



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

FOURTH SECTION

CASE OF H.T. v. GERMANY

(Application no. 38073/97)

JUDGMENT

STRASBOURG

11 October 2001

FINAL

11/01/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of H.T. 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 I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 September 2001,

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

PROCEDURE

1. The case originated in an application (no. 38073/97) 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, H. T. (“the applicant”), on 31 July 1997.

2. 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 social court proceedings were in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

4. The application 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).

5. The application 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.

6. By a decision of 11 July 2000 the Chamber declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a German national, born in 1938 and living in Mettmann.

9. In a letter of 30 December 1985 addressed to the Rheinprovinz Pension Office (*Landesversicherungsanstalt*), the applicant and her husband, born in 1927, declared that for the purposes of entitlement to a widow's or a widower's pension the statutory rules still in force should continue to apply in future (see below, "Relevant domestic law").

10. On 4 March 1986, following her husband's death, the applicant applied with the Rheinprovinz Insurance Office for the payment of a survivor's pension.

11. On 10 June 1986 the Insurance Office issued a decision granting the applicant a survivor's pension as from 1 March 1986. The Office, referring to the relevant provision of the Workers' Pension (Reform) Act, further stated that in case that the person concerned had other earned income or income in lieu of earned income, the payment of the survivor's pension was not suspended during the first year after the spouse's death. During the second year, the survivor's pension was reduced by a specific percentage in relation to a dynamic exonerated amount.

12. On 20 June 1986 the applicant lodged an administrative complaint (*Widerspruch*) with the Pensions Office, which was dismissed on 24 March 1987.

13. By submissions dated 27 April 1987, the applicant, represented by counsel, instituted proceedings with the Düsseldorf Social Court, challenging the above decisions issued by the Rheinprovinz Pension Office. She maintained in particular that the underlying legislation, especially the age-limit for opting out of the new system, was unconstitutional, i.e. in breach of the right to property. In this respect, the applicant noted that, according to information provided by the Federal Ministry for Labour and Social Matters, a constitutional complaint concerning the above issue was pending before the Federal Constitutional Court. She suggested that the proceedings before the Social Court be suspended to await the outcome of the said constitutional complaint proceedings. With her action, the applicant also objected to the calculation of the pension in question.

14. On 24 June 1987 the Düsseldorf Social Court suspended the proceedings pursuant to Section 251 of the Code of Civil Procedure (*Zivilprozessordnung* - see below, Relevant domestic law).

15. On 14 August 1987 the Rheinprovinz Pensions Office reassessed the applicant's survivor's pension. Taking her other income into account, the Office suspended the monthly payment of DEM 967.10.

16. By submissions of 10 September 1987, the applicant filed an action with the Düsseldorf Social Court against the decision of 14 August 1987. She again suggested that the proceedings be suspended pending constitutional complaint proceedings in a similar case. The second set of proceedings was, thereupon, also suspended.

17. On 26 February 1993 the applicant requested the Social Court to resume the suspended proceedings. She noted that in the meantime the Federal Constitutional Court had not taken any decisions concerning the legal provision at issue in her case. On 17 March 1993 the Social Court informed the applicant that the proceedings had been resumed.

18. On 22 July 1993 the Social Court inquired with the Federal Constitutional Court about the state of the constitutional complaint proceedings concerning certain aspects of the reform of the rules governing a survivor's pension. On 5 August 1993 the Federal Constitutional Court informed the Social Court that two proceedings had terminated in 1987 and that it envisaged rendering a decision in three further cases in 1994.

19. On 17 September 1993 the Social Court held an oral hearing. Following discussion, the parties agreed to a further suspension of the proceedings.

20. On 5 June 1996 the applicant requested the Social Court to resume the proceedings. She submitted that, having regard to the length of the proceedings before the Federal Constitutional Court and considering her age, she could no longer be expected to wait. On 18 June 1996 the Social Court informed the applicant that the proceedings had been resumed. On 5 February 1998 the Social Court inquired again with the Federal Constitutional Court about the state of proceedings before it.

21. On 18 February 1998 the Federal Constitutional Court dismissed two constitutional complaints. It found that the rules introduced by the Survivor's Pension and Educational Periods Act, in so far as they provided for a suspension of the payment of the survivor's pension in case of other earned income or income in lieu of earned income, were compatible with the Basic Law (*Grundgesetz*).

22. On 7 May 1998 the Social Court forwarded the Federal Constitutional Court's decision to the applicant's counsel and requested him for comments. After a reminder, the applicant's counsel asked for an extension of the time limit. After a further reminder, the applicant's counsel informed the Social Court on 13 October 1998 that he was no longer representing the applicant.

23. On 17 March 1999 the Social Court dismissed the applicants' actions. It found in particular that in 1987 the Federal Constitutional Court had declared the age-limit of 50 years compatible with the Basic Law. It held that the Federal Constitutional Court's decisions of 1998 had no impact on its decision, as they did not concern the issues raised in the applicant's action.

II. RELEVANT DOMESTIC LAW

A. Pension rules

24. Before 1 January 1986 men and women had to meet different conditions for entitlement to a widow's or a widower's pension, respectively. While a widow was generally entitled to a widow's pension, a widower could only obtain payment of a widower's pension if his late wife had mainly provided for the family's maintenance. In March 1975 the Federal Constitutional Court had held that, having regard to changes in the role of women in marriage and family and the labour market, the existing rules fixing different conditions for entitlement to a widow's or a widower's pension had to be replaced by legislation avoiding discrimination.

25. On 1 January 1986 the Survivor's Pension and Educational Periods Act (*Hinterbliebenenrenten- und Erziehungszeiten-Gesetz*) of 11 July 1985, amending the relevant provisions of the Employees' Pension Act (*Angestelltenversicherungsgesetz*), the Reich Insurance Act (*Reichsversicherungsordnung*) and the Reich Miners' Act (*Reichsknappschaftsgesetz*), entered into force. The Reich Insurance Act, applying to workers, and the Employees' Pension Act, applying to employees, together with the reform legislation, namely the Workers' Pension (Reform) Act (*Arbeiterrentenversicherungs-Neuregelungsgesetz*) and the Employees' Pension (Reform) Act (*Angestelltenversicherungs-Neuregelungsgesetz*), formed the basis of the general old age insurance system (*gesetzliche Rentenversicherung der Arbeiter und Angestellten*). A widow is entitled to a survivor's pension after the death of her insured husband, and a widower is entitled to a survivor's pension after the death of his insured wife. Moreover, pursuant to the new legislation, a survivor's earned income or income in lieu of earned income is taken into account. According to the explanatory report, the latter rule was justified on account of the maintenance function of a survivor's pension (60% of the spouses' last income). The reform only concerned pension cases having occurred as from 1 January 1986. Furthermore, for a transitional period until 31 December 1988, spouses could opt for the old regime if they had been married before 1 January 1986 and if they were both older than 50 years at that time. Subsequent reform legislation, including a uniform pension regime for workers and employees, did not affect the substance of the above legislation concerning a survivor's pension.

B. Code of Civil Procedure

26. According to Section 251 of the Code of Civil Procedure, a court suspends proceedings upon the request of the parties if such a suspension

appears reasonable on account of settlement negotiations or for other important reasons.

THE LAW

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

27. In the applicant's submissions, the length of the court proceedings before the Düsseldorf Social 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...”

28. The applicant submitted that there was a link between the two proceedings. Both her counsel and the Social Court were waiting for the outcome of the proceedings before the Federal Constitutional Court, announced for 1994. Moreover, it was for the Social Court to verify whether these proceedings concerned the applicant's case or not.

29. The Government held that, as to a first period between 1987 and 1996, the length of the proceedings was mainly due to the applicants' requests to stay the proceedings while waiting for the outcome of the constitutional court proceedings. As regards the second period between 1996 and 1999, the Government argued that the applicant did not react to the Social Courts' repeated requests for comments to the Federal Constitutional Court's decision of 18 February 1998. The Government also maintained that there was no formal procedural link between the proceedings before the Social Court and those pending before the Federal Constitutional Court.

A. Period to be taken into consideration

30. The period to be taken into consideration began on 27 April 1987, when the applicant instituted proceedings with the Düsseldorf Social Court, almost one year after having lodged the administrative complaint with the Pensions Office on 20 June 1986. It ended on 17 March 1999, when the Social Court dismissed her case. It therefore lasted nearly twelve years.

B. Reasonableness of the length of the proceedings

31. As to the reasonableness of the length of the proceedings, the Court recalls that it must be assessed in the light of the particular circumstances of

the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant (see, among other authorities, *Pélissier and Sassi v. France* [GC], n° 25444/94, 25 March 1999, § 67, and the *Klein v. Germany* judgment, n° 33379/96, 27 July 2000, § 36).

32. The case concerned questions relating to the reform of the survivor's pension. The applicant challenged the constitutionality of aspects of the reform, namely the possibility of its suspension in case of other earned income or income in lieu of earned income and, under the transitory provisions, the age-limit for opting in favour of the old system. Similar matters had already been raised in constitutional complaints pending before the Federal Constitutional Court brought by third persons since 1986. The proceedings were, therefore, of a certain complexity.

33. The principal cause for the overall length was the repeated suspension of the social court proceedings. In particular, between 1987 and 1998, the proceedings were not furthered as the Social Court awaited the outcome of the said Federal Constitutional Court proceedings.

34. As regards the conduct of the applicant, the Court notes that, when instituting proceedings with the Social Court in 1987, she suggested staying the proceedings in order to await the outcome of the pending constitutional complaint proceedings. Only on 26 February 1993, that is almost six years later, she requested the Social Court to resume the suspended proceedings. The Court finds that, in these circumstances, the applicant contributed to a certain extent to the delay of the proceedings.

35. As for the conduct of the authorities, the Court recalls that even in proceedings, where it is for the parties to take the initiative with regard to the progress of the proceedings, the national courts are not dispensed from ensuring compliance with the requirements of Article 6 of the Convention as regards reasonable time (see the *Scopelliti v. Italy* judgment of 23 November 1993, Series A n° 258, p. 10, § 25, and the *Duclos v. France* judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2180, § 55).

36. In the Court's view, the Social Court did not duly establish the relevance, for the applicant's case, of the proceedings before the Federal Constitutional Court. In this respect, the Court notes that the Social Court, when finally dismissing the applicant's action on 17 March 1999, estimated that the constitutional complaint proceedings were not decisive for the applicant's case. Its decision was mainly based on a decision, rendered by the Federal Constitutional Court in 1987, dealing with the question of the constitutionality of the 50 years' age limit. In particular, the Court considers that, had the Social Court had doubts as to the constitutionality of the said legislation, it would have had to stay the proceedings and apply with the Federal Constitutional Court for a preliminary ruling. The Court further

notes that the Social Court, when already nine years had elapsed and the applicant had expressly requested to resume proceedings, confined itself to inquiring with the Federal Constitutional Court about the state of the proceedings before it. Subsequently, it took the Social Court another ten months to render its final decision.

37. In these circumstances the Court, bearing in mind that special diligence is necessary in pensions disputes (see the *Nibbio, Borgese, Biondi, Monaco and Lestini v. Italy* judgments of 26 February 1992, Series A nos. 228-A – 228-E, pp. 10, 21, 33, 43 and 54, §§ 18, 18, 18, 17, and 18, respectively), finds that the overall length of the social court proceedings cannot be regarded as “reasonable” within the meaning of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant sought DEM 64 400, corresponding to the estimated pension loss, due to the said reform, between 1987 and 2016 when she would reach the average age of a woman, i.e. 78 years. Furthermore, she claimed DEM 570 for translation fees of the Court’s decisions and letters and DEM 100 for photocopies. She further submitted that the length of the proceedings had caused her non-pecuniary damage, in particular for the tremors her body suffered from since some years. She did not claim a specific amount in this respect.

41. The Government objected that there was no causal link between any violation, which might be found on account of the length of the proceedings, and the alleged pecuniary loss. Had the Social Court dismissed the applicant’s action in a reasonable delay, the amount of the applicant’s pension would have been the same. As to the costs and expenses, the Government did not express a view.

42. The Court, like the Government, considers that there is no causal link between the violation found by the Court and the pecuniary damage sought by the applicant. It, therefore, makes no award under this head.

43. However, the Court holds that the prolonged uncertainty, in which the applicant was kept for the duration of her proceedings as to the amount of her pension, was a source of permanent anxiety for her. In itself, this caused her non-pecuniary injury. Assessing it as a whole and on an equitable basis, as required by Article 41 of the Convention, the Court awards Ms T. compensation in the sum of DEM 10 000.

44. As regards costs and expenses, the Court awards the applicant the overall sum of DEM 670.

B. Default interest

45. According to the information available to the Court, the statutory rate of default interest applicable in Germany at the date of adoption of the present judgment is 8,62% 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*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
 - (i) 10 000 (ten thousand) German marks in respect of non-pecuniary damage;
 - (ii) 670 (six hundred seventy) German marks for costs and expenses together with any value-added tax that may be chargeable.
 - (b) that simple interest at an annual rate of 8,62% shall be payable from the expiry of the above-mentioned three months until settlement.
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 October 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Antonio PASTOR RIDRUEJO
President