



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

FIFTH SECTION

CASE OF GLÜSEN v. GERMANY

(Application no. 1679/03)

JUDGMENT

STRASBOURG

10 January 2008

FINAL

10/04/2008

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 Glösen v. Germany,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr H. Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 1679/03) 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 Ralf Glösen (“the applicant”), on 6 January 2003.

2. The applicant was represented by Mr J. Walczak, a lawyer practising in Hamburg. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. On 15 September 2005 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings 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 1962 and lives in Hamelin.

5. In 1986 the applicant started to study food chemistry at the Braunschweig University. He obtained a certificate in mathematics in a re-examination in the second term. In his intermediate examination,

accomplished in his 7th term of studies, he failed examinations in chemistry. A re-sit was scheduled for 12 October 1989.

6. On 11 October 1989 the applicant was attacked and robbed by two masked and armed men. He subsequently underwent psychological treatment for post-traumatic disorders.

A. Compensation proceedings

7. On 19 December 1989 the applicant applied for compensation under the Victims Compensation Act (*Opferentschädigungsgesetz*, see “Relevant domestic law” below). On 8 August 1990 the Braunschweig Pension Office (*Versorgungsamt*) found that the applicant was suffering from “psychological reactive disturbances” (*psychoreaktive Störungen*) and that his earning capacity was reduced by 20% (*Minderung der Erwerbsfähigkeit*). It established that he did not qualify for a pension because the Victims Compensation Act only provided for a pension in cases where the earning capacity was reduced by at least 25%.

8. In September 1990, following his failure to pass a re-examination at the Braunschweig University, the applicant broke off his studies. He subsequently started and finished in July 1994 the study of food technology at the Lippe/Lemgo University of Applied Sciences.

9. On 11 April 1992 the applicant requested the withdrawal of the decision of 8 August 1990 and the recognition that his earning capacity was reduced by more than 20%. A medical report was issued by Dr S. on 1 July 1992.

10. On 21 November 1992 the applicant asked for the proceedings to be suspended until he started to work again. On 6 May 1993 the applicant’s representative requested a review of the decision of 8 August 1990.

11. On 4 February 1994 the Pension Office Medical Service submitted a medical opinion.

12. On 15 July 1994 the Hildesheim Pension Office rejected the applicant’s request.

13. On 25 July 1994 the applicant lodged an administrative appeal against the decision. On 9 May 1995 the applicant was informed that, in the light of a fresh report, the Pension Office intended to set aside the decision of 8 August 1990. On 26 June 1995 the applicant’s representative asked for the percentage as regards the reduction of earning capacity to be increased.

14. On 18 September 1995 the Hildesheim Pension Office quashed the order of 8 August 1990.

15. On 26 February 1996 the Lower Saxony Regional Pension Office (*Landesversorgungsamt*) rejected the applicant’s administrative appeal.

16. On 6 March 1996 the applicant filed an action with the Hanover Social Court against the order of the Regional Pension Office and the order of the Hildesheim Pension Office dated 18 September 1995.

17. Upon request by the Hanover Social Court two further medical statements were rendered by Dr H. and a Dr K. on 7 June 1996 and 22 August 1996 respectively. On 26 September 1996 the Social Court appointed another expert, Dr M., to provide a new medical report. On 18 January 1997 he submitted his report.

18. Between April and December 1997 three further neurological statements were delivered by Dr B. on behalf of the defendant *Land*.

19. In his written submissions of 4 April 1997 the applicant suggested that a new medical report should be prepared. On 18 December 1997 the court asked the applicant to submit possible further written statements by the end of January 1998 at the latest. It furthermore referred to Section 109 of the Social Courts Act (see “Relevant domestic law and practice” below).

On 26 January 1998 the applicant asked for a medical report to be prepared pursuant to Section 109 of the Social Courts Act and moreover requested an extension of the time-limit for the naming of an expert. On 9 February 1998 he asked the court to designate Dr M. as expert. On 23 February 1998 the court appointed the expert. His medical report dated 28 May 1998 was received by the court on 10 June 1998. The expert found that the applicant was suffering not only from psychological reactive disturbances but also from a panic syndrome with agoraphobia and depressions.

20. Following further written pleadings by the applicant submitted to the court on 18 June and 12 August 1998 respectively and a further neurological statement rendered on September 1998 by Dr B. upon the defendant’s request, the Regional Pension Office acknowledged (*Teilanerkenntnis*) on 22 November 1998 that the applicant’s earning capacity had been reduced by 40% between October 1989 and March 1990 and by 30% between April 1990 and March 1991. This acknowledgement did not, however, fully satisfy the applicant’s claims and he did not withdraw his action as to the remainder.

21. Between January 1999 and October 1999 the parties submitted further written pleadings. Another neurological statement by Dr B. was submitted on 11 March 1999.

22. On 28 October 1999 the Hanover Social Court rejected the remainder of the applicant’s action. It found that on the basis of the extensive medical documentation a finding of a higher percentage as regards the reduction of earning capacity was not justified.

23. On 20 December 1999 the applicant lodged an appeal with the Lower Saxony Social Court of Appeal.

24. With regard to the partial acknowledgment of 22 November 1998 the competent authority issued on 7 January 2000 an implementing order to retrospectively pay the applicant a sum amounting to some 5,500 euros (EUR).

25. Following several written pleadings both issued by the applicant and the defendant in 2000, Dr H. issued another medical statement at the court's request on 23 January 2001, received by the court on 27 March 2001. Dr B. submitted another neurological statement on 27 April 2001.

26. On 25 January 2002 the applicant's lawyer requested the court to expedite the proceedings.

27. On 17 June 2002 the Social Court of Appeal appointed Dr M.W. to draw up a psychiatric expert report. The following day, on 18 June 2002, the applicant again requested to expedite the proceedings.

28. On 11 July 2002 the Federal Constitutional refused to admit the applicant's complaint about the refusal of the Social Court of Appeal to decide upon his appeal. The decision was served to the applicant's lawyer on 18 July 2002.

29. On 20 September 2002 Dr M.W. submitted the expert report. On 13 May 2003, upon the court's request, she supplemented it. On 4 December 2002 and 21 August 2003 respectively Dr B. issued further neurological statements.

30. On 24 October 2003 the Social Court of Appeal appointed Dr P.-W. to draw up a further report opinion, which the court received on 27 May 2004. The expert found that the applicant was suffering not only from psychological reactive disturbances but also from a panic syndrome with agoraphobia and depressions and from chronic lumbago.

31. A hearing scheduled for 29 June 2004 was subsequently postponed; the reason for this is disputed between the parties.

32. On 27 August 2004 the defendant *Land* acknowledged the impairments to the applicant's health as found by Dr P.-W. and assessed that his earning capacity was reduced overall by 40 % and by an additional 10 % as from 1 October 1989. The applicant accepted the acknowledgment on 6 October 2004 but upheld his claim as to the remainder.

33. Between November 2004 and May 2005 the applicant's counsel and the defendant submitted several sets of pleadings to the court. On 13 December 2004 the applicant applied under Section 109 of the Social Courts Act for a further medical report to be prepared by a Dr W. Further written statements by the parties followed between January and May 2005.

34. With regard to the partial acknowledgment of 27 August 2004 the competent authority issued on 8 July 2005 an implementing order to retrospectively pay the applicant pension and related benefits plus interest amounting to some 46,000 EUR and a monthly pension of 218 EUR as from August 2005.

35. On 28 July 2005 the Social Court of Appeal appointed Dr W. as expert. His report of 30 December 2005 was received by the court on 24 January 2006.

36. On 25 January 2006 the Social Court of Appeal asked the applicant whether he wished to pursue his claim. By letter of 8 March 2006 the court was informed by the applicant's counsel that he no longer acted for the applicant.

37. In his written submissions of 16 March and 4 April 2006 respectively, consisting of approx. fifty pages, the applicant challenged Dr W.'s report. Dr W.'s comments were received by the court on 12 October 2006. On 26 October 2006 the Social Court of Appeal asked the expert to supplement his submissions as regards the question whether the current impairment to the applicant's health could be considered as a consequence of the attack in 1989 or as a result of the length of proceedings. In his reply of 11 December 2006, the expert stated that, in his opinion, the current problems could not be traced back to the length of proceedings, which was of only minor importance in the light of the applicant's developing illness. He furthermore underlined that he considered the health problems to be wholly the consequence of the attack in 1989.

38. On 19 December 2006 the court held a hearing at which Dr P.-W. made a supplementary statement. On the same day the Lower Saxony Court of Appeal rejected the applicant's appeal.

B. Proceedings related to the degree of the applicant's disability

39. On 1 November 1995 the applicant requested the Hildesheim Pension Office to establish the degree of his disability (*Grad der Behinderung*) under the Disabled Persons Act (governed from 1 October 2001 by the Social Code IX) and to issue him a disabled persons' pass (*Behindertenausweis*). On 15 March 1995 the Hildesheim Pension Office rejected his request, assessing the degree of disability at less than 20%.

40. On 24 March 1996 the applicant lodged an administrative appeal.

41. According to the Government the proceedings were apparently subsequently suspended to await the outcome of the proceedings under the Victims Compensation Act. The applicant agreed, and added that he had been informed by the Pension Office that the proceedings had been suspended for that reason. In a letter addressed to the Social Court of Appeal as regards the compensation proceedings, the applicant's counsel informed the court on 26 June 2000 *inter alia* that the applicant was interested in a speedy decision on his appeal in the degree of disability proceedings.

42. On 27 October 2002 the applicant complained to the Federal Constitutional Court about the Pension Office's inactivity. On 4 February 2003 the Registry of the Federal Constitutional Court informed him that his complaint would be recorded in the general register pursuant to Section 60 of the Rules of Procedure of the Federal Constitutional Court (*Geschäftsordnung des Bundesverfassungsgerichts*).

43. On 3 November 2003 the Lower Saxony Regional Pension Office rejected the applicant's administrative appeal.

44. On 27 November 2003 the applicant filed an action with the Hanover Social Court.

45. The applicant was granted access to the files in January 2004. On 3 August 2004 the Social Court informed the parties of its intention to decide without a hearing and invited comments. On 6 September 2004 the applicant filed his statement of claim and claim for relief.

46. On 26 October 2004 the files of the proceedings under the Victims Compensation Act were transmitted to the court. On 3 November 2004 the Social Court informed the applicant that his claim lacked reasonable prospects of success.

47. On 2 February 2005 the Social Court again requested the applicant to comment on its intention to decide without a hearing. The applicant replied on 24 March 2005.

48. On 22 September 2005 the applicant informed the court that it was unclear whether the action was to be continued. On 8 November 2005 the applicant requested the court to pursue the proceedings.

49. Following a hearing on 10 February 2006 the Hanover Social Court rejected the applicant's claim. It held that the degree of the applicant's disability had already been ascertained in the compensation proceedings. As for alleged further damage to his health, the court assessed any additional disability at 10%, which was not sufficient to increase the total degree of disability.

50. On 19 April 2006 the applicant lodged an appeal with the Lower Saxony Social Court of Appeal.

51. On the applicant's request, the Lower Saxony Social Court of Appeal suspended the proceedings on 28 July 2006.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Victims Compensation Act

52. The relevant part of Section 1 § 1 of the Victims Compensation Act reads as follows:

“(1) A person who, in the territory in which this Act is applicable ... has sustained personal injury attributable to a wilful and unlawful attack upon himself or another person or the lawful prevention thereof shall, on application, be granted benefits in accordance with the Federal Act on the Social Benefits for Victims of War in respect of resulting health impairments and financial loss. “

B. Social Courts Act

53. Section 88 of the Social Courts Act provides:

“(1) Where no decision has been made regarding an application for the performance of an administrative act within a reasonable time and without sufficient grounds, a court action shall be admissible six months after an application for the performance of the administrative act has been submitted. (...) ”

(2) The same applies where no decision on an administrative appeal was made, providing that a three-month time-limit shall apply as a reasonable time limit.”

54. Section 109 of the Social Courts Act reads as follows:

“(1) On application by the insured person, the disabled person, the person entitled to benefits or his surviving dependants, a physician to be determined shall be heard as an expert. The hearing in respect of this expert opinion may be made dependant on whether the applicant advances the costs and, unless the court decides otherwise, the applicant in the end bears the costs.

(2) The court may reject an application where its admission would delay the settlement of the legal dispute and the court is convinced that the application was submitted in attempt to delay proceedings or the application was not submitted earlier due to gross negligence.”

In view of the requirements of § 2 of this provision, national courts in practice rarely reject such a request.

C. Social Code IX

55. Section 69 § 2 of the Social Code IX provides:

“(2) No assessment of the degree of disability shall be made where it has already been established that the applicant is disabled and the degree of the reduction of the earning capacity based on the disability has already been established in a pension payment order, a corresponding decision by an administrative authority or by a court, or preliminary documentary proof has been issued by a competent public authority

unless the disabled person can substantiate an interest in a re-assessment in accordance with para. (1). An assessment in accordance with sentence 1 shall thereby also serve to determine the degree of disability.”

THE LAW

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

56. The applicant complained that the length of the two sets of proceedings had been incompatible with the “reasonable time” requirement of 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...”

57. The Government contested that argument.

A. Compensation proceedings

1. Admissibility

(a) Applicability of Article 6 to the impugned proceedings

58. The Government argued that Article 6 § 1 of the Convention was not applicable to the proceedings because the matter belonged to the core area of public law. In their submissions, compensation pursuant to the Victims Compensation Act, paid exclusively from tax funds and thus based on a one-sided payment by the state, was not dependant on the payment of contributions but was an expression of the state’s public law welfare for persons residing on its sovereign territory. The Government further referred to their arguments which they submitted in the case of *Fodor v. Germany* which concerned a claim pursuant to the Federal Act on the Social Benefits for Victims of War (hereinafter referred to as the Federal Benefits Act). Moreover they maintained that a claim under the Victims Compensation Act was designed as a social right to compensation and provided independently of the existence and assertability of any possible claims against the offender under civil law.

59. The applicant regarded Article 6 as applying in the instant case. Referring to Section 81 a of the Federal Benefits Act, whereby a claim against third persons attained by the person entitled to benefits accrues to the State insofar as the latter is obliged to provide for compensation according to the relevant provisions of the Act, he underlined the alleged

civil character of the claim at issue. He concluded that claims under the Victims Compensation Act fell within the scope of Article 6.

60. With regard to the applicability of Article 6 § 1, the Court recalls that in application no. 11098/84, the former Commission found that the Dutch criminal injuries compensation scheme provided for *ex gratia* compensation, rather than a right to compensation (no. 11098/84, Dec. 1 July 1985, 43 DR 198). By contrast, in the case of *Rolf Gustafsson*, the Court found that the Swedish compensation scheme did create rights which fell within Article 6 § 1 (*Rolf Gustafsson v. Sweden*, judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, § 40).

61. In the instant case, the relevant legislation provides for compensation benefits in accordance with the Federal Benefits Act when the victim of a “wilful and unlawful attack” has sustained personal injury attributable to the attack. It does not purport to, and does not, grant the administration any discretion as to whether to grant a pension or not in case the prerequisites are met. The *Fodor* case, referred to by the Government, dealt with the case of a pension whose grant was entirely at the discretion of the competent authority (*see Fodor v. Germany* (dec.), no. 25553/02, 11 December 2006).

62. The Court finds, as it did in the case of *Rolf Gustafsson*, that the legislative regime created a right to compensation when the statutory requirements were met, such that Article 6 § 1 is applicable.

(b) Exhaustion of domestic remedies

63. Furthermore, the Government contended that the applicant had not exhausted domestic remedies as regards his complaint about the length of proceedings. First, they argued that in the preliminary administrative proceedings the applicant could have brought a complaint for failure to act under Section 88 of the Social Court Act, which would have been an effective challenge to the length of these proceedings. The applicant’s later constitutional complaint had thus been inadmissible as he had failed to exhaust domestic remedies available beforehand. Secondly, the Government asserted that the applicant, in his constitutional complaint, had only challenged the refusal of the Social Court of Appeal to decide upon his appeal. As a consequence, the foregoing preliminary administrative proceedings and the proceedings before the Social Court had not been the subject matter of his constitutional complaint.

64. The applicant pointed out that the Federal Constitutional Court had not declared the constitutional complaint inadmissible, but had rejected the complaint without giving further reasons. He moreover argued that a complaint for failure to act was admissible in situations following a period of inactivity of six months and was not proportionate in cases of short-time delays.

65. With regard to the effectiveness of a constitutional complaint, the Court recalls its recent findings in the *Sürmeli* case (*Sürmeli v. Germany* [GC], no.75529/01, ECHR 2006-...) as well in the *Herbst* case (*Herbst v. Germany* (dec.), no. 20027/02, 11 January 2007) whereby the Court has held that a constitutional complaint to the Federal Constitutional Court is neither capable of affording redress for the excessive length of pending civil proceedings (see *Sürmeli*, cited above, § 108) nor is it an effective remedy for breaches of the “reasonable time” requirement which have already occurred, e.g. in cases where the proceedings in question have already ended at domestic level (see *Herbst*, cited above, § 66). As a consequence, the Court rejects the Government’s objection in this respect.

66. As to the Government’s plea of non-exhaustion on the ground that the applicant failed to lodge a complaint for failure to act in the preliminary administrative proceedings, the Court recalls that the Commission has already held that a complaint for failure to act in administrative proceedings can constitute a remedy to be exhausted as regards lengthy administrative proceedings (see *Bethke v. Allemagne*, no. 20068/92, Commission decision of 11 January 1995, unreported, in which the remedy lay under Section 75 of the Code of Administrative Court Procedure, which provides *inter alia* that an application to set aside an order (*Anfechtungsklage*) can be lodged directly with the Administrative Court if the administrative authorities fail without sufficient justification to decide upon the administrative appeal).

67. In the case of *Egger v. Austria* ((dec.), no. 74159/01, 9 October 2003) the Court found that that a request for transfer of jurisdiction under Section 73 of the Austrian General Administrative Procedure Act (*Devolutionsantrag*) constitutes, in principle, an effective remedy which has to be used in respect of complaints about the length of administrative proceedings. Though German law does not provide explicit time-limits for the completion of administrative proceedings, it nevertheless contains similar mechanisms by providing for the possibility to lodge an application with the competent social court if no decision has either been made regarding an application for performance of an administrative act or the competent authority failed to decide upon an administrative appeal within a reasonable time and without sufficient grounds (see Section 88 of the Social Courts Act, set out at paragraph 53 above). If deemed admissible, the court orders the authority to issue a decision. The Court thus considers that a complaint for failure to act under Section 88 of the Social Courts Act constitutes in principle an effective remedy as regards a complaint about the length of proceedings. The applicant failed to make such a complaint as regards the delay caused by the Regional Pension Office, which did not decide on his administrative appeal of 25 July 1994 until 26 February 1996. Accordingly, as regards the preliminary administrative proceedings,

the applicant has failed to exhaust the domestic remedies available to him for the period from 25 July 1994 until 26 February 1996.

68. It follows that to the extent that the complaint about the length of the proceedings relates to the preliminary administrative proceedings, that is, during the period from 25 July 1994 to 26 February 1996, it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

69. Consequently, the Court can only examine the remaining period of court proceedings (see below § 78).

70. The Court notes that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further observes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i). The applicant

71. The applicant maintained that the overall duration of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. In his view, the period to be taken into consideration began on 11 April 1992 when he requested the withdrawal of the decision of 8 August 1990. He submitted that the length of proceedings had negatively affected his state of health.

(ii). The Government

72. The Government contested the applicant's view as regards the period to be taken into consideration. According to them, the relevant period started to run on 25 July 1994 when the applicant lodged his administrative objection.

73. The Government conceded that the length of the proceedings at issue was considerable but argued that this was due to the particular complexity of the case and also to the applicant's conduct.

74. The complexity of the case stemmed, in their submission, from the need to carry out a number of expert medical assessments which concerned the complex subject matter of the applicant's psychiatric assessment.

75. As to the proceedings before the Social Court the Government submitted that the applicant's request for a further medical report under Section 109 of the Social Court Act as well as his request for an extension of the time-limit for the naming of an expert had contributed considerably to the length of proceedings.

76. Moreover, the Government maintained that the length of the appeal proceedings before the Social Court of Appeal was attributable to the fact that although the defendant had acknowledged that the applicant's health had suffered as a result of the attack, the applicant maintained his action and submitted claimed that his health had been further impaired. The applicant had subsequently again requested another medical report to be prepared with reference to Section 109 of the Social Courts Act.

77. As to what was at stake for the applicant the Government observed that by the implementing order of 8 July 2004 the applicant had already received the sum of 46,000 EUR and thus did not suffer any detrimental economic effects on account of the length of proceedings.

(b) The Court's assessment

(i). Period to be taken into consideration

78. The Court agrees with the Government that, in principle, the relevant period to be taken into consideration begins with the date when the applicant files his objection, a necessary first step before proceedings can be brought in the social courts (see *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001; and *König v. Germany*, judgment of 28 June 1978 Series A no.27, § 98). However, as set out above (see § 68) the relevant period which falls to be considered started in the instant case with the initiation of court proceedings on 6 March 1996.

79. It ended on 19 December 2006 with the judgment of the Lower Saxony Court of Appeal and thus lasted ten years and nine months for two levels of jurisdiction.

(ii). Reasonableness of the length of proceedings

80. 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).

81. The Court, like the parties, considers that the case involved points of fact and law of some complexity. The taking of expert opinions was thus necessary. Given the subject matter of these opinions - the psychiatric and neurological assessment of the applicant's health - the social courts were faced with complex medical questions which were moreover subjected to certain changes due to the lapse of time between the triggering incident of the attack in 1989 and the moment of the assessment of the applicant's remaining health impairments. However, as the length of the proceedings cannot only be explained in terms of the complexity of the

issues involved, the Court will also examine the case in the light of the conduct of the applicant and the national authorities.

82. The Court notes that the applicant's request for an additional expert opinion both in the first-instance as well in the second-instance proceedings contributed to the length of proceedings. However, in principle, the fact that the applicant merely availed himself of the possibility to lodge such a request under Section 109 of the Social Court Act does not itself lead to the overall assumption that the time elapsing from this behaviour will only be imputable to the applicant. In this connection the Court in particular observes that following the applicant's request for a further expert report on 13 December 2004, the Social Court of Appeal appointed the requested expert only seven months later on 28 July 2005.

83. As for the conduct of the national authorities, even in proceedings in which 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 no. 258, p. 10, § 25, and the *Duclos v. France* judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2180, § 55). The Court accepts that a certain amount of time was necessary for the production of the expert reports. Nevertheless, the number of expert reports prepared - altogether five expert reports in the court proceedings, including two reports on the applicant's request - accounted to a considerable amount for the length of the proceedings at issue. The Court in particular observes that the national courts did not reject the applicant's request for further medical reports according to Section 109 § 2 of the Social Court Act, which is in any event rarely applied in the practice of national courts (see "Relevant domestic law and practice" above). In that respect it has to be noted that a legal provision which provides for the possibility to request a further expert opinion even though the legal and factual requirements for a judicial decision are already met may often contribute - as in the instant case - to the length of proceedings.

84. As to what was at stake for the applicant in the dispute the Court observes that the proceedings concerned a claim for benefits under the Victims Compensation Act, namely the question whether the applicant was entitled to pension benefits resulting from a reduction of his earning capacity. It is true that the applicant received some 5,500 EUR following a first partial acknowledgment before the Hanover Social Court two years after he had initiated court proceedings. He also received some 46,000 EUR following a second partial acknowledgment before the Lower Saxony Court of Appeal even though it was made only after the court proceedings had been pending for over eight years. The Court notes in that respect that the second acknowledgment was mainly based on the diseases the applicant

developed at a later stage, such as a panic syndrome with agoraphobia, depressions and chronic lumbago (see §§ 30-32 above).

85. Nevertheless, assessing the circumstances of the case as a whole, the Court considers that in the instant case the length of the proceedings at issue cannot be regarded as reasonable. There has accordingly been a breach of Article 6 § 1 of the Convention.

B. Proceedings related to the degree of the applicant's disability

1. The submissions of the parties

(a) The Government

86. The Government contended that Article 6 § 1 of the Convention was not applicable to the proceedings related to the degree of disability, submitting that these proceedings presented more features of public law than of private law. Furthermore the Government took the view that the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention as he had failed to lodge a complaint for failure to act under Section 88 of the Social Court Act in the preliminary proceedings before lodging a constitutional complaint. Moreover, he had not requested the Constitutional Court to transfer his subsequent constitutional complaint from the general register to the register of proceedings and to decide upon the complaint.

87. The Government furthermore submitted that the facts of the case in any event disclosed no breach of Article 6 § 1 of the Convention. They maintained that the period to be taken into consideration began to run on 24 March 1996 when the applicant filed his objection. In general the Government stressed the complexity of the case. Referring to Section 69 § 2 of the Social Code IX (see "Relevant domestic law and practice" above) they underlined that the Pension Office had suspended the proceedings in order to await the outcome of proceedings as regards the applicant's reduction of his ability to work. They further alleged that any delay in the proceedings was mainly imputable to the applicant's own conduct.

(b) The applicant

88. The applicant contested the Government's conclusions. He asserted that a complaint for failure to act would have been pointless due to the link between the two sets of proceedings and given the notice of the Pension Office - the existence of which is disputed between the parties - in view of the suspension of proceedings for this reason.

89. The applicant submitted moreover that the overall duration of the present proceedings was in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention. He argued that the relevant period to be taken into consideration began on 1 November 1995 when he lodged his request to establish the degree of his disability.

2. The Court’s assessment

90. As to the applicability of Article 6, the Court notes the Government’s contention that the proceedings related only to the question of the degree of the applicant’s disability, and therefore had more public than private law features. However, the Court is not required to determine the applicability of Article 6 to these proceedings as, even if the provision is applicable, the complaint is inadmissible for the following reasons.

91. The period to be taken into consideration begins, in principle (see § 78 above), with the date on which the applicant filed his administrative objection, which in the instant case was on 24 March 1996. It ended on 28 July 2006, when the proceedings were suspended at the applicant’s request. The preliminary administrative proceedings had lasted until 3 November 2003, that is, over seven years.

92. As regards those preliminary administrative proceedings and the Government’s objection concerning the exhaustion of domestic remedies the Court reiterates that a complaint for failure to act is in principle an effective remedy as regards the length before administrative authorities (see § 67 above). The applicant did not make use of this remedy as regards the delay caused by the Regional Pension Office, which did not decide on his administrative appeal of 24 March 1996 until 3 November 2003. Accordingly, as regards the administrative proceedings, the applicant has failed to exhaust the domestic remedies available to him.

93. As regards the court proceedings themselves, the Court notes that they lasted a little more than two years at first instance, and the appeal proceedings were suspended, on the applicant’s request, three months after his appeal was lodged. The Court finds that the length of the court proceedings was compatible with the “length” requirements of Article 6.

94. As a consequence the length of the instant proceedings which falls to be considered cannot be regarded as excessive. The Court therefore notes that the complaint as regards the length of the proceedings related to the degree of the applicant’s disability is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. Referring to the profession of a food technician (*Lebensmitteltechniker*) which he allegedly could not practise since the attack, the applicant claimed at the time a total of approx. 850,000 EUR in respect of pecuniary damage (consisting of monthly payments of approx. 2,500 EUR plus 4 % interest as from 1 October 1989) which corresponded according to him to the amount of benefits he was entitled to and which was withheld by the authorities resulting from their failure to decide within a reasonable time. He further claimed continuing monthly payments. Moreover he claimed contributions to professional organisations and other expenses incurred for production of income (8,080.94 EUR), costs for fitness training (4,908.46 EUR) and costs incurring from his studies (5,421.55 EUR). The applicant moreover claimed 20,000 EUR for non-pecuniary damage.

97. The Government contested these claims.

98. With regard to the applicant's claim for pecuniary damage, the Court reiterates that there must be a clear causal connection between the pecuniary damage claimed by the applicant and the violation of the Convention found (see *Barberà, Messegue and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20; and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). The Court observes that in the instant case the pecuniary damage alleged was not caused by the length of proceedings. In particular, the Court cannot speculate as to what the outcome of the proceedings at issue might have been if the violation of Article 6 § 1 of the Convention had not occurred (see *Schmautzer v. Austria*, judgment of 23 October 1995, Series A no. 328, p. 16, § 44; *Wettstein v. Switzerland*, no. 33958/96, § 53, ECHR 2000-XII). Accordingly, it considers that no award can be made to the applicant under this head.

99. As to the applicant's claim for non-pecuniary damages, the Court, having regard to all the elements before it and ruling on an equitable basis, awards the applicant 12,000 EUR under that head.

B. Costs and expenses

100. The applicant sought 254.31 EUR in respect of certain national proceedings before the Braunschweig Administrative Court and the Braunschweig Administrative Court of Appeal. He moreover sought 169.04 EUR corresponding to his lawyer's fees in the preliminary administrative proceedings. In respect of the proceedings before the Court he claimed a lump sum of 163.46 EUR for sundry expenses (photocopying, postage, stationary and costs for a medical letter).

101. The Government objected in particular to the reimbursement of costs related to the proceedings before the Braunschweig Administrative Courts, which did not relate to the present proceedings or the complaint at issue.

102. 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.

103. With regard to the costs of the proceedings before the Braunschweig Administrative Courts the Court agrees with the Government that these do not relate to the violation the Court has found. Moreover the Court notes that the lawyer's fees in the preliminary administrative proceedings relate to the time before the beginning of the period in respect of which the Court has found a violation. They cannot therefore form part of the claim under Article 41. The Court thus rejects the claim for costs and expenses in the domestic proceedings.

104. As regards costs and expenses before the Court, the Court awards the applicant the sum of 163.46 EUR in respect of sundry expenses, as requested by the applicant.

C. Default interest

105. 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 length of the compensation court proceedings admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as regards those proceedings;
3. *Declares* the remainder of the application inadmissible;
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, the following amounts:
 - (i) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 163.46 (one hundred and sixty-three euros and forty-six cents) in respect of costs and expenses;
 - (iii) plus any tax that may be chargeable on the above amounts;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President