



## Refusal to grant lawyer old-age pension after he lost right to practice: unjustified

In today's Chamber judgment in the case [Klein v. Austria](#) (application no. 57028/00), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 1 of Protocol No. 1 (protection of property)** of the European Convention on Human Rights.

The case concerned Mr Klein's complaint of being refused an old-age pension despite his contributions to the Chamber of Lawyers' pension fund throughout his career.

### Principal facts

The applicant, Anton Klein, is an Austrian national and a former lawyer who was born in 1932 and lives in Vienna. Admitted to the bar in 1964, he lost his right to practice as a lawyer in January 1996 by decision of the Executive Committee of the Vienna Chamber of Lawyers after bankruptcy proceeding had been opened against him.

In August 1997, Mr Klein applied to the Chamber of Lawyers, asking to be granted an old-age pension and referring to the fact that he had practised as a lawyer between 1964 and 1995. The Chamber's Executive Committee dismissed the application in June 1998, finding that under the relevant provisions of the statute of its pension fund Mr Klein was not entitled to a pension, given that he had lost his right to practice as a lawyer, and thus was no longer a member of the Chamber of Lawyers, before reaching 65, the age of retirement. Mr Klein's complaint against that decision was dismissed by the Administrative Court in July 1999, which held in particular that, being no longer enrolled in the List of Lawyers of the Austrian Chamber of Lawyers at the time he reached the retirement age, he had no right to an old-age pension. The Constitutional Court, by decision of 6 October 1999, refused to deal with his case because it would not have any prospect of success.

The pension scheme for lawyers in Austria is financed by compulsory contributions from the members of the pension fund. As an additional source of income, the State pays an annual lump sum, divided among the pension funds of the regional Chambers of Lawyers, as compensation for the mandatory services rendered by lawyers in the context of legal aid, for which they do not receive individual payments.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

## Complaints, procedure and composition of the Court

Mr Klein complained under Article 1 of Protocol No. 1, alone and in conjunction with Article 14 (prohibition of discrimination), that the refusal to grant him an old-age pension from the pension fund, even though he had paid contributions to that fund throughout his career as a lawyer, had violated his property rights and had been arbitrary.

The application was lodged with the European Court of Human Rights on 25 January 2000.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,  
Anatoly **Kovler** (Russia),  
Christos **Rozakis** (Greece),  
Peer **Lorenzen** (Denmark),  
Khanlar **Hajiyev** (Azerbaijan),  
George **Nicolaou** (Cyprus), *judges*,  
Ewald **Wiederin** (Austria), *ad hoc Judge*,

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

### [Article 1 of Protocol No. 1](#)

The Court considered that the affiliation with an old-age pension scheme, based on the compulsory membership of a professional organisation during the exercise of a profession, might give rise to the legitimate expectation to receive pension benefits at the point of retirement and thus constituted a possession within the meaning of Article 1 of Protocol No. 1. The fact that Mr Klein failed to fulfil the condition of affiliation to the Chamber of Lawyers could not lead to the conclusion that he had no possession within the meaning of that Article, as the Austrian Government had argued. Moreover, the Chamber of Lawyers was a public law body; measures taken by that body therefore engaged the responsibility of Austria as a State.

The refusal to grant Mr Klein an old-age pension constituted an interference with his right to peaceful enjoyment of his possessions. It was within the margin of appreciation for Member States to provide by law that lawyers who no longer had appropriate financial resources and had been declared bankrupt should not exercise that profession. However, given that no punitive element had been involved in Mr Klein's case, such a legitimate interest could not go so far as to justify the forfeiture of all of his pension claims.

Given the compulsory nature of the affiliation to the Chamber of Lawyers pension scheme and the compulsory contributions to it, that scheme was clearly intended to give lawyers reaching the retirement age a pension which largely corresponded to the cover provided under the State social security scheme. Thus an old age pension scheme could hardly be compared to a contract for damage insurance, which was no longer valid, as the Government had argued. While the latter insurance was designed to provide financial compensation for damage caused by an exceptional event, the former was intended to provide for means of subsistence in the future during a period of life in which the capacity to earn an income would be diminished. A lawyer could therefore not be expected to subscribe to an additional pension scheme under the social security system to protect himself against the complete loss of his pension in case he lost the right to exercise his profession. The Court further noted that the Austrian pension scheme for

lawyers had been amended in 2003, so that lawyers no longer had to be on the List of Lawyers at the time of reaching retirement age in order to be entitled to an old-age pension, which showed that that condition was no longer considered appropriate.

By keeping the circle of potential beneficiaries of the pension scheme small, the Vienna Chamber of Lawyers seemed to have strived to keep the contributions to its pension fund low. However, when it came to a compulsory scheme, regulations had to take into account exceptional situations like Mr Klein's. By completely depriving him of his entitlement to a pension, after having contributed to the pension scheme during his entire career both individually and collectively, by rendering services in the context of legal aid, no fair balance was struck between the competing interests. There had accordingly been a breach of Article 1 of Protocol No. 1.

In view of these findings, the Court did not consider it necessary to examine the case separately under Article 14.

#### Article 41

The Court held that the question of just satisfaction under Article 41 was not ready for a decision. It invited the Government and the applicant to submit, within three months of the date on which the judgment becomes final, their written observations on the matter and to notify the Court of any agreement that they may reach.

*The judgment is available only in English.*

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#### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Nina Salomon (tel: + 33 3 90 21 49 79)**

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.