FIRST SECTION

CASE OF KLEIN v. AUSTRIA

(Application no. 57028/00)

JUDGMENT

STRASBOURG

3 March 2011

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 Klein v. Austria,

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

Nina Vajić, *President,*
Anatoly Kovler,
Christos Rozakis,
Peer Lorenzen,
Khanlar Hajiyev,
George Nicolaou, *judges,*
Ewald Wiederin, ad hoc *judge,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 10 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 57028/00) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austria national, Anton Klein ("the applicant"), on 25 January 2000.

2. The applicant was represented by Mrs M. Klein, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the authorities had refused to grant him an old-age pension from the Vienna Chamber of Lawyers Pension Fund ("the pension fund"), even though he had paid contributions to that fund throughout his career as a lawyer, and that this constituted a breach of his rights under Article 1 of Protocol No. 1 read alone and in conjunction with Article 14 of the Convention.

4. Mrs E. Steiner, the judge elected in respect of Austria, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed initially Mr H. Schäffer to sit as an *ad hoc* judge in her place and subsequently Mr E. Wiederin (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court).

5. By a decision of 4 May 2006 the Court declared the application partly admissible. However, it declared inadmissible all complaints by Ms Claudia Klein, who was initially a second applicant.

6. Neither the applicant nor the Government filed additional observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant is a former lawyer who was born in 1932 and lives in Vienna.

8. On 24 March 1964 he was admitted to the bar and started to practice as a lawyer in Vienna.

9. On 15 November 1995 the Disciplinary Council (*Disziplinarrat*) of the Vienna Chamber of Lawyers (*Rechtsanwaltskammer*) provisionally suspended the applicant's right to practice and on 18 December 1995 bankruptcy proceedings were opened against him. Taking note of that fact, on 23 January 1996 the Executive Committee of the Chamber of Lawyers (*Ausschuß der Rechtsanwaltskammer*) decided that the applicant had lost his right to practise as a lawyer pursuant to section 34(1a) of the Practising Lawyers Act (*Rechtsanwaltsordnung*). This provision, as in force at that time, provided that the right to exercise the profession of a practising lawyer shall be revoked following the binding opening of bankruptcy proceedings until their binding termination and the final dismissal of a request to open bankruptcy proceedings for lack of sufficient means. It further appears that, in connection with the bankruptcy proceedings, the applicant was convicted of embezzlement by the Vienna Regional Court on 28 January 1997 and sentenced to four years imprisonment and on 28 October 1997 an additional sentence of one year was imposed on him.

10. On 31 March 1996 the applicant asked the Chamber of Lawyers to strike him out of the List of Lawyers (Rechtsanwaltsliste) for health reasons. On 30 April 1996 the Chamber of Lawyers informed the applicant that it had taken note of his request. However, the Government submitted that the plenary assembly of the Chamber of Lawyers had struck the applicant out of the List of Lawyers on 16 April 1996. The applicant though submitted that no such decision had been taken by the plenary assembly.

11. It appears that the Chamber of Lawyers continued to address invoices for membership fees (including contributions to the pension fund) to the applicant until August 1997. The Government submitted that those requests were based on a clerical error by the Chamber's administration and that the respective invoices were subsequently declared void.

12. On 4 August 1997 the applicant made an application to the Vienna Chamber of Lawyers asking it to grant him an old-age pension. In his request he referred to the fact that he had practised as a lawyer between 1964 and 1995.

13. On 16 June 1998 Division IV of the Executive Committee of the Chamber of Lawyers (*Ausschuß der Rechtsanwaltskammer*) dismissed the applicant's application. It found that, under the relevant provisions of the Statute of the Chamber of Lawyers Pension Fund, an old-age pension is granted to a lawyer when he or she reaches the retirement age, that is, sixty-five years old. However, he or she must also have renounced his or her right to practise as a lawyer. Given that, before he reached the retirement age, the applicant had already lost his right to practice as a lawyer, he was not entitled to an old-age pension.

14. On 3 July 1998 the applicant filed an objection (*Vorstellung*). He submitted that the above-mentioned decision had been unlawful. If, however, the findings of Division IV were correct, the regulations on the entitlement to an old-age pension were unconstitutional because the decision to refuse him a pension after he had paid contributions to the pension fund for more than thirty-two years had been arbitrary.

15. On 14 July 1998 the Plenary of the Executive Committee rejected the objection. It observed that the bankruptcy proceedings which had been opened against the applicant were still pending and the applicant could not claim a pecuniary right without the consent of the receiver. Given that the applicant's objections had been filed without the consent of the receiver, the objection had had to be rejected.

16. On 4 September 1998 the applicant lodged a complaint with the Administrative Court against the above-mentioned decision.

17. On 15 February 1999 the Administrative Court quashed the Plenary decision of 14 July 1998. It found that a pension claim was not one of the claims falling entirely under the list of assets which were subject to bankruptcy proceedings. Accordingly, the applicant himself had had the right to file an objection.

18. On 23 March 1999 the Plenary of the Executive Committee decided again on the applicant's objection. It found that, under the relevant provisions of the Statute of the Chamber of Lawyers Pension Fund, the person applying for the pension must, when reaching the retirement age, still be a member of the Chamber. Given that, before reaching the retirement age, the applicant had lost his membership of the Chamber because he had also lost his right to exercise his profession, he was not entitled to a pension.

19. On 25 May 1999 the applicant lodged a complaint with the Constitutional Court in which he argued that the decision of the Chamber of Lawyers had violated the principle of equality and his right to peaceful enjoyment of his possessions. At the same time he also lodged a complaint with the Administrative Court.

20. On 6 July 1999 the Administrative Court dismissed the applicant's complaint. It found that the applicant would have had a right to an old-age pension only if 1) he had reached the retirement age and 2) he had still been enrolled in the List of Lawyers of the Austrian Chamber of Lawyers at that time. While the applicant had met the first condition, he had not met the second condition because bankruptcy proceedings had been opened against him which had led *ex lege* to the applicant loosing his right to practice and, thereby, loosing his membership of the Chamber of Lawyers.

21. On 6 October 1999 the Constitutional Court refused to deal with the applicant's case because it would not have had any prospect of success.

II. RELEVANT DOMESTIC LAW

22. The rules governing the exercise of the profession of a lawyer are set out in the Lawyer's Act (*Rechtsanwaltsordnung*). Section 50 of the Lawyer's Act, as amended in 1973 (Lawyer's Act Amendment Act), provided a lawyer with a right to an old-age pension, or, under certain conditions, for a pension for his or her surviving spouse or descendants. The main principles for pension schemes for lawyers are set out in section 50(2) of the Lawyer's Act. According to these principles, only someone who is inscribed in the List of Lawyers of a regional Chamber of Lawyers at the time that he or she reaches the retirement age is entitled to an old-age pension; he or she must have been inscribed on the List for a period of ten or fifteen years before reaching the retirement age; the retirement age is fixed at sixty-eight years and upon reaching that age, a lawyer must renounce his or her right to exercise the profession. Further conditions are set out for pensions on account of incapacity to exercise the profession, widows' or widowers' pension and pensions for descendants. Under section 50(3), the regional Chambers of Lawyers are free to fix more favourable conditions for their own pension scheme.

23. The detailed regulations, as set out in the statues of the pension schemes (*Versorgungseinrichtungen*) adopted by the plenary assembly of the Vienna Chamber of Lawyers, repeat the conditions under section 50(2) of the Lawyer's Act. The Vienna Chamber of Lawyers has not made use of the possibility under section 50(3) to fix more favourable rules with the exception of fixing the retirement age at sixty-five years.

24. The pension scheme is financed by compulsory contributions from the members of the pension fund, the amount of which is fixed by the plenary assembly of the Chamber of Lawyers and roughly calculated on the basis of the payments to beneficiaries out of the pension fund.

25. The fund has also another source of income. Under Austrian Law, lawyers do not receive individual payments for services rendered in the context of legal aid. However, as a compensation for the services rendered by all lawyers, the State pays an annual lump sum which is divided among the regional Chambers of Lawyers and put into the pension funds.

26. For 1998 the annual contribution to the pension scheme were fixed at 40,000 Austrian schillings (ATS, approximately EUR 2,900) per member and the old age pension at ATS 23,000 (approximately EUR 1,670) payable fourteen times per year. For 1999 the contributions were fixed at ATS 61,000 (approximately EUR 4,430), reduced contributions for members under 32 years at ATS 40,000 (approximately EUR 2,900) and increased contributions for lawyers who were older than 50 years when inscribed in the List of Lawyers for the first time at ATS 71,000 (approximately EUR 5,160). Pension payments for 1999 were fixed at ATS 24,000 (approximately EUR 1,745) payable fourteen times per year. Pension payments were regularly increased over the years and the amount fixed for 2006 was EUR 2,030.

27. By a federal act of 28 October 2003 (Federal Law Gazette I no. 93/2003), which entered into force on 1 January 2004, the pension regime of lawyers was amended. The new system of old-age pensions, as provided for in sections 49 and 50 of the Lawyer's Act, provides that being inscribed in the List of Lawyers at the time of reaching the retirement age is no longer a condition which must be met in order for an old-age pension to be granted. Old-age pensions are now also granted to persons formerly inscribed on the List of Lawyers and, provided that contributions have been made for a minimum time, they are calculated using a formula which takes into account the amount of contributions paid and the period during which they have been paid.

28. On 3 December 2003, in an extraordinary meeting, the plenary assembly of the Vienna Chamber of Lawyers amended the statutes of its pension scheme following the introduction of the above-mentioned rules.

29. Under the transitory provisions of section 18 of the Vienna statues of the pension scheme, the new provisions apply only to lawyers claiming an old-age pension whose right to exercise the profession had not been withdrawn before the amendment entered into force.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

30. The applicant complained under Article 1 of Protocol No. 1, alone and in conjunction with Article 14 of the Convention, 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.

31. Article 1 of Protocol No. 1, in so far as relevant, reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

A. Submissions by the parties

32. The applicant submitted that Article 1 of Protocol No. 1 applied to his pension claim. Doubts as to the applicability of this provision would subside only if the entitlement to a pension was based on transfer payments by the State and not on contributions made by the person claiming the pension. Also, the fact that

the Chamber of Lawyers was a self-governing body did not remove his pension claim from the scope of Article 1 of Protocol No. 1 as argued by the Government, because this did not mean that they were not at all, or to a lesser extent, subject to the laws of the State or the rights set forth in the Convention.

33. Referring to the merits, the applicant pointed out that he had made financial contributions to (and performed unpaid legal aid services for) the pension fund for many years, but, because of the lack of a formal requirement at the time that he had reached the retirement age, his pension claim had been refused. This constituted an unjustified enrichment of the pension fund.

34. The applicant also claimed that the formal requirement of being inscribed on the List of Lawyers at the time of his retirement had been fulfilled by him. When bankruptcy proceedings had been opened against him, on 18 December 1995, he had lost the right to practice as a lawyer, but had not been formally struck out of the List of Lawyers. Until August 1997 he had received invoices for membership fees to the Chamber of Lawyers. This had shown that the Chamber itself had considered that the applicant was still its member. In his view, he could have been struck out of the List of Lawyers only through a formal decision confirmed in writing. Given that this had not occurred, he must have still been on the List.

35. The pension scheme for lawyers was, in general, based on the principle of solidarity, as was the case with the social insurance pension scheme. The comparison with a damage insurance scheme was therefore improper and misleading because arriving at the retirement age could not be considered an incident causing damage. It was a typical feature of a pension scheme that the obligation to provide benefits to the insured person arrived when the period of contribution ended. It was not realistic to require an insured person to take out another insurance policy just in case, in the future, he or she looses the right to practice the profession. But, even if this was the case, this was no justification to forfeit pension contributions made over a considerable period. The applicant also pointed to the recent amendment to the rules on old-age or survivor pensions of lawyers, according to which being inscribed on the List of Lawyers was no longer a condition for granting a pension to the interested person. If these rules had been in force at the time of the events, the applicant would have been entitled to an old-age pension.

36. The Government argued that Article 1 of Protocol No. 1 did not apply to the proceedings at issue. While, according to the Court's relevant case-law, payments into a pension fund could create a right to benefits from that fund, the Court, nevertheless, emphasises at the same time that this was the case only if the conditions laid down by the law had been met. In the present case, the applicant was clearly excluded from the pension scheme. The lawyers' old-age pension scheme did not correspond to the "conventional" model of a social insurance scheme in Austria, but was a system of benefits *sui generis*. Besides having elements of a social insurance scheme, it also contained elements of a contractual and, in particular, a damage insurance scheme. This was evident from the fact that, under the lawyers' old-age pension scheme, in order for the person concerned to be granted an old-age pension, he or she must have been registered on the List of Lawyers at the time that the pension was due to be applied. This corresponded to the requirement under a damage insurance scheme of a valid contractual relationship at the time that the damage occurred. Because of this particularity, it was inadmissible to directly compare the lawyers' pension scheme to the general social insurance scheme.

37. The Government also pointed out that the Chamber of Lawyers, which represented the interests of lawyers, had been established as a self-governing body with compulsory membership and democratic structures, in which the individual members had the opportunity to exert influence on the tenets of the group and, thus, also on the statutes of its pension scheme. The State cannot, therefore, be held responsible for the ensuing regulations to the same extent as in "classical" social insurance cases.

38. The Government further submitted that, even if one considered Article 1 of Protocol No. 1 applicable, any alleged interference with the applicant's property rights had been justified. Given that lawyers, by comparison with other professions, were subject to different occupational requirements and had different rights and duties, the fact that their pension scheme was different to those of other professions was justified. Lawyers were self-employed and were highly-qualified members of a profession which contained the necessary legal knowledge and freedom of decision making to enable those members to make their own

arrangements regarding pension benefits.

39. The system, about which the applicant now complains, already existed when he took up his profession and he must have been aware of the conditions for granting pension payments. He had also benefited from that system, because funding the pension payments to retired members of the profession on a pay-as-you-go basis (*Umlagesystem*) allowed for relatively small contributions. If the condition about which the applicant now complained – being inscribed in the List of Lawyers at the crucial moment – had not existed, the applicant would certainly have had to pay considerably higher contributions to the pension fund. The applicant had been free to join the general social insurance scheme on a voluntary basis.

40. As regards the applicant's submission that he should have been considered as having still been inscribed on the List of Lawyers because no formal written decision had been taken, the Government submitted that he had been deleted from the List at the latest on 16 April 1996 by a decision taken by the plenary assembly of the Chamber of Lawyers. In any event, the Administrative Court, in its decision of 6 July 1999, had clarified that, for the purposes of the pension, the decisive element was that bankruptcy proceedings had been opened against him and that he had therefore lost his right to practise as a lawyer before having reached the retirement age. In so far as the applicant argued that under the 2004 pension regulations he would be entitled to an old-age pension, the Government referred to the transitory provisions of the amendment, according to which the new system would not be applicable to him.

B. The Court's assessment

1. Applicability of Article 1 of Protocol No. 1

41. The Government submitted two arguments as to why this provision did not apply to the present proceedings. First, they argued that, even though payments into a pension fund could create a right to benefits from that fund, this was the case only if the conditions laid down by the law had been met. In the present case, the applicant was clearly excluded from the lawyers' pension scheme because he had not fulfilled the relevant conditions and therefore had no claim to have his pension protected by Article 1 of Protocol No. 1. Second, the Government argued that the Chamber of Lawyers, which represented the interests of lawyers, had been established as a self-governing body with compulsory membership and democratic structures. The State therefore could not be held responsible for the ensuing regulations to the same extent as in "classical" social insurance cases.

42. The Court reiterates that the right to a pension is not, as such, guaranteed by the Convention. However, according to the case-law of the Convention institutions, the right to a pension which is based on employment can in certain circumstances be assimilated to a property right (see *Apostolakis v. Greece*, no. 39574/07, § 27, 22 October 2009).

43. This may be the case where special contributions have been paid: in its judgment in the case of Gaygusuz v. Austria (see *Gaygusuz v. Austria*, 16 September 1996, §§ 39-41, *Reports of Judgments and Decisions* 1996-IV), the Court held that entitlement to a social benefit is linked to the payment of contributions, and, when such contributions have been made, an award cannot be denied to the person concerned. That case concerned the issue of emergency aid granted by the State to people in need, which, the Court held, was a pecuniary right for the purposes of Article 1 of Protocol No. 1. The Court found a violation of Article 14 of the Convention combined with Article 1 of Protocol No. 1 because the Government had refused to grant the award on grounds of nationality.

44. That may also be the situation where an employer has given a more general undertaking to pay a pension on conditions which can be considered to be part of an employment contract (see *Sture Stigson v. Sweden*, no. 12264/86, Commission decision of 13 July 1998).

45. The present case differs to a certain extent from the ones quoted above, because it neither concerns social security benefits in general nor expectations to receive a pension based on an employment contract. However, the Court considers that the compulsory affiliation to an old-age pension scheme, based on the

equally compulsory membership of a professional organisation during the exercise of a profession, may also give rise to the legitimate expectation to receive pension benefits at the point of retirement and constitutes a possession within the meaning of Article 1 of Protocol No. 1.

46. Thus, the Court cannot accept the Government's argument that Article 1 of Protocol No. 1 did not apply. On the one hand the condition of affiliation to the Chamber of Lawyers and the failure to fulfil this condition as a sufficient reason for forfeiture of a pension claim cannot in the Court's view lead to the conclusion that the applicant had no possession within the meaning of Article 1 of Protocol No. 1. In this respect, the Court also observes that, following an amendment to the Lawyers' Act in 2003, being inscribed in the List of Lawyers at the time of reaching the retirement age was no longer a condition which had to be met in order for an old-age pension to be granted. As regards the Government's second argument, the Court observes that the Chamber of Lawyers is not a private association but a public law body, and measures taken by that body therefore engage the responsibility of Austria as a State.

47. Article 1 of Protocol No. 1 therefore applies to the proceedings at issue.

2. Compliance with Article 1 of Protocol No. 1

48. The Court considers that the refusal to grant the applicant an old-age pension from the pension fund constituted an interference with the applicant's right to peaceful enjoyment of his possessions. The question is how should the interference be analysed under Article 1 of Protocol No. 1?

49. The Court has stated in the past that the reduction or the forfeiture of a retirement pension acts neither as a control of use nor a deprivation of property, but that it falls to be considered under the first sentence of the first paragraph of Article 1 (see *Banfield v. the United Kingdom* (dec.), no. 6223/04, ECHR 2005-XI with further references). Accordingly, it must be determined whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

50. In the case of *Banfield v. the United Kingdom*, which concerned the reduction of the pension of a police officer by 65% after he had been convicted of criminal offences, the Court found no violation of Article 1 of Protocol No. 1, because the reduction of the pension benefit was limited to that part of the applicant's pension which corresponded to the contributions by his employer paid during his time of service and did not concern that part of his pension which related to his own contributions (see *Banfield*, cited above). In the case of *Apostolakis* v. Greece, which concerned the automatic deprival of all of the applicant's pension rights following a criminal conviction, the Court considered that that measure had been disproportionate and found a breach of Article 1 of Protocol No. 1 (see *Apostolakis*, cited above, § 42).

51. In both cases, the Court emphasised that the State's entitlement to bring forfeiture and disciplinary proceedings against the applicant in addition to the criminal proceedings was well within its margin of appreciation and met the demands of the general interest of the community (see *Banfield*, cited above, and *Apostolakis*, cited above, § 41).

52. In the present case, the applicant was convicted of embezzlement (see paragraph 9) but that conviction had not had any direct effect on his pension claim. The Executive Committee of the Chamber of Lawyers, the Plenary of the Executive Committee and eventually the Administrative Court dismissed the applicant's request for an old-age pension because bankruptcy proceedings had been opened against him, and they had led *ex lege* to the applicant loosing his right to practice and, thereby, loosing his membership of the Chamber of Lawyers. Membership of the Chamber of Lawyers was, however, a condition for being granted a pension from the pension fund at reaching the age of at least 65.

53. The Court finds that it is clearly within the margin of appreciation afforded to the Contracting States to provide by law that members of the profession of lawyers who no longer have appropriate financial resources and have been declared bankrupt should no longer exercise that profession. However, given that no punitive element was involved, such a legitimate interest cannot go so far that it justifies the forfeiture of all of the pension claims of the lawyer concerned.

54. The Government argued that the lawyers' old-age pension scheme was a system of benefits *sui generis*, combining elements of a social insurance scheme with elements of a damage insurance scheme. The condition, that a person claiming a pension through the lawyers' pension scheme must be registered on a List of Lawyers at the time that the pension is granted, corresponded to the requirement under a damage insurance scheme of a valid contractual relationship at the time that the damage occurred. The system, about which the applicant complained, already existed when the applicant took up his profession and he must have been aware of the conditions for granting pension payments. He had also been free to join the general social insurance scheme (outside the bar) on a voluntary basis.

55. The Court is not persuaded by those arguments. It is true that the applicant must have been aware of the system as a whole when he started his profession as a lawyer, but that argument should not be overstated. In view of the compulsory nature of the affiliation to the Chamber of Lawyers pension scheme and the compulsory contributions thereto, it was clearly intended to give to lawyers reaching the retirement age a pension which largely corresponded to the cover provided under the social security scheme. In this respect the Court considers that an old age pension scheme can hardly be compared to a damage insurance contract, as the Government suggest, because the latter is designed for providing financial compensation for damage caused by an event, such as fire, flood or accident, which is not sure to occur, whereas the former is clearly intended to provide for means of subsistence in the future during a period of life in which the capacity to earn will diminish partly or fully. One cannot, therefore, expect a lawyer to subscribe to a further pension scheme under the social security system to protect himself against the complete loss of his or her pension just in case he or she looses the right to exercise the profession. This must be considered a quite exceptional risk. It also transpires from the facts which were stated after the applicant had gone bankrupt, that the Chamber of Lawyers had had considerable difficulty dealing with a situation which also seemed unusual to them. Moreover, the subsequent amendment to the lawyers' pension scheme in 2003, which abolished the condition that a lawyer must be inscribed in the List of Lawyers at the time of reaching the retirement age in order to be granted an old-age pension, and making the payments of that pension dependent on a minimum time of contribution (see paragraph 25 above) shows that that situation was no longer considered appropriate.

56. It seems that, by adopting only the minimum level of regulation for a member to be included in the system of pension benefits (see Relevant Domestic Law, paragraphs 21-27 above) and keeping the circle of potential beneficiaries of the pension scheme small, the Vienna Chamber of Lawyers strived to keep the contributions to its pension fund low. However, in the Court's view, when it comes to a compulsory scheme, regulations must take into account exceptional situations like the one in which the applicant found himself.

57. The Court cannot find that, by completely depriving the applicant of all of his entitlements to a pension, after having contributed to the pension scheme during the whole of his professional career both individually and collectively (see §§ 24-25), a fair balance was struck between the competing interests. It rather seems as if an excessive individual burden was placed on the applicant (see *Immobiliare Saffi v. Italy,* [GC], no. 22774/93, § 59, ECHR 1999-V).

58. Accordingly there has been a breach of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNTION WITH ARTICLE 1 OF PROTOCOL NO. 1

59. In respect of the above-mentioned complaint, that the refusal to grant the applicant an old-age pension from the pension fund even though he had paid contributions to that fund throughout his career as a lawyer, the applicant also relied on Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. Article 14 reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

60. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and its Protocols, because it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been invoked, both on its own and together with Article 14, and a separate breach of the substantive Article has been found, it is not generally necessary for the Court to also consider the case under Article 14. However, the position is reversed if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45).

61. In the circumstances of the present case, the Court considers that there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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."

63. In respect of pecuniary damage, the applicant claimed 289,808.99 euros (EUR). He submitted that this sum corresponded to the old-age pension payments he should have received from the pension fund from 9 July 1997 onwards. Moreover, he claimed that the Court should order the Government to make future pension payments equal to an ordinary old-age pension as fixed by the competent organs of the Vienna Chamber of Lawyers.

64. In respect of costs and expenses, the applicant claimed EUR 39,157.47 for those incurred in both the domestic proceedings and the proceedings before the Court, including Turnover Tax.

65. The Government pointed out that there should be a causal link between the violation found and the presumed damage. Moreover, it was not for the Court to speculate what the outcome of the proceedings would have been had the authorities or courts acted in conformity with the requirements of the Convention. In any event the applicant should not have submitted such a claim himself because, as a person declared bankrupt, he was no longer in a position to make those claims. Moreover, the applicant's claims should be reduced by the amount of the contributions he had not made to the pension fund which amounted to EUR 22,004.10 and by the amount of EUR 264,920, which the Chamber of Lawyers had paid from its own funds to the applicant's clients after he had gone bankrupt.

66. As regards the claim for legal costs, the Government asserted that the sums claimed by the applicant were in general excessive and the costs for representation in the proceedings before the Vienna Chamber of Lawyers had been incurred unnecessarily because there had been no obligation to be represented by counsel.

67. The Court considers that the question of the application of Article 41 is not ready for a decision. Accordingly, it shall be reserved and the subsequent procedure shall be fixed after having regard to any agreement which might be reached between the Government and the applicant (Rule 75 § 1 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

2. *Holds* that no separate examination of the same issues under Article 14 of the Convention is required;

3. *Holds* that the question of the application of Article 41 is not ready for a decision; accordingly,

(a) *reserves* the said question in whole;

(b) *invites* the Government and the applicant to submit, within three months of the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 3 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Nina Vajić
Registrar President

KLEIN v. AUSTRIA JUDGMENT