



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

SECOND SECTION

CASE OF KURT NIELSEN v. DENMARK

(Application no. 33488/96)

JUDGMENT

STRASBOURG

15 February 2000

FINAL

15/05/2000

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

In the case of Kurt Nielsen v. Denmark,

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

Mr C.L. ROZAKIS, *President*,
Mr M. FISCHBACH,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A.B. BAKA,
Mr E. LEVITS, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 3 February 2000,

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

PROCEDURE

1. The case originated in an application against Denmark lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Danish national, Mr Kurt Nielsen, (“the applicant”), on 23 September 1996. The application was registered on 18 October 1996 under file no. 33488/96.

The applicant complained that, contrary to Article 6 § 1 of the Convention, civil proceedings instituted by him had not been heard within a reasonable time.

2. On 9 September 1998 the Commission (Second Chamber) decided to give notice of the application to the respondent Government and invited them to submit their observations on its admissibility and merits. The Government submitted their observations on 17 November 1998, to which the applicant replied on 28 December 1998.

3. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the application falls to be examined by 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 Second Section. The Chamber constituted within the Section included *ex officio* Mr P. Lorenzen, the judge elected in respect of Denmark (Article 27 § 2 of the Convention and Rule 26 § 1 (a) of the Rules of Court), and Mr C.L. Rozakis, the President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr M. Fischbach,

Mr G. Bonello, Mrs V. Stráznická, Mr A.B. Baka, and Mr E. Levits (Rule 26 § 1 (b)). Mrs V. Stráznická was subsequently unable to participate in the examination of the case and she was replaced by Mrs M. Tsatsa-Nikolovska.

5. On 22 June 1999, the Court declared the application admissible.

AS TO THE FACTS

6. The applicant is a Danish citizen, born in 1966. He resides in Skanderborg, Denmark.

7. On 12 November 1986 the applicant was involved in a car accident. He was severely injured and is now partly disabled.

8. On 26 February 1988 the applicant instituted proceedings against three insurance companies in the City Court of Skanderborg (*retten i Skanderborg*). He claimed that the defendant companies should be held liable to pay, jointly and severally, a specified amount in compensation for permanent disablement and loss of working capacity.

9. On 11 May 1988 the case was adjourned pending the outcome of the applicant's request to the National Board of Industrial Injuries (*Arbejdsskadestyrelsen*, hereinafter called the NBI), to give an opinion on the degree of disablement and working capacity. The applicant was hereafter examined by two medical experts at the request of the NBI which also, on 2 February 1989, requested the Municipality of Skanderborg to provide certain information. This information was provided by the Municipality on 21 December 1989, following which the NBI submitted its expert opinion on 17 January 1990. On 7 March 1990 the NBI was asked certain additional questions as to the degree of disablement and working capacity. By letter of 8 February 1991, the Board maintained its opinion.

10. On 22 February 1991 the applicant requested the NBI to submit an opinion as to the moment in time his injuries could be considered stationary. The NBI submitted its opinion on 13 May 1991.

11. From May 1991 until March 1992 the parties exchanged views and submitted pleadings during a number of preliminary court sessions. During this period the applicant was asked several times by the defendants to provide additional and more specific particulars. On 11 March 1992 one of the defendant companies produced a supplementary list of questions for the NBI to which the applicant objected, in particular since they ought to have been submitted much earlier. On 8 April 1992 the City Court adjourned the case in order to obtain further information from the NBI. It nevertheless scheduled the trial to commence on 24 August 1992. The NBI was

informed on 13 April 1992 of the request to submit a further opinion. On 13 August 1992 the City Court decided to adjourn the case until further notice since the information from the NBI was not available. The court took note of the fact that the applicant's counsel opposed a division of the case in order to decide the liability question separately. The applicant appealed against the decision to adjourn the case to the High Court of Western Denmark (*Vestre Landsret*) which, however, upheld the decision on 1 October 1992.

12. On 8 January 1993 the NBI - which had only on 4 November 1992 received payment of an obligatory charge from the defendants' counsel - announced that it could not submit a reply on the basis of the previous medical examinations as they were considered to be too old. The applicant was accordingly examined again by medical experts following which the NBI submitted its opinion as to the applicant's degree of disablement and working capacity on 30 June 1994.

13. On 25 January 1995 the case was heard by the City Court. By judgment of 15 February 1995 the defendant companies were held liable to pay 950,803.60 DKK plus interest to the applicant. On 28 February 1995 the defendants appealed against the judgment to the High Court of Western Denmark. On 28 September 1995 the High Court fixed the trial to commence on 1 August 1996. It was later rescheduled to commence on 5 September 1996.

14. By judgment of 9 September 1996 the High Court upheld the judgment of the City Court. The judgment has become final.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

15. The applicant complained of the length of the civil proceedings which he instituted against the three insurance companies. He alleged a violation of Article 6 § 1 of the Convention which provides:

“In the determination of his civil rights and obligations..., everyone is entitled to a... hearing within a reasonable time by [a] ... tribunal...”

16. The Government contested that submission on the ground that the conduct of the parties was the main reason for the duration of the proceedings.

A. Period to be taken into consideration

17. The relevant period began on 26 February 1988 when the applicant instituted proceedings before the City Court of Skanderborg. It ended on 9 September 1996 with the judgment of the High Court of Western Denmark.

18. It therefore lasted 8 years, 6 months and 13 days for two levels of jurisdiction.

B. Reasonableness of the length of the proceedings

19. According to the Court's case-law, the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and that of the authorities dealing with the case. On the latter point, what is at stake for the applicant in the litigation has to be taken into account in certain cases (see among other authorities the *Pélissier et Sassi v. France* judgment of 25 March 1999, to be published in *Reports of Judgments and Decisions* 1999, § 67, and the *Duclos v. France* judgment of 17 December 1996, *Reports* 1996-VI, p. 2180, § 55).

20. The Government argue that the proceedings concerned a complicated issue as it was considered necessary to obtain specialist opinions from the NBI, which had to procure various information and opinions, including opinions from specialist doctors. According to the Government the case was an ordinary civil dispute between private parties which did not call for special or exceptional diligence. The Government further submit that the conduct of the parties, including that of the applicant, had a significant importance to the length of the proceedings. It would thus have been possible and expedient with fewer submissions to the NBI - even a single one might have sufficed if the parties had co-operated. In respect of the request submitted to the NBI on 13 April 1992, to have a further opinion from the Board the defendants only paid the obligatory charge 7 months after the request had been made. The applicant was several times - especially in the period from May 1991 to March 1992 - late in fulfilling requests for further and better particulars, and his objection to divide the case in order to have a separate decision on the question of liability prolonged the proceedings, as it prevented an efficient utilisation of the period until the case was ready for trial. The Government deny that any significant delays can be imputed to the domestic authorities. It took more than 10 months for the NBI to get information from the Municipality of Skanderborg.

21. The applicant submits that only the courts and the defendants were responsible for the delays, and that his lawyer did everything to speed up the proceedings.

22. Even if the case might have been of some complexity, the Court does not find that this can reasonably explain the length of the proceedings exceeding 8 years and 6 months for two instances.

23. The Court recalls that after a car accident the applicant became partly disabled, and what was at stake for him was a considerable amount mainly intended to compensate his disablement and loss of working capacity. Under these circumstances the Court finds that special expedition was called for.

24. As to the applicant's conduct, the Court does not find it established that a division of the case in order to decide the liability question separately would have had any major impact on the total length of the proceedings. Even if it might have been possible for the applicant to limit the number of requests to the NBI and to respond more speedily to requests for particulars, this certainly cannot justify the total duration of the proceedings (see, *mutatis mutandis*, the Portington v. Greece judgment of 23 September 1998, Reports 1998-VI p. 2632, § 29, and the Zana v. Turkey judgment of 25 November 1997, Reports 1997-VII, p. 2552, § 79).

25. The Court recalls that only delays imputable to the relevant judicial and administrative authorities can justify a finding that a reasonable time has been exceeded, contrary to the Convention. The Contracting Parties are, however, also responsible for delays attributable to public-law organs, like municipal authorities, which - although they are not organs of the State - perform official duties assigned to them by law (see *mutatis mutandis* the H v. The United Kingdom judgment of 8 July 1987, Series A no 120-B p. 61, §§ 80-82, and Eur. Comm. HR, application nos. 26114/95 and 26455/95, decisions of 28 June 1995, DR 82-A, p. 150). Furthermore, the fact that delays to some extent were caused by the conduct of the defendants in the proceedings does not in itself lead to the finding that these delays cannot be attributed to the State. Even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial required by Article 6 § 1 (see among other authorities the Pafitis and others v. Greece judgment of 26 February 1998, Reports 1998-I, p. 458, § 93). In so far as the Government have argued that 4 requests to the NBI were excessive, the Court recalls that all requests were approved by the City Court - the last one, of 8 April 1992, also by the High Court - and that the case, which at the time of the last request had been pending for more than 4 years, remained adjourned, even if it took more than 2 years and 2 months to obtain the opinion of the Board.

26. The Court finds that there were certain lengthy periods imputable to the State authorities: between 11 May 1988 (date on which it was decided to ask the NBI for an opinion) and 17 January 1990 (date on which the reply was submitted); between 7 March 1990 (date on which it was decided to ask the NBI for a further opinion) and 8 February 1991 (date on which the Board's reply was submitted); between 8 April 1992 (date on which the City Court adjourned the case in order to have a fourth opinion from the NBI) and 30 June 1994 (date on which the reply was forwarded); and between 28 September 1995 (date on which the High Court fixed the trial date) and 5 September 1996 (date on which the hearing was held). These 4 periods amount to a total of more than 5 years and 9 months. The Government have not provided any convincing explanation for these delays.

27. Having regard to the delays imputable to the State, the overall duration of the proceedings and what was at stake for the applicant, the Court concludes that the "reasonable time" requirement was not satisfied. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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."

A. Non-pecuniary damage

29. In respect of non-pecuniary damage, the applicant sought the sum of 250,000 DKK.

30. The Government asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

31. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the civil proceedings instituted by him. Making its assessment on an equitable basis and having regard to the circumstances of the case - in particular the overall duration of the proceedings and the applicant's personal situation - the Court awards the applicant 70,000 DKK as compensation for non-pecuniary damage.

B. Costs and expenses

32. The applicant did not specify any claim for reimbursement of legal costs and expenses incurred in the preparation of his case.

Accordingly, the Court makes no award in this respect.

C. Default interest

33. According to the information available to the Court, the statutory rate of interest applicable in Denmark at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, 70,000 (seventy thousand) Danish crowns in respect of non-pecuniary damage;
3. *Holds* that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, then sent as a certified copy on 15 February 2000, according to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President