



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

THIRD SECTION

CASE OF NOLD v. GERMANY

(Application no. 27250/02)

JUDGMENT

STRASBOURG

29 June 2006

FINAL

11/12/2006

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 Nold v. Germany,

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
Mrs B. MAYEN, *ad hoc judge*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 8 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 27250/02) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two German nationals, Mr Peter Nold and Mrs Adelinde Nold (“the applicants”), on 14 July 2002.

2. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. On 18 March 2005 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. Mrs R. Jaeger, the judge elected in respect of Germany, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mrs B. Mayen to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

THE FACTS

5. The applicants live in Rümmelsheim in Germany.

1. Proceedings before the Bad Kreuznach Regional Court

6. In 1993 the applicants engaged company H., represented by Mr H., to build a house for them.

7. On 31 May 1995 company H. filed a claim against the applicants with the Bad Kreuznach Regional Court (*Landgericht*), seeking 242,651.10 Deutschmarks (DEM) in outstanding payments. The claim reached the Regional Court on 2 June 1995.

8. On 27 July 1995, following an extension of the time allowed for submissions, the applicants contested the claim. They argued that company H. had failed to fulfil its contractual obligations and that the building had serious construction defects.

9. On 27 October 1995, following an extension of the time-limit, company H. reduced its claim to DEM 202,005.40.

10. Between November 1995 and April 1996 both parties – following several extensions of the set time-limits – submitted extensive written statements.

11. On 24 April 1996 the presiding judge of the Regional Court instructed the judge rapporteur to prepare the oral hearing.

12. On 19 July 1996 the plaintiff requested the Regional Court to schedule a hearing.

13. On 20 July 1996 the presiding judge assigned the case to a new rapporteur.

14. On 1 August 1997 the Regional Court held an oral hearing.

15. Between September and December 1997 both parties submitted further observations.

16. On 12 December 1997 the Regional Court instructed the expert W. to prepare an expert opinion on the alleged building defects. It further decided to hear evidence from witnesses.

17. On 19 January 1998 the Regional Court dispatched the case file to the expert.

18. On 9 February 1998 the applicants requested that the questions to the expert be amended.

19. On 10 February 1998 the presiding judge rejected the applicants' request in order, *inter alia*, to avoid delays. He further announced that a new rapporteur had been appointed.

20. On 20 August 1998 the applicants submitted a document on the progress of the building work (*Bautagebuch*), totalling 180 pages.

21. On 10 November 1998 the presiding judge rejected the applicant's request to forward the document to the expert.

22. On 15 December 1998 the expert submitted his expert opinion.

23. On 8 January 1999 the Regional Court served the expert opinion on the parties for comments within six weeks.

24. On 13 January 1999 applicants' counsel withdrew from the case.

25. On 15 March 1999 the applicants lodged a criminal complaint (*Strafanzeige*) against H. for having lied during the proceedings.

26. Between 24 April and 26 May 1999 the case file was dispatched to the Public Prosecutor's Office.

27. On 6 July 1999 the applicants submitted a personal statement totalling 122 pages. On 28 July 1999 the presiding judge informed them that these submissions could not be taken into consideration, as they had not been drafted by counsel.

28. On 20 August 1999, following several extensions of the set time-limit, the applicants' new counsel submitted critical comments on the expert opinion. He further requested on several occasions that evidence be taken from the expert in court and that another expert opinion be commissioned.

29. On 20 October 1999, following two extensions of the time-limit, the plaintiff submitted further comments.

30. On 15 November 1999 the presiding judge transferred the case file to the rapporteur.

31. On 9 December 1999 the case file was dispatched to the Public Prosecutor's Office.

32. On 10 February 2000 the case file was dispatched to the Court of Appeal.

33. On 16 February 2000 company H. lodged a third-party complaint (*Streitverkündung*) against its subcontractor.

34. On 29 February 2000 the applicants appointed a new counsel, who had worked on the case previously.

35. On 9 March 2000 the plaintiff requested the Regional Court to expedite the proceedings.

36. On 29 March 2000 the third party acceded to the proceedings.

37. On 9 August 2000 the case file was transferred to a new rapporteur.

38. On 21 February 2001 the applicants asked whether the Regional Court intended to schedule a further hearing.

39. On 22 February 2001 the Regional Court scheduled a hearing for 10 August 2001.

40. On 2 April 2001 the plaintiff informed the Regional Court that company H. had been converted into a limited-liability company.

41. Between 15 and 22 May 2001 the case file was dispatched to the Court of Appeal.

42. On 8 August 2001 the plaintiffs increased the amount of their claim.

43. On 10 August and 7 December 2001 the Regional Court heard evidence from three witnesses.

44. On 11 January 2002 the Regional Court scheduled an inspection of the building site for 24 May 2002.

45. Between January and May 2002 both parties submitted further observations.

46. On 3 March 2002 the applicants lodged an appeal to a higher authority (*Dienstaufsichtsbeschwerde*) against the presiding judge of the Regional Court for breach of his official duties, raising the issue of the length of the proceedings. The applicants simultaneously informed the

President of the Koblenz Court of Appeal, the Ministry of Justice and the Bad Kreuznach Public Prosecutor's Office of their appeal.

47. On 8 April 2002 the President of the Regional Court informed the applicants that she did not intend to impose disciplinary measures on the presiding judge. While conceding that the proceedings in question were lengthy, she found this to be due mainly to the fact that they were extremely contentious and that both parties had submitted lengthy written statements. She further pointed out that both parties had repeatedly requested the extension of deadlines and had failed to pay an advance on the experts' fees. The proceedings had been further delayed by the public prosecutor's repeated requests to obtain the case file and by the fact that the judge rapporteur had been replaced several times. The President concluded that the parties' counsel should reduce the scope of the litigation in order to permit the Regional Court better to comply with its obligation to speed up the proceedings.

48. On 24 May 2002 the Regional Court conducted an inspection of the building site.

49. On 29 May 2002 the case file was dispatched to the Chief Public Prosecutor's Office.

50. On 22 July 2002 the presiding judge ordered the preparation of a copy of the case file, in view of its frequent dispatch.

51. On 5 August 2002 the plaintiff informed the Regional Court that he had filed for insolvency on 23 July 2002. Preliminary insolvency proceedings had been opened on that date.

52. On 9 and 30 August 2002 the Regional Court decided to hear a further expert opinion on the alleged building defects. They also ordered the applicants to pay an advance on the expert's expenses.

53. On 4 September 2002 the applicants requested an extension of the time allowed for paying an advance on the expenses.

54. On 6 September 2002 the applicants lodged an objection of bias (*Befangenheitsantrag*) against expert W. On an unspecified date, they lodged a criminal complaint against that same expert.

55. Between 9 September and 19 September 2002 the case file was dispatched to the Public Prosecutor's Office.

56. On 30 September 2002 the applicant requested a further extension of the time allowed to pay an advance on the expenses. They further alleged that the proceedings had been suspended owing to the plaintiff's insolvency.

57. On 7 October 2002 the applicants lodged an objection of bias against the Chamber of the Regional Court as a whole as well as against its presiding judge, arguing that the judges had committed several procedural errors.

58. On 21 October 2002 the Regional Court rejected as inadmissible the complaint against the Chamber as a whole.

59. Between 31 October and November 2002 the case file was dispatched to the Public Prosecutor's Office.

60. On 3 December 2002 plaintiff's counsel informed the court that insolvency proceedings had been opened on 1 October 2002 and declared that the administrator in insolvency wished to take over the case.

61. On 19 December 2002 the applicants received the rapporteur's submissions on the objection of bias, with a request for comments to be submitted by 15 January 2003.

62. On 7 January 2003 the applicants lodged an appeal against the Regional Court's decision of 21 October 2002.

63. On 27 January 2003 the Koblenz Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 21 October 2002 as having been lodged outside the statutory time-limit of two weeks, and fixed the value at issue (*Streitwert*) at 124,065.53 euros (EUR).

64. On 10 February 2003 the Regional Court dismissed the applicants' objection against the presiding judge.

65. On 12 March 2003 the applicants lodged another objection of bias against the presiding judge of the Regional Court, which was dismissed on 24 June 2003.

66. Between 28 March and 14 April 2003 the case file was sent to the Federal Constitutional Court.

67. On 24 June 2003 the Regional Court dismissed the objection of bias against the presiding judge, finding that there was no indication that the latter had been biased against the applicants.

68. On 25 July 2003 the Koblenz Court of Appeal rejected the applicants' complaint against the value which it had determined in its decision of 27 January 2003.

69. On 19 August 2003 expert W. died.

70. On 25 August 2003 the Koblenz Court of Appeal dismissed the applicants' appeal against the Regional Court's decision of 24 June 2003 and fixed the value at issue at between EUR 110,001 and EUR 120,000.

71. On 28 August 2003 the presiding judge proposed that evidence be taken from a further expert.

72. On 7 September and 31 October 2003 the applicants lodged criminal complaints against the judges of the Regional Court.

73. On 14 October 2003 the applicants informed the Regional Court that they had entered into negotiations with a view to a friendly settlement.

74. On 3 November 2003, the Regional Court, with the parties' consent, ordered that the proceedings be suspended (*Ruhen des Verfahrens*).

75. On 1 December 2003 the trustee in insolvency of company H. withdrew the action against the applicants. In return, the applicants paid EUR 15,000 and waived all their remaining claims against company H.

76. On 5 January 2004 the Regional Court fixed the value of the claim at EUR 107,768.36.

77. On 18 February 2004 the Court of Appeal fixed the value of the claim at the same amount.

2. Proceedings before the Federal Constitutional Court

78. On 3 October 2002 the applicants lodged a constitutional complaint concerning the length of the proceedings before the Bad Kreuznach Regional Court.

79. On 9 April 2003 the Federal Constitutional Court refused to entertain the constitutional complaint, finding that the Regional Court had not violated the applicants' right to a hearing within a reasonable time.

The relevant parts of the decision read as follows:

“...the length of proceedings – almost eight years – appears to be still just acceptable (*gerade noch hinnehmbar*) from a constitutional point of view. While the case which had to be adjudicated by the Regional Court was not particularly complex from a legal point of view, it was conducted in a very contentious and lengthy manner. Furthermore, it does not appear from the case file that the Regional Court delayed the proceedings ... by any inactivity on its part or that it neglected to advance the proceedings. The Regional Court constantly advanced the proceedings by exchanging the written statements rapidly, deciding on the taking of evidence and issuing legal instructions.

It must further be taken into account that the applicants repeatedly contributed to the obstructions and delays in the proceedings by requesting that further evidence be taken and time-limits extended and by lodging objections of bias and criminal complaints necessitating the dispatch of the case file. While these actions form part of the parties' rights in civil proceedings, the relevant court cannot be held responsible for the resulting prolongation of the proceedings.

Finally, it must be borne in mind that the applicants, as far as can be established, have not been affected economically by the length of the proceedings.

While no objection can be made to the conduct of the proceedings from a constitutional point of view, the Regional Court – in view of the length of the proceedings – is requested to speed up the proceedings and bring them to an early conclusion.”

80. On 14 September 2003 the applicants lodged a further constitutional complaint alleging a violation of their right to a fair trial. They argued that the Regional Court had committed several material and procedural errors which gave them good grounds for believing that the judges were biased against them. In particular, the applicants claimed that the Regional Court had arbitrarily failed to determine the correct value at issue.

81. On 3 November 2003 the Federal Constitutional Court refused to entertain the applicants' complaint.

THE LAW

I. COMPLAINT ABOUT THE LENGTH OF THE PROCEEDINGS

82. The applicants complained that the length of the proceedings had been incompatible with the “reasonable time” requirement contained in Article 6 § 1 of the Convention, which reads:

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

83. The Government contested that argument.

84. The period to be taken into consideration began on 2 June 1995 and ended on 1 December 2003. It therefore lasted eight years and six months for one level of jurisdiction.

A. Admissibility

1. The parties’ submissions

85. The Government invited the Court to reject the complaint as being an abuse of the right of application within the meaning of Article 35 § 3 of the Convention, as the applicants had wrongly alleged that the length of proceedings had caused the loss of their own claims against the building company. The Government further contended that the applicants had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. They alleged, in particular, that it was possible to obtain damages for the excessive length of proceedings by means of an action to establish State liability (*Amtshaftungsklage*) before the civil courts.

86. The applicants contested the Government’s submissions. They maintained that the length of the proceedings had indeed caused the loss of their claims against the building company. They further claimed that they had unsuccessfully availed themselves of all the remedies open to them. They pointed out that their complaints against the Regional Court had been rejected both by the Court of Appeal and by the Federal Constitutional Court.

2. The Court’s assessment

87. As regards the question of abuse of the right of application the Court reiterates that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see, among other authorities, *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). The Court, having regard to the contents of the case file, does not consider that such is the case. The applicants’ allegations that the

length of the proceedings caused the loss of their claims against the building company relate not to the facts, but to the legal assessment of the merits of the case.

88. With regard to the exhaustion of domestic remedies, the Court reiterates that under Article 35 § 1 of the Convention, normal recourse should be made by an applicant to remedies that are available and sufficient to afford redress in respect of the breaches alleged. Whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it normally requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic courts, at least in substance, and in compliance with the formal requirements and time-limits laid down in the domestic law. It is incumbent on the Government pleading non-exhaustion to demonstrate to the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1211, § 68, and *Lukenda v. Slovenia*, no. 23032/02, § 44, 6 October 2005).

89. Turning to the present case, the Court notes that the applicants raised their complaint about the length of the proceedings before the Federal Constitutional Court. In its decision of 9 April 2003, that court found the length of the proceedings to be still acceptable. The proceedings were terminated some eight months afterwards. Notwithstanding the question whether an action to establish State liability can in principle be regarded as an effective remedy against the excessive length of proceedings, the Court is not persuaded that the proceedings would have had reasonable prospects of success, having particular regard to the ruling of the Federal Constitutional Court in the applicants' case. It follows that the applicants must be regarded as having exhausted domestic remedies.

90. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The Government

91. The Government considered that the length of the proceedings had not been unreasonable having regard to all the circumstances of the case. The case had been particularly complex due to the lengthy submissions presented by both parties. The parties had submitted a total of 140 detailed statements, containing fresh presentation of facts and evidence. The proceedings had been further complicated by the change in the plaintiff's legal status (*Klägerwechsel*) and by the third-party intervention.

92. According to the Government, the applicants had contributed considerably to the length of the proceedings by submitting numerous and very detailed statements. Furthermore, the applicants had repeatedly failed to comply with the Rules of Civil Procedure by submitting their own statements, even though in proceedings before the Regional Court representation by a lawyer was compulsory. The applicants had further delayed the proper presentation of evidence by contesting all the Regional Court's orders at length. Between 1999 and 2003, the proceedings had been further delayed by the criminal complaint lodged against the other parties to the proceedings as well as against the Regional Court, necessitating frequent dispatches of the case file to the prosecuting authorities and causing an overall delay of almost six months. The same applied to the appeals to a higher authority and the complaints relating to cost issues lodged by the applicants. From October 2002 to August 2003, the applicant's numerous objections of bias had brought the proceedings to a virtual standstill. The applicants had further delayed the proceedings by repeatedly asking for substantial extensions of the relevant time-limits. They had failed to pay an advance on the costs of commissioning the expert opinion as ordered by the Regional Court in August 2002, arguing that the proceedings had been suspended owing to the plaintiff's insolvency; in fact, the proceedings had not been suspended until the opening of insolvency proceedings in October 2002.

93. The Regional Court had tried to advance the proceedings as far as possible by serving documents on the other party promptly and giving instructions on the proper progress of proceedings. The first oral hearing had been held on 1 August 1997 in order to give the parties sufficient time for their submissions. While conceding that the heavy workload of the Chamber of the Regional Court and the changes of judge rapporteur had done nothing to expedite the proceedings, they could not be regarded as the sole reason for the length of the proceedings.

94. Finally, the Government maintained that the applicants had not been affected economically by the length of the proceedings, as their alleged claims against the building company had never been introduced into the proceedings.

(b) The applicants

95. The applicants contested the Government's submissions. They maintained that the length of the proceedings had been due to the fact that the Chamber of the Regional Court and its rapporteurs suffered from an excessive workload. The proceedings had been further delayed by the fact that there had been six changes of rapporteur. During the proceedings, one of the rapporteurs had been working simultaneously on another, very long case. Consequently, no procedural steps had been taken for a period of one year following the change of rapporteur on 1 June 1996. For a long period of time, the presiding judge's only activity had consisted in serving submissions on the other party. It did not appear that the Chamber had even read the case file. According to the applicants, the presiding judge had been protected by his superiors for political reasons.

96. The applicants further maintained that their submissions had been considerably less extensive than the plaintiff's and that they had never changed the presentation of facts. The questions put to the court-appointed expert had been necessitated by the fact that the Regional Court had failed adequately to prepare the presentation of evidence and that the expert had been unqualified for his task.

97. They further pointed out that they had not lodged any appeals to a higher authority before October 1999 and that the Federal Ministry of Justice had informed them of their right to lodge appeals to a higher authority and objections of bias.

98. The criminal complaint filed against the plaintiff had been necessary because the Regional Court had consistently failed to take steps against the plaintiff's fraudulent actions and false submissions. The first criminal complaint against a judge had been lodged on 7 September 2003 and could not have caused any delays prior to that. They further pointed out that it had not been necessary to dispatch the original case file to the Public Prosecutor's Office as the presiding judge had ordered, in June 2002, that a copy of the case file be prepared.

99. The first change of counsel in 1999 had been due to the fact that their previous counsel had been harshly criticised by the presiding judge. It had been extremely difficult to find new counsel. The second change of counsel had been due to the fact that a change in the procedural law had allowed their second counsel, who was not resident in Bad Kreuznach, to represent them before the Regional Court, enabling them to dispense with the services of his replacement before that court. That had not caused any delay in the proceedings.

100. They had not paid an advance on the costs for the second expert because the questions put to the latter had been inadequate and the order of 9 August 2002 to take evidence had been issued in violation of the Rules of Procedure, as the proceedings had been suspended since 23 July 2002 because of the plaintiff's insolvency.

(c) The Court's assessment

101. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

102. It further reiterates its settled case-law to the effect that even in legal systems applying the principle that the procedural initiative lies with the parties (*Parteimaxime*), as the German Code of Civil Procedure does, the parties' attitude does not dispense the courts from ensuring the expeditious trial required by Article 6 § 1 (see, among many other authorities, *Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 81, p. 14, § 32; *Berlin v. Luxembourg*, no. 44978/98, § 58, 15 July 2003; and *McMullen v. Ireland*, no. 42297/98, § 38, 29 July 2004). The same applies where the cooperation of an expert is necessary during the proceedings (see *Scopelliti v. Italy*, judgment of 23 November 1993, Series A no. 278, p. 9, §§ 23 and 25, and *Martins Moreira v. Portugal*, judgment of 26 October 1988, Series A no. 143, p. 21, § 60).

103. Like the Federal Constitutional Court in its decision of 9 April 2003 (see paragraph 79 above), the Court considers that the case was not particularly difficult from a legal point of view. It can accept that the case became more complex in procedural terms on account of the parties' lengthy submissions and the third-party intervention.

104. With regard to the applicants' own conduct, they repeatedly requested extensions of the time they had been given. They also requested additional expert opinions on several occasions and objected to the court-appointed expert, going so far as to lodge a criminal complaint against him. Furthermore, although they were represented by counsel, they submitted personal pleadings to the Regional Court. As from 1999, the applicants lodged numerous criminal complaints and appeals to a higher authority; between October 2002 and August 2003 they lodged a number of unsuccessful objections of bias. While the applicants cannot be criticised for having taken advantage of certain remedies available to them under domestic law, the national authorities cannot be held responsible for the resulting delays. With regard to the personal pleadings submitted by the applicants, the Court does not consider that they contributed substantially to the overall length of the proceedings.

The Court concludes that the applicants' conduct contributed to a certain degree to the length of the proceedings.

105. Turning to the conduct of the domestic courts, the Court notes that the first oral hearing of the applicants' case was held on 1 August 1997, that is, more than two years after the claim had been filed. It does not appear from the case file that this delay was due to the fact that the parties had to be given sufficient time for their submissions. In this connection the Court further notes that the presiding judge, as far back as April 1996, had instructed the rapporteur to prepare the hearing. On 1 June 1996 the case was transferred to a new rapporteur. However, a hearing did not take place until August 1997, that is, more than one year later. Furthermore, during several periods in the proceedings the parties exchanged observations without any steps being taken by the Regional Court. With regard to the numerous criminal complaints lodged by the applicants between 1999 and 2003, the Court recalls its case-law, according to which the domestic courts should consider the possibility of having copies made in order to avoid delays caused by the dispatch of the case file (see *Gisela Müller v. Germany*, no. 69584/01, § 85, 6 October 2005). Considering that on 22 July 2002 the presiding judge ordered that such copies be prepared, any delays which occurred after that date cannot be attributed to the applicants' complaints. The Court finally notes that the Government did not contest that the Chamber of the Regional Court suffered from an excessive workload and that the judge rapporteur was changed no less than six times during the proceedings. The Court considers that these circumstances must have contributed to a substantial degree to the overall length of the proceedings. The Court reiterates in this connection that Article 6 § 1 imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision (see *Martins Moreira v. Portugal*, cited above, § 60, and *Frydlender*, cited above, § 45).

106. As to what was at stake for the applicants, the Court observes that the proceedings concerned a building company's claim for outstanding payments. While the applicant's own claims against the building company did not form the direct subject matter of the proceedings, it appears that the applicants felt compelled to await the outcome of the presentation of evidence – which was never concluded during the proceedings – before completing their building project.

107. In the light of these various factors, having regard to its case-law on the subject, the Court considers that, in the instant case, the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. FURTHER COMPLAINTS

108. The applicants complained under Article 6 § 1 of the Convention that the domestic courts had denied them a fair hearing by an impartial tribunal with respect to their appeals to a higher authority and their objections of bias.

109. They alleged, in particular, that the presiding judge of the Regional Court had arbitrarily withheld his comments on their objection of bias in order to prevent them from lodging their appeal against the decision of 21 October 2002 within the statutory time-limit. Furthermore, the Regional Court and its presiding judge had arbitrarily delayed the proceedings, committed numerous errors of fact and law and favoured the plaintiff.

110. The Government contested these submissions.

111. The Court, in the light of all the material in its possession, finds that the matters complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

112. The applicants further complained that the Federal Constitutional Court had violated their right to a fair hearing by failing to take the applicants' submissions into account. The Court notes that the proceedings before the Federal Constitutional Court ended on 3 November 2003, when the latter court refused to entertain the applicants' second complaint. The complaints in question were first raised by the applicants before the Court in their submissions dated 26 November 2005, that is, more than six months later.

113. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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. Damage

115. The applicants, relying on documentary evidence, claimed a total of EUR 700,000 for the loss of their alleged claims for damages against the plaintiff building company. If the proceedings had been terminated in due

time, they would have been able to assert their claims against the company before the latter became insolvent in 2002.

116. In respect of non-pecuniary damage, the applicants maintained that the excessive length of the proceedings had destroyed their family life. They and their two sons had lost all their social contacts and had had to give up cultural activities. Their sons did not wish to remain in the defective house on a long-term basis as originally planned. They further argued that the length of the proceedings had caused them constant anxiety, resulting in insomnia and health problems. Further anguish had been caused by the knowledge of the lack of stability of their home. Even now, the house remained in a poor state and was in need of extensive work. In late 1999 the first applicant had lost his job because he had been unable to sell the defective house in order to move to his company's new headquarters. His new place of work was so far from the family home that the family was separated during the week. The delay had prevented them from taking up self-employment in the house, causing them further loss. The applicants requested the Court to award them an appropriate sum to compensate for the damage they had suffered.

117. The Government maintained that there was no causal link between the allegedly unreasonable length of the proceedings and the pecuniary damage the applicants claimed to have sustained. They further pointed out that the applicants had never introduced their alleged claims against the building company into the pending proceedings. As regards non-pecuniary damage, the Government accepted that the applicants had suffered as a result of all the circumstances connected with the building of the house, but argued that the Government could not be held accountable for all the emotional damage sustained.

118. As regards the applicant's claim for pecuniary damages, the Court reiterates that it cannot speculate as to what the outcome of the proceedings at issue might have been if the violation of Article 6 § 1 of the Convention had not occurred (see, among other authorities, *Schmautzer v. Austria*, judgment of 23 October 1995, Series A no. 328, p. 16, § 44; *Uhl v. Germany*, no. 64387/01, § 38, 10 February 2005; and *Gisela Müller v. Germany*, cited above, § 92). It further notes that there is insufficient proof of any causal connection between the excessive duration of the proceedings as such and the pecuniary damage allegedly sustained by the applicant. There is, therefore, no ground for an award under this head.

119. With regard to the non-pecuniary damage claimed, the Court considers that, for the reasons given above, the Government cannot be held accountable for the overall damage caused by the alleged defectiveness of the building. The Court considers, however, that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 5,000 under that head.

B. Costs and expenses

120. The applicants, relying partly on documents, also claimed EUR 18,974.04 for the costs and expenses incurred before the domestic courts, including EUR 15,000 paid to the plaintiff's administrator in insolvency by way of friendly settlement, EUR 3,374.04 for legal fees and a lump sum of EUR 600 for the costs incurred in the preparation of submissions to the domestic courts and by the frequent visits of their counsel. They further claimed EUR 368.16 for costs and expenses incurred before the Court.

121. The Government contested that the costs and expenses incurred before the domestic courts had been caused by the length of the proceedings.

122. According to the Court's consistent case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefore. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, *inter alia*, *Venema v. the Netherlands*, no. 35731/97, § 117, ECHR 2002-X).

123. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicants have not established that the costs and expenses claimed for the proceedings before the domestic courts were incurred by them in order to seek prevention or rectification of the specific violation caused by the excessive length of the proceedings. However, seeing that in length-of-proceedings cases the protracted examination of a case beyond a "reasonable time" involves an increase in the applicant's costs (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999, and *Maurer v. Austria*, no. 50110/99, § 27, 17 January 2002), it does not find it unreasonable to make an award of EUR 250 under this head.

124. With regard to the costs and expenses incurred before the Court, the Court considers it reasonable to award the applicants, who were not represented by a lawyer, the sum of EUR 368.16.

C. Default interest

125. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 618.16 (six hundred and eighteen euros and sixteen cents) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 29 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President