



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

FOURTH SECTION

**CASE OF KLEIN v. GERMANY**

(Application no. 33379/96)

JUDGMENT

STRASBOURG

27 July 2000

**FINAL**

*27/10/2000*

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form



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

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

Mr A. PASTOR RIDRUEJO, President,

Mr G. RESS,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mrs N. VAJIĆ,

Mr M. PELLONPÄÄ, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 11 July 2000,

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

**PROCEDURE**

1. The case originated in an application (no. 33379/96) against the Federal Republic of Germany lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Edgar Klein (“the applicant”), on 9 January 1996.

2. The applicant was represented by Mr Hanau, director of the research institute for social law at the University of Köln (Germany). The German Government (“the Government”) were represented by their Agent, Mr Klaus Stoltenberg, *Ministerialdirigent*, of the Federal Ministry of Justice.

3. The applicant alleged that the length of the civil proceedings were in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

4. On 14 January 1998 the Commission decided to communicate the applicant’s complaint concerning the length of the civil proceedings and to declare the remainder of the application inadmissible.

5. The applicant’s complaint concerning the length of the civil proceedings was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

6. It was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

7. By a decision of 9 December 1999 the Chamber declared the applicant's complaint concerning the length of the civil proceedings admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

9. The applicant, born in 1926, is a German national and residing in Bad Neuenahr.

10. On 6 December 1985 the Rhineland Westphalia electricity-supply company instituted proceedings before the Moers District Court (*Amtsgericht*) against the applicant claiming outstanding payments for electricity.

11. On 28 April 1986 the District Court ordered the applicant to pay a sum of about 141 Deutsch Mark (DEM) as well as interest to the plaintiff. The Court found that the applicant had reduced the sums due following the annual statements of account, challenging the mode of calculation as well as the coal-mining contribution, a contribution earmarked as a subsidy for the national coal-mining industry (*Kohlepfennig*). The Court considered that both the mode of calculation and the contribution could not be objected to from a constitutional point of view.

12. On 8 June 1986 the applicant lodged a constitutional complaint with the Federal Constitutional Court (*Bundesverfassungsgericht*).

13. On 11 October 1994, after a series of hearings and after having received the observations of the Federal Government, the Government of Bavaria and the association of the German coal-mining industry (*Gesamtverband des deutschen Steinkohlebergbaus*), the Second Division (*Senat*) of the Federal Constitutional Court rendered a decision (of about 30 pages) upon the applicant's constitutional complaint. The Second Division declared that the relevant parts of the Act on the Use of EC Coal in the Electricity Supply (*Gesetz über die weitere Sicherung des Einsatzes von Gemeinschaftskohle in der Elektrizitätswirtschaft*), which were underlying the coal-mining contribution in question, were unconstitutional as the coal-mining contribution amounted to an inadmissible special levy (*Sonderabgabe*). The Federal Constitutional Court quashed the District Court's decision of April 1986 in as much as the payment of the contribution was concerned and sent the case back to that court. It further ordered that the legislation in question, to the extent that it was unconstitutional, should

not be applied beyond 31 December 1995. The Constitutional Court did not entertain the applicant's complaint about the mode of calculation on the ground that the relevant regulations had changed meanwhile.

14. On 15 February 1995, in the resumed proceedings, the Moers District Court ordered the applicant to pay a sum of about 80 DEM as well as interest to the plaintiff. It found that, pursuant to the above legislation which continued to be in force until 31 December 1995, the applicant had to pay the above sum representing the coal-mining contribution.

15. On 22 August 1995 the Federal Constitutional Court refused a constitutional complaint by the applicant lodged on 24 May 1995. The applicant received the decision on 2 September 1995.

## II. RELEVANT DOMESTIC LAW

16. Under the terms of Article 93 § 1 of the Basic Law (*Grundgesetz*), the Federal Constitutional Court shall rule, *inter alia*, on constitutional complaints 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.

17. Article 100 § 1 of the Basic Law provides, *inter alia*, that, where a court considers unconstitutional a law whose validity is relevant to its decision, the proceedings shall be stayed and the question submitted to the Federal Constitutional Court if the present Basic Law is considered to have been breached. According to paragraph 2 of Article 100, where a court has doubts whether a rule of public international law is an integral part of federal law and whether such a rule directly creates rights and duties for the individual, the question shall be submitted to the Federal Constitutional Court.

18. The composition and functioning of the Federal Constitutional Court are governed by the Federal Constitutional Court Act (*Gesetz über das Bundesverfassungsgericht*). The 1985 version of the Federal Constitutional Court Act (applicable with effect from 1 January 1986) 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 complaints (sections 93a-93d of the 1993 Federal Constitutional Court Act).

19. According to section 2 of that Act, the Federal Constitutional Court is constituted in two divisions, each composed of eight judges.

20. Sections 90 to 96 of the Act concern constitutional complaints lodged by individuals. Sections 90 and 92 run as follows:

**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.”

21. Sections 93a to 93c of the 1985 Act provided as follows:

**Section 93a of the 1985 Act**

“A complaint of unconstitutionality shall require acceptance prior to a decision.”

**Section 93b of the 1985 Act**

“(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. 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 of the 1985 Act**

“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*.”

22. Sections 93a to 93d of the 1993 Act read:

**Section 93a of the 1993 Act**

“(1) A complaint of unconstitutionality shall require acceptance prior to a decision.

(2) It is to be accepted,

a. if it raises a constitutional issue of general interest,

b. if this is advisable for securing the rights mentioned in section 90(1); or also in the event that the denial of a decision on the matter would entail a particularly serious disadvantage for the complainant.”

**Section 93b of the 1993 Act**

“The Section may refuse acceptance of a complaint of unconstitutionality or accept it in the event of section 93c. In other cases, the Division shall decide on acceptance.”

**Section 93c of the 1993 Act**

“(1) If the conditions of section 93a(2)(b) are met and the Federal Constitutional Court has already decided on the relevant question of constitutional law, the Section may uphold the complaint of unconstitutionality if it is clearly justified ...”

**Section 93d of the 1993 Act**

“(1) The decision pursuant to sections 93b and 93c shall be taken without oral pleadings. It is unappealable. The order by which acceptance of a complaint of unconstitutionality is refused does not require any reasoning.

...”

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

24. Section 95 concerns the ruling of the Federal Constitutional Court if the complaint is upheld and reads:

“(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. Section 79 shall apply *mutatis mutandis*.”

25. Section 79, to which section 95(3) refers, provides:

“(1) In the event that a final conviction is based on a legal provision, which has been declared incompatible with the Basic Law or has been declared null and void pursuant to section 78, or based on the interpretation of a legal provision, which has been declared incompatible with the Basic Law by the Federal Constitutional Court, a reopening of the criminal proceedings is admissible, in accordance with the provisions of the Code of Criminal Procedure.

(2) In all other respects, subject to the provisions of section 95(2) or a specific statutory provision, final decisions based on a rule declared null and void pursuant to section 78 shall remain unaffected. Such decisions shall not be enforceable ...”

26. The Federal Constitutional Court may issue an interim injunction (*einstweilige Anordnung*) in order to avoid serious disadvantages (*zur Abwehr schwerer Nachteile*), to prevent imminent violence (*zur Verhinderung drohender Gewalt*) or for another important reason in the general interest (*aus einem anderen wichtigen Grund zum gemeinen Wohl*), pursuant to section 32 of the Constitutional Court Act.

## THE LAW

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

27. In the applicant’s submissions the length of the proceedings in particular before the Federal Constitutional Court exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention, 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...”

#### A. Applicability of Article 6 § 1 of the Convention

28. The Government contest the applicability of Article 6 § 1 to the proceedings before the Federal Constitutional Court, notably insisting on

the special role and status of this Court. It also considers the application incompatible *ratione materiae* with Article 6 § 1, as it relates to a dispute regarding a public-law levy.

29. The Court recalls that according to its consistent case-law, proceedings come within the scope of Article 6 § 1 of the Convention, even if they are conducted before a Constitutional Court, where their outcome is decisive for civil rights and obligations (see the *Süssmann v. Germany* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1171, § 41, and the *Pammel and Probstmeier* judgments of 1 July 1997, *Reports* 1997-IV, pp. 1109, § 53, and p. 1135, § 48, respectively).

30. The Court further notes that the present case concerns not only the length of proceedings before the Federal Constitutional Court, but also the length of proceedings before the civil courts.

31. The dispute before the civil courts as to the amount of the electricity supply which was due by the applicant, and which comprised the coal-mining contribution, was of a pecuniary nature and undeniably concerned a civil right within the meaning of Article 6 § 1.

32. In the present case, the Federal Constitutional Court declared the relevant parts of the law at issue unconstitutional, quashed the District Court's decision of April 1986 and sent the case back to that court (see paragraph 13 above).

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

34. Accordingly, Article 6 § 1 is applicable to the proceedings at issue.

## **B. Compliance with Article 6 § 1 of the Convention**

### *1. Period to be taken into consideration*

35. The period to be taken into consideration began on 6 December 1985, when the Rhineland Westphalia electricity-supply company instituted proceedings against the applicant before the Moers District Court. It ended on 22 August 1995, when the Federal Constitutional Court rendered its decision. It therefore lasted approximately nine years and eight months.

### *2. Applicable criteria*

36. The reasonableness of the length of proceedings must be assessed in the light of the 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 the aforementioned *Pammel and Probstmeier* judgments, p. 1110, § 60, and

p. 1136, § 55, respectively, and the Gast and Popp v. Germany judgment of 23 February 2000, § 70, to be published in the official Reports of the Court).

37. The Government insists on the extreme complexity of the case before the Federal Constitutional Court, because it raised fundamental questions concerning constitutional law in financial matters (*Finanzverfassungsrecht*). They also emphasise the heavy case-load of the Federal Constitutional Court during this period, which had obliged it to deal with more urgent cases of considerable political and social importance, some of which were related to the German reunification. They further submit that the proceedings were not of major importance for the applicant from an economic point of view, as the amount in issue in the case was only about 142 DEM.

38. According to the applicant, the case was not particularly complex because, when the law at issue was adopted, its unconstitutionality already appeared clearly. Furthermore, the other cases with which the Federal Constitutional Court had to deal as matters of priority could not excuse the excessive length of the present proceedings. Finally, the applicant stresses that the latter involved an important question of principle for him and other German citizens.

39. The Court notes that the proceedings started on 6 December 1985 and ended on 22 August 1995. The main delay in the procedure occurred before the Federal Constitutional Court in the first round of constitutional proceedings, which lasted for more than eight years (22 June 1986 to 11 October 1994).

40. The Court considers that the constitutional issues raised were of some complexity, as is shown by the length and the motivation of the Federal Constitutional Court's judgment of 11 October 1994. The scope of the judgment went well beyond the present case. Moreover, the Federal Constitutional Court solicited the observations of various authorities before rendering its decision (see paragraph 13 above).

41. The applicant's conduct did not cause any delay in the proceedings.

42. As regards the Federal Constitutional Court, the Court observes that it has repeatedly held that Article 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. Although this obligation cannot be construed in the same way for a constitutional court as for an ordinary court, it is for the European Court in the last instance to verify that it has been complied with, having regard to the particular circumstances of each case and the criteria laid down in its case-law (see the aforementioned Pammel and Probstmeier judgments, p. 1111, § 68, and pp. 1137-1138, § 63, respectively).

43. Moreover, a temporary backlog of court business does not entail a Contracting State's international liability if that State takes appropriate remedial action with the requisite promptness. However, according to the

Court's established case-law, a chronic overload, like the one the Federal Constitutional Court has laboured under since the end of the 1970s, cannot justify an excessive length of proceedings (see the aforementioned Pammel and Probstmeier judgments, p. 1112, § 69, and p. 1138, § 64, respectively, and the aforementioned Gast and Popp judgment, § 75).

44. In the present case, the applicant lodged his constitutional complaint with the Federal Constitutional Court on 8 June 1986 and the proceedings remained pending for more than eight years.

45. Contrary to the Süßmann and Gast and Popp cases, German reunification can have played only a secondary role in the present instance because, when the reunification treaty entered into force, on 3 October 1990, the Klein case had been pending in the Federal Constitutional Court for more than four years.

46. Finally, what was at stake in the proceedings for the applicant is also a material consideration. It is true that the amount of 142 DEM at issue was minor, but the constitutionality of the law in issue raised a question of principle for a great number of German citizens.

47. Accordingly, despite the complexity of the case, the length of the constitutional proceedings cannot satisfy the reasonable-time requirement laid down in Article 6 § 1 of the Convention.

48. In the light of all the circumstances of the case, the Court concludes that the reasonable time required by Article 6 § 1 was exceeded, and that that provision was therefore breached.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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.”

### A. Damage and costs and expenses

50. The applicant claims a total amount of 50,000 DEM for damage and for costs and expenses incurred in the domestic proceedings and those before the Strasbourg institutions. The applicant refers to the psychological burden (*Belastung*) for him due to the length of proceedings before the Federal Constitutional Court as he was not represented by a lawyer in these proceedings, and to the fact that the German State had made an economy of about 47 billions of DEM because of the payment of the coal-mining contribution. The Government made no comment on this claim.

51. The Court considers that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction for the applicant's alleged non-pecuniary damage.

52. As concerns the costs and expenses, the Court recalls that, according to its settled case-law, it will award costs and expenses only in so far as these relate to the violation found and to the extent to which they have been actually and necessarily incurred and are reasonable as to the quantum (see the aforementioned Pammel judgment, p. 1114, § 82). Making an assessment on an equitable basis, the Court awards the applicant the overall sum of 7,000 DEM, together with any value-added tax (VAT) that may be chargeable.

### **B. Default interest**

53. According to the information available to the Court, the statutory rate of interest applicable in Germany at the date of adoption of the present judgment is 4% per annum.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the present judgment in itself constitutes sufficient just satisfaction for non-pecuniary damage;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 7,000 (seven thousand) German marks, together with any VAT that may be chargeable, for costs and expenses;
  - (b) that simple interest at an annual rate of 4% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 27 July 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Antonio PASTOR RIDRUEJO  
President