

## APPLICATION/REQUÊTE N° 6167/73

X. v/the FEDERAL REPUBLIC OF GERMANY  
X. c/RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

DECISION of 18 December 1974 on the admissibility of the application  
DÉCISION du 18 décembre 1974 sur la recevabilité de la requête

*Article 9 of the Convention : Marriage cannot be considered simply as a form of expression of thought, conscience or religion but is governed by the specific provisions of Article 12.*

*Article 12 of the Convention : An obligation to contract a marriage in accordance with forms prescribed by law rather than a particular religious ritual is not a refusal of the right to marry.*

*Article 9 de la Convention : Le mariage ne peut être considéré que comme une forme d'expression d'une pensée, de la conscience ou d'une religion. Il est régi par les dispositions spécifiques de l'article 12.*

*Article 12 de la Convention : L'obligation de contracter mariage selon les formes prescrites par la loi au lieu d'un rituel religieux particulier, n'est pas un refus du droit au mariage.*

### THE FACTS

(français : voir p. 65)

The facts of the case as submitted by the applicant may be summarised as follows :  
The applicant is a German citizen born in 1924 and living in Heidelberg.

The applicant complains that the German authorities do not recognise his marriage with Mrs Y. The registrar of marriages refused to make an entry in the family record (Familienbuch) because the applicant had not married under the forms prescribed by Sec. 11 of the Law on Marriages (Ehegesetz). The applicant complained to the competent District Court (Amtsgericht) which rejected his complaint on ... May 1972. The applicant's appeal (Beschwerde) was rejected by the Regional Court (Landgericht) Heidelberg on ... September 1972. A further appeal (weitere Beschwerde) was rejected by the Court of Appeal (Oberlandesgericht) Karlsruhe on ... March 1973. The latter court stated in its decision that in the opinion of the applicant he is married to Y. because he had intercourse with her only after having read out verse 16 of the 22nd chapter of the second book of Moses in the Old Testament. The Court held that the right to marriage as guaranteed under Art. 6 (1) of the Constitution (GG) only referred to the conclusion of marriage in the form provided by the legislator in Sec. 11 of the Law on Marriages. In the opinion of the court Art. 6 (GG) not only gives the State the right but even creates the obligation for the State to set up regulations for marriages as it is a social institution. Therefore, so the court concluded, the necessity of contracting a marriage in proper form before the registrar of marriages was justified under constitutional law.

The applicant's constitutional appeal was rejected by a group of three judges of the Federal Constitutional Court on ... June 1973 as being clearly ill-founded.

The applicant alleges a violation of most of the Articles of the Convention and especially of Art. 9 (1).

### THE LAW

The applicant has complained that the German authorities do not recognise his marriage contracted according to a special religious ritual and not in the forms prescribed by the Law on Marriages.

It is true that Article 9 (1) of the Convention secures to everyone the right to freedom of religion: However, in this case this provision cannot be considered without having regard to Article 12 which provides that "Men and women of marriageable age have the right to marry and found a family, according to the national laws governing the exercise of this right". Marriage is not considered simply as a form of expression of thought, conscience or religion but is governed by the specific provision of Article 12 which refers to the national laws governing the exercise of the right to marry.

In the present case the applicant was not denied the right to marry. He was only requested to marry under the forms prescribed by German law. There is consequently no appearance of a violation of the Convention, especially of Articles 9 (1) and 12.

An examination by the Commission of this complaint as it has been submitted, including an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms set out in the Convention and in particular in the above Article.

It follows that the application is manifestly ill-founded within the meaning of Article 27 (2) of the Convention.

For these reasons, the Commission

**DECLARES THIS APPLICATION INADMISSIBLE.**

#### **Résumé des faits**

*L'office d'état civil de Heidelberg a refusé d'inscrire le mariage du requérant au registre des mariages, au motif qu'il n'avait pas été célébré selon les formes prescrites à l'article 11 de la loi sur le mariage (Ehegesetz). Recours rejetés successivement par le tribunal cantonal (Amtsgericht), le tribunal régional (Landgericht) et la cour d'appel (Oberlandesgericht). Recours constitutionnel rejeté par un comité de trois juges de la Cour constitutionnelle fédérale comme manifestement mal fondé.*

*Le requérant se prétend valablement marié parce qu'il a lu à haute voix le verset 16 du 22ème chapitre du 11ème Livre de Moïse avant ses premières relations sexuelles avec la personne qu'il considère comme son épouse. Il invoque l'article 9, paragraphe 1, de la Convention.*

#### **Résumé des considérants « En droit »**

*L'article 9, paragraphe 1, de la Convention, qui garantit la liberté de religion, doit être envisagé conjointement, en l'espèce, avec l'article 12. Le mariage n'est pas considéré par la Convention que comme une forme d'expression d'une pensée, de la conscience ou d'une religion. Il est régi par les dispositions spécifiques de l'article 12, qui se réfère au droit national.*

*En l'espèce, le requérant ne s'est pas vu refuser le droit au mariage, mais seulement imposer les conditions de formes prescrites par le droit allemand. Il n'y a donc pas apparence de violation des articles 9, paragraphe 1, ou 12 de la Convention.*

*Requête manifestement mal fondée.*