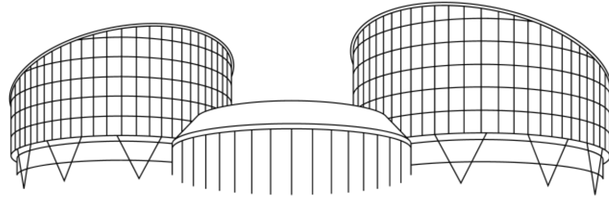

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SMITH v. GERMANY

(Application no. 27801/05)

JUDGMENT

STRASBOURG

1 April 2010

FINAL

01/07/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Smith v. Germany**,**

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 March 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 27801/05) 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 Dutch national, Mr Hendrik Smith ("the applicant"), on 23 July 2005.

2. The applicant was represented by Mr O. Wallasch, a lawyer practising in Frankfurt. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the German Ministry of Justice.

3. On 25 August 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government of the Netherlands, having been informed by the Section Registrar of their right to intervene (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), indicated that they did not wish to exercise this right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Groningen.

6. On 27 July 2001 the Ahrensburg District Court (*Amtsgericht*) issued a warrant for the applicant's arrest.

7. On 30 January 2002 the applicant was arrested in Germany and remanded in custody at Oldenburg Prison.

8. On 22 May 2002 the Lübeck Public Prosecutor issued an indictment against the applicant on several counts of trafficking and importing narcotic substances (cannabis and marihuana).

9. On 20 June 2002 the Lübeck Regional Court (*Landgericht*) opened the applicant's trial.

10. On 22 July 2002 the Schleswig-Holstein Court of Appeal quashed the arrest warrant for failure to comply with the obligation to expedite criminal proceedings where an applicant is in detention pending trial. Following his release from detention, the applicant returned to the Netherlands.

11. Following negotiations with the applicant's legal representatives, the Lübeck Public Prosecutor gave the applicant an assurance that the prosecution service would institute proceedings under Article 11 of the Convention on the Transfer of Sentenced Persons (European Treaty Series no. 112, "the Transfer Convention") if the applicant returned to Germany for his trial and confessed to the alleged crimes.

12. During the oral hearing before the Lübeck Regional Court, which took place on 16 September 2002, the applicant, who had voluntarily returned from the Netherlands, gave a full confession. The Public Prosecutor gave the following statement, as recorded in the transcript of the hearing:

> "In this case the current view is that there are no objections to the transfer of the defendant to the Netherlands under the Transfer Convention of 21 March 1983 or against the application of Article 11 of the Transfer Convention."

13. Following the hearing, the Lübeck Regional Court, on the basis of the applicant's confession, convicted him on twenty-six counts of unlawful importing and unlawful trafficking of narcotic substances, and sentenced him to three and a half years' imprisonment.

14. The court accepted as mitigating factors the applicant's confession and the fact that he had voluntarily returned from the Netherlands in order to stand trial. It considered that the oral hearing could probably not have taken place without his cooperation. The applicant having waived his right to appeal, the judgment became final on 16 September 2002.

15. Following the hearing, the applicant returned to the Netherlands.

16. On 17 September 2002 the applicant applied to the Schleswig-Holstein Ministry of Justice for the institution of transfer proceedings under Article 11 of the Transfer Convention. In his pleadings, the applicant's counsel relied upon the agreement between the defence, the criminal chamber of the Lübeck Regional Court, and the Public Prosecutor's Office at the Lübeck Regional Court.

17. On 7 October 2002 the Ministry of Justice forwarded the application to the Head of the Chief Public Prosecutors (*Leitender Oberstaatsanwalt*) in Lübeck with a request for him to submit a report.

18. On 22 November 2002 the Head of the Chief Public Prosecutors stated that, as a general rule, execution of sentence in the home country was not an option in such serious cases of drug trafficking. However, the special circumstances of this particular case justified lodging an application for execution assistance with the Dutch Justice Ministry.

19. On 19 December 2002 the Schleswig Holstein Justice Ministry wrote to the Dutch Justice Ministry enquiring whether it would be possible for it to continue the execution of the German sentence directly under Article 8 § 1 (a) of the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991 ("the EC Convention on Enforcement" – see International Treaties below). The German Ministry expressed the opinion that the Transfer Convention was not applicable, as the applicant was not in German custody.

20. On 17 March 2003 the Dutch Justice Ministry declared that in principle there was a willingness to allow the sentence to be executed in the Netherlands. However, in the Netherlands continued enforcement was allowed only in exceptional circumstances, which did not apply in the present case. The Dutch Ministry therefore requested its German counterpart to approve the conversion of the prison term imposed on the applicant, under Article 8 § 1 (b) of the EC Convention on Enforcement.

21. On 24 April 2003 the German Ministry requested the Head of the Chief Public Prosecutors to state his position. By a letter dated 1 July 2003 the Head of the Chief Public Prosecutors stated that he was opposed to a formal application for execution assistance because the Netherlands would make the execution dependent on a conversion of the sentence.

22. On 21 July 2003 the Ministry of Justice informed the applicant that it would refrain from lodging a formal application with the Netherlands.

23. In September 2003 the applicant was summoned to serve his sentence. His requests for the suspension of the execution of his sentence until a final decision on his transfer request was given were unsuccessful.

24. On 18 January 2004 the applicant lodged a constitutional complaint against the Ministry's decision not to institute transfer proceedings under Article 11 of the Transfer Convention.

25. On 10 February 2004 an arrest warrant was issued against the applicant as he had failed to start serving his sentence.

26. On 14 January 2005 the Federal Constitutional Court, sitting as a panel of three judges, declined to consider a constitutional complaint lodged by the applicant. According to the Federal Constitutional Court, the applicant had failed to exhaust domestic remedies. With regard to domestic remedies, the Federal Constitutional Court found as follows:

> “The applicant has no right to a judicial review of the exercise of discretion in so far as the decision is based on general, in particular foreign policy, considerations..., the evaluation of which belongs to the core area of Government. However, the judicial review of discretionary powers in respect of law enforcement remains unaffected thereby, in particular with regard to the statement made on the day of the trial by the Lübeck Public Prosecutor's Office ... It cannot be denied that uncertainties may remain for the person seeking justice in this connection in view of the previously disputed contestability of decisions by the authorising authority, as well as in regard to the possible legal remedies. Sufficient account is taken of the possible uncertainties with regard to the legal remedy on account of the possibility of a binding referral under section 17a § 2 of the Courts Act. It is reasonable to expect the applicant to have recourse to a disputed legal remedy.”

27. According to the Federal Constitutional Court, it was for the lower courts to decide which court was competent in the applicant's case. These courts had further to consider whether the impugned act interfered with the applicant's right to a fair trial or with the principle of protection of legitimate confidence. Notwithstanding the possibility of lodging a fresh request, the fact that the relevant time-limits for lodging appeals might in the meantime have expired did not lead to the constitutional complaint being admissible.

28. This decision was served on the applicant's counsel on 10 February 2005.

29. On 14 February 2005 the applicant lodged a fresh request with the Justice Ministry that execution of his sentence be taken over under Article 11 of the Transfer Convention.

30. A warrant is still out against the applicant for having failed to start serving his sentence.

II. RELEVANT DOMESTIC LAW

31. Section 17a § 2 of the Courts Act (*Gerichtsverfassungsgesetz*) reads as follows:

> “If the invoked court is not competent to adjudicate the case, the court shall decide this of its own motion after hearing the parties and shall, at the same time, refer the legal dispute to the competent court ... The decision shall be binding ... on the court to which the legal dispute is referred.”

Section 23 of the Introductory Act to the Courts Act, in so far as relevant, provides as follows:

> “(1) Upon request, the ordinary courts shall decide on the lawfulness of directives, orders or other measures taken by the judicial authorities to regulate individual issues in the sphere of the civil law ... and the criminal law.
>
> (2) By means of a request for judicial determination an order requiring a judicial or executive authority to take a decision it has omitted or refused to take may also be sought.”

In accordance with section 26 of the same Act, the request has to be lodged within one month of communication of the impugned administrative act. If a party has been prevented from complying with this time-limit through no fault of their own, they can lodge a request to restore the previous time-limit. However, such a request is inadmissible if it has been lodged more than one year after expiry of the time-limit, with the exception of cases of *force majeure* (Section 26 § 4).

32. The German Act on International Mutual Assistance in Criminal Matters does not explicitly define the role of the enforcement authority in the transfer proceedings. The Act merely provides that the authorising authority, that is the Federal Ministry of Justice – which can delegate its competence to the *Land* Ministry – must send a transfer request to the administering State. If the decision is taken by a *Land* Ministry, that Ministry, after consulting the public prosecutor's office, exercises discretion with regard both to foreign policy considerations and law-enforcement issues.

III. INTERNATIONAL TREATIES

1. The Convention on the Transfer of Sentenced Persons (ETS 112)

33. The aim of the Convention on the Transfer of Sentenced Persons ("the Transfer Convention" – European Treaty Series no. 112) is to develop international cooperation in the field of criminal law and to further the ends of justice and the social rehabilitation of sentenced persons. According to the Preamble, foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentence within their own society.

Article 9 ("Effect of transfer for administering State") reads as follows:

> "1. The competent authorities of the administering State shall:
>
> (a) continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or
>
> (b) convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.
>
> 2. The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.
>
> 3. The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions.

...”

Article 10 (“Continued enforcement”) provides:

“1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.

2. If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.”

Article 11 (“Conversion of sentence”) reads as follows:

“1. In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:

(a) shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;

(b) may not convert a sanction involving deprivation of liberty to a pecuniary sanction;

(c) shall deduct the full period of deprivation of liberty served by the sentenced person; and

(d) shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.”

2. The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991

Article 8

Determination of the custodial penalty

“1. Where the transfer or enforcement of a custodial penalty is accepted, the competent authorities of the administering State shall:

(a) enforce the penalty imposed in the sentencing State immediately or through a court or administrative order ...

or

> (b) through a judicial or administrative procedure convert the sentence into a decision of the administering State, thereby substituting the penalty imposed in the sentencing State by a penalty laid down by the law of the administering State for the same offence...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained that the proceedings concerning his transfer request violated his right to a fair hearing, as provided for in Article 6 § 1 of the Convention, which reads as follows:

> “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

35. The Government contested that argument.

A. Admissibility

1. Applicability of Article 6 § 1 of the Convention

(a) The Government's submissions

36. In the Government's view, Article 6 § 1 of the Convention was not applicable to the proceedings regarding the applicant's transfer request as the matter did not concern the determination of a criminal charge. Referring to the Court's decision in the case of *Homann v. Germany* (no. 12788/04, 9 May 2007), the Government considered that Article 6 § 1 of the Convention was only applicable in respect of the proceedings concerning the determination of the sentence, which were terminated by the judgment pronounced on 16 September 2002. It did not, however, apply to the proceedings concerning the applicant's transfer requests, as no new charges had been brought against the applicant following the final sentence. According to the Government, in the case of an assurance given in proceedings concerning a criminal charge, Article 6 only applied in so far as that assurance had had an impact on the accused's conduct in the proceedings and could possibly be considered to constitute a violation of the right to a fair trial. However, the applicant had not applied to the ordinary courts for a review of the criminal judgment.

37. The Government emphasised that the inapplicability of Article 6 § 1 did not mean that the enforcement of the sentence would be unfair, as the right to a fair trial was guaranteed by the German Constitution.

(b) The applicant's submissions

38. According to the applicant, Article 6 § 1 was applicable in the instant case, as the proceedings concerning his transfer request concerned his civil rights, in particular the right to liberty. He alleged that the conversion of the sentence by the Dutch courts would have led to his earlier release from prison.

(c) The Court's assessment

39. The Court reiterates that in criminal matters the period governed by Article 6 § 1 covers the whole of the proceedings in issue, including appeal proceedings. It is true that the Court has generally held that Article 6 § 1 under its criminal head does not apply to proceedings relating to the execution of a final criminal sentence (see *Enea v. Italy* [GC], no. 74912/01, § 97, 17 September 2009). However, the Court has also held that in the event of conviction, there is no "determination ... of any criminal charge", within the meaning of Article 6 § 1, as long as the sentence is not definitively fixed (see *Eckle v. Germany*, 15 July 1982, § 77, Series A no. 51).

40. Turning to the circumstances of the present case, the Court observes that, from a technical point of view, the applicant's conviction became final on 16 September 2002 when he waived his right to appeal against the Lübeck Regional Court's judgment of that date. The Court considers, however, that under the particular circumstances of this case it has to be taken into account that the proceedings relating to the applicant's transfer request were very closely related to the criminal proceedings and to the final determination of the sentence. The Court notes, in particular, that the Public Prosecutor, during the proceedings leading to the applicant's conviction, expressly declared that they had no objections to the transfer of the applicant to the Netherlands. It was only in view of this reassurance that the applicant returned to Germany in order to stand trial and gave a full confession leading to his criminal conviction. Although the Lübeck Regional Court imposed a criminal sentence based on the applicant's conviction, this was not to be considered as final having regard to the possibility of converting the sentence following a transfer to the applicant's home country. Finally, the Court notes that according to the express statement of the Lübeck Regional Court the oral hearing – and consequently the applicant's conviction – would probably not have been possible without the applicant's cooperation.

41. Having regard to these exceptionally close connections between the criminal proceedings and the proceedings concerning the applicant's transfer

request, it would be too formalistic to limit the scope of application of Article 6 under its criminal head to the proceedings which took place before pronouncement of the judgment on 16 September 2002. The Court therefore considers that the transfer proceedings have to be regarded as an integral part of the criminal proceedings in so far as they directly relate to the assurance which was given by the Public Prosecutor during the criminal proceedings.

42. The Court is aware of the fact that the decision taken by the Justice Ministry on the transfer request does not solely depend on the public prosecutor's recommendations and on considerations regarding the execution of sentence, but also on considerations of foreign policy which fall within the core area of public law. It is therefore acceptable if this part of the decision is not subject to judicial review. Accordingly, the Court has previously held that Article 6 § 1 was not applicable to proceedings under the Transfer Convention (see *Csoszánski v. Sweden* (dec.), no. 22318/02, 27 June 2006; *Szabo v. Sweden* (dec.), no. 28578/03, 27 June 2006; and *Veermae v. Finland* (dec.), no. 38704/03, 15 March 2005). However, in those cases the Transfer Convention was not prospectively influencing the course of the trial and the fixing of the sentence, because no assurance was given by the public prosecution before or during the criminal proceedings.

43. It follows that Article 6 § 1 of the Convention under its criminal head is, under the specific circumstances of the present case, applicable to the proceedings concerning the applicant's transfer request in so far as they relate to the assurance given by the public prosecution during the criminal proceedings.

44. It follows that the applicant's complaint under Article 6 of the Convention is not incompatible *ratione materiae* with the provisions of the Convention.

2. Exhaustion of domestic remedies

45. According to the Government, the applicant failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

46. The applicant contested that argument.

47. The Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. At the same time, it normally requires that the complaints intended to be made subsequently at the international level should have been aired before the appropriate national courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 69, 17 September 2009).

48. However, the obligation under Article 35 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible (see *Scoppola*, cited above, § 70). In particular, the

only remedies which the Convention requires to be exhausted are those that relate to the breaches alleged and are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Dalia v. France*, 19 February 1998, § 38, *Reports of Judgments and Decisions* 1998-I).

49. Lastly, Article 35 § 1 of the Convention provides for a distribution of the burden of proof. As far as the Government is concerned, where it claims non-exhaustion it must satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II, and *Scoppola*, cited above, § 71).

50. The Court considers that the Government's objection raises issues concerning the effectiveness of legal remedies which are closely linked to the merits of the applicant's complaint. Thus, it decides to join this objection to the merits of the case.

3. Conclusion

51. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. The applicant's submissions

52. The applicant complained under Article 6 § 1 of the Convention about the domestic authorities' refusal to institute transfer proceedings under Article 11 of the Transfer Convention, contrary to the previous assurance given by the Public Prosecutor. He pointed out that he had only agreed to appear before the German criminal court on the strength of that assurance. The applicant considered that the Public Prosecutor's assurance had to be regarded as being binding on the Ministry of Justice.

53. The applicant further complained under Article 6 § 1 of the Convention that the Federal Constitutional Court had failed to inform him in good time about the alleged failure to exhaust domestic remedies. According to the applicant, he had not been able to challenge the judgment

given by the Lübeck Regional Court on 16 September 2002, as he had waived his right to appeal in view of the assurance given.

54. He further pointed out that in parallel proceedings (see *Buijen v. Germany*, no. 27804/05) the applicant's legal counsel had unsuccessfully lodged an application for judicial review under Section 23 of the Introductory Act to the Courts Act. Having regard to the fact that the domestic courts had declared the application in the above-mentioned proceedings inadmissible, there was no reason to lodge a similar application in the instant proceedings. He was now barred from seeking judicial review.

2. The Government's submissions

55. The Government considered that the applicant had failed to make use of the remedies available to him under the domestic law. They pointed out, firstly, that the applicant had not contested the judgment of 16 September 2002. The Government further considered that the applicant had not made use of all remedies available to him in the enforcement proceedings.

56. As the Federal Constitutional Court had clarified (Decisions of the Federal Constitutional Court 96, p. 100 et seq.) the decision taken by the law-enforcement authority regarding whether a proposal for a transfer request was to be made represented a legal act which was subject to judicial review, as guaranteed by the Basic Law. While the applicant had no right to judicial review of the exercise of discretion in so far as the decision was based on general – in particular foreign policy – considerations, judicial review of the discretionary powers in respect of law enforcement remained unaffected thereby, in particular with regard to the statement made on the day of the trial by Lübeck Public Prosecutor. However, the applicant had failed to have either the decision of the Public Prosecutor or the decision of the Ministry reviewed by the lower courts but, in respect of the decision of the Ministry, had applied directly to the Federal Constitutional Court.

57. The Government further considered that the applicant had not had a legitimate expectation of being transferred under Article 11 of the Transfer Convention. While the Public Prosecutor's endorsement of a transfer under Article 10 of the Transfer Convention might be seen as non-compliance with the assurance originally given to the applicant, this had not had a decisive effect on the outcome of the transfer proceedings, as the Public Prosecutor's statement was not binding on the Justice Ministry.

3. The Court's assessment

58. The Court notes, at the outset, that the German courts did not review the substance of the applicant's complaint about the refusal to institute transfer proceedings under Article 11 of the Transfer Convention. It therefore considers that the applicant's complaint primarily falls to be

examined under Article 6 § 1 in the light of the right of access to court. The Court reiterates that the right to a court, of which the right of access constitutes one aspect, is not absolute but may be subject to limitations. Nevertheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. The requirement of access to court must be entrenched not only in law but also in practice, failing which the remedy lacks the requisite accessibility and effectiveness (see, among other authorities, *Moldovan v. Romania (no. 2)*, nos. 41138/98 and 64320/01, § 118, ECHR 2005-VII (extracts)).

59. Turning to the circumstances of the present case, the Court notes that there is a dispute between the parties as to whether the applicant had at his disposal an effective legal remedy which would have allowed him to contest the Justice Ministry's refusal to instigate transfer proceedings under Article 11 of the Transfer Convention.

60. With regard to the parties' submissions, the Court notes the following: while alleging that the applicant could have contested the refusal before the lower courts, the Government did not indicate precisely which remedy was available to the applicant at the relevant time and to which court the applicant should have addressed himself. Neither the Government nor the Federal Constitutional Court cited any case-law of the lower courts as to the admissibility of legal remedies in cases like the applicant's. Furthermore, in the decision given on the applicant's complaint the Federal Constitutional Court conceded that the contestability of the Justice Ministry's decision had been in dispute. Finally, the Court notes that in the *Buijen* case the applicant lodged a request for review with the civil courts which was declared inadmissible.

61. Consequently, the Court finds that, in the particular circumstances of the present case, it has not been shown that there was a possibility of instituting an effective action for review of the refusal to institute transfer proceedings after a relevant assurance.

62. The foregoing considerations are sufficient to enable the Court to conclude that the applicant has been denied access to a court with regard to the part of the decision on his transfer request which did not concern considerations of public policy.

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

63. For the reasons set out above, the Court further considers that the applicant has to be regarded as having exhausted domestic remedies as required by Article 35 § 1 of the Convention. It follows that the Government's objection is to be rejected.

64. Having regard to the foregoing, the Court does not consider it necessary to examine the remainder of the applicant's complaints under Article 6.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

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

66. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to non-exhaustion of domestic remedies and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 (right of access to court) of the Convention;

4. *Holds* that there is no need to examine the application under the other aspects of Article 6 § 1 of the Convention raised by the applicant.

Done in English, and notified in writing on 1 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President