



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

FIFTH SECTION

CASE OF KIRSTEN v. GERMANY

(Application no. 19124/02)

JUDGMENT

STRASBOURG

15 February 2007

FINAL

09/07/2007

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 Kirsten v. Germany,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOUCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 22 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 19124/02) 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, Ms Gisela Kirsten (“the applicant”), on 1 May 2002.

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

3. On 2 May 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Berlin.

5. From 1960 to 1979 she worked as a ballet dancer for the Erich-Weinert-Ensemble (EWE), a national company of the German Democratic Republic (GDR). In 1979 she terminated her career on stage and worked for the company as a set and costume designer.

6. The EWE paid the applicant her wages as a costume and set designer and, in addition, a monthly allowance in the amount of 588 GDR marks

(hereafter „the allowance“). The allowance was paid by virtue of the regulation of the Minister of Culture (*Anordnung über die Gewährung einer berufsbezogenen Zuwendung an Ballettmitglieder in staatlichen Einrichtungen der DDR*) of 1 September 1976. Pursuant to this regulation former members of ballets in the GDR were paid an allowance at the end of their career on stage. The allowance accrued after reaching the age of 35 and having worked for at least 15 years as a dancer. It was paid, irrespective of other earnings, by the former employer. Once the former dancer received an old-age or invalidity pension the allowance was regularly paid by the National Insurance of the GDR (*Staatliche Versicherung der DDR*).

7. After the reunification of the GDR and the Federal Republic of Germany (FRG) the EWE which formerly belonged to the National People's Army (*Nationale Volksarmee*) of the GDR was incorporated into the organisation of the Federal Ministry of Defence of the FRG. The Ministry took over the contracts with the company's staff and continued to pay the applicant her wages and the allowance. The allowance and the retirement pensions were moreover converted and paid in German Marks (DEM).

8. On 1 January 1992 the Ministry discontinued all allowance payments to former ballet dancers with reference to Article 9 § 2 in conjunction with Appendix II, Chapter VIII, Section H, paragraph III Nr. 6 of the German Unification Treaty.

9. In December 1992 the applicant brought an action with the Berlin Social Court claiming the payment of the allowance.

10. On 24 August 1994 the Federal Social Court ruled in a leading judgment that the social courts had no jurisdiction over disputes concerning the allowance. It found that those disputes belonged to the realm of civil – and more specifically – labour law, *inter alia* because the granting and the amount of the allowance were so closely linked to the contract of employment and in particular to the respective wages.

11. On 13 January 1995 the Berlin Social Court referred the applicant's case to the Frankfurt/Oder Labour Court.

12. On 15 May 1996 the Frankfurt/Oder Labour Court ordered the Ministry of Defence to pay the applicant DEM 28,224 and the monthly allowance as of January 1996. It pointed out that the wording of the pertinent provision of the German Unification Treaty was ambiguous. The provision could be interpreted as setting 31 December 1991 as the final date to qualify for the allowance or as terminating permanently the allowance payments from that date onwards. However, in view of the principle of the protection of legitimate expectations (*Vertrauensschutz*) the allowance payments could not be permanently discontinued without an explicit and a precise regulation in the German Unification Treaty. Therefore the provision had to be construed as setting 31 December 1991 as the final date to qualify for the allowance.

13. On 13 May 1998 the Brandenburg Regional Labour Court quashed the decision of the Frankfurt/Oder Labour Court and rejected the applicant's action. It admitted that the wording of the pertinent provision was ambiguous. Referring to the leading judgment on the allowance of the Federal Labour Court dated 24 March 1998, it construed the provision as terminating the allowance payments as of 31 December 1991. It argued that the allowance had been paid out of public funds and was an atypical benefit granted by the GDR. Therefore it would have been necessary to rule explicitly that the allowance was to be transferred into the united German legal system. The judgement was served on the applicant on 15 October 1998. The applicant subsequently lodged an appeal on points of law.

14. On 8 November 1998 the applicant lodged a constitutional complaint of approximately fifty pages with the Federal Constitutional Court. She *inter alia* complained that the length of the proceedings - which were still pending before the Federal Labour Court - violated Article 6 of the Convention.

15. On 26 January 1999 the Federal Labour Court rejected the applicant's request for leave to appeal on points of law.

16. In March 1999 the applicant submitted another fifty pages of observations to the Federal Constitutional Court.

17. On 2 July 2002 the Federal Constitutional Court delivered a leading decision on the ballet dancers' allowance. It referred to its leading judgment of 28 April 1999, pursuant to which the pension rights acquired in the GDR fell within the scope of Article 14 of the German Basic Law protecting the right to property provided that the German Unification Treaty recognised them as legal claims within the united German legal system. The impugned allowance did accordingly not fall within the scope of Article 14 of the German Basic Law as Article 9 of the German Unification Treaty prescribed that it would not be transferred into the social and labour legislation of the FRG. Furthermore, there had never been a legitimate expectation that the allowance would be transferred into the united German legal system, as in the legal system of the GDR, the allowance had already amounted to a preferential treatment.

18. On 4 July 2002 the Federal Constitutional Court refused to admit the applicant's constitutional complaint with reference to its leading decision of 2 July 2002. The decision was served on the applicant's lawyer on 3 August 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The German reunification

19. As a result of the German reunification, which became effective on 3 October 1990, the GDR acceded to the FRG. The relevant domestic law concerning the details of this transition and its legal framework, such as the German Unification Treaty and the laws on the transfer of pension rights, are reproduced in the case of *Adam and others v. Germany* ((dec.) no. 290/03, 1 September 2005).

2. Case-load of the Federal Constitutional Court between 1999 and 2002

20. According to the information submitted by the Government, the Federal Constitutional Court had to face a heavy case-load after the German reunification. They presented a list of the fifty major decisions taken by the first chamber (*Senat*) of the Federal Constitutional Court between March 1999 and July 2002. Out of these cases, approximately ten concerned issues related to the German reunification as such (e.g. complaints related to the expropriation, usufructuary rights and restitution of property and the transfer of pensions). The other decisions concerned regular constitutional questions such as the surveillance of telecommunications, the protection of private life (see decision of the Federal Constitutional Court no. 1 BvR 653/96; and *Von Hannover v. Germany*, no. 59320/00, ECHR 2004-VI), issues related to the social law and family law as well as the restricted right of audience (*Singularzulassung*) before German Appeals Courts (see decision of the Federal Constitutional Court no. 1 BvR 335/97; and *Wendenburg and Others v. Germany* (dec.), no. 71630/01, ECHR 2003-II).

3. The Brandenburg Constitution and case-law of the Brandenburg Constitutional Court

21. Article 52 § 4 of the Brandenburg Constitution provides:

“Everyone has the right to a fair and expeditious trial before an independent and impartial court. (...)”

22. On 14 July 1994 and on 28 March 2001 respectively, the Brandenburg Constitutional Court examined constitutional complaints about the length of proceedings before civil and administrative courts. It held that the complaints were admissible but reached in both cases the conclusion that the length of the impugned proceedings did not violate Article 52 § 4 of the Brandenburg Constitution.

23. In its decision of 20 March 2003 (no. 108/02) concerning the length of proceedings pending for over three years and five months before the Cottbus Administrative Court, the Brandenburg Constitutional Court found a violation of the right to a decision within a reasonable time under Article 52 § 4 of the Brandenburg Constitution. It held *inter alia*:

“It is for the Administrative Court to draw its conclusion from the established violation of the applicant's right under Article 52 § 4 of the Brandenburg Constitution and – irrespective of the independence of the judiciary – to terminate the unconstitutional circumstances.”

THE LAW

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

24. The applicant complained that the overall length of the proceedings and in particular the length before the Regional Court and the Federal Constitutional Court had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. Applicability of Article 6 to the impugned proceedings

25. The Government argued that Article 6 was not applicable to the present proceedings because the matter at issue belonged to the core area of public law. In their submissions, the impugned allowance, which was entirely financed out of public funds, constituted a form of state subsidy for professional dancers and was not dependant on the payment of contributions nor paid in return for faithful service to a company. It was moreover based on the regulation of the Ministry of Culture and not on a contract of employment. Finally, the allowance neither served as a social security benefit as it was paid irrespective of other earnings.

26. The applicant regarded Article 6 as applying in the instant case.

27. The Court recalls that the concept of “civil rights and obligations” within the meaning of the Article 6 is autonomous but that the legislation of the State concerned is not without importance in this context (see *Perez v. France* [GC], no. 47287/99, § 57, ECHR 2004-I; and *Deumeland*

v. Germany, judgment of 29 May 1986, Series A no. 100, § 62). It notes that the Federal Social Court ruled in a leading decision that disputes over the allowance belonged to the realm of labour law because the allowance was so closely linked to the contract of employment and the occupation as ballet dancer (see § 10 above). The Court observes that the applicant was not affected in her relations with the administrative authorities as such, acting in the exercise of discretionary powers; she suffered an interference with her means of subsistence and was claiming an individual, economic right flowing from specific rules laid down in the regulation of the Minister of Culture. The protection of this basic right is, moreover, organised in such a way that at the judicial stage disputes over it come within the jurisdiction of the labour courts. Therefore, and despite the public law features pointed out by the Government, the Court sees no convincing reason to question that the entitlement to the allowance was a “civil” right within the meaning of its case-law (see, *mutatis mutandis*, *Mennitto v. Italy* [GC], no. 33804/96, § 28, ECHR 2000-X).

28. Article 6 § 1 therefore applies in the present case.

2. Exhaustion of domestic remedies

29. Furthermore, the Government held that the applicant had not exhausted the domestic remedies as she had failed to sufficiently substantiate her complaint about the length of proceedings before the Federal Constitutional Court. As to the effectiveness of this remedy, they mainly reiterated the arguments which they submitted in the case of *Sürmeli v. Germany* ([GC], no. 75529/01, §§ 80 - 91, ECHR 2006-...)

30. The Government also asserted that the domestic remedies had not been exhausted because the applicant had failed to lodge a complaint with Brandenburg Constitutional Court against the length of proceedings before the Frankfurt/Oder Labour Court and the Brandenburg Regional Labour Court. As to the effectiveness of such complaints, the Government referred to their submissions about a complaint to the Federal Constitutional Court and named three decisions of the latter court (see “Relevant domestic law and practice” §§ 22 - 23 above).

31. The applicant asserted that none of the remedies advocated by the Government would in practice have made it possible to expedite the proceedings.

32. The Court recalls at the outset that under Article 35 of the Convention, normal recourse should be had by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Dalia v. France*, judgment

of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 87, § 38; *Horvat v. Croatia*, no. 51585/99, § 38, ECHR 2001-VIII; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 142, ECHR 2006-...). Furthermore, in the area of exhaustion of domestic remedies, it is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Horvat*, cited above, § 39).

33. As regards a constitutional complaint to the Federal Constitutional Court, the Court reiterates that it has recently held that that remedy is not capable of affording redress for the excessive length of pending civil proceedings (see *Sürmeli*, cited above, § 108).

34. As regards a constitutional complaint to the Brandenburg Constitutional Court, the Court notes that Article 52 § 4 of the Brandenburg Constitution guarantees the right to expeditious proceedings and that a violation of this right may be alleged before the Brandenburg Constitutional Court. However, the Government did not demonstrate that the latter court is empowered to order specific measures to speed up the proceedings in issue or able to award compensation for unreasonably long proceedings. In its decision of 20 March 2003 (see “Relevant domestic law and practice” § 23 above) for instance, the Brandenburg Constitutional Court - although it considered the impugned length of proceedings unconstitutional - did not set any deadlines for the lower court but rather underlined the latter court's independence. Therefore, the Court is not satisfied that the Brandenburg Constitutional Court was in the present case capable of affording sufficient redress in respect of the violation alleged (see, *mutatis mutandis*, *Sürmeli*, § 108, cited above).

35. The Government's preliminary objection concerning the exhaustion of domestic remedies must be dismissed.

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

B. Merits

37. The period to be taken into consideration began in December 1992 when the applicant lodged her complaint with the Berlin Social Court and ended on 3 August 2002 when the decision of the Federal Constitutional Court was served on the applicant's lawyer. It thus lasted nine years and eight months for four levels of jurisdiction.

38. The Government underlined that the Social Court had awaited the outcome of the leading case because it had been undecided whether the social courts had jurisdiction over disputes concerning the allowance.

Likewise, the Regional Labour Court had awaited the decision of the Federal Labour Court concerning the leading case for reasons of procedural efficiency. The Government further stressed the unique political context of the German reunification and that the Federal Constitutional Court had been faced with an immense workload. The latter court had had to rule on more urgent cases of considerable political importance and had attached priority to those cases which had affected a large number of people. Furthermore, it first awaited for a certain number of cases concerning the allowance to be filed in order to get the necessary overview of the various cases. The leading decision on the allowance was rendered only one and a half years after the last complaint concerning the allowance was filed on 20 December 2000.

39. The applicant argued that the German reunification could not justify the Federal Constitutional Court's constant overload. Furthermore, the Government had failed to specify which cases had been more urgent so as to justify the delay occurred before the Federal Constitutional Court. Even if it had been reasonable for the latter court to regroup the cases concerning the allowance, it should subsequently have decided on these cases without any delay.

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

41. The Court considers that the case had been legally complex.

42. As to the applicant's conduct, the Court takes note of her lawyer's sometimes convoluted and confused submissions which contributed to the length of proceedings as they unnecessarily distracted the authorities from concentrating on the main issues (see, *Stork v. Germany*, no. 38033/02, 13 July 2006, § 43; and, *mutatis mutandis*, *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 86, ECHR 2003-IX (extracts)). Considering the total duration of the proceedings, the applicant's contribution insofar must however be considered as small.

43. With regard to the conduct of the national courts, the Court underlines that it might be reasonable for them to await under certain circumstances the outcome of parallel proceedings as a measure of procedural efficiency. This decision must however be proportionate having regard to the special circumstances of the case (see *König v. Germany*, cited above, § 110; *Boddaert v. Belgium*, judgment of 12 October 1992, Series A no. 235-D, § 39; *Pafitis and Others v. Greece*, judgment of 26 February 1998, Reports 1998-I, § 97; and *Stork*, cited above, § 44). In the present case, it was uncertain whether the social or the labour courts had jurisdiction over disputes concerning the allowance and the Berlin Social Court therefore abstained from deciding on the applicant's case in view of the lead

case pending before the Federal Social Court. The Court thus finds that the length of approximately two years before the Berlin Social Court may in the present case be regarded as justified by considerations of procedural efficiency.

44. While the parties agreed that the Frankfurt/Oder Labour Court had dealt with the impugned case expeditiously, the proceedings had been pending some two years and two months before the Regional Labour Court. The Court accepts that a certain delay may be considered proportionate since the latter court awaited the outcome of the leading case pending before the Federal Labour Court. However, the Court notes that the Regional Labour Court's judgment was served on the applicant's lawyer almost seven months after the leading decision of the Federal Labour Court had been rendered. Given the length of proceedings at that stage, this delay cannot be justified by considerations of procedural efficiency.

45. As to the proceedings before the Federal Constitutional Court, the Court recalls 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 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 considerations other 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 *Wimmer v. Germany*, no. 60534/00, § 30, 24 February 2005). However, although it might have been appropriate to gain a certain overview of the various cases concerning the allowance, the Court sees no reason why it was necessary for the Federal Constitutional Court to wait until the last complaint concerning the allowance was filed in order to process this group of cases, including the one brought by the applicant.

46. Furthermore, the Court has previously held that a length of three years and nine months (see *Schwengel v. Germany* (dec.), no. 52442/99, 2 March 2000) and a length of four years and eight months (see *Goretzki v. Germany* (dec.), no. 52447/99, 24 January 2002) before the Federal Constitutional Court might be proportionate, particularly in the unique context of the German reunification. The Court yet underlines that the instant proceedings had already been pending approximately six years when the case was referred to the Federal Constitutional Court whereas in the cases just mentioned, they had lasted not more than a year when the lower courts decided to adjourn them in view of the precedent pending before the Federal Constitutional Court. Accordingly, the latter court should have acted with particular expedience in the present case given the length of

proceedings at that stage. The substantial delay is hence disproportionate and cannot be justified by considerations of procedural efficiency.

47. The Court finally observes that the delay cannot be explained by the exceptional circumstances of the German reunification taken alone (see, *mutatis mutandis*, *Hesse-Anger v. Germany*, no. 45835/99, § 32, 6 February 2003). Pursuant to the list submitted by the Government (see § 20 above), not more than ten of the fifty major decisions issued by the first chamber of the Federal Constitutional Court between March 1999 and July 2002 concerned issues related to the German reunification as such. The unusual length of proceedings is hence imputable to the Federal Constitutional Court.

48. Finally, the Court observes that the allowance was meant to cover a part of the applicant's pension and was therefore – even if not her only means of existence – of decisive importance for her.

49. Having examined all the material submitted to it, the Court considers that in the instant case the overall length of the proceedings and in particular the length before the Regional Labour Court and the Federal Constitutional Court was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. The applicant further complained that in Germany there was no court to which application could be made to complain of the excessive length of proceedings pending before the Federal Constitutional Court. She relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

51. The Government held that Article 13 did not apply to proceedings before a constitutional court as it would oblige the States to provide for an endless chain of domestic remedies. In any event, in case of an urgent matter, it was possible to lodge a motion for an interim injunction.

52. The Court notes that this complaint is so closely linked to the one examined above that it must therefore likewise be declared admissible.

53. The Court further reiterates that the correct interpretation of Article 13 of the Convention is that this provision guarantees an effective remedy before a national authority for an alleged violation of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). As established in its case-law, it reiterates that the remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective”, within the meaning of Article 13 of the Convention if they “[prevent] the alleged

violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred” (see *Kudla*, cited above, § 158). Article 13 therefore offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Kudla*, cited above, § 159; see also *Scordino*, cited above, §§ 186-187).

54. Furthermore, the Court is not called upon to examine the relevant law and practice *in abstracto*, but to determine whether, in the light of the *Kudla* judgment (cited above), there had been a remedy compatible with Article 13 of the Convention available to grant the applicant appropriate relief as regards her complaint about the length of proceedings.

55. The present proceedings exceeded the reasonable-time requirement under Article 6 of the Convention *inter alia* because delay occurred while the case was pending before the Federal Constitutional Court. As to the Government's argument concerning the “endless chain of domestic remedies” the Court notes that it had to deal with a similar argument in the case of *Kudla* (cited above, §§ 154 - 155) and that it held:

“As to the suggestion that requiring yet a further remedy would result in domestic proceedings being made even more cumbersome, the Court would observe that (...) there are examples emerging from the Court's own case-law on the rule on exhaustion of domestic remedies which demonstrate that it is not impossible to create such remedies and operate them effectively (see, for instance, *Gonzalez Marin v. Spain* (dec.), no. 39521/98, ECHR 1999-VII, and *Tomé Mota v. Portugal* (dec.), no. 32082/96, ECHR 1999-IX).

If Article 13 is, as the Government argued, to be interpreted as having no application to the right to a hearing within a reasonable time as safeguarded by Article 6 § 1, individuals will systematically be forced to refer to the Court in Strasbourg complaints that would otherwise, and in the Court's opinion more appropriately, have to be addressed in the first place within the national legal system. In the long term the effective functioning, on both the national and international level, of the scheme of human rights protection set up by the Convention is liable to be weakened.”

56. The Court sees no reason to depart from these principles in the present case. It notes that the Government have not shown that any form of relief was available for the delay caused by the Federal Constitutional Court.

57. Therefore, there has been a violation of Article 13 in that the applicant had no domestic remedy whereby she could enforce her right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

III. FURTHER COMPLAINTS UNDER ARTICLE 6 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

58. The Court has examined the remainder of the applicant's complaints as submitted by her. However, having regard to all material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (see, in particular, *Adam and others*, cited above).

59. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed a total of 188,242.05 euros (EUR) for pecuniary damage corresponding to the previous and future loss of the allowance payments. She further claimed 5,000 EUR in respect of non-pecuniary damage on account of the length of proceedings.

62. The Government contested these claims.

63. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It however considers that the applicant must have sustained non-pecuniary damage on account of the length of proceedings. Making its own assessment on an equitable basis and having regard to the nature of the Convention violations it has found, the Court awards her EUR 3,000 under that head.

B. Costs and expenses

64. The applicant also claimed 12,015.38 EUR for the costs and expenses incurred before the domestic courts, 814 EUR of which before the Federal Constitutional Court. She further claimed 37,596 EUR for the costs and expenses incurred before this Court comprising 30,996 EUR for expert reports on the allowance and 6,600 EUR corresponding to her lawyer's fees.

The applicant underlined that the translation costs could only be specified after the closure of the case before the Court.

65. The Government contested these claims.

66. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the expert reports did not deal with the violation of Articles 6 and 13 of the Convention. Regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

C. Default interest

67. 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. *Declares* the complaint concerning the excessive length of the proceedings and the lack of an effective remedy in this respect admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President