

Pending cases against Germany

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number	Meeting Section
1679/03	GLUSEN	10/01/2008	10/04/2008	1035	2
20027/02	HERBST	11/01/2007	11/04/2007	1035	4.2
14635/03	LAUDON	26/04/2007	24/09/2007	1035	4.2
75529/01	SURMELI	08/06/2006	08/06/2006	1035	4.2
19124/02	KIRSTEN	15/02/2007	09/07/2007	1035	4.2
76680/01	SKUGOR	10/05/2007	24/09/2007	1035	4.2
39741/02	NANNING	12/07/2007	12/10/2007	1035	4.2
71440/01	FREITAG	19/07/2007	19/10/2007	1035	5.3A

Cases against Germany the examination of which has been closed in principle on the basis of the execution information received and awaiting the preparation of a final resolution

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number	Meeting Section
74969/01	GORGULU	26/02/2004	26/05/2004	1035	6.1
58453/00	NIEDZWIECKI	25/10/2005	15/02/2006	1035	6.2
59140/00	OKPISZ	25/10/2005	15/02/2006	1035	6.2
44672/98	HERZ	12/06/2003	03/12/2003	1035	6.2
65745/01	DZELILI	10/11/2005	10/02/2006	1035	6.2
57249/00	HERBOLZHEIMER	31/07/2003	31/10/2003	1035	6.2
27250/02	NOLD	29/06/2006	11/12/2006	1035	6.2
66491/01	GRASSER	05/10/2006	26/03/2007	1035	6.2
38033/02	STORK	13/07/2006	13/10/2006	1035	6.2
64387/01	UHL	10/02/2005	10/05/2005	1035	6.2
54810/00	JALLOH	11/07/2006	11/10/2006	1035	6.2
35968/97	VAN KUCK	12/06/2003	12/09/2003	1035	6.2
37568/97	BOHMER	03/10/2002	21/05/2003	1035	6.2
8722/02	BECKER	14/12/2006	14/12/2006	1035	6.2
55809/00	BERGER	14/06/2007	14/06/2007	1035	6.2
59008/00	SIEBERT	23/03/2006	23/03/2006	1035	6.2
30943/96	SAHIN	08/07/2003	08/07/2003	1035	6.2
31871/96	SOMMERFELD	08/07/2003	08/07/2003	1035	6.2
11057/02	HAASE	08/04/2004	08/07/2004	1035	6.2

Main pending cases (or group of cases) against Germany

Case name :	NANNING v. Germany	Appl N° :	39741/02
Judgment of :	12/07/2007		
Final on :	12/10/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-2(04/03/2008)		
First exam :	1020-2(04/03/2008)		

NOTES OF THE AGENDA

39741/02 Nanning, judgment of 12 July 2007, final on 12 October 2007

The case concerns the violation of the applicant's right to respect for family life due to the exclusion of access to her daughter (violation of Article 8).

The child had been entrusted to a foster family by the applicant in 1991. Relations between the applicant and the foster family subsequently deteriorated and the foster-parents prevented all further contact between mother and daughter. From 1991 onwards she unsuccessfully attempted to have her daughter returned or alternatively to be granted access to E by a court order. On 11 June 1997 the Ratingen District Court withdrew her custody rights. On 19 May 2001 the Düsseldorf Regional Court rejected the applicant's appeal, considering that it was in E's best interest to remain with the foster family. It held that it would merely lead to further irritations if E was forced against her will to have contact with her mother, taking into account that E would reach her majority in little more than a year.

The European Court criticised the fact that the Düsseldorf Regional Court did not convincingly justify why it excluded access rights for the fourteen months until the daughter's coming of age and underlined that questions relating to fundamental elements of family life are not to be determined by the mere passage of time.

The case also concerns the excessive length of the civil proceedings (5 years and two months for two levels of jurisdiction) (violation of Article 6§1). The European Court noted in particular that the case had remained pending for 4 years before the Düsseldorf Regional Court, despite the special diligence which ought to be observed in such cases.

Individual measures: The applicant's daughter has reached the age of majority. The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage.

• *Assessment:* No further measure seems necessary.

General measures:

1) Violation of Article 8:

• *Publication and dissemination* of the European Court's judgment to the relevant authorities are awaited, as is information on possible further general measures.

2) Violation of Article 6§1: see the Sürmeli case (judgment of 08/06/2006, Section 4. 2).

The Deputies decided to resume consideration of this item:

1. at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided concerning general measures.

Case name :	SURMELI v. Germany	Appl N° :	<u>75529/01</u>
Judgment of :	08/06/2006		
Final on :	08/06/2006		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	Length of civil proceedings		
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	976-2(17/10/2006)		

NOTES OF THE AGENDA

- 75529/01 Sürmeli, judgment of 08/06/2006 - Grand Chamber
- 20027/02 Herbst, judgment of 11/01/2007, final on 11/04/2007
- 19124/02 Kirsten, judgment of 15/02/2007, final on 9/07/2007
- 14635/03 Laudon, judgment of 26/04/2007, final on 24/09/2007
- 76680/01 Skugor, judgment of 10/05/2007, final on 24/09/2007

The cases of Sürmeli, Herbst, Laudon and Skugor concern the excessive length of civil proceedings, including proceedings concerning parental authority rights in the Skugor case; the Kirsten case concerns the excessive length of proceedings concerning civil rights and obligations before social courts and the Federal Constitutional Court (violations of Article 6§1).

The Sürmeli case also concerns in particular the lack of an effective remedy in German law in respect of lengthy civil proceedings. The Kirsten case also concerns the lack of an effective remedy against the excessive length of proceedings before the Federal Constitutional Court (violations of Article 13).

Individual measures: All proceedings at issue have been closed.

• *Assessment:* no further measure appears necessary

General measures:

1) Violations of Article 6§1 in the Sürmeli, Kirsten, Herbst, Laudon and Skugor cases:

- *Information provided by the German authorities:* The judgment of the European Court in the Sürmeli case was sent out with a letter from the Government Agent of 09/06/2006 to the courts and justice authorities concerned, i.e. the Federal Constitutional Court, the Federal Court of Justice and all state administrations of justice, all Ministries of Justice of the *Länder (Landesjustizverwaltungen)*. All judgments of the European Court against Germany are publicly available via the website of the Federal Ministry of Justice (<http://www.bmj.de>, *Themen: Menschenrechte, EGMR*) which provides a direct link to the European Court's website for judgments in German (http://www.coe.int/T/D/Menschenrechtsgerichtshof/Dokumente_auf_Deutsch). It was also published in *Neue Juristische Wochenschrift (NJW)* 2006, p. 2389 ff and *Europäische Grundrechtezeitschrift (EuGRZ)* 34 10-14/2007, p. 255 ff.).
- *Recent developments:* in an e-mail dated 10/10/2007 and 23/01/2008, the German authorities provided statistics concerning the average length of proceedings before German courts. The Secretariat is currently assessing this information.

2) Violations of Article 13 in the cases of Sürmeli and Kirsten: According to the European Court in the Sürmeli judgment, a bill to introduce into German written law a new remedy in respect of inaction was tabled in September 2005 (§138 of the judgment).

- *Information provided by the German authorities:* The draft proposal for a forced acceleration remedy ("*Tu was*"-Beschwerde) has given rise to a very controversial debate amongst legal practitioners. As a result the Ministry of Justice organised a discussion amongst legal experts on this issue in October 2007. The Ministry is currently working on a new draft proposal in the light of the results of this debate.
- *Information is awaited on further progress of this legal reform as well as on all other measures taken or envisaged to provide for an effective remedy against excessive length of proceedings.*

The Deputies decided to resume consideration of these items at the latest at the 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided concerning general measures.

Case name :	FREITAG v. Germany	Appl N° :	71440/01
Judgment of :	19/07/2007		
Final on :	19/10/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-5.3A(16/09/2008)		
Last exam :	1028-5.3A(03/06/2008)		
First exam :	1020-2(04/03/2008)		

NOTES OF THE AGENDA

71440/01 Freitag, judgment of 19 July 2007, final on 19 October 2007

This case concerns the violation of the applicant's right of access to a court (violation of Article 6§1). On 5/03/1998, the applicant, a shareholder of an insurance company based in Berlin, brought proceedings against the company to obtain compensation for the loss in value of his shares caused by a merger with another company based in Hamburg. He first lodged proceedings at the Hamburg Regional Court which declared that it had no local jurisdiction. Accordingly the applicant requested the transfer of his case-file to the competent Berlin Regional Court. However, on 2/09/1998, the Berlin Court declared his case inadmissible as it had received it only after expiry of the two-month time-limit for submission. The European Court found that the delays had been caused by the Hamburg Regional Court and that the applicant could not be expected to bring new proceedings before the Berlin Regional Court, thus incurring more court fees. By declaring the case inadmissible, the domestic courts had failed to strike a fair balance between the general interest of legal certainty and the applicant's right to have his claim examined by the court.

Individual measures: The applicant was awarded just satisfaction in respect of pecuniary damage for a loss of opportunity that he could not have examined the merits of his claim.

According to section 580, number 8 of the Code of Civil Procedure, there exists a possibility to reopen civil proceedings following the finding of a violation by the European Court.

- *Assessment:* no further individual measure seems necessary in these circumstances.

General Measures: The Berlin Regional Court held that Section 281 of the Code of Civil Procedure did not apply to proceedings concerning shareholders' compensation. According to this Section, an action complies

with the time-limit even if it has been lodged with an incompetent court and is only transferred to the competent court subsequently.

A decision of the Federal Court of Justice given on 13/03/2006 (after the facts of the present case) showed that German procedural law would have allowed the applicant's motion to be declared admissible on the basis of Section 281 of the Code of Civil Procedure, as it had been lodged in time with the Hamburg Regional Court.

It therefore appears that this violation resulted from an isolated error.

- *Information is awaited on the publication and dissemination of the European Court's judgment.*

The Deputies decided to resume consideration of this item:

1. at their 1028th meeting (3-5 June 2008) (DH), in the light of information to be provided on the payment of the just satisfaction, if necessary;
2. at the latest at their 1035th meeting (16-18 September 2008) (DH), in the light of information to be provided concerning general measures, namely the publication and dissemination of the European Court's judgment.