



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

THIRD SECTION

**CASE OF TRIPPEL v. GERMANY**

*(Application no. 68103/01)*

JUDGMENT

STRASBOURG

4 December 2003

**FINAL**

*04/03/2004*

*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 Trippel v. Germany,**

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

Mr I. CABRAL BARRETO, *President*,

Mr G. RESS,

Mr L. CAFLISCH,

Mr P. KÜRIS,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 March and on 13 November 2003,

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

## PROCEDURE

1. The case originated in an application (no. 68103/01) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a German national, Mr Karsten Trippel (“the applicant”), on 12 March 2001.

2. The applicant was represented by C. Lenz, a lawyer practising in Stuttgart. The German Government (“the Government”) were represented by their Agent, Mr K. Stoltenberg, *Ministerialdirigent*, Ministry of Justice.

3. The applicant complained, *inter alia*, that the length of the court proceedings before the Federal Constitutional Court exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention.

4. The application was allocated to the Third 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.

5. On 14 March 2002 the Third Section declared the application partly inadmissible.

6. On 20 March 2003, the Third Section declared the applicant's complaint about the length of the proceedings admissible. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

## THE FACTS

7. The applicant lives in Großbottwar, Germany.

8. He owned four shares in a company, the MotoMeter AG. 99 % of this company's shares were held by the company Robert Bosch GmbH.

9. On 6 July 1992, following a majority decision of the shareholders' meeting, the MotoMeter AG sold all its company assets to a newly founded company, the MotoMeter GmbH, and was subsequently liquidated. The majority shareholder offered to buy the minority shareholders' shares at a price of 615 DEM (314.44 EUR) per share.

10. On 22 July 1992, the applicant and other private shareholders challenged the decision of 6 July 1992 before the Stuttgart Regional Court. They submitted that the main shareholder had circumvented rules aiming at the protection of minority shareholders inherent in the German Act on Stock Companies (*Aktiengesetz*). They further complained that the price per share offered by the main shareholder was too low and that minority shareholders had not been able to buy parts of the assets.

11. On 22 January 1993, the Regional Court rejected the claim on the grounds that the decision in question was lawful and that there had been no violation of the applicant's and other shareholders' rights.

12. On 21 December 1993, the Stuttgart Court of Appeal rejected the appeals lodged by the applicant and the other minority shareholders.

13. On 5 December 1994, the Federal Court of Justice refused to entertain their appeals on points of law.

14. On 12 January 1995, the applicant lodged a constitutional complaint with the Federal Constitutional Court.

15. On 23 August 2000 (served on 13 September 2000), the Federal Constitutional Court refused to entertain the applicant's complaint, finding that the complaint was not of fundamental constitutional significance. Referring to an earlier decision of the same day dealing with a similar subject matter, which it attached, the Federal Constitutional Court noted that entertaining the complaint was not necessary in order to enforce the applicant's rights. Finally, as the applicant had only possessed four shares of the MotoMeter AG, his financial loss had not posed an existential burden for him.

## THE LAW

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

16. The applicant complained about the length of the proceedings before the Federal Constitutional Court. He relied on Article 6 § 1 of the Convention which, insofar as relevant, reads as follows:

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

17. The Government contested this.

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

18. The Court notes that the proceedings at issue concerned the applicants' claim to the German civil courts regarding the sale of his company shares. As these form part of the applicant's possessions, it is satisfied, and this was not contested by the parties, that the proceedings concerned the determination of the applicant's “civil rights and obligations” within the meaning of Article 6 § 1 (see *Duclos v. France*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2179, 2180, § 53). This provision is therefore applicable to the proceedings at issue.

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

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

19. The period to be taken into consideration began on 12 January 1995, when the applicant lodged a constitutional complaint with the Federal Constitutional Court and ended on 13 September 2000, when the decision of the Federal Constitutional Court was served on the applicant (see *Gast and Popp v. Germany*, n° 29357/95, § 69, ECHR 2000-II). The proceedings thus lasted for approximately five years and eight months before the Federal Constitutional Court.

##### 2. *Applicable criteria*

20. The Court recalls that 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 criteria laid down in the Court's case-law,

in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, as a recent authority, *Comingersoll v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

**a) Complexity of the case**

21. The Government asserted that the constitutional law aspects of the complaint at issue were very complex and difficult, as was revealed by the detailed analysis and reasoning of the Federal Constitutional Court in its precedent decision of 23 August 2000.

22. The applicant contested this, recalling that the civil courts had, over three instances, dealt with the same case in half the time that the Federal Constitutional Court had needed to issue its decision. Bearing in mind that the Federal Constitutional Court had only needed to decide on the admissibility of the complaint and that in the precedent decision, it had merely confirmed its previous case law, there was no justification for the excessive amount of time it took to deliver both the precedent decision and the ensuing decision in the applicant's case.

23. The Court notes that the applicant's complaint to the Federal Constitutional Court concerned the protection of the rights of minority shareholders with regard to the majority, in particular in cases where a company is sold and consequently liquidated. In its decision of 23 August 2000, the Federal Constitutional Court was thus held to examine points of fact and law of some complexity, which it dealt with in extensive detail in the precedent decision of the same day. This, however, does not of itself justify the length of the proceedings.

**b) Conduct of the applicant**

24. The Court notes that the applicant was not responsible for any delay in the proceedings. No assertion to this effect was made by the Government.

**c) Conduct of the Federal Constitutional Court**

25. The Government submitted that the length of the proceedings could be explained with the grouping of the applicant's complaint with two other corresponding complaints. The Federal Constitutional Court had then preferred to wait for a decision in proceedings involving a similar subject matter pending before the Stuttgart Social Court and the ensuing submission of a complaint to the Federal Constitutional Court in 1997 in order to obtain a comprehensive view of the factual and legal issues involved. In April 1999, it had given priority to another complaint also dealing with the property rights of minority shareholders and decided on this matter in a fundamental and detailed pilot decision. According to the Government, it was reasonable and necessary to proceed in this manner (see *Goretzki v. Germany*, no. 52447/99, decision of 24 January 2002; see also *Süßmann v.*

*Germany*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1174, § 59) in order to deal with certain unresolved issues relating to the property rights of minority shareholders. Grouping similar cases and then issuing a pilot decision on one of them also corresponded to the established practice of the Federal Constitutional Court. As this practice usually caused the remaining complaints to lose their fundamental constitutional significance, it was necessary for the Federal Constitutional Court to decide on the pilot case first in order to assess the constitutional significance of the other cases.

26. The applicant referred to the Pammel case, where the Court had found that a length of proceedings amounting to five years and three months was in violation of Article 6 § 1 of the Convention and could not be justified by a chronic overload of work (see *Pammel v. Germany*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1112, § 69). He submitted that if the practice of grouping complaints and awaiting the outcome of other proceedings were to become established, the Federal Constitutional Court would constantly be able to delay proceedings at will. According to the applicant, the Government could not argue that it was reasonable and appropriate for the applicant to wait for the Federal Constitutional Court to decide on the pilot case, as the pilot case itself had already been pending for an excessive amount of time, namely since 1994. Instead of first deciding on one case before deciding on the other, the Federal Constitutional Court should have joined the cases and decided on them together.

27. The Court recalls that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, among many others, *Vocaturo v. Italy*, judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17, and *Kind v. Germany*, n° 44324/98, § 52).

28. It is aware, however, that this obligation cannot be construed for a Constitutional Court in the same way as for an ordinary court. The role of a Constitutional Court as guardian of the Constitution makes it particularly necessary for it 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 (see the *Süssmann* judgment cited above, p. 1174, § 56).

29. It is for the European Court in the last instance to verify that the above obligation imposed by Article 6 § 1 has been complied with, having regard to the special circumstances of each case and the criteria laid down in its case law (see the *Pammel* judgment cited above, § 68).

30. The Court confirms that in some cases, it may be reasonable and necessary to group together cases dealing with the same set of facts and to suspend proceedings pending a decision in a related case whose outcome may be relevant for proceedings in question. However, in the present case, the delay of two years occasioned by this practice was excessively long. The

Court is also not convinced that waiting for the decision of a lower court was absolutely necessary in order to decide on the compatibility of certain legal issues with the Basic Law. Even if the lower court's decision did contain vital information for the examination of the applicant's complaint, the Court notes that the Federal Constitutional Court could have officially suspended the proceedings in the applicant's case pending the decision of the Stuttgart Court of Appeal, instead of not taking any action during this time.

31. As regards the ensuing delay of another two years occasioned by the Federal Constitutional Court's choice to first decide on the pilot case in April 1999, the Court admits that it may take some time to decide on a matter of such complexity. However, given the fact that when the Federal Constitutional Court began examining the pilot case, the applicant's complaint had already been pending for two years, two further years to examine the next case appear to be too long.

32. In the light of the above, the Court is not persuaded by the Government's explanations for the delays; in particular it is not convinced that the Federal Constitutional Court fulfilled its obligation under the Convention to organise the administration of the cases before it in such a way as to satisfy the requirements of Article 6 § 1.

**d) Importance of the case for the applicant**

33. Regarding the importance the case held for the applicant, the Government contested that there was much at stake for him, seeing that in the prior civil proceedings, he had suffered a loss of 1,200 DEM (approximately 613 euros (EUR)) at the most. With regard to the value in dispute before the civil courts, the Government submitted that the value of one million DEM (approximately 511,000 EUR) was the total value fixed for six complainants in the civil proceedings, but that the value per complainant was not known.

34. The applicant noted that the value in dispute had been fixed at one million DEM by the civil courts based on the applicant's interest in the case. This also led to considerable court costs and legal expenses, which would have been reimbursed if the applicant's complaint before the Federal Constitutional Court had been successful. The applicant therefore denied that his complaint was not of far-reaching importance.

35. The Court agrees that at the outset, the applicant had lost a relatively small sum of money due to the sale and ensuing liquidation of the MotoMeter AG. However, it also has noted the considerable amount of money the applicant had already spent on court proceedings and legal expenses when lodging his complaint with the Federal Constitutional Court, which would have been reimbursed at least in part if the Federal Constitutional Court had accepted his complaint. The applicant thus had an

increased financial interest in the outcome of the proceedings before the Federal Constitutional Court.

**e) Conclusion**

36. In sum, the Court finds that the delays in the proceedings before the Federal Constitutional Court were excessive and thus violated Article 6 § 1 of the Convention.

**II. APPLICATION OF ARTICLE 41 OF THE CONVENTION**

37. 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**

38. The applicant sought compensation for pecuniary damage in the sum of 22,774.21 EUR, corresponding to the court costs and legal expenses occasioned by the proceedings before the civil courts and the Federal Constitutional Court. He submitted that if, in its decision of 23 August 2000, the Federal Constitutional Court had decided on his case along with the precedent decision of the same day, the civil court decisions against him would have been revoked, so that eventually, the respondent party in the civil proceedings and the German Government would have had to reimburse the above court costs and expenses. As he would in that case have been able to sell his shares at market value, the applicant also requested the difference in the price received per MotoMeter share and the actual market value of each share. In this context, the applicant submitted that he actually possessed fourteen shares, so that his loss exceeded 1,200 DEM. The applicant also asked the Court to award punitive damages in the amount of 6,500 EUR.

39. The Government referred to the case of *Klein v. Germany* (*Klein v. Germany*, no. 33379/96, § 51, 27 July 2000) where, due to a relatively small financial burden on the applicant and despite a length of the proceedings amounting to nine years and eight months, the Court had awarded 7,000 DEM (approximately 3,580 EUR) in total including costs and expenses and had declared that the finding of a violation of Article 6 § 1 in itself constituted sufficient just satisfaction. Insofar as the applicant submitted that he owned more than four shares, the Government submitted that as he had only registered four at the shareholders' meeting, the civil proceedings

only concerned four shares. Finally, the Government mainly submitted that there was no causal link between the Federal Constitutional Court's entertainment of the applicant's complaint and the excessive length of the proceedings before that court. In particular, there was no such link between the alleged violation of Article 6 and the applicant's legal costs and expenses before the civil courts.

40. The Court recalls that it cannot speculate as to what the outcome of the proceedings at issue might have been if the violation of the Convention had not occurred (see *Janssen v. Germany*, no. 23959/94, § 56, 20 December 2001). In particular, it can discern no causal link between the facts in respect of which it has found a violation and the pecuniary damage for which the applicant seeks compensation. It therefore makes no award under the head of pecuniary damage.

41. Regarding the applicant's request for non-pecuniary damage, it is reasonable to assume that in the present case, the applicant suffered anxiety and frustration as a result of the delays found by the Court to have been attributable to the State (see paragraphs 30, 31 and 32 above). On an equitable basis, the Court awards EUR 3,000 under this head.

#### **B. Costs and expenses**

42. The applicant claimed a total of 9,591.88 EUR for costs and expenses incurred in the proceedings before the Court.

43. The Government submitted that only those expenses relating to the alleged length of the proceedings may be reimbursed. They recalled that the remainder of the complaints relating to an alleged violation of Article 1 of Protocol No. 1 was declared inadmissible on 14 March 2002.

44. Considering that the claim on the length of the proceedings only constituted a relatively small part of the present application, the Court finds the applicant's claims excessive. Making its own estimate, the Court awards him 1,800 EUR, plus any tax that may be chargeable.

#### **C. Default interest**

45. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## 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) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
    - (ii) EUR 1,800 (one thousand eight hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Ireneu CABRAL BARRETO  
President