CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 1679/03
by Ralf GLÜSEN
against Germany

The European Court of Human Rights (Third Section), sitting on 15 September 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Ms R. JAEGER,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 6 January 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ralf Glüsen, is a German national who was born in 1962 and lives in Hameln.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 11 October 1989 the applicant was attacked and robbed by two disguised and armed men. He was subsequently under psychological treatment because he suffered from post-traumatic disorders.

1. Reduction of the applicant's ability to work

On 19 December 1989 the applicant filed a request to be granted compensation pursuant to the Victim's Compensation Act (*Opferentschädigungsgesetz*). On 8 August 1990 the Braunschweig Pension Office (*Versorgungsamt*) found – on the basis of an expert opinion it had ordered on the applicant's mental health – that he was suffering from "psychological reactive disturbances" (*psychoreaktive Störungen*) and that the reduction of his ability to work (*Minderung der Erwerbsfähigkeit*) amounted to 20%. It granted the applicant compensation but established that he did not qualify for a pension because the Victim's Compensation Act only provided for a pension in cases where the ability to work was reduced by at least 25%.

On 11 April 1992 the applicant requested that a higher degree of the reduction of his ability to work be found in his case. On 15 July 1994 the Hildesheim Pension Office rejected his request.

On 25 July 1994 the applicant lodged an administrative appeal (*Widerspruch*).

On 18 September 1995 the Hildesheim Pension Office – on the strength of a new expert opinion pursuant to which the applicant's remaining disturbances could not be considered as consequences of the attack in 1989 – quashed the order dated 8 August 1990.

On 26 February 1996 the Niedersachsen Regional Pension Office (*Landesversorgungsamt)* rejected the applicant's administrative appeal of 25 July 1994.

On 6 March 1996 the applicant filed an action with the Hannover Social Court against the order of the Regional Pension Office and the order of the Hildesheim Pension Office dated 18 September 1995. On 22 November 1998 the Regional Pension Office acknowledged (*Teilanerkenntnis*) that the reduction of the applicant's ability to work had amounted to 40% between October 1989 and March 1990 and had amounted to 30% between April 1990 and March 1991. This acknowledgement did not, however, fully satisfy the applicant's claims (*Klagebegehren*) and the latter did not withdraw his action as to the remainder.

On 28 October 1999 the Hannover Social Court rejected the applicant's action as to the remainder.

On 20 December 1999 the applicant lodged an appeal (*Berufung*) with the Niedersachsen Social Court of Appeal (*Landessozialgericht*).

On 25 January 2002 and on 18 June 2002 the applicant's lawyer requested the court to expedite the proceedings.

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

It appears that the proceedings before the Social Court of Appeal are still pending.

2. Degree of the applicant's physical invalidity

On 1 November 1995 the applicant requested the Hildesheim Pension Office to found the degree of his physical invalidity (*Grad der Behinderung*) and to issue him a pass for severely disabled persons (*Behindertenausweis*).

On 15 March 1996 the Hildesheim Pension Office rejected his request as it assessed that the degree of his physical invalidity was below 20%. On 24 March 1996 the applicant lodged an administrative appeal. The proceedings apparently were suspended to await the outcome of the proceedings concerning the compensation pursuant to the Victim's Compensation Act. On 26 June 2000 the applicant's lawyer requested the office to decide upon the applicant's appeal.

On 27 October 2002 the applicant complained to the Federal Constitutional Court about the Office's inactivity. On 4 February 2003 the Registry of the Federal Constitutional Court informed him that his complaint would not be admitted but only recorded in the general register pursuant to section 60 of the Rules of Procedure of the Federal Constitutional Court (*Geschäftsordnung des Bundesverfassungsgerichts*).

On 3 November 2003 the Niedersachsen Regional Pension Office rejected the applicant's administrative appeal.

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

3. Professional furtherance

On 3 February 1999 the applicant requested the Niedersachsen Regional Pension Office to take different measures concerning his professional furtherance (*Maßnahmen zur Berufsförderung*).

On 11 March 1999 the office informed him that it intended to reject his requests and that it would issue an order which could be challenged in the courts (*rechtsbehelfsfähiger Bescheid*) after the Pension Office's final determination of the damage caused by the attack in 1989.

B. Relevant domestic law

Section 88 of the Social Court's Act (*Sozialgerichtsgesetz*) provides *inter alia* that a complaint for failure to act (*Untätigkeitsklage*) can be lodged with the Social Court six months after a motion has been filed with the administrative authorities if the latter fail without sufficient justification to decide upon the motion.

COMPLAINTS

1. As regards the first set of the proceedings, the applicant complained that they lasted unreasonably long. He alleged that the refusal of the German authorities and courts to decide his case had provoked further post-traumatic changes of his personality and thereby violated his rights to respect for private and family life. It moreover detained him from pursuing further university studies and thereby violated his right to education. The applicant invokes Articles 6 and 8 of the Convention and Article 2 of Protocol No. 1.

2. The applicant further complained under Article 6 of the Convention about the length of the second set of proceedings.

3. Finally, the applicant complained under Article 6 and 8 of the Convention and Article 2 of Protocol No. 1 about the length of the third set of proceedings.

THE LAW

1. The applicant complained about the length of the first and the second set of proceedings.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant also complained under Article 6 and 8 of the Convention and Article 2 of Protocol No. 1 about the length of the third set of proceedings.

The Court holds that the length-of-proceedings complaint falls to be examined under Article 6 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..."

and that no further issues arise under Article 8 of the Convention or under Article 2 of Protocol No. 1.

The Court notes that Article 6 is not applicable to the impugned proceedings before the Pension Office (see, *mutatis mutandis, König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 98).

In any event, even assuming the compatibility of the complaint with the Convention, the applicant failed to lodge a complaint for failure to act to the Social Court pursuant to Section 88 of the Social Court's Act (see "Relevant domestic law" above). Accordingly, the domestic remedies have not been exhausted.

It follows that this complaint is premature and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the length of the first and second set of proceedings;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President