



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

FOURTH SECTION

**CASE OF OSTEO DEUTSCHLAND GMBH V. GERMANY**

**(Application no. 26988/95)**

JUDGMENT

STRASBOURG

3 November 1999

**In the case of Osteo Deutschland GmbH v. Germany,**

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

Mr A. PASTOR RIDRUEJO, *President*,

Mr L. CAFLISCH,

Mr J. MAKARCZYK,

Mr I. CABRAL BARRETO,

Mr V. BUTKEVYCH,

Mr J. HEDIGAN,

Mrs S. BOTOCHAROVA, *Judges*,

and of Mr V. BERGER. *Section Registrar*,

Having deliberated in private on 21 October 1999,

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

**PROCEDURE**

1. The case was referred to the Court by the Government of Germany ("the Government") on 26 March 1999 within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 26988/95) against the Federal Republic of Germany lodged with the European Commission of Human Rights ("the Commission") under former Article 25 by Osteo Deutschland GmbH, a company incorporated under German law. The applicant company is represented by Mr H. Kroitzsch, a lawyer practising in Karlsruhe (Germany). The Government of Germany are represented by their Agent, Ms H. Voelskow-Thies, *Ministerialdirigentin*, of the Federal Ministry of Justice.

The Government's application to the Court referred to former Articles 32 and 48, which were accepted by Germany. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

2. On 12 May 1999 the applicant company designated Mr H. Kroitzsch as the lawyer who would represent it. In a letter bearing the same date, the applicant company's lawyer further informed the Court that the applicant company's mother company had meanwhile been sold, that the new owner had given instructions to terminate the proceedings before this Court and that the application is therefore withdrawn.

3. Following the entry into force of Protocol No. 11 of the Convention on 1 November 1998 and in accordance with Article 5 § 4 thereof read in conjunction with Rule 100 § 1 and Rule 24 § 6 of the rules of Court, a Panel

of the Grand Chamber decided on 7 July 1999 that the case should be dealt with by a Chamber constituted within one of the Sections of the Court.

4. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Fourth Section. The Chamber ultimately constituted within the Section included Mr A. Pastor Ridruejo, Mr L. Caflisch, Mr J. Makarczyk, Mr I. Cabral Barreto, Mr V. Butkevych, Mr J. Hedigan and Mrs S. Botoucharova.

5. After consulting the Agent of the Government and the applicant's lawyer, the Chamber decided not to hold a hearing in the case.

6. On 24 September 1999 the Government stated that they were prepared to waive their right to the presence of an *ad hoc* judge.

## AS TO THE FACTS

7. On 21 January 1988 the applicant company requested the Federal Health Office (*Bundesgesundheitsamt*) for an authorisation to produce, as a medical product, a bone substitute product, pursuant to the Pharmaceutical Act (*Arzneimittelgesetz*).

8. In July 1991, in the absence of any decision on their request, the applicant company instituted proceedings with the Berlin Administrative Court (*Verwaltungsgericht*) complaining about the inactivity of the Federal Health Office. On 13 December 1991 the Administrative Court ordered the defendant to decide on the applicant company's request.

9. On 4 December 1992 the applicant company lodged an official liability action before the Berlin Regional Court (*Landgericht*) against the Federal Health Office, claiming damages due to the failure to decide upon their request of 1988.

10. Moreover, on 16 December 1992 the applicant applied to the Berlin Administrative Court for measures in execution of the decision of 13 December 1991. On 11 January 1993 the Administrative Court fixed a fine in case the Office should not decide within one month.

11. On 18 March 1993 the Regional Court stayed (*Aussetzung*) the proceedings in order to await the decision by the Federal Health Office on the applicant company's request. The Regional Court considered that the outcome of the proceedings regarding the compensation claims depended upon the question whether or not the product concerned could be authorised.

12. On 26 November 1993 the Berlin Court of Appeal (*Kammergericht*) dismissed the applicant company's appeal against the decision of 18 March 1993, arguing that the stay of the proceedings was necessary under the relevant provisions of the Code of Civil Procedure. Although the Federal Health Office had failed in their duty to decide speedily on the applicant's request, the award of damages depended on the question whether the

production of the medical product concerned could be authorised under the Pharmaceutical Act. Thus, the decision of the Federal Health Office had to be awaited in order to avoid conflicting decisions.

13. On 29 December 1993 the applicant company lodged a constitutional complaint with the Federal Constitutional Court against the above decision. On 2 March 1995 the applicant company's representative, Mr Kroitzsch, upon his inquiry with the Federal Constitutional Court, was informed that no date for the Court's deliberations on the complaint of December 1993 had been fixed.

14. On 12 April 1996 the Federal Institute for Pharmaceutical and Medical Products (*Bundesinstitut für Arzneimittel und Medizinprodukte*), the successor of the Federal Health Office, dismissed the applicant company's request. The Institute noted that in its report of 13 July 1995 it had drawn the applicant company's attention to shortcomings in its application for authorisation, i.e. questions of clinical research.

15. On 8 May 1996 the applicant company lodged an objection (*Widerspruch*).

16. On 31 October 1996 the Federal Constitutional Court refused to entertain the applicant company's constitutional complaint.

17. Meanwhile, on 28 February 1996 the applicant company obtained a certificate under the 1994 Medical Devices Act (*Medizinproduktegesetz*) and can now sell its bone substitute product in Germany.

18. On 25 June 1998 the Federal Institute for Pharmaceutical and Medical Products dismissed the applicant company's objection against the decision of 12 April 1996. The Institute stated that the bone substitute product in question was a medical product within the meaning of the Medical Devices Act for which an application for a licence under the Pharmaceutical Act had no longer been admissible subsequent to 14 June 1998.

## PROCEEDINGS BEFORE THE COMMISSION

19. Osteo Deutschland GmbH applied to the Commission on 14 March 1995. It alleged a violation of Article 6 § 1 of the Convention on account of the length of the official liability proceedings.

20. The Commission (First Chamber) declared the application (no. 26988/95) admissible on 14 January 1998. In its report of 21 October 1998 (former Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention<sup>1</sup>.

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1. Note by the Registrar. A copy of the Commission's report is obtainable from the Registry.

## AS TO THE LAW

### STRIKING OUT OF THE LIST

21. On 12 May 1999 the applicant company's lawyer informed the Court that the applicant company's mother company had meanwhile been sold and that the new owner had given instructions to terminate the proceedings before this Court. Therefore the application is withdrawn. The Government did not comment on these submissions.

22. Article 37 § 1 of the Convention, insofar as relevant, provides as follows:

“The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; ...

...”

23. Having regard to the applicant company's letter of 12 May 1999, the Court finds that the applicant company does not intend to pursue its application within the meaning of the above-quoted Article.

24. Given that the case concerns a complaint under Article 6 § 1 of the Convention about the length of civil proceedings, an issue on which the Court has had ample opportunity to express its opinion, it cannot be said that there is any reason of public policy for continuing the present proceedings (Article 37 § 1 *in fine*).

25. Accordingly, it is appropriate to strike the case out of the list.

### FOR THESE REASONS THE COURT UNANIMOUSLY

*Decides* to strike the case out of the list.

Done in English and notified in writing on 3 November 1999, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER  
Registrar

Antonio PASTOR RIDRUEJO  
President