longer as his mother had told him not to visit him.

20. On 11 April 2002 the District Court granted the first applicant the right to take his son home every second Saturday until July 2002. As from September 2002 he would have the right to take C. home every second weekend. Given the considerable tensions between the second and third applicants and the child's mother and their firm refusal to communicate with each other, the grandparents would have no right to attend those visits, in order not to jeopardise the first applicant's access rights. Referring to the reports of the guardian *ad litem* and the Youth Office, the District Court found that contact with his father would be in the child's best interest and that C.'s unwillingness to see his father had been the result of S.'s influence.

21. On 10 May 2002 S. lodged a complaint before the Court of Appeal.

22. On 20 August 2002 the parents reached an interim agreement before that court whereby the father would have three further contact visits with C. before the next hearing scheduled for 22 October 2002. Only one of those visits took place.

23. On 22 October 2002 the Court of Appeal heard evidence from the parents, two representatives of the Youth Office and the guardian *ad litem*.

On 5 November 2002 it heard evidence from C. who, without giving any reasons, insisted that he did not wish to see his father any longer.

24. On 3 December 2002 the Court of Appeal ordered a psychological expert report on the question of access. On 5 March 2003 the expert gave his report.

25. On 1 July 2003 the Court of Appeal held an oral hearing during which it gave leave to a new counsel to represent the applicant.

26. On 25 July 2003 the Court of Appeal amended the District Court's decision (of 11 April 2002) and granted the first applicant access to his son every second Saturday of the month from 13 September 2003 onwards in order to re-establish the mutual trust between father and son. From 12 December 2003 the first applicant would be entitled to access to C. every second weekend from Friday afternoon until Sunday evening. In view of the considerable tensions between S. and C.'s grandparents, those visits would take place in the absence of the latter. Moreover, the Court of Appeal withdrew S.'s custody rights in so far as they concerned C.'s access to his father and transferred them to the Youth Office. The Court of Appeal argued that S. had placed undue strain on her son by leaving it to him to decide whether he wished to see his father or not and that she had failed to fulfil her duty to promote C.'s contacts with his father.

2. Second set of proceedings (no. 72 F 429/03)

27. At S.'s request, on 9 June 2004 the District Court stayed execution of the Court of Appeal's decision (of 25 July 2003) until 30 June 2005 and restored her custody rights. It also suspended contact visits between the first applicant and his son. The District Court argued that granting the applicant access to his son against the latter's clearly expressed wishes would pose a serious threat to the child's mental well-being. The District Court advised both parents to undergo family therapy.

28. The first applicant has not informed the Court about the further progress of the proceedings.

3. Compensation proceedings

29. On 18 May 2002 the first applicant requested the District Court to grant him compensation for the damage caused by the length and alleged unfairness of the proceedings. On 16 August 2002 the President of the Court of Appeal, who was responsible for dealing with compensation claims, dismissed the applicant's claim.

C. Proceedings relating to the second and third applicants' access rights

1. First set of proceedings (no. 71 F 235/99)

30. Since S. was preventing the child's grandparents from having access to C., they lodged a request with the District Court on 29 July 1999 to determine their access rights.

31. On 13 October 2000 the District Court, after obtaining a psychological expert report and hearing evidence from the parties and C., granted the applicants the right to see their grandchild every second and fourth Wednesday of the month in the afternoon.

32. On 12 December 2000, at S.'s request, the Court of Appeal adopted an interim measure staying execution of the District Court's decision.

33. On 19 February 2001 the second and third applicants withdrew their request for access to C.

2. Second set of proceedings (no. 72 F 209/01)

34. On 26 April 2001 the grandparents lodged a second request for access to C. with the Güstrow District Court.

35. On 3 September 2001 the District Court appointed a guardian *ad litem* for C.

36. Following a request from the applicants' legal counsel during the hearing held on 27 March 2002, the District Court adjourned the proceedings until a decision had been taken by the District Court in the first applicant's access proceedings (no. 72 F 86/01).

37. On 11 February 2003 the applicants requested the District Court to resume their proceedings.

38. During the oral hearing of 5 November 2003 the District Court gave leave to two new counsels to represent the applicants. It also heard evidence from the parties, the guardian *ad litem* and a representative of the Youth Office and announced that it would schedule a further hearing.

39. On 16 December 2003 the applicants requested the District Court to schedule a hearing. On 23 December 2003 the District Court informed them that it would schedule the hearing as soon as the Court of Appeal had returned the court files.

40. On 5 January 2004 the District Court heard evidence from C., who insisted that he did not wish to see his grandparents.

41. On 20 March 2004, in the framework of an extrajudicial mediation procedure in which the parties had been participating since the end of 2003, the applicants met C. and his mother. However, C. refused to join his mother and his grandparents, stating that he did not wish to see the latter.

42. On 18 February 2004 the District Court heard evidence from the parties and announced a decision for 31 March 2004.

43. Between 25 March 2004 and 19 May 2004 the applicants and the Youth Office several times announced to the court that an agreement with S. was imminent. The District Court therefore cancelled the hearing scheduled for 31 March 2004.

44. On 19 May 2004 the District Court held a further hearing with the parties and the guardian *ad litem*.

45. On 9 June 2004 the District Court dismissed the applicants' request to be granted access to C. Referring to the persistent quarrel between both applicants and S. and their inability to communicate with each other, the court concluded that it would be contrary to the child's well-being if it obliged him to see his grandparents against his firm wishes.

46. The applicants appealed that decision.

47. On 18 January 2005, after holding a hearing, the Court of Appeal advised the parties to undergo family therapy and decided that it would schedule a further hearing at the parties' request.

48. The applicants, S. and C. underwent family therapy from 18 January 2005 until 24 July 2006. Nevertheless, the relationship between the applicants, C. and S. has not improved.

49. On 27 December 2007 the grandparents therefore requested the Court of Appeal to resume the proceedings and to schedule a further hearing.

50. On 18 March 2008 the Court of Appeal heard evidence from the applicants, the guardian *ad litem*, the representative of the Youth Office and the child, who again confirmed that he was not interested in contact with his grandparents. He insisted that it had been his own rather than his mother's wish not to see his grandparents.

51. On 11 April 2008 the Court of Appeal heard evidence from S.

52. On 14 May 2008 the Rostock Court of Appeal dismissed the applicants' appeal against the District Court's decision of 9 June 2004 and confirmed the District Court's findings that contact with his grandparents would be contrary to the child's well-being. It found that the relationship between the applicants and C.'s mother had been characterised by insurmountable quarrels and untenable accusations made by the applicants against S. There were no signs that S., who had even attempted to improve her relationship with the applicants in a mediation procedure, had manipulated her son.

II. RELEVANT DOMESTIC LAW

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

54. According to section 52 of the Act the court, in proceedings concerning a child, must seek to establish agreement between the parties as

soon as possible and at any stage of the proceedings. The court hears evidence from the parties as soon as possible and informs them about the options for family counselling in order to develop a consensual approach to exercising custody and parental responsibilities. To the extent that there is no risk of a delay which is detrimental to the child's best interests, the court suspends the proceedings if the parties agree to out-of-court counselling or if there is a prospect of agreement between the parties.

THE LAW

I. THE LENGTH OF ACCESS PROCEEDINGS NOS. 75 F 131/99 AND 72 F 86/01 AND NO. 72 F 209/01

55. The applicants complained about the length of their access proceedings (nos. 75 F 131/99 and 72 F 86/01 and no. 72 F 209/01), relying on Articles 6 § 1 and 8 of the Convention, the relevant parts of which provide:

Article 6 § 1

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

Article 8

"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."

56. The Government acknowledged in principle that the length of the proceedings had failed to satisfy the reasonable-time requirement laid down in Article 6 § 1. Nevertheless they stressed the extremely difficult factual circumstances underlying those proceedings. In particular, the number of persons involved and the very difficult relationship between the parties and the child's mother had rendered the proceedings unusually complex.

A. Admissibility

57. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6

(a) Proceedings relating to the first applicant's request for access to C. (nos. 75 F 131/99 and 72 F 86/01)

58. The period to be taken into consideration began on 15 April 1999 and ended on 25 July 2003 with the decision of the Rostock Court of Appeal. It thus lasted some four years and three months for two levels of jurisdiction, including a remittal.

59. The applicant submitted that the proceedings had not been particularly complex. He conceded that interim agreements had been concluded but argued that the courts had failed to urge S. to comply with them. Therefore he had in reality had no access to C. In his view the delays in the proceedings resulted from the fact that the courts had acceded to the mother's wishes instead of working towards a durable settlement of his access rights.

60. The Government maintained that the domestic courts had conducted the proceedings in compliance with Article 6 of the Convention and with section 52 of the Non-Contentious Proceedings Act (see "Relevant domestic law", paragraph 54 above), as they had promoted and secured the conclusion of interim agreements. Therefore several periods were not attributable to the national courts. Furthermore the Court of Appeal could not be blamed for the three-month delay caused by the applicant's change of lawyer.

61. 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, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In cases relating to civil status, special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (see *Laino v. Italy* [GC], no. 3158/96, § 18, ECHR 1999-I).

62. The Court accepts that, not least due to the extremely tense relations between the parties involved in the proceedings, their unwillingness to communicate with each other and the fact that both parents failed to abide by the interim decisions agreed upon before the domestic courts, the access proceedings in question were quite complex. It was moreover necessary to hear evidence from the parties, C., the guardian *ad litem* and representatives of the Youth Office in person and to obtain a psychological expert report on the question of contact between the applicant and his son.

63. As to the applicant's own conduct, the Court notes that the applicant's hierarchical complaint against the sitting judge of the Güstrow District Court, his subsequent appeal to the Rostock Court of Appeal as well as the compensation proceedings he instituted before the District Court contributed to the length of proceedings. However, the applicant cannot be blamed for making full use of the remedies available to him under domestic law (see, amongst other authorities, *Girardi v. Austria*, no. 50064/99, § 56, 11 December 2003). A minor delay of not more than three months also resulted from the applicant's change of representative during the appellate proceedings.

64. As to the domestic authorities' conduct, the Court notes at the outset that the District Court and the Court of Appeal attempted to find a solution between the parents by way of interim agreements. The Court agrees with the Government that such agreements could, in principle, be useful in securing a final settlement of the dispute.

65. However, the Court also observes that there were several periods during which no action was taken in the applicant's case. In particular, the Court of Appeal held its oral hearing on 24 October 2000, that is, eight months after the applicant's appeal to the Court of Appeal on 3 February 2000. Furthermore, despite several requests by the applicant for an oral hearing following the collapse of the parties' provisional agreement of 25 April 2001 in September 2001, it took the District Court almost six months to schedule a hearing on 18 February 2002.

66. Given the importance of what was at stake for the applicant, namely the possibility of having further contact with his young son, the domestic courts were 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 before the court (see *H. v. the United Kingdom*, 8 July 1987, §§ 89-90, Series A no. 120, and *Nanning v. Germany*, no. 39741/02, § 44, 12 July 2007). In view of the avoidable delays in the proceedings before the District Court and the Court of Appeal (see paragraph 65 above), the Court considers in the present case that the matter was not decided with special diligence.

67. Therefore, the length of the first applicant's access proceedings did not satisfy the reasonable-time requirement laid down in Article 6 § 1 of the Convention.

There has accordingly been a violation of Article 6 § 1 of the Convention.

(b) The second and third applicants' second set of access proceedings (no. 75 F 209/01)

68. The Court observes that the period to be taken into consideration began on 26 April 2001, when the second and third applicants lodged their second request for access to their grandson, and ended on 14 May 2008 with the decision of the Rostock Court of Appeal. The proceedings thus lasted almost six years and nine months for two levels of jurisdiction.

69. The applicants submitted that no delays were imputable to them.

70. The Government maintained that the domestic courts could not be blamed for the delays caused by the applicants' request to suspend the proceedings (from 27 March 2002 to 11 February 2003), their notification to the District Court that an agreement with the child's mother was imminent (25 March to 19 May 2004) and the fact that they underwent family therapy (18 January 2005 to 24 July 2006) aimed at promoting a friendly settlement between the parties. Furthermore, the delay caused by the change of their representatives was not imputable to the courts.

71. As to what was at stake for the applicants, the Government submitted that the grandparents' access rights must be considered to rank lower than those of the parents, who in principle had a closer relationship to the child.

72. 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 criteria established by its case-law, particularly the complexity of the case, the conduct of the applicants and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], cited above, § 43).

73. The Court accepts that the present case was rendered complex by the difficult personal relationship between the applicants and the child's mother and by the fact that the first applicant's access proceedings were pending simultaneously before the domestic courts.

74. As regards the conduct of the applicants, the Court notes that on 27 March 2002 the applicants sought to adjourn the proceedings until the District Court had given a decision in the first applicant's access proceedings (no. 72 F 86/01). The Court further notes that the District Court gave its decision on 11 April 2002, whereas the applicants did not request the District Court to resume their proceedings until ten months later, on 11 February 2003. Further delays of approximately four months

stemmed from the change of the applicants' representative and from the fact that the District Court had to postpone the date for giving a decision from 31 March 2004 to 9 June 2004. Hence, the applicants contributed to delays of approximately one year and two months.

75. Turning to the conduct of the authorities, the Court agrees with the Government that the domestic courts undertook considerable – albeit fruitless – efforts to reconcile the parties and to help them to settle their dispute amicably. Accordingly, the Court considers that the Court of Appeal cannot be blamed for the delays caused by the fact that those concerned underwent family therapy between 18 January 2005 and 24 July 2006.

76. Nevertheless the Court notes that the domestic courts were responsible for considerable delays in the proceedings. Thus, four months elapsed after the applicants lodged their request for access on 26 April 2001 until the District Court appointed a guardian *ad litem* for C. on 3 September 2001. Subsequently, it took the District Court a further seven months to hold its first oral hearing on 27 March 2002. After the applicants' request of 11 February 2003 to continue the proceedings, the District Court held an oral hearing only some nine months later, on 5 November 2003. On 23 December 2003 the District Court informed the applicants that it could schedule a further hearing only when the Court of Appeal had returned the case files. The Court thus notes that the delays in the proceedings were caused at least to some extent by the proceedings of the first applicant which were simultaneously pending before the District Court and which involved the reciprocal dispatch of the case files. In this connection, the Court has already held that the domestic courts should consider the possibility of having copies made in order to avoid delays caused by the dispatch of the case file (see *Gisela Müller v. Germany*, no. 69584/01, § 85, 6 October 2005); the District Court apparently did not do this in the present case.

77. As to the importance of what was at stake for the applicants, the Court notes that the proceedings at issue concerned the access rights of grandparents to a young child who had lived with the applicants for the first three years of his life. The Court, referring to its consistent case-law, reiterates that it is essential for access cases in particular to be dealt with speedily (see, *inter alia*, *Luig v. Germany*, 28782/04, 25 September 2007), and that the domestic 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 before the court (see *H. v. the United Kingdom*, cited above, §§ 89-90, and *Nanning*, cited above, § 44). Given the specific circumstances and in particular the embittered relationship between the applicants and the child's mother, the courts were under a particular duty to avoid any unnecessary delays and to adhere to a tight time schedule. Having regard to the delays attributable to the domestic courts (see § 76 above), the Court considers that the domestic

courts did not display the required diligence in the conduct of the proceedings before them.

78. It follows that the proceedings in question were not concluded within a "reasonable time".

There has accordingly been a violation of Article 6 § 1 of the Convention.

2. Article 8

79. The Court observes that the applicants' complaint about the length of proceedings does not raise a separate issue under Article 8. In particular, in its findings under Article 6 § 1, the Court has already taken into account the impact of the length of the proceedings on the applicants' family life.

80. Therefore the Court does not find it necessary to examine the facts under Article 8 of the Convention also.

II. THE LENGTH OF ACCESS PROCEEDINGS NO. 71 F 235/99

81. The second and third applicants also complained about the length of their first set of access proceedings, relying on Articles 6 § 1 and 8 of the Convention.

82. The Court notes that the applicants withdrew their first request for access to C. on 19 February 2001. They thus terminated those proceedings more than six months before the lodging of their application with the Court on 7 December 2002.

83. It follows that this complaint is inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

III. OTHER ALLEGED VIOLATIONS

84. The applicants complained under Articles 6, 8 and 13 of the Convention that the proceedings had been unfair and that they had no effective remedy at their disposal by which to complain thereof.

85. The Court observes that the applicants failed to lodge a constitutional complaint with the Federal Constitutional Court against the impugned decisions.

86. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

88. The applicants sought compensation for non-pecuniary damage, pointing to the distress and frustration they had experienced as a result of the impossibility for them to have access to C. The first applicant claimed 22,000 euros (EUR) for non-pecuniary damage; the second and third applicant claimed EUR 11,000 each for non-pecuniary damage. They submitted that their immense suffering had resulted in serious health problems necessitating numerous in-patient treatments.

89. The applicants submitted that the first applicant had incurred costs of EUR 3,000 for medical treatment and that the second and third applicant had each incurred costs of EUR 4,000 for medical treatment.

90. The Government argued that the claims regarding non-pecuniary damage were excessive, taking the view that a sum of EUR 2,000 at the most would be appropriate for each applicant. Furthermore, they maintained that the costs "incurred as a result of illness" could not be attributed to the length of the proceedings. Moreover, the costs for medical treatment had not been substantiated.

91. As regards the applicants' claim for pecuniary damages, assuming that the costs incurred for their medical treatment could be related to the violations found, the Court notes that the applicants did not submit any proof of those costs. There are therefore no grounds for an award under this head.

92. As to the non-pecuniary damage claimed, the Court finds that it has to consider all the factors before it. With regard to the circumstances of this specific case and ruling on an equitable basis, the Court makes to the first applicant an award of EUR 2,000 and to the second and third applicants a joint award of EUR 2,500.

B. Costs and expenses

93. The applicants also claimed EUR 8,477.59 for the costs and expenses incurred before the domestic courts (lawyer's fees, court costs, fees for the guardian *ad litem*, travel expenses) and EUR 6,609 for those incurred before the Court. The latter included EUR 2,000 for the applicants' first lawyer, Mr Rummel, EUR 3,570 for their second lawyer, Mr Alberti, and EUR 1,039 for mail and telephone costs. The applicants submitted some documents in support of their claims.

94. The Government maintained that the costs claimed for the conduct of the domestic proceedings could not be attributed to the length of the proceedings. They did not comment on the applicants' claims concerning the Convention proceedings.

95. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicants have not established that the costs and expenses claimed for the proceedings before the domestic courts were incurred by them in order to seek prevention or rectification of the specific violation caused by the excessive length of the proceedings. However, seeing that in length-of-proceedings cases the protracted examination of a case beyond a "reasonable time" involves an increase in the applicants' costs (see, among other authorities, *Sürmeli v. Germany* [GC], no. 75529/01, § 148, ECHR 2006-...), it does not find it unreasonable to make to the first applicant an award of EUR 250 and to the second and third applicants, who were jointly represented by counsel, a joint award of EUR 250 under this head. With regard to the costs incurred in the proceedings before it, the Court, having regard to its case-law, and making its own assessment of the reasonableness of the applicants' costs and expenses, awards EUR 2,500 jointly plus any tax that may be payable by the applicants on that amount.

C. Default interest

96. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the length of the first applicant's first set of access proceedings and the second and third applicants' second set of access proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention as regards the first applicant's first set of access proceedings (nos. 75 F 131/99 and 72 F 86/01);

3. *Holds* that there has been a violation of Article 6 of the Convention as regards the second and third applicants' second set of access proceedings (no. 71 F 235/99);

4. *Holds* that no separate issue arises under Article 8 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) to Mr H. Adam: EUR 2,000 (two thousand euros), plus any tax that may be chargeable to them, in respect of non-pecuniary damage;

(ii) to Mr E. Adam and Ms H. Adam jointly: EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to them, in respect of non-pecuniary damage;

(iii) to Mr H. Adam: EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable to them, in respect of costs and expenses incurred before the national courts at the rate applicable at the date of settlement;

(iv) to Mr E. Adam and Ms H. Adam jointly: EUR 250 (two hundred and fifty euros), plus any tax that may be chargeable to them, in respect of costs and expenses incurred before the national courts at the rate applicable at the date of settlement;

(v) to all the applicants jointly: EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses incurred before the Court, at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President