AS TO THE ADMISSIBILITY OF

Application No. 33379/96
by Edgar KLEIN
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 14 January 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

Mrs M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 9 January 1996 by Edgar KLEIN against Germany and registered on 7 October 1996 under file No. 33379/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, born in 1926, is a German national and residing in Bad Neuenahr.

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

I. In 1982 the Rhineland Westphalia electricity-supply company instituted proceedings before the Moers District Court (Amtsgericht) against the applicant and his wife claiming outstanding payments for electricity supply.

On 29 November 1982 the District Court ordered the defendants to pay a sum of about DEM 232 as well as interest and turnover tax to the plaintiff. The Court found that since July 1982 the defendants had unlawfully reduced their payments for electricity-supply by a contribution which served as subsidy for the national coal-mining industry ("Kohlepfennig"). The District Court considered that this contribution could not be objected to from a constitutional point of

view.

On 24 May 1983 the Federal Constitutional Court (Bundes-verfassungsgericht) refused to entertain their constitutional complaint (Verfassungsbeschwerde).

II. In 1985 the Rhineland Westphalia electricity-supply company again instituted proceedings before the Moers District Court against the applicant claiming outstanding payments.

On 28 April 1986 the District Court ordered the applicant to pay a sum of about DEM 141 as well as interest to the plaintiff. The Court found that the applicant had reduced the sums due following the annual statements of account, challenging the calculation mode as well as the above-mentioned coal-mining contribution. The Court considered that both the calculation mode and the contribution could not be objected to from a constitutional point of view.

On 8 June 1986 the applicant lodged a constitutional complaint with the Federal Constitutional Court.

On 11 October 1994 the Second Division (Senat) of the Federal Constitutional Court rendered a decision upon the applicant's constitutional complaint. The Second Division declared that the relevant parts of the Act on the Use of EC Coal in the Electricity Supply (Gesetz über die weitere Sicherung des Einsatzes von Gemeinschaftskohle in der Elektrizitätswirtschaft), which were underlying the coal-mining contribution in question, were unconstitutional. The Federal Constitutional Court quashed the District Court's decision of April 1986 to the extent that the payment of sums covering the contribution was concerned and sent the case back to that Court. The Court further ordered that the legislation in question, to the extent that it was unconstitutional, should be applied no longer than 31 December 1995. The Constitutional Court did not entertain the applicant's complaint about the calculation mode on the ground that the relevant regulations had meanwhile changed.

In its decision, the Second Division reached the conclusion that the coal-mining contribution amounted to an inadmissible special levy (Sonderabgabe).

On 15 February 1995, in the resumed proceedings, the Moers District Court ordered the applicant to pay a sum of about DEM 80 as well as interest to the plaintiff. The Court found that, pursuant to the above legislation which continued to be in force, the applicant had to pay the above sum representing the coal-mining contribution.

On 22 August 1995 the Federal Constitutional Court refused to entertain the applicant's constitutional complaint. The applicant received the decision on 2 September 1995.

COMPLAINTS

The applicant complains about the length of the German court proceedings and also that, in the proceedings before the Federal Constitutional Court, he did not have a fair and public hearing, in particular that the Constitutional Court had violated national and international law. He invokes Article 6 para. 1 of the Convention.

THE LAW

1. The Commission is not required to decide whether or not the applicant's complaints about the first set of court proceedings between 1982 and 1983 disclose any appearance of a violation of the Convention.

In accordance with Article 26 (Art. 26) of the Convention, the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken. It finds that the final decision regarding this set of proceedings was given by the Federal Constitutional Court 24 May 1983, which is more than six months before the date on which the application was submitted.

It follows that this part of the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant further complains under Article 6 para. 1 (Art. 6-1) of the Convention that, in the proceedings before the Federal Constitutional Court, he did not have a fair and public hearing.

Article 6 para. 1 (Art. 6-1), as far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ..."

With regard to the judicial decisions of which the applicant complains, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (cf. No. 21283/93, Dec. 5.4.94, D.R. 77, pp. 81, 88; and Eur. Court HR, Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, p. 20, para. 61; Klaas v. Germany judgment of 22 September 1993, Series A no. 269, p. 17, para. 29).

The Commission, having regard to all material at its disposal, finds that the applicant's submissions do not disclose any appearance of a breach of his rights under Article 6 para. 1 (Art. 6-1) in this respect.

3. As regards the applicant complaint under Article 6 para. 1 (Art. 6-1) about the length of the court proceedings instituted by the Rhineland Westphalia electricity-supply company in 1985, the Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint. The Commission finds that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Commission's Rules of Procedure, to give notice of this complaint to the respondent Government.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the applicant's complaint about the length of the proceedings ;

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO	M.P. PELLONPÄÄ
Secretary	President
to the First Chamber	of the First Chamber