



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

COURT (GRAND CHAMBER)

CASE OF SÜSSMANN v. GERMANY

(Application no. 20024/92)

JUDGMENT

STRASBOURG

16 September 1996

In the case of Süßmann v. Germany¹,

The European Court of Human Rights, sitting, pursuant to Rule 53 of Rules of Court B², as a Grand Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr R. BERNHARDT,

Mr L.-E. PETTITI,

Mr R. MACDONALD,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mrs E. PALM,

Mr I. FOIGHÉL,

Mr R. PEKKANEN,

Sir John FREELAND,

Mr A.B. BAKA,

Mr M.A. LOPES ROCHA,

Mr G. MIFSUD BONNICI,

Mr J. MAKARCZYK,

Mr D. GOTCHEV,

Mr B. REPIK,

Mr P. JAMBREK,

Mr K. JUNGWIERT,

Mr U. LOHMUS,

Mr J. CASADEVALL,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 26 April and 31 August 1996,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the Government of the Federal Republic of Germany ("the Government") on 30 June 1995 and by a German national, Mr Gerhard Süßmann ("the applicant"), on 16 August 1995, within the three-month period laid down by Article 32 para. 1 and

¹ The case is numbered 57/1995/563/649. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

² Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

Article 47 (art. 32-1, art. 47) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

It originated in an application (no. 20024/92) against Germany lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) by Mr Süßmann, in his own name and in that of Mrs Irmgard Stieler (see paragraph 24 below) on 21 May 1992.

The Government's application referred to Articles 32 and 48 of the Convention (art. 32, art. 48); that of the applicant referred to Article 48 (art. 48) as amended by Protocol No. 9 (P9), which has been ratified by Germany. The object of the applications was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 of the Convention (art. 6-1) (length of proceedings in the Federal Constitutional Court). Mr Süßmann's application alleged in addition a breach of Article 6 para. 1 of the Convention (art. 6-1) (fair trial) and of Article 1 of Protocol No. 1 (P1-1), and of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1).

2. On 30 October 1995 the President of the Court gave the applicant leave to present his own case (Rule 31 of Rules of Court B) and to use the German language in both the written and the oral proceedings (Rule 28 para. 3).

3. The Chamber to be constituted included ex officio Mr R. Bernhardt, the elected judge of German nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 4). On 13 July 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mrs E. Palm, Mr I. Foighel, Mr R. Pekkanen, Mr A.B. Baka, Mr M.A. Lopes Rocha, Mr G. Mifsud Bonnici and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43).

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 20 December 1995 and the applicant's memorial on 4 January 1996.

On 19 March 1996 the Commission produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. On 28 March 1996 the Chamber decided to relinquish jurisdiction forthwith in favour of a Grand Chamber (Rule 53). The Grand Chamber comprised as ex officio members the President and the Vice-President, Mr Bernhardt, who in this case was already sitting as national judge, together with the other full members of the Chamber and the substitutes, the latter being Mr C. Russo, Mr P. Jambrek, Mr K. Jungwiert and Mr U. Lohmus. The names of the remaining eight judges were drawn by lot

by the President in the presence of the Registrar on 30 March 1996, namely Mr L.-E. Pettiti, Mr R. Macdonald, Mr A. Spielmann, Mr N. Valticos, Sir John Freeland, Mr D. Gotchev, Mr B. Repik and Mr J. Casadevall (Rule 53 para. 2 (a) to (c)). Mr Russo, who had been unable to attend the deliberations on 26 April 1996, did not take part in the further consideration of the case.

6. In accordance with the decision of the President, who had also given the Agent of the Government leave to address the Court in German (Rule 28 para. 2), the hearing took place in public in the Human Rights Building, Strasbourg, on 24 April 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr J. MEYER-LADEWIG, Ministerialdirigent, Federal Ministry of Justice,	<i>Agent,</i>
Mr M. WECKERLING, Regierungsdirektor, Federal Ministry of Justice,	
Mr E. RADZIWILL, Regierungsrat zur Anstellung, Federal Ministry of Justice,	<i>Advisers;</i>

(b) for the Commission

Mr F. MARTÍNEZ,	<i>Delegate;</i>
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(c) the applicant.

The Court heard addresses by Mr Martínez, Mr Süßmann and Mr Meyer-Ladewig, and their answers to the questions put by two judges.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

7. Mr Süßmann, a German national born in 1916, worked as a physicist in research institutes whose remuneration and pension system was the same as that of the civil service.

8. The applicant retired in 1980 and receives, in addition to the statutory pension, a supplementary pension (Versorgungsrente) paid to him by the Supplementary Pensions Fund of the Federation and the Länder (Versorgungsanstalt des Bundes und der Länder - VBL - "the Fund"). The Fund administers a supplementary old-age pensions scheme, which enables German civil servants or persons with an equivalent status to receive a progressive supplementary pension.

9. As the total of the sums paid under the general old-age pensions scheme and the civil service supplementary scheme regularly exceeded the

last net civil service salary, employers' and employees' representatives reached an agreement to amend the rules governing the Fund. These amendments, which came into force in March 1982 and March 1984, also concerned persons who were already affiliated to the supplementary scheme or in receipt of a pension thereunder.

On 16 March 1988, giving judgment in a series of test cases, the Federal Court (Bundesgerichtshof) upheld the validity of these amendments.

A. Arbitration proceedings

10. On 30 April and 31 May 1985 the Fund calculated the sum payable to the applicant under the amended scheme with the result that his supplementary pension was reduced.

11. The applicant appealed to the Arbitration Tribunal of the Supplementary Pensions Fund (Schiedsgericht der VBL), challenging, *inter alia*, the legality of the amendments made to the rules governing the scheme.

12. Under an arbitration agreement of 3 and 18 September 1985 Mr Süßmann and the Fund had recognised the jurisdiction of the Fund's arbitration tribunals.

13. On 20 February 1987 the Arbitration Tribunal dismissed the applicant's appeal.

14. On 11 May 1987 Mr Süßmann appealed from that decision to the Arbitration Appeals Tribunal of the Supplementary Pensions Fund (Oberschiedsgericht der VBL).

15. On 10 March 1989 the Appeals Tribunal likewise dismissed the applicant's appeal finding that the reduction in his supplementary pension resulting from the amendment of the rules governing the Fund was not unlawful.

B. Proceedings in the Federal Constitutional Court

16. On 11 July 1988 the applicant lodged an appeal in the Federal Constitutional Court (Bundesverfassungsgericht) concerning the amendments to the Fund's rules made in 1982 and 1984. Subsequently he also invoked other grounds.

On 4 April 1989 he extended the scope of his appeal to cover the decision of the Arbitration Appeals Tribunal of 10 March 1989.

17. Sitting as a panel of three members, on 6 November 1991 the Second Section of the First Division (zweite Kammer des ersten Senats) of the Federal Constitutional Court declined to accept the case for adjudication on the ground that the prospects of its succeeding were insufficient.

The Federal Constitutional Court noted that the appeal was inadmissible in so far as it raised for the first time issues of fact or of law that could have been pleaded in the ordinary courts. However, it found the remaining

complaints admissible, in particular those relating to the unfair character of the proceedings in the Federal Court and the interference with the applicant's right of property. As the Federal Court had ruled on the issues of fact and law at last instance in its judgments in the test cases of 16 March 1988, it was not necessary to file further appeals to exhaust the remedies in the ordinary courts.

However, even in regard to the complaints declared admissible, the Federal Constitutional Court considered that the constitutional appeal lacked sufficient prospects of success. It gave the following reasons:

1. There had been no violation of the applicant's right to be heard in a court (*Recht auf Gewährung rechtlichen Gehörs*). In particular there was nothing to suggest that the tribunals had not taken due account of evidence concerning the amendment of the Fund's rules. The decisions were essentially based on two reports drawn up by expert commissions in September 1975 and November 1983. It had not been necessary to take additional evidence.

2. Even if it were accepted that pension rights came within the ambit of the constitutional right of property, there was nothing to indicate that there had been an infringement of that right. It was lawful to reduce pension rights by amending the rules which were of a private-law character.

The Federal Court had held that the pensions under the scheme administered by the Fund were a matter of private law and this view had not been contested by the applicant. The Federal Court had moreover regarded the old-age pensions scheme in question as a collective insurance scheme (*Gruppenversicherung*), under which only the employers were considered to be insured, the employees (*Arbeitnehmer*) remaining mere beneficiaries (*Bezugsberechtigte*). Finally, the Federal Court had examined whether the amendment of the Fund's rules had respected the interests of the employees and the principle of "good faith" (*Treu und Glauben*) and had taken the view that the measure in question had checked a development that was unacceptable socially and politically and had put an end to a situation that represented a considerable departure from the aims of the supplementary pensions scheme. In its opinion, the amendment of the rules was intended to consolidate all the old-age pensions schemes in order to meet the problems arising from economic and demographical changes and was based on a decision of principle taken by the employers' and employees' representatives.

The Federal Constitutional Court concluded its reasoning in the following terms:

"This application of the civil law does not infringe any fundamental right. The objective protection afforded by the right of property is not undermined by the classification of the insurance contract as group insurance, in which the employees are mere beneficiaries, or in the assessment of their individual interests. The argument that the public interest, and notably the interest of all employees in the consolidation of their pensions schemes, called for a reform of those schemes is plausible and is in

any event not open to criticism from the point of view of constitutional law. The interests of employees regarded as beneficiaries may be adequately protected by the organisations that represent them. In view of the superior interest of all civil service employees in having a sound and affordable pensions scheme, a collective defence of those interests would seem objectively appropriate, as it is the sole means of ensuring the necessary balancing of interests within the group. Whatever the case may be, the objective substance of the right of property does not require additional protection of the individual beneficiary. The same applies to the assessment of the merits of the new rules. This is based on both the principle of proportionality and the need to protect confidence in the preservation of acquired pension rights."

Nor, it added, did the reversal of case-law by the Federal Court, which had previously considered employees to be insured under the rules in question, interfere with the right of property, because case-law had no legislative force and could evolve.

Finally, the Federal Constitutional Court observed that the amendment of the Fund's rules did not breach the principle of equality before the law or that of the freedom of association. The applicant's doubts as to the impartiality of the arbitrators were not relevant as the latter were not members of the judiciary, but sat on private-law arbitration tribunals.

18. The decision was notified to the applicant on 5 December 1991.

19. In the two years that followed the lodging of the applicant's appeal in July 1988, the Second Section of the First Division dealt with twenty-four cases concerning the compatibility of the new rules of the Supplementary Pensions Fund with the Basic Law (Grundgesetz). Other appeals were lodged with it relating, inter alia, to redundancy notices served on employees (decision of 30 May 1991), an employer's right to lock out strikers (decision of 26 June 1991) and the appeals filed by former civil servants of the German Democratic Republic challenging a provision of the Treaty on German Unification which terminated the employment contract of some 300,000 persons (decision of 24 April 1991).

II. RELEVANT DOMESTIC LAW

A. The Basic Law

20. Article 93 para. 1 of the Basic Law (Grundgesetz) provides as follows:

"The Federal Constitutional Court shall rule:

...

4. (a) on constitutional appeals which may be lodged by any person who considers that the public authorities have infringed one of his or her fundamental rights or one of his or her rights as guaranteed under Articles 20 (4), 33, 38, 101, 103 and 104 [of the Basic Law]."

B. The Federal Constitutional Court Act

21. The composition and functioning of the Federal Constitutional Court are governed by the Federal Constitutional Court Act (Gesetz über das Bundesverfassungsgericht).

22. Sections 90 to 96 of that Act concern constitutional appeals lodged by individuals (see paragraph 20 above). At the material time the version adopted in 1985 (applicable with effect from 1 January 1986) was in force ³.

Section 90

"1. Any person who claims that one of his basic rights or one of his rights under Articles 20 (4), 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, 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 92

"The reasons for the complaint shall specify the right which is claimed to have been violated and the act or omission of the organ or authority by which the complainant claims to have been harmed."

Section 93a

"A complaint of unconstitutionality shall require acceptance prior to a decision (Annahme zur Entscheidung)."

Section 93b

"(1) A section may refuse acceptance of a complaint of unconstitutionality by a unanimous order if

1. the complainant has not paid the required advance at all (section 34 (6)) or has not paid it on time,
2. the complaint of unconstitutionality is inadmissible or does not offer sufficient prospects of success for other reasons, or

³ This translation of these provisions appeared in the "Law on the Federal Constitutional Court" in the collection "Documents on Politics and Society in the Federal Republic of Germany", Bonn, 1982.

3. the division is not likely to accept the complaint of unconstitutionality in accordance with the second sentence of section 93c below.

The order shall be final.

(2) The section may uphold the complaint of unconstitutionality by a unanimous order if it is clearly justified because the Federal Constitutional Court has already decided on the relevant question of constitutional law ...

(3) The decisions of the section shall be taken without oral pleadings. In stating the reasons for an order by which acceptance of a complaint of unconstitutionality is refused, it is sufficient to refer to the legal aspect determining the refusal."

Section 93c

"If the section neither refuses acceptance of a complaint of unconstitutionality nor upholds it, the division shall then decide on acceptance. It shall accept the complaint of unconstitutionality if at least two judges hold the view that a question of constitutional law is likely to be clarified by a decision or that the denial of a decision on the matter will entail a serious and unavoidable disadvantage for the complainant. Section 93b (3) above shall apply *mutatis mutandis*."

Section 94 provides for the right of third parties to be heard in appeal proceedings in the Federal Constitutional Court.

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 cases pursuant to the first sentence of section 90 (2) above it shall refer the matter back to a competent court.

3. If a complaint of unconstitutionality against a law is upheld, the law shall be declared null and void. The same shall apply if a complaint of unconstitutionality pursuant to paragraph 2 above is upheld because the quashed decision is based on an unconstitutional law ..."

23. The Federal Constitutional Court Act was subsequently amended with a view to reducing the court's workload. The amendments adopted in 1993 (which entered into force on 11 August 1993), among other things, reorganised the procedure for individual appeals (section 93a-93d of the 1993 Federal Constitutional Court Act).

PROCEEDINGS BEFORE THE COMMISSION

24. Mr Süßmann applied to the Commission on 21 May 1992 in his own name and in that of Mrs Stieler. Relying on Article 1 of Protocol No. 1 (P1-1) and Article 6 of the Convention (art. 6), he complained of the reduction in their supplementary pension and the lack of a fair trial before the arbitration tribunals and in the Federal Court. He also complained, only on his own behalf, of the length of proceedings in the Federal Constitutional Court.

25. On 8 September 1993 and 30 August 1994 the Commission declared the application (no. 20024/92) admissible as regards Mr Süßmann's complaint concerning the length of the proceedings in the Federal Constitutional Court (Article 6 para. 1 of the Convention) (art. 6-1) and declared the remainder of the application inadmissible.

In its report of 12 April 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment ⁴.

FINAL SUBMISSIONS TO THE COURT

26. In their memorial the Government requested the Court to hold:

"that the application is inadmissible or in the alternative that there has been no violation of the applicant's right to have his case heard within a reasonable time as guaranteed under Article 6 para. 1 of the Convention (art. 6-1)".

27. The applicant asked the Court, on his own behalf and that of Mrs Stieler,

"to find that there had been a violation of Article 6 and Article 1 of Protocol No. 1 (art. 6-1, P1-1) and of Article 14 of the Convention [taken in conjunction with] Article 1 of Protocol No. 1 (art. 14+P1-1) and to reinstate them in their prior contractual rights as reparation".

⁴ For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1996-IV), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. SCOPE OF THE CASE

28. In his application to the Court and in his memorial, Mr Süßmann repeated all the complaints that he had raised before the Commission in his own name and in that of Mrs Stieler (see paragraph 24 above).

29. In its decisions of 8 September 1993 and 30 August 1994 the Commission declared admissible only the applicant's complaint concerning the length of proceedings in the Federal Constitutional Court (see paragraph 25 above).

The Court recalls that, as the scope of the case before it is delimited by the Commission's decision on admissibility, it has no jurisdiction to revive issues declared inadmissible (see, as the most recent authority, the *Leutscher v. the Netherlands* judgment of 26 March 1996, Reports of Judgments and Decisions 1996-II, p. 434, para. 22).

30. In addition, before the Court the applicant alleged a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 (art. 14+P1-1). As he did not raise this complaint before the Commission, the Court cannot take cognisance of it. Moreover, Article 14 (art. 14), being complementary to the other substantive provisions of the Convention and the Protocols, has no independent application (see, for instance, the *Karlheinz Schmidt v. Germany* judgment of 18 July 1994, Series A no. 291-B, p. 32, para. 22) and the Commission declared the applicant's complaint concerning Article 1 of Protocol No. 1 (P1-1) inadmissible (see paragraph 25 above).

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 OF THE CONVENTION (art. 6-1)

31. In the applicant's submission the length of the proceedings in the Federal Constitutional Court exceeded a reasonable time within the meaning of Article 6 para. 1 of the Convention (art. 6-1), which provides as follows:

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

32. The Government disputed this, whereas the Commission agreed with the applicant.

33. The Court must first determine whether Article 6 para. 1 (art. 6-1) is applicable.

A. Applicability of Article 6 para. 1 (art. 6-1)

34. According to the Government, the Federal Constitutional Court is not an ordinary court. Its role at national level is comparable to that of the European Court of Human Rights at European level. As the supreme guardian of the Constitution, the task of the Federal Constitutional Court is to ensure that general constitutional law is complied with and not to rule on the "civil rights and obligations" of individuals. That is why, the Government contended, the requirements set forth in Article 6 para. 1 of the Convention (art. 6-1) could not apply to it. Equally the criterion laid down in the Court's case-law as to the effect of a decision of a Constitutional Court on the outcome of litigation in the ordinary courts was not helpful; it was virtually inconceivable that Constitutional Court decisions should not have an effect on disputes in such courts. Moreover, the present case concerned the length solely of the proceedings in the Federal Constitutional Court and not the length of the whole proceedings. Finally the decision given by the Federal Constitutional Court was of a preliminary nature and was part of proceedings to determine whether the case could be accepted for adjudication; as such it fell outside the scope of Article 6 para. 1 (art. 6-1).

35. The applicant argued that the aim of his appeal was not the verification by the Federal Constitutional Court of the constitutionality of a law, but exclusively to have that court examine whether the lower courts had properly directed themselves as to the law. There could be no doubt that Article 6 para. 1 (art. 6-1) was applicable to this type of procedure.

36. Referring to its own decisions and opinions and to the case-law of the Court, the Commission likewise took the view that Article 6 para. 1 (art. 6-1) was applicable to the procedure in question. It observed among other things that a State which established a constitutional-type court was under a duty to ensure that litigants enjoyed in the proceedings before it the fundamental guarantees laid down in Article 6 (art. 6).

37. The Court is fully aware of the special role and status of a Constitutional Court, whose task is to ensure that the legislative, executive and judicial authorities comply with the Constitution and, which, in those States that have made provision for a right of individual petition, affords additional legal protection to citizens at national level in respect of their fundamental rights guaranteed in the Constitution.

38. The Court recalls that it has had to examine the question of the applicability of Article 6 para. 1 of the Convention (art. 6-1) to proceedings in a Constitutional Court in a number of cases.

39. According to its well-established case-law on this issue (see the *Deumeland v. Germany* judgment of 29 May 1986, Series A no. 100, p. 26, para. 77; the *Bock v. Germany* judgment of 29 March 1989, Series A no. 150, p. 18, para. 37; and the *Ruiz-Mateos v. Spain* judgment of 23 June 1993, Series A no. 262, p. 19, para. 35), the relevant test in determining

whether Constitutional Court proceedings may be taken into account in assessing the reasonableness of the length of proceedings is whether the result of the Constitutional Court proceedings is capable of affecting the outcome of the dispute before the ordinary courts.

In the Ruiz-Mateos case the Court also found that Article 6 para. 1 (art. 6-1) applied to Constitutional Court proceedings from the point of view of fair trial (see the above-mentioned judgment, pp. 23-24, paras. 55-60). It held that, while it was not called upon to give an abstract ruling on the applicability of Article 6 para. 1 (art. 6-1) to Constitutional Courts in general, it had nevertheless to determine whether any rights guaranteed to the applicants under that provision (art. 6-1) were affected in the case before it (*ibid.*, para. 57). It noted further that by raising questions of constitutionality, the applicants were using the sole - and indirect - means available to them of complaining of an interference with their right of property (*ibid.*, para. 59).

It follows that Constitutional Court proceedings do not in principle fall outside the scope of Article 6 para. 1 (art. 6-1).

40. However, the present case differs from earlier cases in that it concerns the length only of proceedings in a Constitutional Court and not also that of proceedings conducted in ordinary courts. In this instance the proceedings in the Federal Constitutional Court were not an "extension" of proceedings in the ordinary courts. The applicant had first contested the lawfulness of the reduction of his supplementary pension, following the amendment of the Fund's rules, in the arbitration tribunals (see paragraphs 10-15 above). As the Federal Court, in a series of test cases, had confirmed the validity of these amendments (see paragraph 9 above), the applicant could appeal directly to the Federal Constitutional Court, without first bringing proceedings in the ordinary civil courts (see paragraphs 16-17 above).

41. The Court recalls that proceedings come within the scope of Article 6 para. 1 of the Convention (art. 6-1), even if they are conducted before a Constitutional Court, where their outcome is decisive for civil rights and obligations (see, *inter alia*, the *Kraska v. Switzerland* judgment of 19 April 1993, Series A no. 254-B, p. 48, para. 26).

42. The dispute as to the amount of the applicant's pension entitlement was of a pecuniary nature and undeniably concerned a civil right within the meaning of Article 6 (art. 6) (see the *Schuler-Zgraggen v. Switzerland* judgment of 24 June 1993, Series A no. 263, p. 17, para. 46, and the *Massa v. Italy* judgment of 24 August 1993, Series A no. 265-B, p. 20, para. 26). Following the decisions of the Federal Court in the test cases, the only avenue through which Mr Süßmann could pursue further determination of that dispute was by means of an appeal whereby he alleged a breach of his constitutional right of property. The Federal Constitutional Court proceedings therefore concerned a dispute over a civil right.

43. In the event of a successful appeal, the Federal Constitutional Court does not confine itself to identifying the provision of the Basic Law that has been breached and indicating the public authority responsible; it quashes the impugned decision or declares void the legislation in question (section 95 of the Federal Constitutional Court Act - see paragraph 22 above).

In the present case, if the Federal Constitutional Court had found that the amendments to the civil servants' supplementary pensions scheme infringed the constitutional right of property and had set aside the impugned decisions, Mr Süßmann would have been reinstated in his rights. Thus he would have received the full amount of his initial supplementary pension.

44. The Federal Constitutional Court proceedings were therefore directly decisive for a dispute over the applicant's civil right.

45. Admittedly in this case the Second Section of the First Division, sitting as a panel of three judges, had declined to accept Mr Süßmann's complaint in the course of preliminary proceedings (sections 93a and 93b of the Federal Constitutional Court Act as amended in 1985 - see paragraph 22 above). Nevertheless, in giving the reasons for its decision, it examined the submissions on the merits made by the applicant and, in particular, considered in detail whether the Federal Court, by confirming the validity of the amendments to the rules, had infringed the applicant's constitutional right of property (see paragraph 17 above).

46. In these circumstances Article 6 para. 1 (art. 6-1) is applicable to the proceedings in issue.

B. Compliance with Article 6 para. 1 (art. 6-1)

1. Period to be taken into consideration

47. The Court is concerned only with the length of the proceedings before the Federal Constitutional Court. Thus the relevant period began on 11 July 1988, the date on which the applicant appealed to the Federal Constitutional Court, and ended on 5 December 1991, the date on which the decision was notified to him. It therefore lasted three years, four months and three weeks.

2. Applicable criteria

48. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the complexity of the case, the conduct of the parties and of the authorities, and the importance of what is at stake for the applicant in the litigation (see, as the most recent authority, the *Phocas v. France* judgment of 23 April 1996, Reports 1996-II, p. 546, para. 71).

(a) Complexity of the case

49. In the Commission's view, the case was not in itself especially complex; the procedure was summary in character and did not include a phase liable to give rise to delays.

50. The Court considers that although the decision not to entertain Mr Süßmann's appeal was one taken in preliminary proceedings, the case was one of some complexity. It was one of twenty-four constitutional appeals raising similar issues of some difficulty, concerning supplementary pensions of large numbers of German civil servants, which necessitated a detailed examination in substance by the court (see paragraphs 19 and 45 above).

(b) Conduct of the applicant

51. Like the Commission the Court notes that the applicant's conduct did not cause any delay in the proceedings and indeed the Government did not allege that it had done.

(c) Conduct of the Federal Constitutional Court

52. According to Mr Süßmann, the Federal Constitutional Court did not examine the appeals relating to the amendments to the rules governing the Supplementary Pensions Fund until three years after they were filed. These disputes concerned some 600,000 persons. Moreover, many of them were already elderly and this delay had caused them mental and physical suffering as well as financial hardship.

53. The Government, on the other hand, stressed the special features of the procedure in the Federal Constitutional Court and the specific nature of the present case. The applicant had not brought proceedings in the ordinary courts, unlike other persons who had pursued that avenue of appeal and who had as a result applied to the Federal Constitutional Court at a later date. In order to give a coherent decision, it had had to group together the twenty-four cases raising similar issues. Furthermore, over the same period the Federal Constitutional Court had had to rule on more urgent cases of considerable political importance, for instance cases concerning implications of German reunification.

54. In the Commission's view, it was primarily for the Federal Constitutional Court to adapt its procedure to the large number of appeals concerning the reduction of civil servants' supplementary pensions and to bring to a conclusion other cases pending before it, in particular the cases assigned to the Second Section. It considered that in this case the length of the proceedings in the Federal Constitutional Court was excessive, having regard, among other things, to what was at stake for the applicant given his age.

55. The Court recalls that, as it has repeatedly held, Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, for example, the *Muti v. Italy* judgment of 23 March 1994, Series A no. 281-C, p. 37, para. 15).

56. Although this obligation applies also to a Constitutional Court, when so applied it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms.

57. Furthermore while Article 6 (art. 6) requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice (see in this connection, *mutatis mutandis*, the *Boddaert v. Belgium* judgment of 12 October 1992, Series A no. 235-D, p. 82, para. 39).

58. In view of the importance of the decision taken by the German Federal Constitutional Court in the present case, the impact of which extended far beyond the individual application before it, this principle is of special relevance here.

59. It was also reasonable for the Federal Constitutional Court to have grouped together the twenty-four cases pending before it so as to obtain a comprehensive view of the legal issues arising from the reduction of civil servants' supplementary pensions.

60. In addition these appeals were filed at the same time as those brought by former civil servants of the German Democratic Republic to challenge a provision of the Treaty on German Unification terminating the employment contracts of around 300,000 persons (see paragraph 19 above).

Admittedly, as the Commission pointed out, the amendments to the supplementary pensions scheme also concerned a large number of German civil servants.

However, bearing in mind the unique political context of German reunification and the serious social implications of the disputes which concerned termination of employment contracts, the Federal Constitutional Court was entitled to decide that it should give priority to those cases.

(d) What was at stake for the applicant

61. Finally, what was at stake in the proceedings for the applicant is also a material consideration. Mr Süßmann's supplementary pension had been reduced and, in view of his age, the proceedings before the Federal Constitutional Court were of undeniable importance for him.

However, the amendments to the supplementary pensions scheme did not cause prejudice to him to such an extent as to impose on the court concerned a duty to deal with his case as a matter of very great urgency, as is true of certain types of litigation (see, as the most recent authority, the A and Others v. Denmark judgment of 8 February 1996, Reports 1996-I, p. 107, para. 78).

(e) Conclusion

62. In the light of all the circumstances of the case, the Court finds that a reasonable time within the meaning of Article 6 para. 1 (art. 6-1) was not exceeded and that there has accordingly been no breach of that provision (art. 6-1) on this point.

FOR THESE REASONS, THE COURT

1. Holds unanimously that Article 6 para. 1 of the Convention (art. 6-1) applies to the proceedings in issue;
2. Holds by fourteen votes to six that there has been no violation of Article 6 para. 1 (art. 6-1) in respect of the length of the proceedings.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 16 September 1996.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

- (a) partly dissenting opinion of Mr Foighel, joined by Mr Lohmus;
- (b) partly dissenting opinion of Mr Mifsud Bonnici;
- (c) partly dissenting opinion of Mr Jambrek, joined by Mr Pettiti;
- (d) partly dissenting opinion of Mr Casadevall.

R.R
H.P

PARTLY DISSENTING OPINION OF JUDGE FOIGHHEL,
JOINED BY JUDGE LOHMUS

Like the majority, I find Article 6 (art. 6) applicable. However, I share the unanimous view of the Commission and consider that Constitutional Court proceedings lasting almost three years and five months and terminating with a decision not to admit the applicant's complaint for insufficient prospects of success were too long. In this respect I, like the Commission, take into account that, given the applicant's age, what was at stake for him in the proceedings before the Federal Constitutional Court was of pressing importance (see the *A and Others v. Denmark* judgment of 8 February 1996, Reports of Judgments and Decisions 1996-I).

I find that Article 6 para. 1 (art. 6-1) has been violated.

PARTLY DISSENTING OPINION OF JUDGE MIFSUD
BONNICI

1. Regretfully I did not find it possible to subscribe to the judgment arrived at by the majority of the Court that Mr Süßmann's application to the German Constitutional Court was decided within a reasonable time and therefore there occurred no breach of Article 6 para. 1 of the Convention (art. 6-1).

2. The applicant lodged his appeal to that court on 11 July 1988. He was notified that his appeal had been rejected on 5 December 1991, three years and five months later.

3. In paragraph 48 of the judgment it is stated that the reasonableness of the length of the proceedings must be assessed in the light of:

(a) the particular circumstances of the case, having regard to its possible complexity;

(b) the conduct of the parties and the authorities; and

(c) the importance of what is at stake for the applicant.

4. The judgment considers that the case was one of some complexity, and mentions that there were twenty-four other appeals similar to that of the applicant and the points raised had relevance to the supplementary pensions payable to a large number of German civil servants (paragraph 50).

There is no doubt that the appeal was important because it affected a matter of principle which involved the reduction of the supplementary pension payable to a large number of civil servants. Nevertheless, the decision not to entertain the appeal was taken in preliminary proceedings (paragraph 50) and therefore one is entitled to conclude that the Constitutional Court did not consider that the points raised were of constitutional value and I cannot therefore reconcile, in such a context, lack of importance and constitutional value of the matter in issue, and at the same time consider it of some complexity.

5. Moreover, I am of the opinion that there were particular circumstances in the case which called for a quicker consideration of the appeal than is usual. Pension rights obviously and of their very nature, require, almost always, urgent consideration. It follows that it would be unrealistic if in conformity with this necessity one does not take into account that the applicant's case and contestation had begun in July 1985, by simply saying that all the arbitration proceedings are not relevant because those are a matter of private law (see paragraph 17). These may be considered outside the jurisdiction but surely they must be given weight when the question of the assessment of the reasonableness of the length of the "public law" proceedings which followed, is examined, since the longer the matter has been pending, in whatever forum, the greater the urgency in the proceedings in the Constitutional Court.

6. As to the conduct of the Constitutional Court, it is unfortunate that the judgment absolves that court on certain erroneous assumptions of facts. In paragraph 60 it is stated:

"In addition these appeals [i.e. the twenty-four appeals similar to that of the applicant] were filed at the same time as those brought by former civil servants of the German Democratic Republic to challenge a provision of the Treaty on German Unification terminating the employment contracts of around 300,000 persons ...

...

... bearing in mind the unique political context of German reunification and the serious social implications of the disputes which concerned termination of employment contracts, the Federal Constitutional Court was entitled to decide that it should give priority to those cases."

This argumentation, however, is not valid. The Treaty on German Unification was signed on 3 October 1990, that is two years and two months after the applicant filed his appeal and when all the twenty-four similar appeals were already before the Constitutional Court (paragraph 19).

7. It is for these reasons that I cannot find any real extenuating circumstances for the unreasonable length of the proceedings of the German Constitutional Court in the instant case and I therefore find a violation of Article 6 para. 1 of the Convention (art. 6-1).

PARTLY DISSENTING OPINION OF JUDGE JAMBREK,
JOINED BY JUDGE PETTITI

1. I am in agreement with the majority's decision as to the applicability of Article 6 para. 1 of the Convention (art. 6-1) to the German Federal Constitutional Court proceedings, in particular where they are directly decisive for a dispute over the applicant's civil right which is the subject of his constitutional complaint.

2. In the present case, the Court was concerned only with the length of the proceedings before the German Federal Constitutional Court. Its task was to determine whether the relevant period met the standard of reasonable time. The Constitutional Court proceedings, at the end of which the Second Section of the First Division (zweite Kammer des ersten Senats), sitting in a panel of three Constitutional Court judges, reached its decision not to accept the case for adjudication on the ground that the prospects of its succeeding were insufficient, lasted three years, four months and three weeks.

3. To my regret I cannot agree with the majority of the Court, who found that the relevant period did not exceed the reasonable time within the meaning of Article 6 para. 1 (art. 6-1), and that there had accordingly been no breach of this provision (art. 6-1). I list grounds for my dissent below.

4. The decision not to entertain the applicant's appeal was one taken in preliminary proceedings. The panel of three judges only examined the submissions on the merits made by the applicant with the view to determine whether the prospects of their succeeding in the panel of seven judges constituting the First Division of the Constitutional Court were sufficient or not. Such a preliminary decision thus falls short of the exercise of full jurisdiction of the Constitutional Court which would end up with the final adjudication of the merits of the case.

5. I agree with the majority that even the preliminary decision entailed a detailed examination in substance of the case. The reading of the text of the relevant decision, however, did not convince me that it should necessarily take more than three years to draft the judgment and to take the decision. After all, the Kammer had the advantage of being able to rely on the Bundesgerichtshof's judgment in a series of test cases, and also on the case-law of the German Federal Constitutional Court itself, relating to the character of the pension rights within the ambit of the constitutional right of property and to the protection of public confidence in law in cases where acquired pension rights are affected ex nunc.

6. I am also in agreement with the view that there are good reasons for a Constitutional Court to group together a number of cases raising similar issues in order to give a coherent decision. Such a grouping, however, may only serve the purpose of the proper administration of justice if the period defined by the arrivals of the first and the last of such cases remains reasonable, i.e. if it is shorter than "reasonable time within the meaning of

Article 6 para. 1" of the Convention (art. 6-1). If that is not the case, then a Constitutional Court would be better advised to adjudicate one of the first cases, and to then deal with new cases following the precedent set and according to the specific circumstances of each case.

7. The Court also stated that in relation to a Constitutional Court the obligation to hear cases within a reasonable time "cannot be construed in the same way as for an ordinary court".

The Court then seems to identify application of the relevant obligation with the "chronological order in which cases are entered on the list". I could in principle agree with such a view. I cannot agree, however, with the specific reasoning of the majority implied in paragraph 56 of the judgment.

8. First, the shifting of the cases downwards from the top of the list - although in principle legitimate - must nevertheless respect the basic obligation of the Constitutional Court to hear also the case moved further down the list within a reasonable time-limit, set by the European Convention.

9. And secondly, all the cases on the list should be treated on equal terms when their nature and their importance in political and social terms is considered as a criterion of priority. Here it seems that the Court's reasoning is contradictory. In paragraph 53 the Court observes that the Constitutional Court "had had to rule on more urgent cases of considerable political importance, for instance cases concerning implications of German reunification". This argument for unequal treatment is repeated in paragraph 60 of the judgment where the Court suggests "bearing in mind the unique political context of German reunification" which in its view entitled the German Constitutional Court to give priority to such cases.

On the other hand, the Court also noted that the applicant's appeal concerned "supplementary pensions of large numbers of German civil servants". According to Mr Süßmann, this number amounted to some 600,000 persons. The Court further stated (in paragraph 58) that the importance of the decision taken by the German Federal Constitutional Court in the present case was implied by its impact, which extended far beyond the individual application before it. It therefore appears as if the Court would on the one hand (in German reunification cases) consider the "importance of a case in political and social terms" as a good reason for giving it priority, and deal with it sooner and faster. It appears on the other hand (supplementary pension fund cases) to consider differently the criterion of "proper administration of justice".

10. The Court observes that: "Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations ..., such as the nature of a case and its importance in political and social terms."

Again, I could agree with such a general formulation only within a predefined context. First, any modern Constitution is based upon respect of

the rule of law and of the fundamental human rights and freedoms, while the principles of fair and speedy trial are prerequisites for their genuine and effective respect. Therefore, those "other considerations" to be taken into account by the Constitutional Court may never be interpreted as "other than human rights considerations".

The same applies to the criterion of "the importance of a case in political and social terms", which should, at least in principle, never be interpreted in such a way as to justify prolongation of the period to hear another human rights case within a reasonable time.

11. The present case before the Court originated in an application lodged with the European Commission of Human Rights by Mr Süßmann on 21 May 1992. It was registered on 22 May 1992. The complaint relating to the length of proceedings was declared admissible by the Commission on 30 August 1994. The Commission's report was adopted on 12 April 1995. The case was then referred to the Court on 30 June 1995 and the hearing took place in public on 24 April 1996.

12. I am well aware of the fact that neither the German Federal Constitutional Court, nor the European Court of Human Rights are ordinary courts.

However, they both cannot escape their obligation to hear cases within a reasonable time. Furthermore, Article 6 para. 1 (art. 6-1) imposes in my view on the Contracting States not only the duty to organise their own judicial systems in such a way that their courts can meet the requirement to hear cases within a reasonable time, but also to organise their common international mechanism in a similar way.

13. In paragraph 37 the Court recognised the special role, status and tasks of a Constitutional Court as a guardian of the Constitution and, which, in those States that have made provision for a right of individual petition, affords additional legal protection to citizens in respect of their fundamental rights.

I am in agreement with such an assessment. However, even in countries where judicial review of constitutionality is concentrated and specialised, all courts are as a rule considered guardians of the Constitution in a broader sense. For the case at hand, however, another more specific feature of the Constitutional Court, empowered to adjudicate individual human rights cases, seems pertinent.

14. Due to this status, Constitutional Courts - and all other supreme courts alike - are under pressure to respond to two often contradictory requirements:

Wider public and applicant parties expect the Supreme Court of a country to take care of the totality of injustices that occur, and particularly their own appeals.

On the other hand, Supreme Courts should perform the role of the judicial leader. They should control the evolution of judge-made law in a

country, set precedents and standards and articulate the judicial philosophy of the nation.

Anyhow, the preliminary stage of "filtering cases", should not take too long. The applicants should not be left to wait so long for the preliminary decision on acceptability.

A decision on the preliminary proceedings should have been taken more rapidly to determine Mr Süßmann's appeal.

PARTLY DISSENTING OPINION OF JUDGE CASADEVALL

(Translation)

Following the unanimous decision of the Court concerning the applicability of Article 6 para. 1 (art. 6-1), I regret that I am unable to agree with the majority as regards the length of the proceedings in the Federal Constitutional Court and I consider that there was a failure to conduct the proceedings within a "reasonable time" which was capable of giving rise to a breach of Article 6 para. 1 of the Convention (art. 6-1).

According to the Court's case-law, the question whether proceedings have been conducted within a "reasonable time" is resolved on the basis of a careful examination of the facts, the complexity of the case, the circumstances and the causes of any delay, the conduct of the applicant and of the authorities, and what was at stake in the litigation for the applicant. It is not merely a matter of assessing the amount of time that has elapsed during the proceedings (see the *Buchholz v. Germany* judgment of 6 May 1981, Series A no. 42).

Each State has to organise its legal system so as to ensure that all disputes over civil rights and obligations are dealt with by a judicial decision with a "reasonable time" (see the *König v. Germany* judgment of 28 June 1978, Series A no. 27, and the *Milasi v. Italy* judgment of 25 June 1987, Series A no. 119).

A State may not shelter behind the imperfections of its court system, whether they be of a procedural nature or in any other area, to evade liability for the resulting delays (see the *Guincho v. Portugal* judgment of 10 July 1984, Series A no. 81).

To take into account the argument based on an excessive workload in the Federal Constitutional Court would be inconsistent with the Court's decision in similar cases (see the *Ruiz-Mateos v. Spain* judgment of 23 June 1993, Series A no. 262). This reasoning could then be invoked for all types of courts.

In the present case, even if it is accepted that the substantive issues raised were of some complexity, the decision taken by the Second Section of the First Division of the Federal Constitutional Court was an extremely simple one, a finding of inadmissibility based on the provisions of the Federal Constitutional Court Act (paragraph 2 of section 93b).

The refusal to accept for adjudication the applicant's appeal was based simply on the ground that its prospects of success were insufficient.

Such a decision, of a purely procedural nature cannot justify proceedings in the Constitutional Court lasting three years and five months. Moreover, in view of Mr Süßmann's age (80), the case was of undeniable importance for him. If the Court accepts in the present case a period of three years and five months to reach a decision that an appeal is inadmissible (even where

the court concerned is a Constitutional Court), why should it not accept in a future case four or even five years?

I therefore agree with the unanimous opinion of the Commission and find, having regard to the Court's case-law in this area, that the length of the proceedings exceeded a "reasonable time" and that there has therefore been a violation of Article 6 para. 1 of the Convention (art. 6-1).