



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

FIFTH SECTION

CASE OF BREILER v. GERMANY

(Application no. 16386/07)

JUDGMENT

STRASBOURG

16 September 2010

FINAL

16/12/2010

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

In the case of Breiler 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,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 24 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 16386/07) 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 German national, Mr Klaus Breiler (“the applicant”), on 16 April 2007.

2. The applicant was represented by Mr K.H. Christoph, a lawyer practising in Berlin. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, Federal Ministry of Justice.

3. On 1 September 2009 the President of the Fifth Section decided to communicate the complaint concerning the length of the proceedings to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3). The Chamber decided, pursuant to Rule 54 § 3, that no hearing was required.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1939 and lives in Berlin. He studied educational science and aircraft engineering and piloting in the former German Democratic Republic (GDR). From 1969 until 1990 he worked for the GDR airline *Interflug*.

5. On 4 December 2000 he applied for the transfer of alleged future pension rights under one of the additional pension schemes for certain professions or groups (*Zusatzversorgungssysteme*). On 20 February 2002 the applicant's request was dismissed. His subsequent administrative appeal, submitted on 13 March 2002, was rejected on 26 July 2002.

6. On 30 August 2002 he brought an action in the Social Court, which, following a hearing on 20 January 2003, dismissed the action, finding that the applicant did not qualify for any of the additional pension schemes. The judgment was served on the applicant on 20 February 2003. On 18 March 2003 he appealed the judgment.

7. On 18 June 2003 the Federal Social Court rendered a decision concerning a similar subject-matter, which was consistent with the Social Court's decision in the instant case. On 28 August 2003 the Social Court of Appeal advised the parties of the Federal Social Court's decision and classified the case as ready for decision.

8. During the course of the appeal proceedings the applicant's representative declared that he was seeking fundamental clarification of the subject-matter before the Federal Constitutional Court. The Social Court of Appeal therefore awaited a decision of that court.

9. On 24 April 2006 the judge rapporteur enquired whether the appeal was to continue after the Federal Constitutional Court on 1 March 2006 (file no. 1 BvR 320/06) had declined to admit for examination a constitutional complaint in a similar case.

10. On 8 May 2006 the applicant's representative announced that he would submit further observations until 30 June 2006. After a reminder of the Social Court of Appeal on 15 August 2006 these observations were submitted on 20 December 2006.

11. On 16 February 2007 the Social Court of Appeal dismissed the applicant's appeal and refused to grant leave to appeal on points of law. On 15 March 2007 the judgment was served on the applicant's representative.

12. Within the statutory time limit the applicant's representative objected to the refusal to grant leave to appeal on points of law and reasoned the objection on 15 June 2007. On 22 January 2008 the Federal Social Court dismissed the objection as inadmissible. This decision was served on the applicant's representative on 1 February 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. Section 88 of the Social Courts' Act exempts applicants from the requirement to await the outcome of the preliminary administrative proceedings and allows them to lodge a court action directly with the Social Court if the administrative authorities fail without sufficient justification to decide the administrative appeal within a reasonable time, in general three months.

14. Further relevant domestic law and practice is described in the Court's decision of *Klose and Others v. Germany* (see *Klose and Others v. Germany* (dec.), no. 12923/03, 25 September 2007) and *Ritter v. Germany* (see *Ritter v. Germany* (dec.), no. 31102/04, 20 November 2007).

THE LAW

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

15. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

16. The Government contested that argument.

A. Admissibility

17. The Government complained about the applicant's failure to lodge an action for failure to act under section 88 of the Social Courts' Act (see paragraph 13 above), a remedy which the Court has considered to be effective to challenge the length of administrative proceedings (see *Glüsen v. Germany*, no. 1679/03, § 67, 10 January 2008). The Government further maintained that the lack of exhaustion of domestic remedies also followed from the fact that the applicant never complained about the length of the proceedings before the domestic courts.

18. The applicant maintained that further remedies at national level had lacked any reasonable prospects of success. Moreover, he would have risked having to bear part of the costs if he had lodged further appeals.

19. The Court notes that the applicant's administrative appeal was rejected on 26 July 2002, some four months after lodging it. Given that relatively short period and bearing in mind that an action for failure to act deprives the applicant of a (potentially favourable) decision by the administrative authority, the Court considers that in the instant case the applicant could not have been expected to lodge such an action.

20. The Court further notes that German law does not provide for any effective legal remedy to expedite civil proceedings or to provide adequate redress for delays that have already occurred (see *Sürmeli v. Germany* [GC], no. 75529/01, §§ 115, 116, ECHR 2006-VII and *Herbst v. Germany*, no. 20027/02, § 63, 11 January 2007). Therefore, the Court finds that the

applicant neither had to raise the length issue before the domestic courts nor was he obliged to avail himself of a constitutional complaint in this regard.

21. It follows that the Government's objections must be rejected.

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

B. Merits

1. Period under consideration

23. The Court observes that the relevant period started to run on 13 March 2002 when the applicant lodged his administrative appeal, and ended on 1 February 2008, when the Federal Social Court's decision was served on the applicant's representative. The proceedings thus lasted approximately five years and eleven months at three levels of jurisdiction, including a compulsory administrative appeal.

2. Reasonableness of the period

a. Submissions made before the Court

24. The applicant, without disputing the facts submitted by the Government, contended that the proceedings had been unreasonably long, in particular in view of the subject matter at issue, that is his old-age pension.

25. The Government considered that the overall length of the proceedings had not exceeded the "reasonable time" requirement of Article 6 § 1 of the Convention. The Government further submitted that the subject matter of the case, the transfer of pension rights, was a relatively complex matter and required time-consuming investigations by both the first and the second instance court.

26. The Government pointed out that with regard to the period between 28 August 2003 and 24 April 2006 the Social Court of Appeal had awaited a decision on the specific issue by the Federal Constitutional Court. Since the applicant's representative had declared that he was seeking clarification before the Federal Constitutional Court the Government maintained that this course of action had been appropriate. Furthermore, the Government observed that the applicant had at the time not complained about the inactivity to the Social Court of Appeal.

27. The Government emphasized that the period between the applicant's letter of 8 May 2006 announcing further submissions and their actual submission on 20 December 2006 must be attributed to the applicant.

b. The Court's assessment

28. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

29. The Court notes that the applicant did not contest the Government's argument that the subject-matter of the instant case was complex and required extensive investigations and shares this view.

30. As to the importance of what was at stake for the applicant, the Court accepts that the applicant had an interest in obtaining speedy decisions of the courts with regard to the amount of his old-age pension.

31. As to the conduct of the domestic courts the Court notes that the proceedings were pending before the Social Court of Appeal alone for almost four years and were never formally stayed during that period. Furthermore, some five months after the appeal was lodged the case had already been classified as ready for a decision. While the formal conduct of the proceedings thus does not disclose any justification for the delay, the Court cannot overlook the fact that the Social Court of Appeal, prompted by the announcement of the applicant's representative that he was seeking a leading decision from the Federal Constitutional Court, awaited a decision of that court before rendering its judgment. In this context the Court observes that up till then the question at issue had "only" been decided by the Federal Social Court, making the case formally ready for a decision. However, since that court's decision was unfavourable to the applicant, it can be argued that it was reasonable for the Social Court of Appeal to wait until the issues of the case pertaining to constitutional law were also clarified. Consequently, the inactivity of the Social Court of Appeal can even be considered to have been in the applicant's interest who was aware of the fact that without a positive decision of the Federal Constitutional Court his appeal had no prospects of success and who, moreover, never asked for the proceedings to be expedited during the period at issue.

32. As regards the conduct of the applicant after April 2006 the Court notes that despite his announcement to submit further observations by the end of June he only lodged them with the court on 20 December 2006 and thus with a delay of almost six months.

33. In the light of the particular circumstances of the case the Court finds that the overall length of the proceedings can still be regarded as reasonable. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

34. The applicant also alleged a violation of Article 14 of the Convention, alone and in conjunction with Article 1 of Protocol No. 1.

35. In the light of all the material in its possession, and in so far as the matter complained of is within its competence, the Court, referring to its decisions in *Klose and Others v. Germany* (see *Klose and Others v. Germany* (dec.), no. 12923/03, 25 September 2007) and *Fiedler v. Germany* (see *Fiedler v. Germany* (dec.), no. 24116/94, 15 May 1996), considers that, irrespective of whether the applicant was excused from pursuing a constitutional complaint for lack of sufficient prospects of success, this part of the application in any event does not disclose any appearance of a violation of the Convention.

36. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President