

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

FIFTH SECTION

CASE OF PETER v. GERMANY

(Application no. 68919/10)

JUDGMENT

STRASBOURG

4 September 2014

FINAL

04/12/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Peter v. Germany,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 1 July 2014,

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

PROCEDURE

1. The case originated in an application (no. 68919/10) 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 J. Peter ("the applicant"), on 24 November 2010.

2. The applicant was represented by Mr C. Lenz, a lawyer practising in Stuttgart. The German Government ("the Government") were represented by their Agent, Mr H.-J. Behrens, *Ministerialrat*, of the Federal Ministry of Justice.

3. On 3 June 2013 the applicant's complaint concerning the length of proceedings before the Federal Constitutional Court and the lack of an effective remedy was communicated to the Government.

4. On the same day the President of the Section sitting in a single-judge formation declared the remainder of the application inadmissible.

THE FACTS

5. The applicant is a German national who was born in 1948 and lives in Ulrichstein.

A. The circumstances of the case

1. Background to the case

6. On 1 August 2001 the Civil Partnership Act (*Gesetz über die eingetragene Lebenspartnerschaft*) entered into force and introduced civil unions for same-sex couples.

7. On 5 October 2001 the applicant entered into a civil partnership with Mr Peter, *né* V.

8. On 22 June 2002 Mr Peter, *né* V., died.

2. Proceedings at issue

9. In September 2002 the applicant applied for a survivor's pension to the German Pension Fund (*Bundesversicherungsanstalt für Angestellte)*, a public-law corporation.

10. On 19 November 2002 the German Pension Fund rejected the applicant's claim and on 28 February 2003 it dismissed the administrative appeal lodged by the applicant against that decision.

11. On 19 March 2003 the applicant applied to the Fulda Social Court for judicial review. He argued that the term "widow or widower" in Article 46 §§ 1 and 2 of the Social Security Code, Book VI (*Sozialgesetzbuch* Nr. VI) should be construed as encompassing the surviving partner in a civil partnership.

12. On 26 November 2004 the Fulda Social Court dismissed the applicant's claim. According to the court the surviving partner in a civil partnership could not be called a "widower" in the generally accepted sense of the term. Furthermore, the applicant's civil partnership had not lasted longer than a year, which would have led to statutory exclusion from the benefit even for married couples.

13. During the appeal proceedings the respondent acknowledged the applicant's claim to a survivor's pension as of 1 January 2005, when the relevant amendments to the Civil Partnership Act became effective.

14. The remaining leapfrog appeal on points of law (*Sprungrevision*) was dismissed on 13 December 2005 by the Federal Social Court. The court pointed out that the respondent had partly acknowledged the applicant's claim, so that the appeal concerned only the period from July 2002 until December 2004.

15. On 20 January 2006 the applicant lodged a constitutional complaint (no. 1 BvR 170/06) with the Federal Constitutional Court.

16. On 7 July 2009 the Federal Constitutional Court delivered its judgment in a case (no. 1 BvR 1164/07, hereinafter "the 2007 case") which had been brought in 2007 concerning the pension rights of a surviving partner in a civil partnership. It found that denying a partner in a civil union the right to a survivor's pension from the civil servants' pension scheme,

when the legislature had already amended Article 46 §§ 1 and 2 of the Social Security Code, Book VI, in respect of the general pension scheme, violated the principle of non-discrimination as set down in Article 3 of the Basic Law.

17. On 1 December 2009 the applicant pointed to the above-mentioned judgment and requested a decision to the same effect.

18. On 11 June 2010 a three-judge panel of the Federal Constitutional Court decided not to review the applicant's constitutional complaint. In its reasoning the panel explained that the complaint did not raise a pressing constitutional question as the relevant provision of the social security legislation had meanwhile been amended. Even assuming that the legislative provision concerned had violated the Constitution, the Federal Constitutional Court could not have afforded redress as the legislature could not be required to amend a provision that had already become void.

19. On 13 July 2010 the applicant was served with a copy of the decision.

3. Subsequent developments

20. On 7 December 2011 the Government informed the Court that in response to the pilot judgment in *Rumpf v. Germany* (no. 46344/06, 2 September 2010) an Act on Protracted Court Proceedings and Criminal Investigations (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*) had been published in the Federal Law Gazette and had entered into force on 3 December 2011.

21. In December 2011 the Court informed the applicant of the enactment of the new domestic remedy and drew his attention to the transitional provision of that Act. Referring to the *Brusco v. Italy* case ((dec.), no. 69789/01, ECHR 2001-IX), the Court invited the applicant to inform it whether he intended to make use of the new remedy within the time-limit set by the transitional provision in question.

22. The applicant informed the Court that he intended to file a complaint under the new domestic provisions.

23. On 6 February 2012 the applicant filed a complaint under the new Act, claiming compensation in respect of pecuniary and non-pecuniary damage. He complained that constitutional court proceedings that lasted four years, six months and one day were excessively long, even taking the position and function of the Federal Constitutional Court into account. He pointed out that his case could not be considered a particularly difficult one.

24. In the course of the proceedings the judge rapporteur for the constitutional complaint submitted a statement explaining that when he took office and became judge rapporteur for this complaint on 1 October 2007 it had already been agreed between his predecessor and judge B., who was judge rapporteur for the 2007 case (compare paragraph 16, above), that the

handling of the applicant's complaint should be postponed until the 2007 case had been determined. Subsequently, it became clear that the 2007 case did not pose a problem of retroactivity and therefore did not affect the outcome of the applicant's constitutional complaint. The judge rapporteur conceded that the applicant's submissions were sufficiently substantiated for his constitutional complaint to indeed have been dealt with earlier on the basis of the actual reasoning given. However, the judge maintained that it had been in the applicant's best interest to wait for the court's ruling in the 2007 case.

25. The applicant replied that the judge rapporteur's statement demonstrated that his constitutional complaint had not been given any attention whatsoever in the first year after it was lodged. It would have been obvious even from a cursory examination of the constitutional complaints that his complaint concerned the retroactive application of a legislative amendment. Therefore, any proper comparison of his case with the 2007 case would have easily shown that the two cases were not interdependent.

26. On 1 October 2012 the complaints panel of the Federal Constitutional Court dismissed the applicant's complaint under section 97a of the Federal Constitutional Court Act. Citing *Gast and Popp v. Germany* (no. 29357/95, ECHR 2000-II), as well as *Klein v. Germany* (no. 33379/96, 27 July 2000), the Federal Constitutional Court noted that a chronic backlog of cases in the constitutional courts could not justify the excessive length of proceedings. However, when assessing whether the duration of proceedings was excessive, the Federal Constitutional Court had to consider its special function and position. Unlike the ordinary courts, the capacity and structure of a Constitutional Court were laid down in the Constitution and it served further purposes beyond the administration of individual justice. The scope for adaptation and for the acceleration of proceedings was therefore limited. Furthermore, decisions and judgments of the Federal Constitutional Court had binding *inter omnes* legal effect and for this reason had to be drafted with the utmost diligence. The court further explained that it was in the nature of constitutional court proceedings that chronological case management was of subordinate importance. Concerning the applicant's case, the court noted that the actual duration of the proceedings – four and a half years – was unusually long, but not excessive. For the purposes of its examination the Federal Constitutional Court noted that three phases could be distinguished: (a) the phase of over one year between the lodging of the constitutional complaint and the decision to await the outcome of the 2007 case; (b) the phase of two years until a decision had been given in the 2007 case; and (c) the phase of eleven months until the constitutional complaint at issue had been determined. A new judge rapporteur had stepped in at the end of his predecessor's term of office and his predecessor had had to finish cases of higher priority than that of the applicant. The court maintained that the twelve-month wait in accordance with section 97b §1 of the Federal

Constitutional Court Act had not been excessive considering that the Federal Constitutional Court had opted to rule on a similar case concerning the pension rights of surviving partners in a civil union (the 2007 case) before the applicant's case. The court pointed out that, although in hindsight the present case could have been decided without reference to the "pilot case", the two cases shared sufficient similarities to justify the decision of the former judge rapporteur. Nothing indicated that the decision to postpone the applicant's case pending a decision on the 2007 case had been based on arbitrary considerations. The court noted that the applicant had never claimed that the sum of money at issue was of extraordinary financial importance to him. In conclusion, the Federal Constitutional Court argued that after the decision in the 2007 case the applicant's constitutional complaint had been determined in due time, without any delay.

B. Relevant domestic law and practice

27. The Act on Protracted Court Proceedings and Criminal Investigations (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*, "the Remedy Act") was published in the Federal Law Gazette – Part I, 2011, pp. 2302 et seq. – on 2 December 2011 and entered into force the next day.

1. Relevant features of the remedy

28. The Remedy Act introduced general provisions instituting a remedy against any kind of protracted court proceedings. Section 1 applied to criminal and civil proceedings – for details see *Taron v. Germany* (dec.), no. 53126/07, §§ 19 et seq., 29 May 2012, and *Garcia Cancio v. Germany* (dec.), no. 19488/09, §§ 27 et seq., 29 May 2012.

29. For proceedings before the Federal Constitutional Court, section 2 of the Remedy Act amended the Federal Constitutional Court Act as follows:

> "Section 97a
>
> (1) Any person who, as the result of the unreasonable length of proceedings before the Federal Constitutional Court, experiences a disadvantage as a participant in those proceedings or as a participant in proceedings suspended for the purpose of obtaining a decision from the Federal Constitutional Court shall be afforded reasonable compensation. The reasonableness of the length of proceedings shall be assessed in the light of the circumstances of the particular case, having due regard to the functions and the position of the Federal Constitutional Court.
>
> (2) A non-pecuniary disadvantage shall be presumed in cases where proceedings before the Federal Constitutional Court have been of unreasonable length. Compensation may be claimed therefor save in particular cases where reparation by other means, such as the mere finding that the length of proceedings was unreasonable, is sufficient. Such compensation shall amount to €1,200 for every year of delay. If the sum thus calculated is not equitable, the Federal Constitutional Court shall assess a higher or lower sum.

Section 97b

(1) A decision on compensation and reparation shall be rendered if a complaint of undue delay has been lodged with the Federal Constitutional Court. A complaint of undue delay shall be admissible only if the complainant has previously objected to the length of the proceedings before the Federal Constitutional Court (*Verzögerungsrüge*).

A complaint of undue delay shall be lodged in writing and it shall set out the circumstances purported to establish the unreasonableness of the length of the proceedings. It shall be admissible twelve months at the earliest after the case has been lodged with the Federal Constitutional Court. A complaint of undue delay shall not require a reasoned notification.

...

Section 97d

(1) The rapporteur in the proceedings concerned shall submit an opinion within one month of receipt of the reasons for the complaint of undue delay.

(2) The complaints panel shall decide by a majority. In the event of a tie the complaint of undue delay shall be dismissed. The complaints panel shall render its decision without an oral hearing. Reasons need not be given.

(3) The decision is not subject to appeal."

2. Transitional provisions

30. In a departure from the general transitional provision under section 23 of the Remedy Act (see for details *Taron*, § 27, and *Garcia Cancio*, § 36, both cited above), section 97e of the amended Federal Constitutional Court Act stipulated that, in the case of terminated proceedings whose length might still become or had already become the subject of a complaint before that court, it was not necessary to raise a complaint of undue delay (*Verzögerungsrüge)* prior to filing a complaint claiming compensation. That complaint had to be lodged with the Federal Constitutional Court by 3 June 2012 at the latest.

THE LAW

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

31. The applicant complained that the length of the proceedings before 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..."

32. The period to be taken into consideration began on 20 January 2006 and ended on 13 July 2010. It thus lasted four years and six months for the proceedings before the Federal Constitutional Court.

A. Admissibility

33. The Court notes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. The applicant complained in particular that the complaints panel of the Federal Constitutional Court had not remedied the allegedly excessive length of the proceedings. He submitted that the panel had admitted that the length of the proceedings had been unduly long and that no real attention had been given to his constitutional complaint for at least the first three and a half years after he had lodged it. However, the panel had not come to the correct conclusion. The applicant stressed that he had had no influence over the duration of the constitutional complaint, as he had received no information on the internal proceedings within the Federal Constitutional Court.

35. The Government contested that argument. They referred mainly to the reasons given by the Federal Constitutional Court as to why the duration of the proceedings before that court had been unusually long, but not excessive. They reiterated that a constitutional court served specific functions besides administering justice in individual cases. They emphasised that the decisions of the Federal Constitutional Court had an impact over and above the individual case and sometimes had the force of law, which required precise drafting for a range of possible situations. Organisational measures to shorten the length of proceedings were moreover subject to structural limitations, because the structure of the Federal Constitutional Court was defined in the Constitution and was difficult to adapt to variable caseloads. The Federal Constitutional Court had taken a sensible approach in the particular case by deciding to designate pilot cases to which priority was given. In the majority of cases this would lead to an earlier decision in the deferred case; in this particular case it had not been obvious that the decision in the pilot case did not cover all the essential aspects. Finally, the Government drew particular attention to the fact that the applicant had not contacted the Federal Constitutional Court between January 2006 and December 2009, when he had pointed to the

judgment regarding the pilot case. According to the Government the applicant had waited for nearly four years before showing an interest in his case again.

36. The applicant replied that in view of the well-known procedure before the Federal Constitutional Court any plea for acceleration would have been fruitless, if not counterproductive. He further pointed out that the alleged decision to postpone the examination of his constitutional complaint in favour of a different pilot case had not been documented in the files; therefore he doubted that it had been a deliberate decision on the part of the judge rapporteur. Furthermore, he doubted that it was a sensible system of work allocation to further burden constitutional judges who were soon to leave office by assigning new cases to them.

2. The Court's assessment

37. 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).

38. The Court observes that the Federal Constitutional Court applied the above criteria when deciding on the application under the Remedy Act. It notes that the Federal Constitutional Court acknowledged that Article 6 § 1 of the Convention was in substance applicable to proceedings before constitutional courts as well.

(a) A constitutional court's special function

39. The Court will first address the Federal Constitutional Court's argument that proceedings before that court had specific characteristics that needed to be taken into account when determining the length of proceedings.

40. The Court reiterates that a constitutional court's role as guardian of the Constitution makes it particularly necessary for such a court 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.

41. The Court further notes that the Federal Constitutional Court issues binding interpretations of the Basic Law. Since its decisions have an impact beyond the individual case, and sometimes even rank as statutory law, each case that is not clearly inadmissible has to be drafted with the utmost diligence. The Court agrees that priority must be given to cases of high importance in terms of the public interest (see *Leela Förderkreis e.V. and Others v. Germany*, no. 58911/00, § 63, 6 November 2008).

(b) The handling of the applicant's case

42. Referring to the criteria cited above (see paragraph 37) in order to assess the reasonableness of the length of proceedings, the Court observes at the outset that in the present case the applicant's conduct did not contribute to the length of the proceedings before the Federal Constitutional Court.

43. The Court cannot subscribe to the Government's argument that the applicant should have inquired earlier about the state of the proceedings before the Federal Constitutional Court. The Court observes, at the outset, that the pertinent transitional provision of the amended Federal Constitutional Court Act (see paragraph 30, above) expressly stipulates that, in the case of terminated proceedings whose length might still become or had become the subject of a complaint before the Federal Constitutional Court, it was not necessary to raise a complaint of undue delay prior to filing a complaint claiming compensation. The Court further reiterates that the obligation of the courts to proceed with cases in a reasonable time stems directly from the Convention; consequently, the parties to legal proceedings are not obliged to remind the relevant courts of their duties. Before most courts, in particular the highest courts, the parties are usually invited to submit further observations and otherwise are asked to refrain from making submissions unless some circumstances relevant to the case have changed.

44. In evaluating what was at stake for the applicant the Court accepts the Federal Constitutional Court's assessment that the case was not directly relevant to the applicant's subsistence, as he was receiving a monthly survivor's pension in the meantime and the complaint exclusively concerned the payment of arrears. In this regard the Court observes that the applicant did not submit any evidence to the contrary.

45. Assessing the complexity of the case, the Court notes that the issue of discrimination against couples in same-sex civil unions with regard to pension rights was a complex one which needed further review. The Court accepts that the Federal Constitutional Court decided to deal with the instant case in this general context, even though the decisive factor turned out to be the question of retro-activity.

46. With regard to the processing of the proceedings, the Court considers that the – informal – decision of the Federal Constitutional Court to give priority to another case that raised a related constitutional question was *prima facie* reasonable and cannot be objected to in hindsight. Awaiting the outcome of the pilot case was thus also in the interest of the applicant, since it could have expedited the processing of his case. The fact that the case which was given priority later on proved to be irrelevant to the applicant's case does not change the generally appropriate character of the proceedings. Having regard to the complexity of the constitutional question, the Court can accept the argument of the judge rapporteur of the Constitutional Court that, given that his remaining time in office was

limited, he had already assigned priority to finishing other proceedings instead of starting with an entirely new one.

47. In the specific circumstances of the instant case the Court therefore accepts the complaint panel's assessment that the proceedings were unusually but not unreasonably long. The Court has reached this conclusion having particular regard to the fact that the applicant's case was adjudicated by means of a reasoned panel decision which applied the criteria developed by the Court and gave explanations to the questions raised by the applicant.

48. In the light of the foregoing, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

49. The applicant further complained that he had not had an effective remedy at his disposal by which to complain about the length of the constitutional court proceedings. He alleged a violation of 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."

50. The Government contested that argument.

A. Admissibility

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

B. Merits

52. The applicant submitted that he maintained his complaint under Article 13 of the Convention after having made use of the new domestic remedy in that regard. He alleged, in particular, that the new domestic remedy was not effective and that the proceedings before the complaints panel of the Federal Constitutional Court had not been fair within the meaning of Article 6 § 1 of the Convention.

53. The Government submitted in reply that the proceedings before the complaints panel were in principle effective. They stressed that the complaints panel of the Constitutional Court had applied the case-law of the Strasbourg Court.

54. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under

Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). In the present case, having regard to the Court's case-law concerning the reasonable length of proceedings (see the judgment in the pilot case of *Rumpf v. Germany*, no. 46344/06, 2 September 2010) and the duration of the proceedings before the Constitutional Court (four years and six months), the Court considers that the applicant had an arguable claim under Article 6 § 1.

55. The Court reiterates that the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (see *Paulino Tomás v. Portugal* (dec.), no. 58698/00, ECHR 2003-XIII). However, the Court reiterates that the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII) and that the mere fact that an applicant's claim fails is not in itself sufficient to render the remedy ineffective (see *Amann v. Switzerland*, [GC], no. 27798/95, §§ 88-89, ECHR 2002-II).

56. The Court notes that a remedy was in principle provided under German law which enabled the applicant to raise with the national courts his complaint as to the alleged violation of his Convention right to proceedings within a reasonable time.

57. The Court observes that the Constitutional Court could have stated a violation of the applicant's right to a fair trial within a reasonable time and could have made an award in respect of non-pecuniary damage. The fact that no such award was made by the complaints panel of the Constitutional Court, for reasons relating to the particular case, does not render the remedy ineffective in principle. Furthermore, no other evidence has been provided to show that the remedy at issue could be considered ineffective.

58. In the light of the foregoing, the Court finds that it has not been shown that the constitutional remedy was ineffective.

59. Accordingly, there has been no violation of Article 13 of the Convention in the present case.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 13 of the Convention.

Done in English, and notified in writing on 4 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President