EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

CASE OF SÜRMELI v. GERMANY

(Application no. 75529/01)

JUDGMENT

STRASBOURG

8 June 2006

This judgment is final but may be subject to editorial revision.

In the case of Sürmeli v. Germany,
The European Court of Human Rights, sitting as a Grand Chamber composed of:
Mr J.-P. COSTA, President,
Mr C.L. ROZAKIS,
Sir Nicolas BRATZA,
Mr B.M. ZUPANČIČ,
Mr G. RESS,
Mr L. CAFLISCH,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mrs A. MULARONI,
Mrs A. GYULUMYAN,
Mrs D. JOČIENĖ,
Mr J. ŠIKUTA, judges,
and Mr T.L. EARLY, Section Registrar,
Having deliberated in private on 9 November 2005 and on 10 May 2006,
Delivers the following judgment, which was adopted on the last mentioned date:

PROCEDURE

1. The case originated in an application (no. 75529/01) 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 a Turkish national, Mr Selim-Mustafa Sürmeli ("the applicant"), on 24 November 1999.

2. The applicant, who had been granted legal aid, was represented by Mr O. Wegner, a lawyer practising in Lübeck. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling Vogel, Ministerialdirigentin, Federal Ministry of Justice.

3. The applicant complained of the length of proceedings in the Hanover Regional Court and of the lack of an effective remedy in German law in respect of that complaint.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 29 April 2004 it was declared admissible by a Chamber of that Section, composed of Mr I. Cabral Barreto (President), Mr G. Ress, Mr L. Caflisch, Mr R. Türmen, Mr B.M. Zupančič, Mr K. Traja and Mrs A. Gyulumyan, judges, and also of Mr V. Berger, Section Registrar. On 1 February 2005 the Chamber, in which Mr J. Hedigan had replaced Mrs A. Gyulumyan, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment when asked to state their position (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined in accordance with the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. Mr J.-P. Costa, one of the Vice-Presidents of the Court, subsequently replaced Mr L. Wildhaber, who was unable to take part in the hearing, as President of the Grand Chamber, and was in turn replaced as a titular member of the Grand Chamber by Mr M. Pellonpää, the first substitute judge (Rule 10 and Rule 24 § 3). Mr K. Hajiyev, who was likewise unable to take part, was replaced by Mr V. Butkevych, the second substitute judge. Mr G. Ress continued to sit in the case after the expiry of his term of office, by virtue of Article 23 § 7 of the Convention and Rule 24 § 4.

6. The applicant and the Government each filed written observations on the admissibility and merits of the case. The parties replied in writing to each other's observations.

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 9 November 2005 (Rule 59 § 3).

There appeared before the Court:

(a) for the Government
Mrs A. WITTLING-VOGEL, Ministerialdirigentin, Agent,
Mr B. NETZER, Ministerialdirektor,
Mrs C. STEINBEIß-WINKELMANN, Ministerialrätin,
Mr T. LAUT, judge, on secondment to the Federal Ministry of Justice, Advisers;

(b) for the applicant
Mr O. WEGNER, Counsel,
Ms A. BEK, Adviser.

The applicant was also present.

The Court heard addresses by Mrs Wittling-Vogel and Mr Wegner and their replies to questions put by its members.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

8. The applicant was born in 1962 and lives in Stade (Germany).

9. On 3 May 1982 he was involved in an accident with a cyclist on the way to school and sustained injuries including a broken left arm. On 22 May 1982 he left hospital. He subsequently entered into negotiations with the cyclist's liability insurers, who paid him a sum of approximately 12,500 euros (EUR) in respect of any damage he might have sustained. The accident insurers for Hanover City Council, the authority responsible for the applicant's school, paid him a temporary disability pension (Verletzenrente) until the end of 1983. They also paid him approximately EUR 51,000 in compensation.

10. The applicant subsequently instituted proceedings against the City Council's accident insurers, in the course of which a considerable number of expert reports and medical opinions were produced.

In a judgment of 16 November 1989 the Lower Saxony Social Court of Appeal (Landessozialgericht), which itself had asked experts in the fields of orthopaedic surgery, neurology and, at the applicant's request, hand surgery to produce reports on his medical problems, acknowledged that he had become 20% permanently disabled as a result of the accident and was entitled to a pension on that account with effect from 1 June 1984.

11. Since 1 July 1994, after falling on his left arm or hand in January 1993, the applicant has been in receipt of an occupational-disability pension of approximately EUR 800 per month.

12. The applicant instituted a second set of proceedings against Hanover City Council's accident insurers, seeking in particular the award of an increased pension. He submitted that the accident had caused him mental damage and a stomach disorder. In a judgment of 19 February 2001 the Social Court of Appeal dismissed the applicant's claim. It based its decision on two reports by experts in neuropsychiatry whom it had appointed during the proceedings, on a large number of other medical reports, some of which had been drawn up shortly after the accident, and on files from other administrative and judicial proceedings concerning the applicant.

B. Proceedings in the civil courts

1. The first phase of the civil proceedings

13. On 18 September 1989, after the negotiations aimed at securing increased payments had failed, the applicant brought an action against the cyclist's insurance company in the Hanover Regional Court (Landgericht), in particular seeking damages and a monthly pension, among other claims. On 10 June 1991, after holding several hearings and taking evidence about the accident from four witnesses between July 1990 and March 1991, the Regional Court delivered a partial decision. It held that the applicant's liability for the accident was limited to 20% and that he was entitled to damages for the remaining 80%.

14. On 26 November 1992 the Celle Court of Appeal (Oberlandesgericht) dismissed an appeal by the applicant. On 29 January 1993 the applicant appealed on points of law. He twice requested an extension of the time he had initially been allowed for filing his grounds of appeal. On 2 June 1993 the applicant's new representative applied for a third extension until 14 July 1993. On 14 December 1993 the Federal Court of Justice (Bundesgerichtshof) dismissed the appeal.

2. The second phase of the civil proceedings

(a) First phase, concerning in particular the appointment of an expert

15. In March 1994 the proceedings for the assessment of the damages and the pension resumed in the Hanover Regional Court. The applicant was represented by counsel. On 18 April 1994 the court held a hearing.

16. On 9 May 1994 it ordered an expert medical assessment. On 25 May 1994 the applicant applied for the three judges dealing with his case to withdraw, but his application was dismissed. On 19 July 1994 Hanover Medical School proposed a Professor B. to draw up the expert report that had been ordered. On 21 July 1994 the applicant appealed against the court's decision of 9 May 1994. On 2 August 1994 the Celle Court of Appeal dismissed his appeal.

17. On 15 September 1994 the court appointed Professor B. as the expert. Professor B. informed the court that it would be preferable for the report to be drawn up by a specialist in accident surgery and that it was likely to take at least one year to produce. On 2 December 1994, following a reminder from the court, the applicant agreed to the appointment of a surgical expert.

18. On 15 December 1994 a Professor T. was proposed. The applicant objected to his appointment on the ground that he was not a specialist hand surgeon (Handchirurg). On 6 February 1995 the court accordingly asked Professor B. to draw up the expert report. On 7 February 1995 the applicant informed the court that he agreed with the deadline set; he insisted, however, that there should not only be an expert assessment by a general surgeon but also one by a specialist hand surgeon. Professor B. informed the court that he was unable to draw up the report as requested because the fractures observed in the applicant's forearm did not come within his field of expertise but were a matter for a specialist in traumatology or an orthopaedic surgeon. On 20 February 1995 the defendant proposed appointing Professor T. On 24 April 1995, following a reminder from the court, the applicant suggested appointing Professor B. or, failing that, a Professor B.-G.

19. On 12 May 1995 the court appointed Professor T., who informed it that an additional assessment by a specialist hand surgeon was necessary and that it was likely to take at least one year to produce the report. On 28 July 1995 the court informed the applicant that Professor B. had refused to draw up the report and asked him whether Professor B.-G., whom he had suggested, had already drawn up an expert report on him. On 27 November 1995 the court informed the parties that Professor B.-G. had retired but that his successor, Professor P., would be appointed as expert. On 23 January 1996 Professor P. informed the court that it would take him nine to twelve months to draw up the report.

20. On 3 September 1996 the applicant informed the court that the accident had caused him severe depression, and asked it to order an expert psychiatric assessment.

21. On 10 June 1997 the court asked the expert how his report was progressing. The expert replied that the report would be ready in four to six weeks. On 22 August 1997 the court again contacted the expert. He initially replied that the report would be completed by the end of September but subsequently stated that, owing to an excessive workload, he would need a further month. Professor P.'s report was received at the court on 6 November 1997. The applicant criticised Professor P.'s work and requested that he submit an additional report. He also requested an expert assessment (Schmerzgutachten) of the pain he had felt since the accident. On 3 December 1997 the court granted the defendant company an extension of the time it had been allowed for filing observations on the report; it submitted its observations on 6 January 1998. On 27 April 1998 the applicant's representatives informed the court that as their client had been ill, they would not be able to submit their observations in reply until mid-May.

(b) Second phase: failure to negotiate an out-of-court settlement

22. On 31 August 1998 the applicant's representatives informed the court that the parties had not been able to reach a partial friendly settlement. They subsequently began fresh out-of-court negotiations on a friendly settlement, asking on three successive occasions for the deadline to be put back. On 5 May 1999 they informed the court that the negotiations had failed and asked for the proceedings to be resumed. The defendant stated that the failure of the negotiations had been due to the applicant's unreasonable demands.

23. On 27 May 1999 the president of the division dealing with the case asked the parties to inform him whether they still wished to submit observations. In a note of 8 September 1999 the reporting judge stated that the proceedings had not been able to progress more quickly owing to an excessive workload and to certain priority cases. In a note of 23 December 1999 he made a similar observation, referring to a number of periods of leave, in particular sick-leave, in addition to the reasons stated previously.

24. On 18 February 2000 the president of the division asked the parties to inform him whether they intended to submit any further observations. The applicant replied that negotiations on an out-of-court settlement could take until mid-May and that he reserved the right to submit further observations if they were unsuccessful. On 26 June 2000 he informed the court that the negotiations had failed and asked for an expert assessment of his total loss of earnings resulting from the accident. In support of that request, he submitted an expert psychiatric assessment that had been drawn up during the proceedings in the Social Court of Appeal (see paragraph 12 above). On 17 August 2000 the defendant informed the court that the negotiations had failed because the applicant had refused to make payment of the sum negotiated conditional on the findings of an expert assessment.

(c) Third phase: preparation of the case file and additional report

25. On 17 October 2000 the applicant requested the court to deliver a decision promptly, seeing that the proceedings had already taken eighteen years. In support of his request he submitted an expert psychiatric assessment of his state of health. In a note of 19 January 2001 the court pointed out to him that the proceedings had been pending only since 18 September 1989.

26. On 21 February 2001 the applicant revised his claim, which now concerned a lump sum of 702,122 German marks (DEM – approximately EUR 359,000) and a monthly pension of

DEM 1,000. On 2 March 2001 the court assessed the value of the subject matter of the case at DEM 985,122.

27. On 17 April 2001 the applicant asked the court when it would be holding a hearing. On 15 May 2001 the court set the case down for hearing on 9 July 2001 and asked the applicant to provide information, concerning in particular his alleged loss of earnings. It was important to establish his likely career path had the accident not taken place and the extent to which the physical injury from which he was now suffering was the direct consequence of the accident.

28. On 9 July 2001, having obtained the parties' consent at the hearing, the court decided to admit in evidence the file from the proceedings in the Social Court of Appeal. The file could not be forwarded immediately because it was at the Federal Social Court (Bundessozialgericht).

29. On 14 August 2001, at the applicant's request, the court ordered Professor P. to supplement his expert report of 30 October 1997. He replied that it would take him at least ten months to do so.

30. On 20 September 2001 the court asked the applicant to give his consent in writing to its consulting the file in the possession of the Federal Social Court. Pointing out that he was undergoing treatment abroad which was expected to take until mid-November, the applicant asked for an extension of the time allowed for his reply. On 26 October 2001 the court told him that he had not provided sufficient evidence of the injury to his forearm and asked him to inform it whether he intended to pursue his request for an assessment by a specialist hand surgeon. The applicant asked for a further extension of the time allowed for his reply. On 18 December 2001 he stated that he did not agree to the use in evidence of the file from the proceedings in the social courts and requested a further extension with regard to the expert surgical assessment.

31. On 8 February 2002 the court ordered the applicant to submit a number of documents and asked Professor P. to draw up the additional report. In reply to two letters from the applicant it reminded him that he had requested the additional report himself. On 7 May 2002 the applicant submitted his observations, having twice requested further time to do so. On 24 May 2002 he personally informed the court by telephone that he no longer required the additional report and only wanted an assessment of his pain, on the ground that he was suffering from neurosis caused by the proceedings (Prozessneurose).

32. On 28 May 2002 the court declared inadmissible an application for the judges to withdraw, which the applicant had lodged on 23 March 2002.

33. On 29 May 2002 the court asked the applicant's representatives for clarification as to the additional expert report. On 12 July 2002 they informed the court that their client no longer wished the report to be produced.

34. On 1 August 2002 the President of the Regional Court asked to be sent the file in the applicant's case.

35. On 16 September 2002 the court decided to appoint a Professor X to draw up an expert report concerning in particular the onset and cause of the pain suffered by the applicant. It also requested the applicant to provide certain items of information.

36. On 7 October 2002 the applicant again applied for the members of the court to withdraw. On 8 October 2002 he asked for an extension of the time allowed for submitting the information requested. On 22 October 2002 he objected to the expert who had been appointed, proposed another one (Dr J.), sought leave to consult the file and applied for a further extension of six weeks. On 29 October 2002 the court invited him to submit reasons for his objection to the expert, proposed other experts and gave him until 20 December 2002 to produce the information requested.

37. On 12 November 2002 the applicant personally informed the court by telephone that he was unable to inspect the file because he had broken his arm. On 18 November 2002 the defendant proposed an expert. The applicant expressed the view that the expert proposed, not being a specialist in the field, was not competent to carry out an assessment of his pain, and asked the court to deliver a partial decision.

38. On 5 December 2002 Dr J. informed the court that he would be unable to draw up a report before the end of 2003. On the same day the court appointed Professor X as expert and dismissed the applicant's reservations as to his professional credentials. It pointed out that it was unable to give a partial decision. The applicant objected that Professor X had already acted as expert, and requested that an "interdisciplinary" report be produced in addition to the report on his pain.

39. On 15 January 2003 the applicant applied for the reporting judge in his case to withdraw.

40. On 3 March 2003 the president of the division dealing with the case held discussions with the parties' representatives with a view to reaching a friendly settlement and scheduled a hearing to that end for 10 March 2003. At the hearing the applicant stated that he would not let Professor X examine him. The president asked him to stop telephoning the judges dealing with the case and stated that, with a view to speeding up the proceedings, he would not be so willing in future to accept requests to consult the file. On 2 May 2003 the court, in reply to a further request by the applicant, informed him that he could consult the file at the court's registry but that, to avoid delays in dealing with the case, the file would not be sent to the registry of the District Court in Stade, his place of residence.

41. On 16 May 2003 a division of the regional court dismissed three applications by the applicant for the reporting judge to withdraw.

42. On 4 June 2003 the applicant again sought leave to consult the case file at the registry of the Stade District Court.

(d) Fourth phase: appointment of a new expert

43. On 11 June 2003, after learning that the applicant had instituted disciplinary proceedings against Professor X, the court appointed Professor W. to replace him as expert. On 25 June 2003 the applicant left a message for the president of the division on his answering machine, expressing his concerns about the choice of expert. The applicant's representatives also expressed reservations as to Professor W.'s credentials and proposed another expert. The president of the division informed the parties that Professor W. had stated that he was prepared to draw up the report, and indicated that he was standing by his choice of expert despite the applicant's reservations about him.

44. On 16 September 2003 Hamburg-Eppendorf University Hospital informed the court that the applicant's medical examination was scheduled for 23 October 2003. On 29 September 2003 Professor W. returned the file to the court and asked it to relieve him of his duties on the ground that the applicant had stated his opposition to the production of the report and had contacted the hospital's legal department to tell them so. On the same day the court sent the file back to Professor W., asking him to wait and see whether the applicant kept his appointment for the medical examination. On 29 October 2003 Professor W. informed the court that he had been able to examine the applicant and asked whether a further expert assessment on pain therapy could be produced by a Professor Y. On 21 November 2003 the court ordered a further examination of the applicant by Professor Y.

45. On 9 December 2003 Professor W.'s report was received at the court. The president of the division informed the expert that further explanations were necessary. On 26 February 2004 the hospital informed the court that a Dr M., from its psychiatric department, was prepared to examine the applicant. On 26 March 2004 Professor W. informed the court that he would be submitting his final conclusions in collaboration with Dr M. The applicant's representatives proposed another expert who, in their opinion, was better qualified to examine their client. On 24 May 2004 the court eventually appointed a Dr W. as expert. Dr W. replied that the case was a difficult and complex one requiring approximately 40 hours' work and that he would not be able to submit the report until October 2004. On 14 June 2004 the court decided to ask the parties to pay advances on the fees for the production of the expert report, but the applicant refused to do so. His representatives objected to the decision of 14 June 2004 but paid the advances as requested. On 28 June 2004 the court dismissed the objection.

46. On 19 July 2004 the court, in reply to a request by the applicant, decided not to supplement its decision of 16 September 2002 on the production of the expert report.

47. On 10 January 2005 Dr W.'s report was received at the court. It was forwarded to the parties on 21 February 2005. On 8 March 2005 the applicant's representatives requested an examination of their client by a different expert.

48. On 5 April 2005 the court's registry asked to be sent the file.

49. On 14 April 2005 the applicant submitted an expert report he had himself commissioned from a Dr K.

(e) Fifth phase: the Regional Court's judgment

50. On 6 October 2005 the court held a hearing at which Professor W. gave evidence and Dr W. and Dr K. were present.

51. In a judgment of 31 October 2005 the court awarded the applicant a total of EUR 20,451.68 for non-pecuniary damage. Taking into account the payments already made after the accident, the defendant was required to pay the outstanding sum of EUR 12,015.36 under this head and EUR 417.93 for loss of earnings. The court dismissed the remainder of the applicant's claim and ordered him to pay 97% of his costs. Relying on the expert reports ordered in the course of the proceedings, on the judgments of the Social Court of Appeal and on various other expert reports and medical opinions produced in separate proceedings, the court outlined the injuries sustained by the applicant in the accident and examined whether any other forms of damage, such as chronic pain and mental disorders, were attributable to the accident as he claimed them to be. It concluded that there was not a sufficiently established

link between the accident and most of the damage alleged. In assessing non-pecuniary damage, the court had regard to the circumstances of the accident, the subsequent conduct of the parties and the relevant case-law of the Celle Court of Appeal. It pointed out that the length of the proceedings could be taken into account only in small measure because the defendant could not be held responsible for the fact that the applicant had not brought his claim until seven years after the accident, making it more difficult to adduce evidence, that he had refused to allow the file from the proceedings in the Social Court of Appeal to be used in evidence and that he had objected on several occasions to the choice of experts appointed. 52. The applicant subsequently applied to the Celle Court of Appeal for legal aid in order to appeal against the judgment.

C. Proceedings concerning the length of the proceedings

1. Proceedings in the Federal Constitutional Court

(a) The first set of proceedings

53. On 14 March 2001 the applicant lodged a constitutional complaint with the Federal Constitutional Court, stating:

"The proceedings at first instance before the Hanover Regional Court in case no. 20 O 186/89 have lasted since 1989 and have irreparably destroyed my existence.

I am lodging a constitutional complaint on account of an infringement of Article 2 § 1 and Article 20 § 2 of the Basic Law because the excessive length of the proceedings is no longer compatible with the rule of law and I request the court to find a breach of the law and of Article 839 of the Civil Code in that Article 139 of the Code of Civil Procedure has not been complied with.

Evidence: Hanover Regional Court, no. 20 O 186/89. Information: no. 1 BvR 352/2000.

Please inform me if you need any other documents."

On 23 March 2001 the Federal Constitutional Court requested information on the state of the proceedings from the Regional Court, which informed it on 22 May 2001 that it had scheduled a hearing for 9 July 2001. On 22 June 2001 it sent the applicant the Regional Court's reply.

54. On 5 and 11 August 2001 the applicant filed additional observations.

55. On 16 August 2001 the Federal Constitutional Court, sitting as a panel of three judges, decided not to examine the applicant's complaint (no. 1 BvR 1212/01). The decision, in which no reasons were given, stated:

"The complaint is not accepted for adjudication. No appeal lies against this decision."

(b) The second set of proceedings 56. On 26 May 2002 the applicant again complained to the Federal Constitutional Court about the length of the proceedings. His complaint, which referred to his previous one, was worded as follows:

"I, the undersigned, Mr Sürmeli, residing at ..., hereby lodge a constitutional complaint on account of a breach of the rule of law (Rechtsstaatsprinzip) by the Hanover Regional Court (no. 20 O 186/89), because the proceedings in that court continue to be delayed."

57. On 27 June 2002 the Federal Constitutional Court, sitting as a panel of three judges, decided not to examine this new complaint (no. 1 BvR 1068/02. In its decision it stated:

"Since the requirements of section 93a(2) of the Federal Constitutional Court Act have not been satisfied, the constitutional complaint cannot be accepted for adjudication. It does not raise any issue of fundamental significance (grundsätzliche Bedeutung). Nor is there any need to examine the complaint for the purpose of safeguarding the constitutional rights which the complainant alleges to have been infringed, since it does not have sufficient prospects of success. The complaint lacks substance in that it cannot be ascertained from the complainant's observations whether the length of the proceedings [in the Hanover Regional Court] has exceeded a reasonable time.

In accordance with the third sentence of section 93d(1) of the Federal Constitutional Court Act, no further reasons for this decision are necessary. No appeal lies against the decision."

58. On 27 July 2005 the registry of the Federal Constitutional Court informed the applicant that it was not possible to reopen the proceedings.

2. Action for damages against the State

59. On 23 May 2002 the applicant applied to the Hanover Regional Court for legal aid in order to bring an action for damages against the State on account of the excessive length of the proceedings in issue.

60. On 14 May 2003 the Regional Court refused his application on the ground that the delays in the proceedings had not been attributable to the justice system but were due to the courts' excessive workload. It added that the applicant had not provided sufficient details of the damage allegedly sustained.

61. On 21 July 2003 the Celle Court of Appeal upheld that decision, basing its conclusion, in particular, on the Government's observations in the present case before the Third Section of the Court, which the applicant had produced in the proceedings before it.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Federal Constitutional Court Act

62. The relevant provisions of the Federal Constitutional Court Act (Bundesverfassungsgerichtsgesetz) of 12 December 1985, in its version of 11 August 1993, read as follows:

Section 90

"1. Any person who claims that one of his basic rights or one of his rights under Article 20 § 4 and Articles 33, 38, 101, 103 and 104 of the Basic Law has been violated by public authority may lodge a complaint of unconstitutionality with the Federal Constitutional Court.

2. If legal action against the violation is admissible [zulässig], the complaint of unconstitutionality may not be lodged until all remedies have been exhausted. However, the Federal Constitutional Court may decide immediately on a complaint of unconstitutionality lodged before all remedies have been exhausted if it is of general relevance or if recourse to other courts first would entail a serious and unavoidable disadvantage for the complainant ..."

Section 93a

"1. A complaint of unconstitutionality shall require acceptance prior to a decision.

2. It is to be accepted

(a) if it raises a constitutional issue of general interest; or

(b) if this is advisable for securing the rights mentioned in section 90(1); or also in the event that the denial of a decision on the matter would entail a particularly serious disadvantage (besonders schwerer Nachteil) for the complainant."

The third sentence of section 93d(1) provides that no reasons need be given for a decision by a panel of three judges not to accept a constitutional complaint for adjudication.

Section 95

"1. If the complaint of unconstitutionality is upheld, the decision shall state which provision of the Basic Law has been infringed and by which act or omission. The Federal Constitutional Court may at the same time declare that any repetition of the act or omission complained of will infringe the Basic Law.

2. If a complaint of unconstitutionality against a decision is upheld, the Federal Constitutional Court shall quash the decision [and] in the cases contemplated in the first sentence of section 90(2) above it shall refer the matter back to a competent court ..."

B. Provisions on the State's liability

63. Article 34 of the Basic Law (Grundgesetz) provides:

"Where a person, in the exercise of a public office entrusted to him, breaches an official duty (Amtspflicht) towards a third party, liability shall in principle rest with the State or the public authority in whose service the person is engaged. An action by the State for indemnity shall remain possible in the event of intentional wrongdoing or gross negligence. The possibility of bringing an action for damages or indemnity in the ordinary civil courts shall remain open."

64. Article 839 of the Civil Code (Bürgerliches Gesetzbuch) provides:

"1. A public servant who wilfully or negligently commits a breach of his official duties towards a third party shall afford redress for any damage arising in consequence. If the public

servant merely acted negligently, he may be held liable only if the injured party is unable to obtain redress by other means.

2. A public servant who commits a breach of his official duties when adjudicating on an action may not be held liable for any damage sustained unless the breach of duty constitutes a criminal offence. This provision shall not apply where the breach of official duties consists in a refusal to discharge a function or a delay in performing it contrary to professional duty.

3. The obligation to afford redress shall not arise where the injured party has wilfully or negligently omitted to avoid the damage by means of a legal remedy."

By Article 253 of the Civil Code, in the version in force until 31 July 2002, compensation for non-pecuniary damage could be awarded only if it was provided for by law. In this connection, Article 847 § 1, which was in force until 31 July 2002, provided for compensation only in the event of physical injury or deprivation of liberty. The new Article 253 § 2 of the Civil Code, as in force since 1 August 2002, has not introduced any amendments relevant to the matters in issue in the instant case.

C. Case-law of the domestic courts concerning the length of civil proceedings

1. Constitutional complaint as a remedy for expediting proceedings

(a) General principles

65. According to the settled case-law of the Federal Constitutional Court, Article 2 § 1 of the Basic Law, in conjunction with the principle of the rule of law as enshrined in Article 20 § 3 of the Basic Law, guarantees effective protection by the law. The rule of law dictates that, in the interests of legal certainty, legal disputes must be settled within a reasonable time (angemessene Zeit). In view of the variety of types of proceedings, there are no absolute criteria for determining the point at which the length of proceedings becomes excessive. Regard must be had to all the circumstances of the case, what is at stake for the parties, the complexity of the case and the conduct of the parties and any other persons (experts or others) acting independently of the court. The longer the proceedings as a whole or at one particular level of jurisdiction, the more pressing the obligation on the court to take steps to expedite or conclude them (see, among other authorities, the decisions of 20 April 1982, no. 2 BvL 26/81, published in the Reports of Judgments and Decisions of the Federal Constitutional Court, volume 60, p. 253 (at p. 269), and of 2 March 1993, no. 1 BvR 249/92, Reports, volume 88, p. 118 (at p. 124)).

(b) Consequences of a finding that the length of proceedings is unreasonable

(i) Finding of an infringement

66. Where the Federal Constitutional Court considers that the length of pending proceedings has been excessive, it holds that there has been an infringement of the Basic Law and requests the court dealing with the case to expedite or conclude the proceedings.

For example, in its decision of 20 July 2000 (no. 1 BvR 352/00 – see Grässer v. Germany (dec.), no. 66491/00, 16 September 2004), concerning the length of proceedings that had lasted 26 years, it held:

"... In view of the exceptional fact that the proceedings had already lasted 15 years by the time the case reached the Court of Appeal, that court should not simply have treated it as an ordinary complex case. On the contrary, it should have ... used all available means to expedite the proceedings. If necessary, it should also have sought ways of lightening its own workload.

It is not for the Federal Constitutional Court to order the courts to take specific measures to expedite proceedings, that being a matter for assessment by the court dealing with the case. The decision [as to the measures required] cannot be taken in the abstract but must have regard to the specific circumstances of the case and to the reasons for the length of the proceedings. The fact that the Court of Appeal was dependent on the collaboration of an expert in the instant case was not an obstacle to expediting the proceedings. By way of example, when selecting the expert the Court of Appeal should have taken account of the particular need to speed up its examination of the case and, to the extent that it had a choice between several similarly qualified experts, should have attached decisive weight to the time that appeared necessary to draw up the expert report. The court must keep track of the production of the report by setting deadlines. If there are any matters requiring the involvement of several experts, organisational arrangements calculated to allow the experts to work simultaneously, such as making a copy of the file, should be made wherever possible.

... The legal analysis of the case and the assessment of the evidence relevant for establishing the facts are tasks entrusted to the judges. A review of their findings is only possible in the context of an appeal. In the absence of any specific evidence it is not necessary to assess whether the Federal Constitutional Court may intervene at an earlier stage of the proceedings in exceptional cases, for example where the court's manner of proceeding is arbitrary in that it is not based on any objective reasons. ...

Seeing that the Court of Appeal has not yet given judgment, the Federal Constitutional Court must confine itself (muss sich beschränken) to a finding of unconstitutionality pursuant to section 95(1) of the Federal Constitutional Court Act. The Court of Appeal is now required, in the light of the above findings, to take effective steps to ensure that the proceedings can be expedited and concluded as quickly as possible. ..."

Similar reasoning was adopted in decisions of 17 November 1999 (no. 1 BvR 1708/99), concerning civil proceedings that had lasted fifteen years, and 6 May 1997 (no. 1 BvR 711/96), concerning a case that had been pending before a family court for six and a half years.

In its decision of 6 December 2004 (no. 1 BvR 1977/04), concerning civil proceedings pending in the Frankfurt am Main Regional Court since 1989, the Federal Constitutional Court reached the following conclusions:

"In view of the exceptional amount of time the proceedings have already taken, the Regional Court can no longer simply treat this as an ordinary complex case. The longer the proceedings, the more pressing the obligation on the court to seek to expedite and conclude them. In such circumstances, the court is obliged to take all steps available to it to speed up the proceedings. Where necessary, the reporting judge must ask to be relieved of other duties within the court ...

In accordance with section 95(1) of the Federal Constitutional Court Act, the Federal Constitutional Court is confined to making a finding of unconstitutionality [of the length of

the proceedings]. The Regional Court is now required, in the light of the above findings, to take effective steps to ensure that the proceedings can be concluded promptly."

(ii) Decisions in which constitutional complaints have been dismissed

67. In certain decisions the Federal Constitutional Court, while declining to examine a constitutional complaint lodged with it, has given particular indications to the court complained of. For example, in a decision of 18 January 2000 (no. 1 BvR 2115/98, unreported) it requested the regional court concerned to expedite the proceedings, which had been pending for almost nine years, and to give a final decision promptly (see Herbolzheimer v. Germany, no. 57249/00, § 38, 31 July 2003). Similar reasoning was adopted in a decision of 26 April 1999 (no. 1 BvR 467/99) concerning the length of civil proceedings lasting seven years at one level of jurisdiction, and in a decision of 27 July 2004 (no. 1 BvR 1196/04) concerning civil proceedings that had been pending for three years, in which the Federal Constitutional Court stated that it was assuming that the hearing scheduled for the end of 2004 would be held on the appointed date.

In a decision of 15 December 2003 (no. 1 BvR 1345/03), concerning proceedings which had been pending in the Administrative Court for two years but in which the complainant had reason to believe that his case would not be dealt with until late 2005, the Federal Constitutional Court observed that, according to what was at stake for the parties, a case could call for priority treatment and an exemption from the rule on examining applications in the order in which they were lodged.

(iii) Remittal of a case to the appropriate court

68. In a number of cases the Federal Constitutional Court, after finding the length of proceedings to be unconstitutional, has set aside the appellate court's refusal to grant the complainant's request to expedite the proceedings and has remitted the case to the same court.

For example, in a decision of 11 December 2000 (no. 1 BvR 661/00) it set aside a judgment in which a court of appeal had dismissed a special complaint alleging inaction on the part of a family court, and remitted the case to the court of appeal on the ground that there had been a violation of the right to a decision within a reasonable time and that it was not inconceivable that the court of appeal might have reached a different conclusion if it had taken account of the length of the proceedings. The same reasons were given in a decision of 25 November 2003 (no. 1 BvR 834/03). Similar findings were reached in decisions of 14 October 2003 (no. 1 BvR 901/03), concerning a period of five and a half years for an application for legal aid, and 28 August 2000 (no. 1 BvR 2328/96), concerning administrative proceedings that had been pending for ten years.

In case no. 1 BvR 383/00 (decision of 26 March 2001), concerning a constitutional complaint about the length of proceedings that had ended, the Labour Court of Appeal had taken eighteen months to draft its judgment and the Federal Labour Court had considered that, notwithstanding the fact that, by law, judgments were to be drafted within a period of five months from the date on which they were delivered in public, there were no grounds for allowing the appeal on points of law in the case before it. The Federal Constitutional Court, holding that there had been an infringement of the Basic Law, considered that such cases could be referred to it as soon as the five-month period had elapsed and remitted the case to a different division of the Labour Court of Appeal. Similar reasoning was adopted in a decision of 27 April 2005 (no. 1 BvR 2674/04).

(iv) Other consequences

69. In some cases complainants have declared their constitutional complaint to have lost its purpose where, after the complaint has been lodged, the court in question has taken action by scheduling a hearing or giving a decision. In such cases the Federal Constitutional Court has merely had to rule on costs.

In case no. 2 BvR 2189/99 (decision of 26 May 2000) the tax court before which proceedings had been pending for eight years held a hearing after the applicant had complained to the Federal Constitutional Court of their excessive length. He consequently withdrew his complaint and was refunded the legal costs incurred in lodging it in so far as it related to the length of the proceedings. However, in so far as he had challenged statutory provisions, he was required to await the outcome of the proceedings in the tax court. Similar reasoning was adopted in case no. 1 BvR 165/01 (decision of 4 July 2001), concerning proceedings in the social courts.

2. Special complaint in respect of inaction as a remedy for expediting proceedings

(a) Case-law of the Federal Constitutional Court

70. In a decision of 30 April 2003 (no. 1 PBvU 1/02), adopted by a majority of ten votes to six, the Federal Constitutional Court, sitting as a full court, called upon the legislature to create a remedy in respect of infringements of the right to be heard by a court. The final part of the decision contains the following passage:

"To redress certain deficiencies in the system of judicial protection, the courts have allowed the creation of special remedies partly outside the scope of written law. These remedies do not satisfy the requirements of constitutional law regarding the transparency of legal remedies (Rechtsmittelklarheit). Remedies must be provided for in the written legal order and the conditions for their use must be visible to citizens."

In the Federal Constitutional Court's view, the principle of the transparency of legal remedies resulted from the principle of legal certainty (Rechtssicherheit), which was an integral part of the rule of law. Citizens had to be in a position to assess whether a remedy could be used and, if so, under what conditions.

"The current system of special remedies in respect of violations of the right to be heard by a court does not comply with this principle of transparency. Doubts thus exist as to whether a special remedy has to be used first or whether a complaint should be lodged immediately with the Federal Constitutional Court. To avoid forfeiting their rights of appeal, litigants often avail themselves of both remedies at the same time. Such constraints provide a clear illustration of the shortcomings of special remedies in terms of the rule of law. At the same time they create an unnecessary burden for citizens and the courts.

The shortcomings referred to above preclude the Federal Constitutional Court from making the admissibility of a constitutional complaint contingent on the use of such special remedies. They are not among the remedies that must be used for the purposes of the first sentence of section 90(2) of the Federal Constitutional Court Act. In so far as such an approach has hitherto been adopted by the Federal Constitutional Court, it can no longer be pursued. ..."

In a decision of 19 January 2004 (no. 2 BvR 1904/03) the Federal Constitutional Court nevertheless declined to examine a constitutional complaint by a prisoner concerning the length of proceedings before a court responsible for the execution of sentences, holding that the complainant should first have lodged a complaint alleging inaction. After observing that some courts accepted such a remedy only where the lack of activity could be deemed to amount to a final rejection of the initial application, the Federal Constitutional Court pointed out that other courts applied less stringent criteria. It concluded:

"This remedy was not bound to fail in advance. The complainant could have been expected to attempt it. He should first have sought judicial protection from the appropriate courts, even if the admissibility of a remedy was the subject of dispute in the case-law and among legal writers and there was consequently some doubt as to whether the court in question would accept it or not."

In case no. 2 BvR 1610/03 (decision of 29 March 2005) the division of the Hamburg Regional Court responsible for supervising the execution of sentences had remained inactive despite several requests to expedite the proceedings and despite a decision in which the Hamburg Court of Appeal had held that their length was unlawful. The Federal Constitutional Court declared the constitutional complaint admissible in so far as it concerned the court's inaction but dismissed it in so far as it concerned the impossibility for the Court of Appeal to give a ruling in place of the Regional Court in order to put an end to the lack of activity. The Regional Court's persistent inaction did not show that the legislative framework failed to satisfy the requirements of Article 19 § 4 of the Basic Law. Besides the possibility of a finding by the appellate court that such inaction was unlawful, there were other remedies for restoring the proper administration of justice, namely an appeal to a higher authority and an action for damages against the State.

(b) Case-law of the civil courts

71. The special remedy of a complaint alleging inaction (ausserordentliche Untätigkeitsbeschwerde) has been recognised according to varying criteria by a number of courts of appeal. While some have accepted it where there have been significant delays, others have limited its application to cases in which the court's inactivity cannot be objectively justified and amounts to a denial of justice. Decisions falling into the latter category include those delivered by the Celle Court of Appeal on 17 March 1975 (no. 7 W 22/75, in which the remedy was found to be admissible only if the court's decision amounted to a denial of justice) and 5 March 1985 (no. 2 W 16/85, in which the remedy was found to be admissible in respect of an unjustified delay by the lower court in dealing with an application for legal aid). The Federal Court of Justice, for its part, has to date left open the question whether, in exceptional cases and with due regard to constitutional law, a special complaint may be allowed in respect of arbitrary inaction that could be construed as a denial of justice on the part of a lower court (see the decisions of 21 November 1994 (no. AnwZ (B) 41/94) and 13 January 2003 (no. VI ZB 74/02)).

72. The Government have cited several decisions in which a court of appeal has allowed a special complaint alleging inaction and has called on the lower court to continue its examination of the case (decisions of the Cologne Court of Appeal (23 June 1981, no. 4 WF 93/81), the Hamburg Court of Appeal (3 May 1989, no. 2 UF 24/89), the Saarbrücken Court of Appeal (18 April 1997, no. 8 W 279/96) and the Bamberg Court of Appeal (20 February 2003, no. 7 WF 35/03)) or have referred the case back to it (the Zweibrücken Court of Appeal's decision of 15 November 2004 (no. 4 W 155/04)). More recent decisions have

clarified the consequences of a complaint alleging inaction. For example, in two decisions of 24 July 2003 (nos. 16 WF 50/03 et 51/03) the Karlsruhe Court of Appeal allowed such a remedy not only where there had been unjustifiable inactivity amounting to a denial of justice, but also where the delay complained of was likely to be prejudicial to a parent claiming parental responsibility, or to the child's well-being. It observed that it could not take the place of the family court, even if this was the most efficient manner of proceeding. Nor could it impose a procedural timetable on the lower court, since unforeseen circumstances might arise. The action it could take was limited to calling on the court to expedite the proceedings as much as possible. However, to give more substance to its order, it set the court deadlines for dealing with an objection to an expert, for giving the expert six weeks in which to produce his report or, otherwise, appointing a new one, for interviewing the parents and child and for arranging a hearing. The Naumburg Court of Appeal delivered a similar decision on the same subject on 20 December 2004 (no. 14 WF 234/04). In other cases courts of appeal have given decisions in place of the lower courts on account of the delays observed and in so far as the case was ready for decision (decisions of the Zweibrücken Court of Appeal (10 September 2002, no. 4 W 65/02), the Naumburg Court of Appeal (19 July 2004, no. 14 WF 38/04) and the Cologne Labour Court of Appeal (9 June 2004, no. 3 Ta 185/04)).

3. Action for damages as a remedy

(a) Case-law of the Federal Constitutional Court

73. The Government have not produced any decisions of the Federal Constitutional Court on this subject.

In a decision of 26 February 1999 (no. 1 BvR 2142/97, unreported – see Mianowicz v. Germany, no. 42505/98, § 40, 18 October 2001) the Federal Constitutional Court refused to examine a constitutional complaint on the following grounds, inter alia:

"... The constitutional complaint is inadmissible in so far as the complainant is asking the Federal Constitutional Court to award him damages for the excessive length of the proceedings in issue. If a complainant seeks compensation for pecuniary or non-pecuniary damage sustained by him as a result of an infringement of his fundamental rights, he must first exhaust the remedies available in the civil courts. It is for those courts to assess, where appropriate, the extent to which the provisions on the State's liability (Article 34 of the Basic Law) and those deriving from the European Convention on Human Rights as incorporated in domestic law form a basis for awarding compensation for the excessive length of proceedings ..."

In a decision of 12 March 2004 (no. 1 BvR 1870/01, unreported) the Federal Constitutional Court confirmed that position:

"In so far as the constitutional complaint concerns the Labour Court of Appeal's decision of 18 May 2001 and that court's alleged inaction, it has become inadmissible because the Court of Appeal has in the meantime given judgment.

The complainant is not entitled to seek an ex post facto finding of a violation of the Basic Law on account of the excessive length of the proceedings. There is no statutory basis in constitutional law for applying to have a court decision set aside because of the excessive length of the proceedings, or for seeking damages on that account. Setting aside the Labour Court of Appeal's judgment of 3 December 2002 would not remedy the violation of the Basic

Law resulting from the excessive length of the proceedings but would simply delay them further ...”

(b) Case-law of the civil courts

74. The Government cited a judgment delivered by the Munich I Regional Court on 12 January 2005 (no. 9 O 17286/03). The case concerned an action for damages in which the claimant alleged that the Bavaria Administrative Court of Appeal had remained inactive for a period of four years and seven months. He had lodged a special complaint with the Federal Administrative Court alleging inaction on that account. Shortly afterwards, the Administrative Court of Appeal made an interlocutory order in the proceedings, with the result that the complainant informed the Federal Administrative Court that his complaint alleging inaction had lost its purpose and that his claim now related solely to the reimbursement of his legal fees. The president of a division of the Federal Administrative Court replied that as no official proceedings had been instituted before it – the complaint alleging inaction being a special remedy – it was unnecessary to rule on the question of costs. The Regional Court granted the claimant approximately EUR 1,400 in damages for the legal fees incurred within the limits of the applicable rates. The court further noted that the claimant had satisfied the conditions in Article 839 § 3 of the Civil Code by having appealed to a higher authority before bringing his action before it.

The Karlsruhe Regional Court, however, awarded compensation in a decision of 9 November 2001 (no. 3 O 192/01) for damage sustained as a result of the length of proceedings in the Saarland Court of Appeal after the Federal Constitutional Court had found their length to be unlawful (decision of 20 July 2000, no. 1 BvR 352/00 – see paragraph 66 above). It pointed out that State liability was not precluded by the “judicial privilege” enshrined in the first sentence of Article 839 § 2 of the Civil Code, since that rule did not apply in the event of inaction on the court’s part. The decision has not become final (see the Court’s decision in Grässer, cited above).

THE LAW

I. THE GOVERNMENT’S PRELIMINARY OBJECTION

75. The Government objected that domestic remedies had not been exhausted in respect of the complaint under Article 6 § 1 of the Convention. Firstly, the applicant had not yet applied to the Federal Constitutional Court at the time of his application to the Court; secondly, he had not made a valid application to the Federal Constitutional Court. His constitutional complaints had been inadmissible as they had not contained sufficient grounds. Neither his initial observations of 14 March 2001, amounting to eight lines, nor his additional observations of 5 and 11 August 2001 had allowed the Federal Constitutional Court to assess whether the length of the proceedings in the Regional Court had been excessive. The same was true of his second constitutional complaint.

76. The applicant asserted that his complaints had contained sufficient grounds. The conditions applied by the Federal Constitutional Court with regard to the statement of grounds were excessively formal and impossible to satisfy without legal assistance. However, the applicant had not had sufficient financial resources to instruct a lawyer. The Federal Constitutional Court had, moreover, contacted the Regional Court for information on the state

of the proceedings and had therefore been perfectly aware of the subject matter of the constitutional complaint.

77. The Court notes that there are two limbs to the Government's objection of failure to exhaust domestic remedies. However, it is unnecessary to rule on either of them if it is found that, as the applicant maintained, a constitutional complaint to the Federal Constitutional Court was in any event bound to fail as it is not a remedy capable of affording redress for his complaint under Article 6 § 1 of the Convention.

78. The Court observes that in its admissibility decision in the present case the Chamber joined to the merits the objection that domestic remedies had not been exhausted, on the ground that the question was closely linked to that of the existence of an effective remedy within the meaning of Article 13 of the Convention. It will therefore examine the Government's objection under that Article, having regard to the close affinity between Article 35 § 1 and Article 13 of the Convention (see Kudła v. Poland [GC], no. 30210/96, § 152, ECHR 2000-XI).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

79. The applicant complained of the lack of any remedies in the German legal system enabling him to complain of the length of the proceedings in the Hanover Regional Court. He alleged a violation of Article 13 of the Convention, which provides:

"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."

A. The parties' submissions

1. The Government

80. The Government asserted that the applicant had had four remedies available in respect of the length of the proceedings in the Regional Court: a constitutional complaint, an appeal to a higher authority, a special complaint alleging inaction and an action for damages.

(a) Constitutional complaint

81. The Government observed that the Court had held that a constitutional complaint to the Federal Constitutional Court was a remedy that had to be used for the purposes of Article 35 § 1 of the Convention where a complaint concerned a court's inaction or the length of civil proceedings (they cited Thieme v. Germany (dec.), no. 38365/97, 15 November 2001, and Teuschler v. Germany (dec.), no. 7636/99, 4 October 2001).

82. They pointed out that according to the settled case-law of the Federal Constitutional Court, Article 2 § 1 of the Basic Law taken together with Article 20 § 3 guaranteed the right to have legal disputes settled within a reasonable time. In view of the variety of types of proceedings, there were no absolute criteria for determining the point at which the length of proceedings became excessive. Consideration had to be given to all the circumstances of the case, what was at stake for the parties, the complexity of the case and the conduct of the

parties and of any other person, such as an expert, who acted independently of the court. The longer the proceedings as a whole or at one particular level of jurisdiction, the more pressing the obligation on the court to take steps to expedite or conclude them.

83. As to the means by which the Federal Constitutional Court was able to influence the length of pending proceedings, the Government admitted that that court generally confined itself, in accordance with section 95(1) of the Federal Constitutional Court Act, to holding that there had been an infringement of the Basic Law. However, it not only requested the court dealing with the case to expedite or conclude the proceedings (here they cited the decision of 17 November 1999 referred to in paragraph 66 above) but also gave indications as to how the proceedings could be expedited, as was evidenced by its decision of 20 July 2000 (ibid.). By virtue of section 31(1) of the Federal Constitutional Court Act, its decisions were binding on all domestic courts and authorities and did not concern only the courts that had dealt with the proceedings to which the constitutional complaint related and the parties to them. The Federal Constitutional Court could also proceed in this manner even where it declared the constitutional complaint inadmissible (they cited the decision of 27 July 2004 referred to in paragraph 67 above).

84. Furthermore, the mere fact that notice of a constitutional complaint satisfying the admissibility criteria was given to the Federal Government or the government of the Land in which the court in question was situated had the effect of speeding up the proceedings. Similarly, there were cases in which complainants had declared that their constitutional complaint had lost its purpose as a result of a procedural step taken in the meantime by the court concerned, the costs of bringing the complaint being borne by the State (they cited the decision of 26 May 2000 referred to in paragraph 69 above). Furthermore, the fact that the Federal Constitutional Court's decisions were often published and discussed in the legal press exerted additional pressure on the courts concerned.

85. Lastly, contrary to what the applicant maintained, the Federal Constitutional Court had urged the legislature to create a statutory remedy only in respect of a violation of the right to be heard by a court, without addressing the question whether it was also necessary to introduce a remedy in respect of the excessive length of proceedings.

86. At the hearing the Government requested the Court, in the event of its finding that a constitutional complaint was not an effective remedy within the meaning of Article 13, to hold that it was nevertheless a remedy that had to be used for the purposes of the exhaustion requirement in Article 35 § 1. Otherwise, the Court would be leaving the way open for litigants to complain to it directly about the length of domestic proceedings without first having to go through the Federal Constitutional Court, which performed a filter function in that regard. That neither could nor should be the aim of Article 13 and such a finding would lead to an increase in the number of cases before the Court.

(b) Appeal to a higher authority

87. The Government observed that under section 26(2) of the German Judges Act (Deutsches Richtergesetz) it was possible to expedite pending proceedings by means of an appeal to a higher authority.

(c) Special complaint alleging inaction

88. The Government submitted that while it was true that a special complaint alleging inaction had no statutory basis in German law, it was nevertheless recognised by a large number of courts of appeal. It was for the complainant to show that a court had been responsible for an unjustifiable delay in the proceedings amounting to a denial of justice. In such cases the court of appeal could order the resumption of the proceedings. Refusal by the judge in question to comply with the order could constitute grounds for a request that he or she withdraw. In some cases the court of appeal had taken over the examination of the case itself and had given a ruling in place of the lower court responsible for the slow pace of the proceedings. The Government conceded that to date the Federal Court of Justice had left open the question whether a complaint alleging inaction should be recognised and that no decisions had been given on the subject by the Celle Court of Appeal, which would have had jurisdiction had the applicant lodged such a complaint on account of the length of the proceedings in the Regional Court.

(d) Action for damages

89. The Government argued that it was possible to obtain damages for the excessive length of proceedings by means of an action to establish the State's liability. Where delays amounted to a breach of a judge's official duties, there could be an entitlement to compensation for the damage sustained. This was so where the judge wrongfully refused to conduct proceedings or delayed them, particularly in the event of a total lack of activity. On account of the principle of judicial independence, the entitlement generally applied only in cases of flagrant abuse (krasse Missbrauchsfälle). Compensation could be awarded for non-pecuniary damage where, for example, a person's physical well-being or health had been harmed. It was for the civil courts to rule on the award of compensation, there being no need for a prior finding by the Federal Constitutional Court that the length of the proceedings was unconstitutional. The Government cited a recent decision delivered by the Munich Regional Court on 12 January 2005 (see paragraph 74 above) in which the claimant had been refunded the legal costs necessarily incurred in lodging a complaint about the excessive length of proceedings before an administrative court of appeal. They further noted that the proceedings brought by the applicant in the Hanover Regional Court in 2002 had not concerned the State's liability for the excessive length of the proceedings but solely an application for legal aid.

(e) Creation of a new remedy

90. While asserting that existing remedies satisfied the requirements of Article 13 of the Convention, the Government informed the Court of a bill to introduce a remedy in the form of a complaint alleging inaction, along the lines of the Austrian model. This remedy would make it possible to lodge a complaint about the unjustified length of proceedings with the court concerned. If the court did not take the necessary steps to expedite the proceedings, the appellate court would be able to set it an appropriate deadline for taking such steps.

91. At the hearing the Government conceded that the current position in the German legal system was not satisfactory. At present, complaints about the excessive length of civil proceedings could not be lodged with the appellate courts, which were closer to the proceedings both geographically and in terms of their subject matter, but had to be raised before the Federal Constitutional Court, whose primary task was to rule on important issues of constitutional law. The Government insisted, however, that they did not consider that state of affairs to constitute a human-rights violation.

2. The applicant

92. The applicant asserted that none of the remedies advocated by the Government would in practice have made it possible to expedite the proceedings in the Regional Court.

93. With regard to the remedy of a constitutional complaint, the applicant submitted that the Federal Constitutional Court did not have the means to ensure that pending civil proceedings were effectively expedited. It was limited to declaring their length unconstitutional, a finding that, in view of the principle of judicial independence, had no effect on the court concerned. The binding nature of decisions of the Federal Constitutional Court related only to the application and interpretation of the law and not to the manner in which proceedings should be conducted. The pressure allegedly exerted by publication of a decision finding a breach of the right to a hearing within a reasonable time was insufficient and purely a matter of speculation, and could not in any event be seriously taken into consideration in examining the effectiveness of a constitutional complaint. Such published decisions, moreover, had had no impact on the conduct of the proceedings in the Regional Court in his case. For a remedy to be considered effective, it had to be capable of improving the position of the person concerned, for example by setting deadlines, as was possible under section 91 of the Austrian Courts Act (Gerichtsorganisationsgesetz). Such a system made it easier for litigants to prove, where the deadline was not met, that the court had delayed the proceedings and to obtain compensation.

94. As regards an appeal to a higher authority, the applicant submitted that that remedy did not satisfy the criteria of effectiveness for the purposes of Article 13 of the Convention.

95. As regards the remedy of a special complaint alleging inaction, the applicant observed that it had no statutory basis in domestic law and had been recognised only by certain courts of appeal, the Celle Court of Appeal not being among them. It accordingly could not be regarded as effective within the meaning of Article 13 of the Convention. Even supposing that such a remedy was capable of affording redress for the excessive length of proceedings, it should at the very least be available in a consistent manner at national level. However, the Federal Court of Justice, the supreme judicial body responsible for ensuring consistency of case-law at federal level, had accepted it only in the event of a flagrant denial of justice. The applicant inferred from this that such a remedy did not have any prospect of succeeding unless there had been a total lack of activity on the part of the court in question. In his case, however, the Regional Court had taken a whole succession of procedural decisions, which were precisely what had caused the delays. The principle of judicial independence likewise generally constituted an obstacle to the intervention of a higher court in pending proceedings. Furthermore, the three decisions cited by the Government in which courts of appeal had taken over the examination of the case because of the excessive length of the proceedings in the lower court were recent and two of them had concerned family law, a field in which particular diligence and promptness were called for.

96. As regards the remedy of an action for damages, the applicant pointed out that he had applied to the Hanover Regional Court for legal aid with a view to suing the Land of Lower Saxony on account of the delays that had occurred. In view of his insufficient financial resources and the requirement for him to be represented by counsel, he had not been able to bring an action directly against the State but had first had to apply for legal aid. His application had been refused at first instance and subsequently by the Celle Court of Appeal on the grounds that there had been no unjustified delays in the proceedings and that he had not provided sufficient details of the damage he had allegedly sustained. The applicant submitted in conclusion that this remedy was ineffective because the courts concerned had taken fourteen months to rule on the matter. Furthermore, it would at best have resulted in a finding

that the State was liable, without expediting the proceedings. In any event, the civil courts could not award any compensation for non-pecuniary damage but only for pecuniary damage.

B. The Court's assessment

1. General principles

97. Under Article 1 of the Convention, which provides that "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention", the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Article 13 and Article 35 § 1 of the Convention (see Scordino v. Italy (no. 1) [GC], no. 36813/97, § 140, ECHR 2006-..., and Cocchiarella v. Italy [GC], no. 64886/01, § 38, ECHR 2006-...).

98. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so. It is therefore necessary to determine in each case whether the means available to litigants in domestic law are "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see Kudła, cited above, §§ 157-58).

99. Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective" within the meaning of Article 13 of the Convention if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred. A remedy is therefore effective if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see Mifsud v. France (dec.) [GC], no. 57220/00, § 17, ECHR 2002 VIII).

100. However, as the Court has recently emphasised, the best solution in absolute terms is indisputably, as in many spheres, prevention. Where the judicial system is deficient with regard to the reasonable-time requirement in Article 6 § 1 of the Convention, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach a posteriori, as does a compensatory remedy. Some States have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation (see Scordino, cited above, §§ 183 and 186, and Cocchiarella, cited above, §§ 74 and 77).

101. Where a domestic legal system has made provision for bringing an action against the State, the Court has pointed out that such an action must remain an effective, sufficient and accessible remedy in respect of the excessive length of judicial proceedings and that its sufficiency may be affected by excessive delays and depend on the level of compensation (see Paulino Tomás v. Portugal (dec.), no. 58698/00, ECHR 2003 VIII, and Doran v. Ireland, no. 50389/99, § 57, ECHR 2003 X).

2. Application of these principles in the instant case

102. The Court considers, without anticipating the examination of whether the reasonable-time requirement in Article 6 § 1 of the Convention was complied with, that the applicant's complaint concerning the length of the proceedings in the Regional Court is on its face "arguable", seeing that the proceedings in issue have lasted more than sixteen years (see, mutatis mutandis, Öneryıldız v. Turkey [GC], no. 48939/99, § 151, ECHR 2004 XI). This complaint has, moreover, been declared admissible by the Chamber.

(a) Constitutional complaint

103. The Court observes that, having regard to the Federal Constitutional Court's case-law acknowledging the existence of a constitutional right to expeditious proceedings (see the Commission's decisions in X v. Germany, no. 8499/79, 7 October 1980, Decisions and Reports (DR) 21, p. 176, and Reisz v. Germany, no. 32013/96, 20 October 1997, DR 91-A, p. 53, which refer to König v. Germany, judgment of 28 June 1978, Series A no. 27, pp. 21-22, §§ 61 and 64), the Convention institutions have previously taken the view that a constitutional complaint to the Federal Constitutional Court was an effective remedy in respect of complaints concerning the length of proceedings (see the Commission's decisions in X v. Germany, cited above; W. v. Germany, no. 10785/84, 18 July 1986, DR 48, p. 102; and Reisz, cited above; and also the Court's decisions in Teuschler and Thieme, both cited above).

104. However, in the light of the continuing accumulation of applications in which the only or the principal allegation was that of a failure to ensure a hearing within a reasonable time, in breach of Article 6 § 1, the Court adopted a different approach in the Kudła case (cited above, §§ 148-49), in which it drew attention to the important danger that existed for the rule of law within national legal orders when excessive delays in the administration of justice occurred in respect of which litigants had no domestic remedy, and observed that it was henceforth necessary, notwithstanding a finding of a violation of Article 6 § 1 for failure to comply with the reasonable-time requirement, to carry out a separate examination of any such complaints under Article 13.

The Court has subsequently undertaken a closer examination of the effectiveness, within the meaning of Article 13 of the Convention, of remedies in a number of Contracting States in respect of the length of proceedings (see, among other authorities, Belinger v. Slovenia (dec.), no. 42320/98, 2 October 2001; Andrášik and Others v. Slovakia (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002 IX; Slaviček v. Croatia (dec.), no. 20862/02, ECHR 2002-VII; Fernández-Molina González and Others v. Spain (dec.), no. 64359/01, ECHR 2002 IX; Doran, cited above; Hartman v. the Czech Republic, no. 53341/99, ECHR 2003 VIII; Paulino Tomás, cited above; Kormacheva v. Russia, no. 53084/99, 29 January 2004; Bako v. Slovakia (dec.), no. 60227/00, 15 March 2005; Charzyński v. Poland (dec.), no. 15212/03, ECHR 2005-V; and Lukenda v. Slovenia, no. 23032/02, ECHR 2005 X).

105. The Court observes that the right to expeditious proceedings is guaranteed by the German Basic Law and that a violation of this right may be alleged before the Federal Constitutional Court. Where that court finds that proceedings have taken an excessive time, it declares their length unconstitutional and requests the court concerned to expedite or conclude them. Like the Czech Constitutional Court (see Hartman, cited above, §§ 67-68) but unlike other constitutional and supreme courts in Europe (see, for example, Andrášik and Others, Slaviček and Fernández Molina González and Others, all cited above, and Kunz v. Switzerland (dec.), no. 623/02, 21 June 2005), the German Federal Constitutional Court is not empowered to set deadlines for the lower court or to order other measures to speed up the proceedings in issue; nor is it able to award compensation. In the Government's submission, a finding of unconstitutionality, on account of its erga omnes effect and the publicity enjoyed by the Federal Constitutional Court's decisions, is sufficient to ensure that the proceedings are effectively expedited, especially as the Federal Constitutional Court may, where appropriate, give detailed indications as to how the proceedings could be expedited, as evidenced by its decision of 20 July 2000 (see paragraph 66 above). The Court notes that that decision, in which the Federal Constitutional Court did indeed give fairly detailed indications of the means whereby the Court of Appeal could speed up the proceedings, remains exceptional and cannot therefore be said to be representative. Furthermore, as regards the effect in concreto of the Federal Constitutional Court's decisions, the decision in question referred to that court's settled case-law to the effect that it was not its task to order the courts to take specific measures to expedite proceedings, that being a matter for assessment by the court dealing with the case. In other cases the Federal Constitutional Court has given somewhat vague indications, such as its statement that it was assuming that the hearing scheduled by the lower court would take place or its observation that some cases called for priority treatment on account of what was at stake for the parties (see paragraph 67 above). In certain cases, in which the constitutional complaint concerned the refusal of an appellate court to allow a complaint alleging inaction on account of the length of proceedings in the court below, the Federal Constitutional Court has set aside the refusal and remitted the case to the appellate court.

106. Accordingly, the only means available for the Federal Constitutional Court to ensure that pending proceedings are expedited is to declare that their length is in breach of the Basic Law and to call upon the court concerned to take the steps necessary for their progress or conclusion. In this connection, it is worth noting that the Federal Constitutional Court itself acknowledges the limited scope of its powers in declaring the length of proceedings to be unconstitutional (see paragraph 66 above). While accepting that the proceedings may well be conducted more quickly where the court in question complies immediately with the Federal Constitutional Court's order, the Court notes that the Government have not provided any indication of the potential or actual impact of the Federal Constitutional Court's decisions on the processing of cases in which there have been delays. It observes that in a case against Germany currently pending before it, in which such an order had been given by the Federal Constitutional Court, the proceedings complained of ended sixteen months later in the court in question and two years and nine months later in the Court of Appeal (see Grässer, cited above). In another case dealt with by the Court, in which the Federal Constitutional Court had ordered the proceedings to be expedited while not finding their length to be unconstitutional, the lower court took a further period of more than ten months to complete its examination, and the proceedings as a whole ended two and a half years after the Federal Constitutional Court's order (see Herbolzheimer, cited above, §§ 31-38). In that case, concerning proceedings that had lasted nine years and eight months, the Court, moreover, found a violation of Article 6 § 1 of the Convention, whereas the Federal Constitutional Court had declared the constitutional complaint inadmissible, finding that the length of the proceedings

(almost nine years by that stage) had not yet reached an intolerable level (see paragraph 67 above).

107. Lastly, as regards the public pressure referred to by the Government, the Court is not persuaded that this is a factor likely to expedite proceedings in an individual case.

108. Having regard to the above considerations, the Court finds that the Government have not shown that a constitutional complaint is capable of affording redress for the excessive length of pending civil proceedings. Accordingly, even assuming that the constitutional complaints lodged by the applicant, who was not represented by counsel before the Federal Constitutional Court, did not satisfy the admissibility criteria, he was not required to raise before that court his complaint about the length of the proceedings in his case.

(b) Appeal to a higher authority

109. The Court notes that the Government have not advanced any relevant reasons to warrant the conclusion that an appeal to a higher authority, as provided for in section 26(2) of the German Judges Act, would have been capable of expediting the proceedings in the Regional Court. It observes, moreover, that it has found on a number of occasions that such appeals are not an effective remedy within the meaning of Article 13 in that they do not generally give litigants a personal right to compel the State to exercise its supervisory powers (see Kuchař and Štis v. the Czech Republic (dec.), no. 37527/97, 23 May 2000; Horvat v. Croatia, no. 1585/99, § 47, ECHR 2001-VIII; and Lukenda, cited above, §§ 61-63).

(c) Special complaint alleging inaction

110. The Court notes that the special remedy of a complaint alleging inaction has no statutory basis in domestic law. Although a considerable number of courts of appeal have accepted it in principle, the admissibility criteria for it are variable and depend on the circumstances of the particular case. The Federal Court of Justice has yet to give a ruling on the admissibility of such a remedy. As regards the consequences where such a complaint has been declared admissible, the Court notes that the Government have merely stated, citing four cases in support of their position, that the appellate court may order the continuation of the proceedings before the lower court, without giving any further details about the content of such orders or their effect on the proceedings in issue. As regards the fact that certain courts of appeal have chosen to give detailed indications of ways of speeding up the proceedings or have themselves given a decision in place of the lower court (see paragraph 72 above), the Court observes that only four such courts have delivered decisions to that effect, none of them before the application in the present case was lodged in November 1999, whereas the effectiveness of a particular remedy is normally assessed with reference to the date of the application (see, for example, Baumann v. France, no. 33592/96, § 47, 22 May 2001; Nogolica v. Croatia (dec.), no. 77784/01, ECHR 2002-VIII; and Marien v. Belgium (dec.), no. 46046/99, 24 June 2004). Moreover, the somewhat general nature of the findings reached by the full Federal Constitutional Court (see paragraph 70 above) tends to suggest, although the decision in question solely concerned the right to be heard by a court, that an unwritten remedy with variable admissibility criteria is likely to be problematic in terms of constitutional law.

111. In their observations the parties agreed that the Celle Court of Appeal, which would have had jurisdiction had the applicant brought a complaint alleging inaction on account of the length of the proceedings in the Regional Court, has yet to give a ruling on the admissibility

of such a complaint. Having regard to the uncertainty about the admissibility criteria for a special complaint alleging inaction and to the practical effect of such a complaint on the proceedings in the instant case, the Court considers that no particular relevance should be attached to the fact that the Celle Court of Appeal has not ruled out this remedy in principle (see paragraph 71 above). It further notes that the Federal Constitutional Court did not declare the applicant's constitutional complaints inadmissible for failure to exhaust domestic remedies within the meaning of the first sentence of section 90 (2) of the Federal Constitutional Court Act (see paragraph 62 above).

112. Accordingly, a special complaint alleging inaction cannot be regarded as an effective remedy in the instant case.

(d) Action for damages

113. Lastly, as regards the remedy of an action for damages, the Court notes that the Government have cited only one judgment, delivered recently by the Munich Regional Court, which held that the inaction observed in proceedings in the administrative courts amounted to a breach of judicial duties. However, a single final judicial decision – given, moreover, at first instance – is not sufficient to satisfy the Court that there was an effective remedy available in theory and in practice (see Rezette v. Luxembourg, no. 73983/01, § 27, 13 July 2004; Marien, cited above; and Gama da Costa v. Portugal, no. 12659/87, Commission decision of 5 March 1990, DR 65, p. 136). Furthermore, the applicant's application to the civil courts for legal aid in order to bring an action for damages was refused on the ground, inter alia, that there had not been any unjustified delays in the proceedings. In any event, even if the relevant courts were to conclude that there had been a breach of judicial duties on account of delays rendering proceedings excessively long, they would not be able to make any award in respect of non-pecuniary damage, whereas, as the Court has previously observed, in cases concerning the length of civil proceedings the applicants above all sustain damage under that head (see Hartman, cited above, § 68, and Lukenda, cited above, § 59; see also Scordino, cited above, § 204, and Cocchiarella, cited above, § 95). The decision of the Munich Regional Court (cited in paragraph 74 above) is a telling example of this shortcoming, since the applicant in that case obtained only partial reimbursement of the legal costs he had necessarily incurred in lodging the complaint alleging inaction.

114. Accordingly, an action for damages was not a remedy capable of affording the applicant adequate redress for the length of the proceedings.

(e) Conclusion

115. In conclusion, none of the four remedies advocated by the Government can be considered effective within the meaning of Article 13 of the Convention. As regards the effectiveness of these remedies in the aggregate, the Court notes that the Government have neither alleged nor shown that a combination of two or more of them would satisfy the requirements of Article 13. It is therefore unnecessary to rule on this question.

116. Accordingly, the applicant did not have an effective remedy within the meaning of Article 13 of the Convention which could have expedited the proceedings in the Regional Court or provided adequate redress for delays that had already occurred. There has therefore been a violation of this Article and the Government's objection of failure to exhaust domestic remedies must be dismissed.

117. As regards the possible introduction in the German legal system of a new remedy in respect of inaction, the Court refers to its findings in relation to Article 46 of the Convention (see paragraph 138 below).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

118. The applicant complained of the length of the proceedings in the Hanover Regional Court. He relied on Article 6 § 1, the relevant part of which provides:

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

119. The Court notes that the proceedings in issue began on 18 September 1989, when the applicant applied to the Regional Court, and are still pending. They have therefore lasted more than sixteen years and seven months to date.

A. The parties' submissions

1. The Government

120. The Government conceded that the length of the proceedings in issue was considerable but argued that this was due to the complexity of the case and, above all, to the applicant's conduct.

121. The complexity of the case stemmed, in their submission, from the need to carry out a number of expert medical assessments. The fact that the applicant had fallen a further time on his hand or left arm on 4 January 1993 had made it even more difficult to assess the precise after-effects of his accident in 1982.

122. The main reason for the delays observed had been the applicant's conduct. He had repeatedly filed lengthy submissions, had twice revised his initial claim, had asked on seventeen occasions for additional time to submit his observations, had twice requested a stay of the proceedings with a view to negotiating a friendly settlement, had several times objected to the judges and experts involved in his case and had requested several expert assessments. The Government asserted that although representation by counsel was compulsory, the Regional Court had been obliged to take into account the observations submitted by the applicant personally because, for example, an application for a judge to withdraw could be lodged without the intervention of a lawyer. They pointed out that German civil procedure was governed by the principle that the procedural initiative lay with the parties. Delays amounting to a total of fifteen months during the first phase of the proceedings and four years and ten months during the second were attributable to the applicant. Furthermore, he had not instituted proceedings in the Regional Court until seven years after the accident, a fact that had complicated the domestic courts' task. In conclusion, the applicant had contributed so much to the length of the proceedings that he could not validly complain about it to the Court.

123. The Government admitted that the Regional Court could perhaps have conducted the proceedings more quickly if it had paid less regard to the applicant's objections to the choice of experts appointed. They emphasised, however, that it had been necessary to take great care in selecting the experts in order to ensure that they had the necessary medical expertise to obtain conclusive findings as to the extent to which the 1982 accident had been the cause of

the applicant's fragile state of health. The Government stated that it had taken three years in total to produce the expert reports. They added that, having been informed that out-of-court negotiations between the parties were in progress, the Regional Court had had valid reasons for awaiting their outcome before resuming the proceedings.

124. As to what was at stake in the case, the Government observed that it had not called for special treatment. Following his accident in 1982, the applicant had successfully completed a training course in information technology and had worked for several years. It was only as a result of his accidents in 1990, 1991 and 1993 that he had had to stop working and was now in receipt of an occupational-disability pension.

2. The applicant

125. The applicant disputed the Government's submissions, contending that the case had not been particularly complex, especially as the Regional Court had already delivered a partial decision in 1991. He gave a detailed breakdown of periods of inaction totalling 34 months in the proceedings. In particular, the Regional Court had taken a long time to appoint an expert who ultimately had not had the necessary expertise in the fields of hand surgery and the causes of pain.

126. The applicant pointed out that the Regional Court had remained in charge of the conduct of the proceedings and had not been obliged to take into account the numerous observations and requests he had submitted personally since, as the court had informed him at the start of the proceedings, representation by counsel was compulsory before it. The applicant pointed out that the reason why he had contacted the Regional Court so frequently was that he had been frustrated at the length of the proceedings. He further noted that the Regional Court had given judgment a few days prior to the hearing in his case before the Court, a fact that showed that it had been quite capable of concluding the proceedings.

127. As to what was at stake in the case, at the hearing before the Court the applicant emphasised that the outcome of the proceedings was very important for him and his future. In its partial decision of 1991 the Regional Court had held that he was entitled to an award for 80% of the damage he had sustained. He had therefore been entitled to expect a substantial amount of compensation, serving as a financial basis for his future plans.

B. The Court's assessment

128. 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 of the relevant authorities and what was at stake for the applicant in the dispute (see Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII).

129. It further refers to its settled case-law to the effect that even in legal systems applying the principle that the procedural initiative lies with the parties (Parteimaxime), as the German Code of Civil Procedure does, the parties' attitude does not dispense the courts from ensuring the expeditious trial required by Article 6 § 1 (see Guincho v. Portugal, judgment of 10 July 1984, Series A no. 81, p. 14, § 32; Capuano v. Italy, judgment of 25 June 1987, Series A no. 119, p. 11, § 25; Unión Alimentaria Sanders S.A. v. Spain, judgment of 7 July 1989, Series A no. 157, p. 157, § 35; Duclos v. France, judgment of 17 December 1996, Reports of

Judgments and Decisions 1996-VI, p. 2180, § 55; Pafitis and Others v. Greece, judgment of 26 February 1998, Reports 1998-I, p. 458, § 93; H.T. v. Germany, no. 38073/97, § 35, 11 October 2001; Berlin v. Luxembourg, no. 44978/98, § 58, 15 July 2003; and McMullen v. Ireland, no. 42297/98, § 38, 29 July 2004). The same applies where the cooperation of an expert is necessary during the proceedings (see Scopelliti v. Italy, judgment of 23 November 1993, Series A no. 278, p. 9, §§ 23 and 25; Martins Moreira v. Portugal, judgment of 26 October 1988, Series A no. 143, p. 21, § 60; and Herbolzheimer, cited above, §§ 45 and 48).

It lastly reiterates that Article 6 § 1 imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to hear cases within a reasonable time (see Scordino, cited above, § 183; Cocchiarella, cited above, § 74; Duclos, cited above, p. 2181, § 55; Muti v. Italy, judgment of 23 March 1994, Series A no. 281-C, p. 57, § 15; Caillot v. France, no. 36932/97, § 27, 4 June 1999; Herbolzheimer, cited above, § 48; and Doran, cited above, § 47).

130. The Court considers that the case was not of a particularly complex nature. It can, however, accept that its complexity increased from a procedural standpoint when it became necessary, after the applicant had fallen on his arm a further time in January 1993, to seek the opinion of several medical experts as to whether and to what extent the 1982 accident had caused him physical and mental damage.

131. With regard to the applicant's conduct, the Court notes that he repeatedly asked for extensions of the time he had been given and on four occasions applied for one or more of the Regional Court judges dealing with his case to withdraw. He also requested additional expert opinions on several occasions and objected to three experts, going so far as to seek the institution of disciplinary proceedings against at least one of them. Furthermore, although he was represented by counsel, he frequently contacted the Regional Court personally, either in writing or by telephone. In addition, he ultimately withdrew his consent, which he had given orally at the hearing of 9 July 2001 in the Regional Court, for the evidence before the Social Court of Appeal to be added to the case file. To that extent, therefore, the applicant contributed to the delays observed. He cannot, on the other hand, be criticised for taking advantage of certain remedies available to him under German law, although the national authorities cannot be held responsible for the resulting increase in the length of the proceedings.

132. With regard to the conduct of the Regional Court, the Court accepts that a certain amount of time was necessary for the production of expert reports. It considers, however, that, even taking into account the fact that the Regional Court had to choose the necessary experts carefully in order to obtain conclusive findings, the overall time it took to do so exceeded a reasonable length. Furthermore, on several occasions during the proceedings the parties exchanged observations without any particular steps being taken by the Regional Court. It should also be noted that although representation by counsel was compulsory, the applicant was able to submit a large number of requests personally. In the Government's submission, the Regional Court was required to take them into consideration because, for example, an application for a judge to withdraw can be lodged without the intervention of a lawyer. However, the delays caused by the four applications to that effect cannot in themselves account for the length of the proceedings. The Court considers that the Government have not adequately shown that the Regional Court did not have sufficient means available to prevent the applicant from filing so many personal observations, seeing that most of them did not concern objections to judges.

133. As to what was at stake for the parties in the dispute, the Court observes that the proceedings concerned a claim for damages and for a pension in respect of the damage resulting from the accident and that they accordingly did not belong to a category that by its nature calls for special expedition (such as custody of children (see Niederböster v. Germany, no. 39547/98, § 33, ECHR 2003 IV), civil status and capacity (see Mikulić v. Croatia, no. 53176/99, § 44, ECHR 2002-I) or labour disputes (see Frydlender, cited above, § 45)). It further notes that the cyclist's and Hanover City Council's insurance companies have paid the applicant various amounts in respect of non-pecuniary and pecuniary damage. Nevertheless, it cannot ignore the fact that the court action brought by the applicant in September 1989 has, after more than sixteen and a half years, still not given rise to a final judicial decision.

134. The Court accordingly concludes that, notwithstanding the applicant's conduct and all the circumstances relied on by the Government, the length of the proceedings has exceeded a reasonable time for the purposes of Article 6 § 1 of the Convention. There has therefore been a violation of that provision.

IV. ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention

135. Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

136. The Court's above findings suggest that the remedies available in the German legal system do not afford litigants an effective means of complaining of the length of pending civil proceedings and therefore do not comply with the Convention.

137. The Court reiterates that, in accordance with Article 46 of the Convention, a finding of a violation imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects (see Broniowski v. Poland [GC], no. 31443/96, § 192, ECHR 2004-V).

138. The Court has taken due note of the bill, tabled shortly before the parliamentary elections of 18 September 2005, to introduce in German written law a new remedy in respect of inaction. According to the Government, this remedy, the creation of which was felt to be necessary in the light of the Court's judgment in Kudła, will ease the Federal Constitutional Court's caseload in that complaints about the length of proceedings will in future have to be submitted to the court dealing with the case or, if that court refuses to take steps to expedite the proceedings, to an appellate court.

The Court considers in this connection that the Government, in opting for a preventive remedy, have taken the approach most in keeping with the spirit of the protection system set up by the Convention since the new remedy will deal with the root cause of the length-of-

proceedings problem and appears more likely to offer litigants adequate protection than compensatory remedies, which merely allow action to be taken a posteriori (see Scordino, cited above, § 183, and Cocchiarella, cited above, § 74).

139. The Court welcomes this initiative, finding no reason to conclude that it has been abandoned, and encourages the speedy enactment of a law containing the proposals set out in the bill in question. It therefore considers it unnecessary to indicate any general measures at national level that could be called for in the execution of this judgment (see Sejdovic v. Italy [GC], no. 56581/00, §§ 121-124, ECHR 2006 ...).

B. Article 41 of the Convention

140. Under Article 41 of the Convention,

"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."

1. Damage

141. The applicant claimed EUR 826,328, plus 7% interest, for loss of earnings. Referring to his training in information technology, he submitted that he would have been able to earn EUR 35,000 per annum as a systems analyst. He further claimed EUR 17,500,000, plus 7% interest, for loss of profit (lucrum cessans) in relation to marketing schemes for a number of products aimed at the Turkish market which he stated that he had been unable to carry out in the absence of a judgment by the Regional Court. The award by the Regional Court of the compensation sought would have allowed him to fund those projects. The applicant claimed a further sum of EUR 170,000 in respect of the interest payable, in his submission, on the amount to which he was entitled in order to avoid depreciation over time. Lastly, in respect of non-pecuniary damage, the applicant sought EUR 300,000 on account of his accident in 1982 and EUR 100,000 for the excessive length of the proceedings in the Regional Court, which he claimed had caused him permanent stress and severe depression. He had lost all confidence in the German authorities, which were persecuting him on account of the compensation claims he had brought in the domestic courts and had instituted criminal proceedings against him.

142. The Government contended that if the Court were to find a violation of the Convention, that would in itself constitute sufficient just satisfaction.

They argued that the applicant's claims were excessive and contrary to the purpose of Article 41. In their submission, there was no causal link between the alleged violations of Article 6 § 1 and Article 13 of the Convention and any of the pecuniary damage alleged by the applicant, who was in fact seeking to be treated as though the domestic courts had found in his favour and had allowed his claims for compensation in full.

143. As regards non-pecuniary damage, the Government submitted that the amount claimed by the applicant was excessive and that the Court should adhere to its case-law on the subject.

144. The Court observes that the pecuniary damage alleged was not caused either by the length of the proceedings in the Regional Court or by the lack of an effective remedy in that regard. In particular, it cannot speculate as to what the outcome of the proceedings would

have been had they satisfied the requirements of Article 6 § 1, as to their length, and Article 13 of the Convention (see Bayrak v. Germany, no. 27937/95, § 38, 20 December 2001; Perote Pellon v. Spain, no. 45238/99, § 58, 25 July 2002; and Storck v. Germany, no. 61603/00, § 176, ECHR 2005 V). It points out that the question whether the Hanover Regional Court's conclusions were well-founded is not part of the subject matter of this application. Accordingly, it considers that no award can be made to the applicant under this head.

145. With regard to non-pecuniary damage, the Court considers, contrary to the Government, that the finding of a violation of Article 6 § 1 and Article 13 of the Convention would not constitute sufficient just satisfaction for the damage sustained by the applicant. However, it considers that the sum claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, and having regard to the nature of the Convention violations it has found, the Court awards the applicant EUR 10,000 under this head.

2. Costs and expenses

146. The applicant sought EUR 3,929.69 in respect of the domestic proceedings, comprising EUR 717.80 for the expert report of 6 November 1997 (see paragraph 21 above); EUR 711.89 for legal fees incurred in bringing the action for damages against the State; and a lump sum of EUR 2,500 for sundry expenses (telecommunications and correspondence with his lawyers and the Regional Court, travel and photocopying). In respect of the proceedings before the Court he sought EUR 6,208.20, an amount corresponding to his lawyer's fees, his lawyer's expenses in connection with attending the hearing, and translation costs.

The applicant further claimed EUR 300 for the costs he had incurred in attending the hearing before the Court and a lump sum of EUR 150 for correspondence and sundry expenses.

147. The Government objected to the reimbursement of the costs relating to the expert report, which would have been incurred in any event, irrespective of the length of the proceedings. They also submitted that the legal fees relating to the action for damages against the State had been incurred not because of the length of the proceedings but because the application for legal aid in order to bring the action had been ill-founded.

148. With regard to the sums claimed in respect of the costs of the proceedings in the domestic courts, the Court considers that they are justified with the exception of the sum claimed in connection with the expert report, which does not relate to the violations it has found, and the lump sums of EUR 2,500 and EUR 150, which have not been substantiated. However, seeing that in length-of-proceedings cases the protracted examination of a case beyond a "reasonable time" involves an increase in the applicant's costs (see Bouilly v. France, no. 38952/97, § 33, 7 December 1999, and Maurer v. Austria, no. 50110/99, § 27, 17 January 2002), it does not find it unreasonable to make an award of EUR 250 under this head. It therefore awards a total of EUR 961.89 for the costs relating to the proceedings in Germany.

149. With regard to the costs incurred in the proceedings before it, the Court awards EUR 6,208.20 less the sums already received under this head in legal aid (EUR 2,497.20), making a total of EUR 3,711. It points out that the applicant's travel expenses for attending the hearing were covered by the award of legal aid.

3. Default interest

150. 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. Holds that there has been a violation of Article 13 of the Convention;

2. Dismisses in consequence the Government's preliminary objection;

3. Holds that there has been a violation of Article 6 § 1 of the Convention;

4. Holds

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;

(ii) EUR 4,672.89 (four thousand six hundred and seventy-two euros and eighty-nine cents) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

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

5. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 8 June 2006.

T.L. EARLY
Section Registrar

J.-P. COSTA
President

EGMR Große Kammer, Urteil vom 8. 6. 2006 - 75529/01 (Sürmeli/Deutschland) , NJW 2006, 2389

1.
Art. 13 EMRK (Recht auf wirksame Beschwerde) garantiert einen Rechtsbehelf im staatlichen Recht zur Durchsetzung von Rechten und Freiheiten der Konvention, der wirksam sein muss. Das ist er, wenn mit ihm entweder die behauptete Verletzung oder ihre Fortdauer verhindert oder angemessene Abhilfe für schon geschehene Konventionsverletzungen erlangt werden kann.

2.
Art. 13 EMRK garantiert auch einen Rechtsbehelf gegen angebliche Verletzungen von Art. 6 I EMRK (Recht auf ein faires Verfahren) durch überlange Gerichtsverfahren. Wirksam ist er, wenn der Beschwerdeführer mit ihm entweder die Entscheidung des zuständigen Gerichts beschleunigen oder angemessene Wiedergutmachung für schon eingetretene Verzögerungen erhalten kann.

3.
Die beste Lösung ist ein präventiver Rechtsbehelf zur Beschleunigung von Verfahren, weil er die Verletzung von Art. 6 I EMRK verhindert und sie nicht nur nachträglich wieder gutmacht.

4.
Dass mit der Verfassungsbeschwerde eine verfassungswidrige Verfahrensverzögerung gerügt werden kann, genügt den Anforderungen von Art. 13 EMRK nicht, weil das BVerfG im Wesentlichen nur feststellen kann, dass eine Verfahrensverzögerung verfassungswidrig war. Es kann dem zuständigen Gericht keine Frist setzen oder andere konkrete Beschleunigungsmaßnahmen anordnen und auch keine Wiedergutmachung gewähren.

5.
Eine Dienstaufsichtsbeschwerde ist keine wirksame Beschwerde i.S. von Art. 13 EMRK, weil sie im Allgemeinen keinen Anspruch darauf gibt, den Staat zur Ausübung seiner Aufsichtsbefugnisse zu zwingen. Das gilt auch für die Beschwerde nach § 26 II DRiG.

6.
Eine außerordentliche Untätigkeitsbeschwerde ist kein wirksamer Rechtsbehelf i.S. von Art. 13 EMRK. Sie wird nur von einigen Gerichten anerkannt, und die Kriterien für die Zulässigkeit sind unterschiedlich. Die Plenarentscheidung des BVerfG vom 30. 4. 2003 (BVerfGE 107, 395 = NJW 2003, 1924) zum rechtlichen Gehör scheint darauf hinzuweisen, dass ein nicht gesetzlich geregelter Rechtsbehelf mit unterschiedlichen Zulässigkeitskriterien verfassungsrechtlich fragwürdig ist.

7.
Auch eine Klage auf Schadensersatz nach § 839 BGB, Art. 34 GG genügt den Anforderungen von Art. 13 EMRK nicht. Wenn ein Schadensersatzanspruch wegen Amtspflichtverletzung durch übermäßige Verfahrensdauer auch vereinzelt anerkannt wird, kann doch kein Ersatz für Nichtvermögensschaden verlangt werden, den der Gerichtshof nach Art. 41 EMRK gerade in Fällen überlanger Verfahrensdauer gewährt.

8.

Auch in Verfahren mit Parteimaxime müssen die Gerichte ein zügiges Verfahren sicherstellen. Aus Art. 6 I EMRK folgt für die Konventionsstaaten die Pflicht, ihre Justiz so zu organisieren, dass ihre Gerichte jedes Erfordernis dieser Vorschrift erfüllen können, einschließlich der Pflicht zur Entscheidung innerhalb angemessener Frist.

9.
Eine Verfahrensdauer von mehr als 161/2 Jahren ist auch dann unangemessen, wenn mehrere Sachverständigengutachten eingeholt werden mussten und der Beschwerdeführer selbst erheblich zur Verlängerung beigetragen hat.

10.
Der Gerichtshof ermutigt zu einer schnellen Verabschiedung eines Gesetzes mit Vorschriften, wie sie der vom Bundesministerium der Justiz vorgelegte Entwurf eines Untätigkeitsbeschwerdengesetzes enthält. (Leitsätze der Bearbeiter)

Zum Sachverhalt:
Der 1962 geborene Bf. ist türkischer Staatsangehöriger und lebt in Stade. Am 3. 5. 1982 erlitt er auf dem Weg zur Schule einen Unfall, bei dem er sich den linken Arm und das Nasenbein brach. Er nahm daraufhin Verhandlungen mit der Haftpflichtversicherung der Unfallgegnerin auf, die ihm etwa 12500 Euro zahlte. Die Unfallversicherung der Stadt Hannover, bei der die Schule des Bf. versichert ist, zahlte ihm bis Ende 1983 eine vorläufige Rente und außerdem eine Entschädigung von etwa 51000 Euro. Der Bf. verlangte von der Haftpflichtversicherung der Unfallgegnerin höheren Schadensersatz. Nach Scheitern der Verhandlungen erhob er am 18. 9. 1989 vor dem LG Hannover Klage auf Schadensersatz und eine monatliche Rente. Im Juni 1991 erging ein Grund- und Teilurteil, wonach dem Bf. ein Schadensersatzanspruch in Höhe von 80% des ihm durch den Unfall entstandenen Schadens zusteht. Das OLG Celle wies die Berufung des Bf. am 26. 11. 1992 zurück, der BGH seine Revision am 14. 12. 1993. Seit Ende März 1994 wird der Rechtsstreit vor dem LG Hannover über die Höhe des Schadensersatzes weitergeführt; das Verfahren ist noch anhängig. Verfassungsbeschwerden des Bf. (14. 3. 2001, 26. 5. 2002) wegen der Verfahrensdauer hat das BVerfG nicht zur Entscheidung angenommen. Am 23. 5. 2002 beantragte der Bf. beim LG Hannover Prozesskostenhilfe für eine Schadensersatzklage gegen das Land wegen der Verfahrensdauer. Das LG wies den Antrag am 14. 5. 2003 zurück. Nachdem der Bf. Anfang 1993 auf seinen linken Arm oder seine linke Hand gefallen war, zahlte ihm die Unfallversicherung der Stadt Hannover eine Invalidenrente von 800 Euro monatlich.

Am 24. 11. 1999 hat sich der Bf. an den Gerichtshof gewandt und gerügt, das Verfahren vor dem LG Hannover dauere zu lange. Dagegen gebe es im deutschen Recht keinen wirksamen Rechtsbehelf. Eine Kammer des Gerichtshofs (III. Sektion) hat die Beschwerde am 29. 4. 2004 für zulässig erklärt. Am 1. 2. 2005 hat sie die Sache nach Art. 30 EMRK, Art. 72 VerfO an die Große Kammer abgegeben. Nach mündlicher Verhandlung vom 9. 11. 2005 hat der Gerichtshof durch Urteil vom 8. 6. 2006 einstimmig die von der Regierung erhobene Einrede der Unzulässigkeit zurückgewiesen, festgestellt, dass Art. 13 und Art. 6 I EMRK verletzt sind, und Deutschland verurteilt, binnen drei Monaten an den Bf. 10000 Euro als Ersatz für Nichtvermögensschaden und 4672,89 Euro als Ersatz für Kosten und Auslagen zu zahlen.

Aus den Gründen:

I. Einrede der Unzulässigkeit durch die Regierung (zusammengefasst)
75.-78. Die Regierung macht geltend, die innerstaatlichen Rechtsbehelfe wegen der Beschwerde nach Art. 6 I EMRK seien nicht erschöpft. Der Bf. bestreitet das. Der Gerichtshof hat entschieden, die Einrede der Regierung wegen der engen Verbindung zwischen Art. 35 I und Art. 13 EMRK im Zusammenhang mit Art. 13 EMRK zu prüfen.

II. Behauptete Verletzung von Art. 13 EMRK
79. Der Bf. rügt das Fehlen eines Rechtsbehelfs in der deutschen Rechtsordnung, mit dem er die Dauer des Verfahrens vor dem LG Hannover geltend machen könne. Das sei eine Verletzung von Art. 13 EMRK.

A. Parteivortrag

1. Die Regierung (zusammengefasst)
80.-91. Die Regierung betont, dem Bf. hätten wegen der Dauer des Verfahrens vier Rechtsbehelfe zur Verfügung gestanden, nämlich die Verfassungsbeschwerde, die Dienstaufsichtsbeschwerde, die Untätigkeitsbeschwerde und die Klage auf Schadensersatz. Nach ständiger Rechtsprechung des BVerfG garantiere Art. 2 I i.V. mit Art. 20 III GG, dass gerichtliche Verfahren in angemessener Frist entschieden werden. Das BVerfG beschränke sich zwar in der Regel darauf, eine Verfassungswidrigkeit festzustellen. Es ersuche aber auch das zuständige Gericht, das Verfahren zu beschleunigen oder zu beenden, und gebe außerdem Hinweise, wie das geschehen könne. Die Dauer des Verfahrens könne auch mit einer Dienstaufsichtsbeschwerde nach Art. 26 II DRiG gerügt werden. Außerdem habe die Rechtsprechung eine Untätigkeitsbeschwerde entwickelt, die von vielen Oberlandesgerichten anerkannt werde. Der Bf. könne damit geltend machen, dass ungerechtfertigte Verfahrensverzögerungen einer Rechtsverweigerung gleichkämen. Das BeschwGer. könne eine Beschleunigung der Verfahren anordnen. Wenn der zuständige Richter dem nicht nachkomme, könne das ein Ablehnungsgesuch rechtfertigen. In einigen Fällen habe das Obergericht das Verfahren an sich gezogen und selbst entschieden. Richtig sei aber, dass der BGH die Frage, ob eine solche Beschwerde möglich sei, offen gelassen habe und dass das OLG Celle, das für eine Untätigkeitsbeschwerde des Bf. zuständig wäre, bisher darüber noch nicht entschieden habe. Schließlich könne der Bf. einen Schadensersatzanspruch nach § 839 BGB i.V. mit Art. 34 GG vor den ordentlichen Gerichten geltend machen, wenn die Verfahrensverzögerung auf einer Verletzung von Amtspflichten beruhe. Das LG München I (DRiZ 2006, 49) habe durch Urteil vom 12. 1. 2005 einer solchen Klage auf Schadensersatz wegen unangemessener Verfahrensdauer stattgegeben. Die nach deutschem Recht gegebenen Rechtsbehelfe erfüllten die Anforderungen von Art. 13 EMRK. Es gebe aber auch einen Gesetzentwurf, mit dem eine Untätigkeitsbeschwerde nach dem österreichischen Vorbild geschaffen werden solle.

2. Der Bf. (zusammengefasst)
92.-96. Der Bf. erwidert, keiner der von der Regierung genannten Rechtsbehelfe hätte das Verfahren vor dem LG beschleunigen können. Das BVerfG könne die Beschleunigung eines Zivilprozesses nicht gewährleisten, es könne insbesondere keine Frist setzen. Eine Dienstaufsichtsbeschwerde sei nicht wirksam i.S. von Art. 13 EMRK. Die von der Regierung erwähnte Untätigkeitsbeschwerde sei im Gesetz nicht vorgesehen und werde nur von einigen Obergerichten anerkannt, zu denen das OLG Celle nicht gehöre. Was eine Klage auf Schadensersatz angehe, habe er vergeblich versucht, Prozesskostenhilfe dafür zu erhalten. Das LG Hannover und das OLG Celle seien aber der Ansicht gewesen, es habe keine unangemessenen Verzögerungen gegeben. Im Übrigen könne eine Klage dieser Art das Verfahren nicht beschleunigen.

B. Beurteilung durch den Gerichtshof

1. Grundsätze
97. Nach Art. 1 EMRK sichern „die Hohen Vertragsparteien allen ihrer Hoheitsgewalt unterstehenden Personen die in Abschnitt I bestimmten Rechte und Freiheiten“ zu. Demgemäß tragen zunächst die staatlichen Behörden und Gerichte die Verantwortung für die Anwendung und Durchsetzung der in der Konvention garantierten Rechte und Freiheiten. Die Beschwerde an den Gerichtshof ist also gegenüber den Rechtsbehelfen an staatliche Einrichtungen zum Schutz der Menschenrechte subsidiär. Das kommt in Art. 13 und Art. 35 I EMRK zum Ausdruck (s. EGMR, Slg. 2006 Nr. 140 - Scordino/Italien, Nr. 1; EGMR, Slg. 2006 Nr. 38 - Cocchiarella/Italien).

98. Art. 13 EMRK garantiert eine Beschwerde im staatlichen Recht zur Durchsetzung der Rechte und Freiheiten der Konvention, in welcher Form auch immer sie in der staatlichen Rechtsordnung garantiert sind. Die Vorschrift verlangt deswegen einen innerstaatlichen Rechtsbehelf, der es ermöglicht, über eine auf die Konvention gestützte „vertretbare Beschwerde“ in der Sache zu entscheiden und angemessene Abhilfe zu geben. Die „Wirksamkeit einer Beschwerde“ i.S. von Art. 13 EMRK hängt nicht davon ab, dass sie mit Sicherheit ein günstiges Ergebnis für den Bf.hat. Auch mehrere Rechtsbehelfe können zusammengenommen die Anforderungen von Art. 13 EMRK erfüllen, selbst wenn keiner von ihnen allein diesen Anforderungen entspricht. Deswegen muss in jedem Einzelfall geprüft werden, ob die einem Bf. im staatlichen Recht zur Verfügung stehenden Rechtsbehelfe „wirksam“ sind in dem Sinne, dass mit ihnen entweder die behauptete Verletzung oder ihre Fortdauer verhindert oder angemessene Abhilfe für schon eingetretene Verletzungen erlangt werden kann (s. EGMR, Slg. 2000-XI Nrn. 157-158 = NJW 2001, 2694 - Kudla/Polen).

99. Die einem Bf. nach staatlichem Recht gegebenen Rechtsbehelfe gegen eine überlange Verfahrensdauer sind „wirksam“ i.S. von Art. 13 EMRK, wenn mit ihnen die Verletzung oder ihre Fortdauer verhindert oder angemessene Abhilfe für schon eingetretene Verletzungen erlangt werden kann. Ein Rechtsbehelf ist demnach wirksam, wenn der Bf. mit ihm entweder die Entscheidung des zuständigen Gerichts beschleunigen oder angemessene Wiedergutmachung für schon eingetretene Verzögerungen erlangen kann (s. EGMR, Slg. 2002-VIII Nr. 17 - Mifsud/Frankreich).

100. Der Gerichtshof hat kürzlich hervorgehoben, dass - absolut betrachtet - die beste Lösung, wie in vielen Bereichen, unzweifelhaft die Vorbeugung ist. Wo die Justiz das Erfordernis der Entscheidung innerhalb angemessener Frist nach Art. 6 I EMRK nicht erfüllt, ist ein Rechtsbehelf zur Beschleunigung des Verfahrens, um zu vermeiden, dass es übermäßig lange dauert, die wirksamste Lösung. Ein solcher Rechtsbehelf hat gegenüber Rechtsbehelfen nur auf Wiedergutmachung unbestreitbare Vorteile, weil er auch die Feststellung nachfolgender Verletzungen im selben Verfahren verhindert und auf die Verletzung nicht nur nachträglich reagiert, wie das ein Rechtsbehelf auf Wiedergutmachung tut. Einige Staaten haben das vollkommen verstanden und zwei Arten von Rechtsbehelfen kombiniert, einen auf Beschleunigung des Verfahrens und den anderen auf Wiedergutmachung (EGMR, Slg. 2006 Nrn. 183, 186 - Scordino/Italien, Nr. 1; EGMR, Slg. 2006 Nrn. 74, 77 - Cocchiarella/Italien).

101. Wenn nach der staatlichen Rechtsordnung eine Klage gegen den Staat möglich ist, muss sie ein wirksamer, ausreichender und zugänglicher Rechtsbehelf gegen die überlange

Dauer von Gerichtsverfahren sein. Ihre Wirksamkeit darf nicht durch übermäßige Verzögerungen beeinträchtigt werden und kann von der Höhe der Entschädigung abhängen (s. EGMR, Slg. 2003-VIII - Paulino Thomas/Portugal; EGMR, Slg. 2003-X Nr. 57 - Doran/Irland).

2. Anwendung dieser Grundsätze auf den vorliegenden Fall
102. Ohne die Prüfung vorwegzunehmen, ob die angemessene Frist nach Art. 6 I EMRK überschritten ist, ist davon auszugehen, dass die Beschwerde über die Dauer des Verfahrens vor dem LG „vertretbar" ist, dauert doch das streitige Verfahren bereits mehr als 16 Jahre (s. mutatis mutandis EGMR, Slg. 2004-XI Nr. 151 - Öneryildiz/Türkei). Außerdem hat die Kammer die Beschwerde für zulässig erklärt.

a) Verfassungsbeschwerde
103. Die Konventionsorgane haben früher angesichts der Rechtsprechung des BVerfG über die Anerkennung eines verfassungsmäßigen Rechts auf ein zügiges Verfahren angenommen (s. EKMR, 1980, Decisions and Reports [DR] Bd. 21, S. 176 - X/Deutschland; EKMR, 1997, DR Bd. 91, S. 53 - Reisz/Deutschland, wo auf das Urteil des Gerichtshofs in der Sache König/Deutschland, 1978, Serie A, Bd. 27, S. 21-22 Nrn. 61, 64 = NJW 1981, 505 Bezug genommen wird), dass die Verfassungsbeschwerde an das BVerfG ein wirksamer Rechtsbehelf für Beschwerden über die Verfahrensdauer sei (s. EKMR, 1980, DR Bd. 21, S. 176 - X/Deutschland; EKMR, 1986, DR Bd. 48, S. 102 - W./Deutschland; EKMR, 1997, DR Bd. 91, S. 53 - Reisz/Deutschland; EGMR, Entsch. v. 4. 10. 2001 - 7636/99 - Teuschler/Deutschland, unveröff.; EGMR, Entsch. v. 15. 11. 2001 - 38365/97 - Thieme/Deutschland, unveröff.).

104. Der Gerichtshof hat in der Sache Kudla (EGMR, Slg. 2000-XI Nrn. 148-149 = NJW 2001, 2694 - Kudla/Polen) angesichts der andauernden Zunahme von Beschwerden, mit denen ausschließlich oder im Wesentlichen die Verletzung der Pflicht gerügt wird, innerhalb angemessener Frist i.S. von Art. 6 EMRK zu verhandeln, einen anderen Ansatz gewählt. Er hat auf die erhebliche Gefahr hingewiesen, die für die Rechtsstaatlichkeit in den Konventionsstaaten besteht, wenn große Verzögerungen bei der Justizgewährung vorkommen, gegen die Rechtsuchende keinen Rechtsbehelf haben. Außerdem hat er betont, dass es nunmehr notwendig sei, zusätzlich zu einer Feststellung der Verletzung von Art. 6 I EMRK wegen Verstoßes gegen die Verpflichtung der Entscheidung innerhalb angemessener Frist die Beschwerde gesondert nach Art. 13 EMRK zu prüfen.

In der Folge hat der Gerichtshof Rechtsbehelfe gegen die Verfahrensdauer in einigen Mitgliedstaaten auf ihre Wirksamkeit i.S. von Art. 13 EMRK genauer überprüft (s. u.a. EGMR, Entsch. v. 2. 10. 2001 - 42320/98 - Belinger/Slowenien, unveröff.; EGMR, Slg. 2002-IX - Andrasik u.a./Slowakei; EGMR, Slg. 2002-VII - Slavicek/Kroatien; EGMR, Slg. 2002-IX - Fernandez-Molina Gonzalez u.a./Spanien; EGMR, Slg. 2003-X - Doran/Irland; EGMR, Slg. 2003-VIII - Hartman/Tschechien; EGMR, Slg. 2003-VIII - Paulino Tomas/Portugal; EGMR, Entsch. v. 29. 1. 2004 - 53084/99 - Kormatcheva/Russland, unveröff; EGMR, Entsch. v. 15. 3. 2005 - 60227/00 - Bako/Slowakei, unveröff.; EGMR, Slg. 2005-V - Charzynski/Polen; EGMR, Slg. 2005-X - Lukenda/Slowenien).

105. Das Recht auf ein zügiges Verfahren wird vom Grundgesetz garantiert, und eine Verletzung kann beim BVerfG gerügt werden. Kommt das BVerfG zu dem Ergebnis, dass das Verfahren übermäßig lange gedauert hat, stellt es die Verfassungswidrigkeit fest und fordert das zuständige Gericht auf, das Verfahren zu beschleunigen oder abzuschließen.

Wie das tschechische Verfassungsgericht (s. EGMR, Slg. 2003-VIII Nrn. 67-68 - Hartman/Tschechien), aber abweichend als andere Verfassungsgerichte und Oberste Gerichtshöfe in Europa (s. z.B. EGMR, Slg. 2002-IX - Andrasik u.a./Slowakei; EGMR, Slg. 2002-VII - Slavicek/Kroatien; EGMR, Slg. 2002-IX - Fernandez-Molina Gonzalez u.a./Spanien; EGMR, Entsch. v. 21. 6. 2005 - 623/02 - Kunz/Schweiz, unveröff.), kann das BVerfG dem zuständigen Gericht keine Frist setzen oder andere Maßnahmen zur Beschleunigung des Verfahrens anordnen, es kann auch keine Wiedergutmachung zusprechen. Die Regierung trägt vor, die Feststellung der Verfassungswidrigkeit sei wegen ihrer allgemeinen Verbindlichkeit und der Publizität der Entscheidungen des BVerfG ausreichend, um das Verfahren wirksam zu beschleunigen, insbesondere weil das BVerfG in geeigneten Fällen genaue Hinweise zur Beschleunigung des Verfahrens geben könne; das zeige die Entscheidung des BVerfG vom 20. 7. 2000 (NJW 2001, 214). In dieser Entscheidung hat das BVerfG tatsächlich die Mittel recht genau bezeichnet, mit denen das OLG das Verfahren beschleunigen konnte. Die Entscheidung ist aber eine Ausnahme geblieben und kann deswegen nicht als beispielhaft angesehen werden. Was im Übrigen die konkreten Auswirkungen der Entscheidungen des BVerfG angeht, verweist die genannte Entscheidung auf die ständige Rechtsprechung des BVerfG, wonach es nicht seine Aufgabe sei, dem zuständigen Gericht bestimmte Maßnahmen zur Verfahrensbeschleunigung vorzuschreiben, weil das Gericht darüber selbst entscheiden müsse. In anderen Fällen hat das BVerfG eher allgemeine Hinweise gegeben, wie zum Beispiel, dass es annehme, die vom zuständigen Gericht anberaumte mündliche Verhandlung werde stattfinden, oder dass einige Fälle angesichts dessen, was für die Parteien auf dem Spiele stand, bevorzugt behandelt werden müssten (BVerfG, NVwZ 2004, 471 = NJW 2004, 1587 L). In bestimmten Fällen einer Verfassungsbeschwerde gegen die Weigerung eines Rechtsmittelgerichts, eine Beschwerde gegen die Untätigkeit des zuständigen Gerichts wegen der Verfahrensdauer zuzulassen, hat das BVerfG den Verwerfungsbeschluss aufgehoben und die Sache an das Rechtsmittelgericht zurückverwiesen.

106. Nach allem ist das einzige dem BVerfG zur Verfügung stehende Mittel, um sicherzustellen, dass ein anhängiges Verfahren beschleunigt wird, festzustellen, dass die Verfahrensdauer verfassungswidrig ist, und das zuständige Gericht aufzufordern, die notwendigen Maßnahmen zur Beschleunigung oder Beendigung des Verfahrens zu treffen. Das BVerfG selbst, und das ist in diesem Zusammenhang erwähnenswert, anerkennt, dass seine Befugnisse darauf beschränkt sind, die Verfassungswidrigkeit einer Verfahrensdauer festzustellen (BVerfG, NJW 2005, 739). Es trifft zu, dass ein Verfahren beschleunigt werden kann, wenn das zuständige Gericht den Anordnungen des BVerfG sofort folgt. Die Regierung hat aber keinen Hinweis auf mögliche oder tatsächliche Auswirkungen von Entscheidungen des BVerfG auf die Verhandlung von Fällen gegeben, in denen es zu Verzögerungen gekommen ist. In einem anhängigen Fall gegen Deutschland, in dem das BVerfG eine solche Anordnung gegeben hat, ist das Verfahren vor dem zuständigen Gericht 16 Monate später beendet worden und zwei Jahre und neun Monate später bei dem BerGer. (s. EGMR, Entsch. v. 16. 9. 2004 - 66491/00 - Grässer/Deutschland, unveröff.). In einem anderen vom Gerichtshof entschiedenen Fall hatte das BVerfG eine Beschleunigung des Verfahrens angeordnet, die Dauer aber nicht für verfassungswidrig gehalten. Daraufhin hat das zuständige Gericht noch mehr als zehn Monate gebraucht, um seine Prüfung abzuschließen, und das Verfahren insgesamt war zweieinhalb Jahre nach der Anordnung des BVerfG beendet (s. EGMR, Urt. v. 31. 7. 2003 - 57249/00 Nrn. 31-38 - Herbolzheimer/Deutschland, unveröff.). In diesem Fall, in dem das Verfahren neun Jahre und acht Monate gedauert hat, hat der Gerichtshof im Übrigen eine Verletzung von Art. 6 I EMRK festgestellt, während das BVerfG die Verfassungsbeschwerde für unzulässig

erklärt hatte, weil die Verfahrensdauer (fast neun Jahre zu diesem Zeitpunkt) noch nicht unzumutbar lang sei (BVerfG, Beschl. v. 18. 1. 2000 - 1 BvR 2115/98, unveröff.).

107. Der Druck der Öffentlichkeit, auf den die Regierung hinweist, ist kein Umstand, der das Verfahren im Einzelfall beschleunigen kann.

108. Aus diesen Gründen hat die Regierung nicht dargelegt, dass mit einer Verfassungsbeschwerde einer überlangen Dauer zivilgerichtlicher Verfahren abgeholfen werden kann. Folglich war der Bf. nicht dazu verpflichtet, Beschwerde über die Dauer des Verfahrens beim BVerfG zu erheben, selbst wenn man annimmt, dass die von ihm eingelegten Verfassungsbeschwerden - er war vor dem BVerfG nicht durch einen Anwalt vertreten - die Zulässigkeitskriterien nicht erfüllten.

b) Dienstaufsichtsbeschwerde
109. Die Regierung trägt keine Gründe vor, welche die Annahme rechtfertigen könnten, dass eine Dienstaufsichtsbeschwerde nach § 26 II DRiG das Verfahren vor dem LG hätte beschleunigen können. Der Gerichtshof hat im Übrigen wiederholt festgestellt, dass derartige Beschwerden kein wirksamer Rechtsbehelf i.S. von Art. 13 EMRK sind, weil sie in der Regel den Bf. keinen Anspruch darauf geben, den Staat zur Ausübung seiner Aufsichtsbefugnisse zu zwingen (s. EGMR, Entsch. v. 23. 5. 2000 - 37527/97 - Kuchar u. Stis/Tschechien; EGMR, Slg. 2001-VIII Nr. 47 - Horvat/Kroatien; EGMR, Slg. 2005-X Nrn. 61-63 - Lukenda/Slowenien).

c) Untätigkeitsbeschwerde
110. Für eine außerordentliche Untätigkeitsbeschwerde gibt es in Deutschland keine gesetzliche Grundlage. Etliche Rechtsmittelgerichte haben sie zwar grundsätzlich anerkannt, die Zulässigkeitsvoraussetzungen sind aber unterschiedlich und hängen von den Umständen des Einzelfalls ab. Der BGH hat über die Zulässigkeit eines solchen Rechtsmittels noch nicht entschieden. Wenn eine derartige Beschwerde für zulässig gehalten wird, hat das zur Folge, dass das Rechtsmittelgericht die Fortsetzung des Verfahrens vor dem Untergericht anordnen kann. Die Regierung beschränkt sich unter Hinweis auf vier Entscheidungen auf diese Bemerkung, ohne weitere Einzelheiten zum Inhalt solcher Anordnungen oder zu ihren Auswirkungen auf das streitige Verfahren anzugeben. Bestimmte Rechtsmittelgerichte haben genauere Hinweise auf Möglichkeiten zur Verfahrensbeschleunigung gegeben oder selbst an Stelle des Untergerichts entschieden (z. B. OLG Zweibrücken, NJW-RR 2003, 1653; OLG Naumburg, NJOZ 2005, 2082; LAG Köln, BeckRS 2004, 41365), es waren aber nur vier Gerichte, die so entschieden haben, und keines vor Einlegung der Beschwerde im vorliegenden Fall im November 1999. Für die Wirksamkeit eines Rechtsbehelfs kommt es aber normalerweise auf den Tag der Beschwerdeeinlegung an (EGMR, Slg. 2001-V Nr. 47 - Baumann/Frankreich; EGMR, Slg. 2002-VIII - Nogolica/Kroatien; EGMR, Entsch. v. 24. 6. 2004 - 46046/99 - Marien/Belgien, unveröff.). Außerdem scheint die allgemein gehaltene Begründung der Entscheidung des BVerfG vom 30. 4. 2003 (BVerfGE 107, 395 = NJW 2003, 1924) darauf hinzuweisen, dass ein ungeschriebener Rechtsbehelf mit unterschiedlichen Zulässigkeitsvoraussetzungen wahrscheinlich verfassungsrechtlich zweifelhaft ist, auch wenn sich die Entscheidung nur auf das Recht auf Gehör vor Gericht bezieht.

111. Nach übereinstimmendem Parteivortrag hat das OLG Celle, das zuständig gewesen wäre, wenn der Bf. eine Untätigkeitsbeschwerde wegen der Dauer des Verfahrens vor dem LG eingelegt hätte, bisher über die Zulässigkeit einer solchen Beschwerde nicht entschieden. Wenn man die Ungewissheit über die Zulässigkeitskriterien einer

Untätigkeitsbeschwerde und die praktischen Auswirkungen auf das Verfahren im vorliegenden Fall berücksichtigt, ist aber nicht von besonderem Gewicht, dass das OLG Celle eine solche Beschwerde nicht grundsätzlich ausgeschlossen hat (OLG Celle, Beschl. v. 17. 3. 1975 - 7 W 22/75, unveröff.; OLG Celle, Beschl. v. 5. 3. 1985 - 2 W 16/85). Im Übrigen hat das BVerfG die Verfassungsbeschwerde des Bf. nicht nach § 90 II 1 BVerfGG wegen Nichterschöpfung des Rechtswegs für unzulässig erklärt.

112. Folglich kann die außerordentliche Untätigkeitsbeschwerde im vorliegenden Fall nicht als wirksamer Rechtsbehelf angesehen werden.

d) Klage auf Schadensersatz

113. Die Regierung hat nur ein einziges, kürzlich ergangenes Urteil des LG München I angeführt, in dem das Gericht festgestellt hat, dass die Untätigkeit in einem verwaltungsgerichtlichen Verfahren eine Amtspflichtverletzung sei. Eine einzelne rechtskräftige gerichtliche Entscheidung, noch dazu von einem Gericht erster Instanz, genügt jedoch nicht, den Gerichtshof davon zu überzeugen, dass in Theorie und Praxis ein wirksamer Rechtsbehelf gegeben war (s. EGMR, Urt. v. 13. 7. 2004 - 73983/01 Nr. 27 - Rezette/Luxemburg, unveröff.; EGMR, Entsch. v. 24. 6. 2004 - 46046/99 - Marien/Belgien, unveröff.; EKMR, DR Bd. 65, S. 136 - Gama da Costa/Portugal). Außerdem ist der Antrag des Bf. auf Prozesskostenhilfe für eine Klage auf Schadensersatz vom LG Hannover unter anderem mit der Begründung zurückgewiesen worden, in dem Verfahren habe es keine ungerechtfertigten Verzögerungen gegeben. Selbst wenn aber die zuständigen Gerichte zu dem Ergebnis kämen, dass wegen Verfahrensverzögerung eine Amtspflichtverletzung vorgelegen habe, könnten sie doch keinen Ersatz für Nichtvermögensschaden zusprechen. Im Verfahren wegen der Dauer von zivilgerichtlichen Verfahren wird den Bf. vom Gerichtshof aber vor allem Ersatz dafür gewährt (s. EGMR, Slg. 2003-VIII Nr. 68 - Hartman/Tschechien; EGMR, Slg. 2005-X Nr. 59 - Lukenda/Slowenien; EGMR, Slg. 2006 Nr. 204 - Scordino/Italien, Nr. 1; EGMR, Slg. 2006 Nr. 95 - Cocchiarella/Italien). Das Urteil des LG München I (DRiZ 2006, 49) ist ein deutliches Beispiel für diesen Mangel, denn der Kl. hat nur teilweisen Ersatz von Anwaltskosten erhalten, die ihm notwendigerweise durch Einlegung der Untätigkeitsbeschwerde entstanden waren.

114. Folglich war eine Klage auf Schadensersatz kein Rechtsbehelf, mit dem der Bf. angemessene Wiedergutmachung für die Dauer des Verfahrens erhalten konnte.

e) Ergebnis

115. Das Ergebnis ist, dass keiner der von der Regierung angeführten vier Rechtsbehelfe als wirksam i.S. von Art. 13 EMRK angesehen werden kann. Was die Wirksamkeit der Rechtsbehelfe in ihrer Gesamtheit angeht, hat die Regierung weder behauptet noch nachgewiesen, dass eine Kombination zweier oder mehrerer von ihnen den Anforderungen von Art. 13 EMRK genügen würde. Deswegen muss diese Frage nicht entschieden werden.

116. Folglich hatte der Bf. keinen wirksamen Rechtsbehelf i.S. von Art. 13 EMRK, der das Verfahren vor dem LG hätte beschleunigen oder angemessene Wiedergutmachung für schon eingetretene Verzögerungen hätte verschaffen können. Deswegen ist dieser Artikel verletzt, und die von der Regierung erhobene Einrede der Nichterschöpfung aller innerstaatlichen Rechtsbehelfe muss zurückgewiesen werden.

117. Was die mögliche Einführung eines neuen Rechtsbehelfs wegen Untätigkeit in die

deutsche Rechtsordnung angeht, wird auf die Ausführungen zu Art. 46 verwiesen (u. Nr. 138).

II. Behauptete Verletzung von Art. 6 I EMRK

118. Der Bf. rügt die Dauer des Verfahrens vor dem LG Hannover. Er beruft sich auf Art. 6 I EMRK. (…)
119. Das streitige Verfahren hat am 18. 9. 1989 mit Klageerhebung beim LG begonnen und ist noch immer anhängig. Es dauert also jetzt schon mehr als 16 Jahre und sieben Monate.

A. Vortrag der Parteien
1. Die Regierung (zusammengefasst)
120.-124. Die Regierung räumt ein, dass die Verfahrensdauer erheblich ist. Das sei aber auf die Schwierigkeit des Falles und vor allem auf das Verhalten des Bf. zurückzuführen. Wegen der Schwierigkeit seien insbesondere zahlreiche Sachverständigengutachten erforderlich gewesen. Der Bf. habe immer wieder längere Schriftsätze eingereicht, zweimal seine Klage geändert, zweimal Aussetzung des Verfahrens wegen Vergleichsverhandlungen beantragt und mehrfach Richter und Sachverständige abgelehnt.

2. Der Bf. (zusammengefasst)
125.-127. Der Bf. macht geltend, der Fall sei nicht sehr schwierig gewesen, insbesondere nicht nach dem Teilurteil von 1991. Das Gericht sei insgesamt 34 Monate untätig gewesen.

B. Beurteilung durch den Gerichtshof
128. Ob die Verfahrensdauer angemessen war, muss unter Berücksichtigung der Umstände beurteilt werden, wobei abzustellen ist auf die Schwierigkeiten des Falles, das Verhalten des Bf. und der Gerichte und die Bedeutung der Sache für den Bf. (s. EGMR, Slg. 2000-VII Nr. 43 - Frydlender/Frankreich).

129. Auch in Rechtssystemen, die nach dem Grundsatz verfahren, dass die Parteien das Verfahren betreiben (Parteimaxime), wie das nach der deutschen ZPO der Fall ist, entbindet nach ständiger Rechtsprechung das Verhalten der Parteien die Gerichte nicht von der Pflicht, das von Art. 6 I EMRK garantierte zügige Verfahren sicherzustellen (s. EGMR, 1984, Serie A, Bd. 81, S. 14 Nr. 32 - Guincho/Portugal; EGMR, 1987, Serie A, Bd. 119, S. 11 Nr. 25 - Capuano/Italien; EGMR, 1989, Serie A, Bd. 157, S. 157 Nr. 35 - Union Alimentaria Sanders S.A./Spanien; EGMR, Slg. 1996-VI, S. 2180 Nr. 55 - Duclos/Frankreich; EGMR, Slg. 1998-I, S. 458 Nr. 93 - Pafitis u.a./Griechenland; EGMR, Urt. v. 11. 10. 2001 - 38073/97 Nr. 35 - H.T./Deutschland, unveröff.; EGMR, Urt. v. 15. 7. 2003 - 44978/98 Nr. 58 - Berlin/Luxemburg, unveröff.; EGMR, Urt. v. 29. 7. 2004 - 42297/98 Nr. 38 - McMullen/Irland, unveröff.). Dasselbe gilt, wenn während des Verfahrens Sachverständigengutachten eingeholt werden müssen (s. EGMR, 1993, Serie A, Bd. 278, S. 9 Nrn. 23, 25 - Scopelliti/Italien; EGMR, 1988, Serie A, Bd. 143, S. 21 Nr. 60 - Martins Moreira/Portugal; EGMR, Urt. v. 31. 7. 2003 - 57249/03 Nrn. 45, 48 - Herbolzheimer/Deutschland, unveröff.).

Es ist weiter daran zu erinnern, dass Art. 6 I EMRK die Konventionsstaaten dazu verpflichtet, ihre Justiz so zu organisieren, das ihre Gerichte jedes Erfordernis von Art. 6 I EMRK erfüllen können, einschließlich der Pflicht zur Verhandlung innerhalb angemessener Frist (s. EGMR, Slg. 2006 Nr. 183 - Scordino/Italien, Nr. 1; EGMR, Slg. 2006 Nr. 74 - Cocchiarella/Italien; EGMR, Slg. 1996-VI, S. 2181 Nr. 55 -

Duclos/Frankreich; EGMR, 1994, Serie A, Bd. 281, S. 57 Nr. 15 - Muti/Frankreich; EGMR, Urt. v. 4. 6. 1999 - 36932/97 Nr. 27 - Caillot/Frankreich, unveröff.; EGMR, Urt. v. 31. 7. 2003 - 57249/00 Nr. 48 - Herbolzheimer/Deutschland, unveröff.; EGMR, Slg. 2003-X Nr. 47 - Doran/Irland).

130. Der Fall war nicht besonders schwierig. Richtig ist aber, dass die Schwierigkeiten zunahmen, als der Bf. am 1. 1. 1993 ein weiteres Mal auf seinen Arm gefallen war und es notwendig wurde, weitere medizinische Gutachten einzuholen darüber, ob und inwieweit der Unfall von 1982 körperliche und geistige Schäden verursacht hat.

131. Was das Verhalten des Bf. angeht, ist festzustellen, dass er mehrfach Fristverlängerungen beantragt und viermal einen oder mehrere der mit seiner Sache befassten Richter am LG abgelehnt hat. Er beantragte auch mehrere Male weitere Sachverständigengutachten und lehnte drei Sachverständige ab, wobei er soweit ging, ein Disziplinarverfahren gegen wenigstens einen von ihnen zu beantragen. Außerdem wandte er sich oft schriftlich oder telefonisch persönlich an das LG, obwohl er durch einen Prozessbevollmächtigten vertreten war. Er widerrief schließlich sein in der Verhandlung vom 9. 7. 2001 vor dem LG gegebenes Einverständnis, die Akten des LSG mit dem Ergebnis der dortigen Beweisaufnahme heranzuziehen. Insoweit hat der Bf. zur Verfahrensverzögerung beigetragen. Andererseits kann ihm nicht vorgeworfen werden, dass er bestimmte ihm nach deutschem Recht zur Verfügung stehende Rechtsbehelfe eingelegt hat, wenn auch das Gericht für die sich daraus ergebenden Verzögerungen nicht verantwortlich gemacht werden kann.

132. Was das Verfahren vor dem LG angeht, ist anzuerkennen, dass eine gewisse Zeit für die Sachverständigengutachten erforderlich war. Aber selbst wenn man berücksichtigt, dass das LG die notwendigen Sachverständigen sorgfältig auswählen musste, um überzeugende Feststellungen zu erhalten, war die dafür verwendete Zeit nicht mehr angemessen. Auch wechselten die Parteien mehrfach während des Verfahrens Schriftsätze, ohne dass das LG irgendetwas veranlasste. Es muss außerdem berücksichtigt werden, dass der Bf. selbst persönlich eine Reihe von Anträgen stellen konnte, obwohl er, wie vorgeschrieben, anwaltlich vertreten war. Die Regierung trägt vor, das Gericht habe diese Anträge berücksichtigen müssen, denn zum Beispiel ein Ablehnungsgesuch gegen einen Richter könne ohne Beteiligung eines Rechtsanwalts gestellt werden. Die vier Ablehnungsgesuche können aber allein die Verfahrensdauer nicht erklären. Die Regierung hat nicht ausreichend dargelegt, dass das LG nicht über ausreichende Mittel verfügte, den Bf. an so vielen persönlichen Schriftsätzen zu hindern, die in ihrer Mehrzahl nicht die Ablehnung von Richtern betrafen.

133. Was die Bedeutung der Sache für die Parteien angeht, ist festzustellen, dass der Rechtsstreit Ansprüche auf Schadensersatz und Renten wegen eines Unfalls betraf und dass er deswegen nicht zu den Verfahren zählt, die ihrer Natur nach besonders beschleunigt werden müssen, wie etwa Verfahren über das Sorgerecht für Kinder (EGMR, Slg. 2003-IV Nr. 33 - Niederböster/Deutschland); Verfahren über den Personenstand und die Geschäftsfähigkeit (s. EGMR, Slg. 2002-I Nr. 44 - Mikulic/Kroatien) oder Arbeitssachen (EGMR, Slg. 2000-VII Nr. 45 - Frydlender/Frankreich). Im Übrigen haben die Versicherungen des Unfallgegners und der Stadt Hannover dem Bf. Beträge für Nichtvermögensschaden und Vermögensschaden gezahlt. Es kann gleichwohl nicht übersehen werden, dass über die vom Bf. im September 1989 erhobene Klage nach mehr als 16 ½ Jahren immer noch nicht endgültig entschieden worden ist.

134. Die Länge des Verfahrens hat damit ungeachtet des Verhaltens des Bf. und der anderen von der Regierung genannten Umstände die angemessene Frist des Art. 6 I EMRK überschritten. Deswegen ist diese Vorschrift verletzt worden.

IV. Art. 46 und 41 EMRK
A. Art. 46 EMRK
…
136. Die obigen Feststellungen des Gerichtshofs machen deutlich, dass die in der deutschen Rechtsordnung vorgesehenen Rechtsbehelfe einem Bf. kein wirksames Mittel geben, sich wegen der Dauer eines anhängigen zivilgerichtlichen Verfahren zu beschweren, und deswegen der Konvention nicht genügen.

137. Die Feststellung einer Konventionsverpflichtung verpflichtet den bekl. Staat rechtlich nicht nur zur Zahlung des nach Art. 41 EMRK als gerechte Entschädigung zugesprochenen Betrags an den Betroffenen, sondern auch dazu, unter Aufsicht des Ministerkomitees allgemeine oder individuelle Maßnahmen in seiner Rechtsordnung zu treffen, um die vom Gerichtshof festgestellte Verletzung abzustellen und die Folgen soweit wie möglich wieder gutzumachen (EGMR, Slg. 2004-V Nr. 192 = NJW 2005, 2521 - Broniowski/Polen).

138. Der Gerichtshof nimmt den kurz vor der Bundestagswahl am 18. 9. 2005 vorgelegten Gesetzentwurf zur Kenntnis, mit dem eine neue Untätigkeitsbeschwerde in das deutsche Recht eingeführt werden soll. Nach Auffassung der Regierung wird dieser Rechtsbehelf, dessen Einführung wegen des Urteils des Gerichtshofs in der Sache Kudla (EGMR, Slg. 2000-XI = NJW 2001, 2694 - Kudla/Polen) für erforderlich gehalten wird, das BVerfG entlasten, weil Beschwerden über die Verfahrensdauer künftig bei dem Gericht eingelegt werden sollen, bei dem das Verfahren anhängig ist, oder, wenn sich dieses Gericht weigert, Maßnahmen zur Beschleunigung des Verfahrens zu treffen, bei dem Rechtsmittelgericht.

Die Regierung hat mit einem vorbeugenden Rechtsbehelf den Ansatz gewählt, der am besten mit dem Geist des von der Konvention geschaffenen Systems im Einklang steht, weil der neue Rechtsbehelf auf die Ursache des Problems der Verfahrensdauer zielt und Bf. wahrscheinlich besser angemessenen Schutz gibt als Rechtsbehelfe auf Entschädigung, die ein Eingreifen nur nachträglich ermöglichen (s. EGMR, Slg. 2006 Nr. 183 - Scordino/Italien, Nr. 1; EGMR, Slg. 2006 Nr. 74 - Cocchiarella/Italien).

139. Der Gerichtshof begrüßt diese Initiative, sieht keine Hinweise, das sie aufgegeben worden ist, und ermutigt zu einer schnellen Verabschiedung eines Gesetzes mit den im Gesetzentwurf enthaltenen Vorschriften. Deswegen ist es nicht erforderlich, allgemeine Hinweise für den staatlichen Bereich zu bezeichnen, die zur Befolgung des Urteils notwendig sein können (s. EGMR, Slg. 2006 Nrn. 121-124 - Sejdovic/Italien).

B. Art. 41 EMRK
…
1. Schaden (zusammengefasst)
141.-143. Der Bf. beantragt 826328 Euro zuzüglich 7% Zinsen als Ersatz für entgangene Einkünfte, weitere 17500000 Euro zuzüglich 7% für entgangenen Gewinn, 170000 Euro für Zinsen, 300000 Euro als Ersatz für Nichtvermögensschaden wegen des Unfalls von 1982 und 100000 Euro als Ersatz für die Verfahrensdauer. Die Regierung meint, eine etwaige Feststellung der Konventionsverletzung genüge als Entschädigung. Die Ansprüche des Bf. seien überzogen, es gebe keinen ursächlichen Zusammenhang mit den geltend gemachten Konventionsverletzungen.

144. Der geltend gemachte Vermögensschaden ist weder durch die Dauer des Verfahrens vor dem LG noch durch das Fehlen eines wirksamen Rechtsbehelfs verursacht worden. Der Gerichtshof kann insbesondere keine Vermutungen über den Ausgang des Verfahrens anstellen, wenn wegen der Dauer den Anforderungen von Art. 6 I und 13 EMRK entsprochen worden wäre (s. EGMR, Urt. v. 20. 12. 2001 - 27937/95 Nr. 38 - Bayrak/Deutschland, unveröff.; EGMR, Urt. v. 25. 7. 2002 - 45238/99 Nr. 58 - Perote Pellon/Spanien, unveröff.; EGMR, Slg. 2005-V Nr. 176 = NJW-RR 2006, 308 = NJW 2006, 1517 L - Storck/Deutschland). Ob die Entscheidung des LG Hannover richtig war, ist nicht Gegenstand dieser Beschwerde. Deswegen kann dem Bf. insoweit keine Entschädigung zugesprochen werden.

145. Was Nichtvermögensschäden angeht, kann, anders als die Regierung meint, die Feststellung einer Verletzung von Art. 6 I und 13 EMRK keine ausreichende gerechte Entschädigung für den vom Bf. erlittenen Schaden sein. Die beantragten Summen sind aber weit überzogen. Der Gerichtshof entscheidet nach billigem Ermessen, wie es Art. 41 EMRK verlangt, und spricht dem Bf. unter Berücksichtigung der Art der Konventionsverletzungen 10000 Euro zu.

2. Kosten und Auslagen (zusammengefasst)
146.-147. Der Bf. beantragt 3929,69 Euro als Ersatz für Kosten der Verfahren in Deutschland, einschließlich 717,80 Euro für das Sachverständigengutachten vom 6. 11. 1997, 711,89 Euro für die Kosten der Schadensersatzklage und 2500 Euro für Auslagen. Für das Verfahren vor dem Gerichtshof beantragt er 6208,20 Euro als Ersatz für Anwaltshonorare, Auslagen des Anwalts und Übersetzungskosten. Weitere 300 Euro verlangt er als Entschädigung für die Kosten seiner Anwesenheit in der mündlichen Verhandlung vor dem Gerichtshof und einen pauschalen Betrag von 150 Euro für Auslagen. Die Regierung widerspricht der Erstattung von Sachverständigenkosten, die mit der Dauer des Verfahrens nichts zu tun hätten. Die Kosten für die Klage auf Schadensersatz seien nicht wegen der Dauer des Verfahrens entstanden, sondern weil der Antrag des Bf. auf Prozesskostenhilfe unbegründet gewesen sei.

148. Die für Kosten vor den deutschen Gerichten verlangten Beträge sind gerechtfertigt mit Ausnahme des für das Sachverständigengutachten geforderten Betrags, der sich nicht auf die festgestellte Verletzung bezieht, und die Pauschalbeträge von 2500 und 150 Euro, die nicht substanziiert worden sind. Weil aber in Fällen wegen der Verfahrensdauer die über eine „angemessene Zeit“ hinaus verlängerte Prüfung eine Zunahme von Kosten für den Bf. bewirkt (s. EGMR, Urt. v. 7. 12. 1999 - 38952/97 Nr. 33 - Bouilly/Frankreich, unveröff.; EGMR, Urt. v. 17. 1. 2002 - 50110/99 Nr. 27 - Maurer/Österreich, unveröff.), ist es angemessen, insoweit 250 Euro zuzusprechen. Dem Bf. werden deswegen insgesamt 961,89 Euro für die Kosten der Verfahren in Deutschland zuerkannt.

149. Als Ersatz für die Kosten in den Verfahren vor dem Gerichtshof spricht er 6208,20 Euro abzüglich erhaltener 2497,20 Euro für Prozesskostenhilfe zu, also 3711 Euro. Die Reisekosten des Bf. für die Teilnahme an der mündlichen Verhandlung sind durch die Prozesskostenhilfe abgegolten.

3. Verzugszinsen
150. Der Gerichtshof setzt als Verzugszinsen den Spitzenrefinanzierungssatz der Europäischen Zentralbank zuzüglich drei Prozentpunkten an.

(Übersetzt und bearbeitet von Dr. Jens Meyer-Ladewig, Wachtberg, und Professor Dr. Herbert Petzold, Straßburg)