



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

FIFTH SECTION

CASE OF VAAS v. GERMANY

(Application no. 20271/05)

JUDGMENT

STRASBOURG

26 March 2009

DÉFINITIF

26/06/2009

This judgment may be subject to editorial revision.

In the case of Vaas v. Germany,

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

Peer Lorenzen, *President*,

Rait Maruste,

Karel Jungwiert,

Renate Jaeger,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 3 March 2009,

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

PROCEDURE

1. The case originated in an application (no. 20271/05) 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 a German national, Mr Anton Alfons Vaas (“the applicant”), on 2 June 2005.

2. The applicant was represented by Mr R. Battenstein, a lawyer practising in Düsseldorf. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. On 29 January 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1935 and lives in Nettetal.

1. Background to the case

5. From 1952 until May 1991 the applicant worked as a lorry driver. On 10 May 1991 he was diagnosed with a back disease (intervertebral disc degeneration) and gave up his profession as a lorry driver.

2. Administrative proceedings

6. On 11 February 1993 the applicant filed an application with the Vehicle Operators Insurance Association (*Berufsgenossenschaft für Fahrzeughaltungen*) for a declaration that he was suffering from a work-related back disease, which would have entitled him to special pension benefits.

7. On 4 January 1996 the Insurance Association found that the applicant's illness had not been work-related.

8. On 23 January 1996 the applicant lodged an administrative appeal which the Insurance Association, following further internal enquiries, rejected on 4 September 1996.

3. Proceedings before the Düsseldorf Social Court

9. On 2 October 1996 the applicant brought an action before the Düsseldorf Social Court for an industrial injury pension on the grounds of occupational disease.

10. On 15 January 1998 the Social Court set down the case for hearing on 11 February 1998.

11. On 11 February 1998 it rejected the applicant's claim on the grounds that it had not been established that his disease was work-related.

12. On 13 March 1998 the judgment was served on the applicant's counsel.

4. Proceedings before North-Rhine Westphalia Social Court of Appeal

13. On 26 March 1998 the applicant lodged an appeal with the North-Rhine-Westphalia Social Court of Appeal without submitting the statement of grounds of appeal. Following two reminders in April and July 1998 the court received the applicant's statement of grounds of appeal on 10 November 1998.

14. On 17 November 1998 the Social Court of Appeal held an oral hearing during which it decided to make further investigations.

15. Between 23 November 1998 and 23 March 1999 the Social Court of Appeal consulted the applicant's disability files which it had received from the Düsseldorf Pension Office, the report of the defendant's technical supervisory services and various medical statements and certificates from the applicant's doctors.

16. On 26 March 1999 the Social Court of Appeal commissioned a report by an orthopaedic expert, S., which was submitted on 20 May 1999

and stated that the applicant's disease had not been caused by his work as a lorry driver.

17. On 14 July 1999 the applicant applied under section 109 of the Social Courts Act (see paragraph 44 below) for a fresh medical report by another expert. He also put additional questions to the expert S. which were answered on 23 July 1999.

18. On 25 August 1999 the Social Court of Appeal commissioned a report by B.-A., an expert specialised in occupational medicine.

19. On 17 September 1999 the Court of Appeal ordered the applicant to pay a further advance to cover the costs of additional examinations which B.-A. considered necessary. On 14 October 1999 the applicant advanced those costs.

20. On 15 December 1999 the applicant cancelled his appointment with B.-A. scheduled that day.

21. On 22 March 2000 B.-A. submitted a report finding that the applicant's disease had to be considered as being work-related.

22. On 5 July 2000 the Social Court of Appeal invited S. to lodge supplementary observations on the findings of B.-A.'s report, which he did on 2 August 2000.

23. Following the applicant's request for a supplementary report by B.-A. in accordance with section 109 of the Social Court Code, the Court of Appeal ordered B.-A. on 13 September 2000 to submit supplementary comments.

24. Between 13 November 2000 and 13 February 2001 the court reminded B.-A. three times to give his comments and set him a time-limit of 15 March 2001. On 15 February 2001 B.-A. submitted his comments.

25. On 26 April 2001 S. was asked for his observations on B.-A.'s supplementary comments. These he gave on 22 May 2001.

26. On 9 July 2001 the Social Court of Appeal set the appeal down for hearing on 18 September 2001. At the hearing the court ordered the taking of further evidence.

27. On 8 October 2001 the defendant submitted an expert report prepared by its own technical supervisory service challenging B.-A.'s conclusions.

28. On 18 October 2001 the Court of Appeal commissioned the preparation of a further report by a consultant surgeon, B., who submitted his report on 19 November 2001.

29. On 22 January 2002 the applicant requested *inter alia* the preparation of a further expert report under section 109 of the Social Courts Act.

30. On 27 February 2002 the Social Court of Appeal commissioned *ex officio* a medical report by an orthopaedic expert, V.

31. In March and April 2002 the Social Court of Appeal reminded V. of its request for a report. In reply, V. informed the court that the applicant had

cancelled his appointment for examination scheduled on 26 April 2002 and that it had had to be postponed to 20 June 2002. On 3 September 2002 the Social Court of Appeal received V.'s report dated 12 August 2002.

32. Between 27 September 2002 and 20 February 2003 the applicant requested the court seven times to extend the time-limits for the submission of his comments on V.'s expert report.

33. On 5 May 2003 the applicant submitted his comments and a private orthopaedic expert's report on which B. commented on 9 June 2003.

34. On 26 August 2003 the applicant informed the court that he intended to commission another private expert report.

35. On 22 September 2003 the Social Court of Appeal held an oral hearing at which the applicant's counsel requested a two-week adjournment to allow him to comment on the future conduct of the proceedings.

36. On 27 October 2003 the applicant appointed a new legal representative who asked the court for access to the case files on 2 December 2003.

37. On 12 December 2003 the Social Court of Appeal postponed the hearing scheduled for 16 December 2003 because the applicant's counsel had failed to return the case files.

38. On 23 March 2004, after a hearing, the Social Court of Appeal rejected the applicant's appeal. Considering that the relevant questions had been sufficiently examined by the experts B., S., and V., it did not find it necessary to seek a further expert opinion, as had been requested by the applicant.

39. On 12 May 2004 the judgment was served on the applicant's counsel.

5. Proceedings before the Federal Social Court

40. On 8 June 2004 the applicant lodged a request for leave to appeal on points of law with the Federal Social Court which was rejected on 7 September 2004. This decision was served on the applicant's counsel on 15 September 2004.

6. Proceedings before the Federal Constitutional Court

41. On 14 October 2004 the applicant lodged a constitutional complaint. On 19 November 2004 the Federal Constitutional Court (no. 1 BvR 2324/04) refused to admit the applicant's complaint. This decision was served on the applicant's counsel on 3 December 2004.

7. Supervisory review proceedings

42. On an unspecified date the applicant requested the Insurance Association to revoke its decisions of 4 January 1996 and 4 September 1996 in accordance with section 44 of the Social Code no. X (*Sozialgesetzbuch X*)

(see paragraph 45 below). On an unknown date the Insurance Association rejected his request.

II. RELEVANT DOMESTIC LAW

1. Action for failure to act

43. Section 88 of the Social Courts Act exempts applicants from the requirement to await the outcome of the preliminary administrative proceedings and allows them to lodge a court action directly with the Social Court if the administrative authorities fail without sufficient justification to decide the administrative appeal within a reasonable time, in general three months.

2. Application for the hearing of an expert

44. Section 109 of the Social Courts Act provides that the insured person may request a further expert report. This request can only be rejected if granting it would delay the proceedings and if the court is satisfied that the request has been made in an attempt to delay the proceedings or was not submitted earlier due to gross negligence. The commissioning of the expert report may be made conditional on the applicant advancing the costs.

3. Application for supervisory review

45. Section 44 of the Social Code no. X provides that if social benefits are rejected on the basis of an unlawful administrative act, the competent authority shall, under certain circumstances, revoke that act with retrospective effect even after it has become final. In such cases the grant of social benefits is limited to a period of four years preceding the date of the application for supervisory review.

THE LAW

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

46. The applicant complained that the length of the administrative and social court proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

47. The Government contested that argument.

A. Admissibility

1. Applicability of Article 6 to the administrative proceedings

48. The Government, referring to the Court's decisions in *inter alia* the *König* judgment (see *König v. Germany*, 28 June 1978, § 98, Series A no. 27), submitted that the period between the filing of the applicant's request with the Insurance Association on 11 February 1993 and the lodging of his administrative appeal on 23 January 1996 was not covered by Article 6 § 1 as it concerned purely administrative proceedings before a public authority.

49. The applicant considered that Article 6 § 1 of the Convention did apply to the administrative proceedings preceding his administrative appeal.

50. The Court agrees with the Government that a "dispute" within the meaning of Article 6 § 1 of the Convention arose only on 23 January 1996 when the applicant filed his administrative appeal against the decision of the Insurance Association (see, amongst other authorities, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001; and *König*, cited above § 98).

51. It follows that to the extent that the complaint about the length of the proceedings relates to the administrative proceedings preceding the applicant's administrative appeal, that is the period from 11 February 1993 to 4 January 1996, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. Exhaustion of domestic remedies

52. The Government further argued that the applicant had failed to lodge an action for failure to act under section 88 of the Social Courts Act (see paragraph 43 above), a remedy which the Court has considered to be effective to challenge the length of administrative proceedings (see *Glüsen v. Germany*, no. 1679/03, § 67, 10 January 2008). Therefore the relevant period did not start to run until 2 October 1996 when the applicant lodged his action with the Düsseldorf Social Court.

53. The Court notes that the Insurance Association rejected the applicant's administrative appeal on 4 September 1996, eight months after he lodged the appeal on 23 January 1996. Given that relatively short period (see, by contrast, *Glüsen*, cited above, §§ 13-15 and 67) and bearing in mind that an action for failure to act would have deprived the applicant of a (potentially favourable) decision by the Insurance Association, the Court considers that in the instant case the applicant could not have been expected to lodge such an action.

54. It follows that the Government's objection in this respect must be rejected.

3. Conclusion

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

B. Merits

1. Period to be taken into consideration

56. The Court notes that the relevant period started to run on 23 January 1996, when the applicant lodged his administrative appeal, and ended on 3 December 2004, when the final decision of the Federal Constitutional Court was served on the applicant's counsel. It thus lasted some eight years and ten months for one level of compulsory administrative appeal and four levels of jurisdiction.

2. The reasonableness of the length of proceedings

a. Submissions made before the Court

57. The applicant, without disputing the facts submitted by the Government, contended that the proceedings had been unreasonably long. He argued that the length of the proceedings before the Düsseldorf Social Court was not justified as no evidence had been taken before that court. He alleged that it had taken the authorities and courts seven years to commission the first expert report after he lodged his pension request in 1993. Nor could he be blamed for requesting further expert reports or statements after S., B. and V. had given unfavourable reports. Finally, the length of the proceedings had restricted the possibility of his being granted his pension benefits following a request for a supervisory review under section 44 of the Social Code no. X. as that provision provided that social benefits would be paid retroactively only for a period of four years before the request was lodged.

58. The Government considered that the length of proceedings was not unreasonable having regard to all the circumstances of the case. The subject matter of the action raised difficult questions of fact and law, necessitating extensive and time-consuming investigations and the commissioning of a total of four expert reports (one at the applicant's request).

59. The Government pointed out that no periods of inactivity had been attributable to the domestic courts. In so far as delays were attributable to

experts or the parties, the Social Court of Appeal had continuously tried to speed up the proceedings by sending reminders that their reports and statements were to be lodged within the set time-limits. Furthermore, the Social Court of Appeal had been obliged by section 109 of the Social Courts Act to commission a report by B.-A and to hear his expert evidence.

60. The Government emphasised that a period of at least one year and eleven months was attributable to the applicant's own conduct as he had delayed in submitting his statement of grounds of appeal, his comments on the expert reports and the required X-rays. Furthermore, he was late in paying the advance on the costs of B.-A.'s expert report and had cancelled appointments with two of the experts, which had inevitably delayed the preparation of their reports. Finally, he had repeatedly applied for fresh expert reports when the existing reports were unfavourable to him and had therefore accepted that the proceedings would take even longer.

61. When assessing the importance of what was at stake for the applicant, the Government noted that the domestic authorities found that he was not entitled to the requested pension. Nor had the length of the proceedings curtailed his rights to receive pension benefits following a request for supervisory review under section 44 of the Social Code no. X, as that request concerned the re-opening of the initial administrative proceedings and thus a separate matter from that in issue in the instant proceedings.

b. The Court's assessment

62. 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 applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

63. The Court observes, at the outset, that the proceedings concerned the question whether the applicant's illness qualified as a work-related disease, thus entitling him to special pension benefits.

64. It recognises that those proceedings were of a considerable complexity. The social courts were faced with the difficult question as to whether there was a causal connection between the exertions the applicant had been exposed to at work and his back disease. The complexity of that issue is demonstrated by the differing opinions expressed by the four experts heard. The assessment of the evidence was also complicated by the fact that the domestic courts had to take into account the applicant's working conditions over a period of almost forty years which involved numerous inquiries concerning his former employers and medical history.

65. As regards the applicant's own conduct, the Court observes that during the proceedings before the Social Court of Appeal, he lodged two

requests under section 109 of the Social Courts Act for a further expert opinion. This request caused a delay of several months. In this connection, the Court notes that, while the applicant cannot be blamed for making full use of the remedies available to him under the domestic law, his behaviour, is an objective fact which must be taken into account for the purpose of determining whether or not the "reasonable time" has been exceeded (see, *Lesar v. Slovenia*, no. 66824/01, § 30, 30 November 2006; and *Girardi v. Austria*, no. 50064/99, § 56, 11 December 2003).

66. The Court also notes that the applicant submitted his statement of grounds of appeal with the Social Court of Appeal more than six months after the court had requested him to do so. Furthermore, he cancelled his appointments with two of the medical experts, B.-A. and V., thus delaying the proceedings by three months. It took the applicant eight months to comment on V's report and one and a half months to comment on B.'s report. Finally, delays of some five months and two weeks were caused by the change of the applicant's legal counsel and by the fact that he was late in paying the advance on the expert's fees and in returning the X-rays to the court. Therefore, the Court considers that a total of two years was attributable to the applicant's own conduct.

67. As to the conduct of the domestic authorities, the Court notes that the proceedings were pending for approximately one year and five months before the Social Court, which dismissed the applicant's action without having obtained expert evidence, whereas the proceedings before the Social Court of Appeal lasted six years and one month including the two years of delay for which the applicant is to be held responsible. The length of the proceedings before the Social Court of Appeal was primarily due to the court's extensive investigations into the applicant's medical history and the potential occupational hazards he was exposed to and to the taking and assessment of substantial expert evidence.

68. As to the number of experts heard, the Court considers that the domestic courts are better placed than the Court to assess the need for expert opinion. Nevertheless, the need to obtain expert reports does not release the national courts from the obligation to ensure compliance with the reasonable-time requirements of Article 6 of the Convention (see *Glüsen*, cited above, § 83).

69. In the instant case, the Court notes that the Social Court of Appeal considered it necessary to appoint four experts (including one at the applicant's request), who were specialised in different medical fields. It further observes that no significant periods of inactivity were attributable to the Social Court of Appeal in that connection. In particular, it proceeded swiftly to the commissioning of the expert report requested by the applicant under section 109 of the Social Courts Act (see, by contrast, *Glüsen*, cited above, § 82). Furthermore, it attempted to expedite the proceedings by setting time-limits or reminding the experts – when necessary – to submit

their statements or reports. Finally, bearing in mind that the applicant even sought to have further experts appointed, the Court considers that the number of experts heard by the Social Court of Appeal was not excessive.

70. The Court further notes that the Federal Social Court and the Federal Constitutional Court conducted the proceedings before them speedily.

71. As to what was at stake for the applicant, the Court accepts that the length of the proceedings at issue caused a degree of hardship to the applicant as the pension claimed was meant to cover at least part of his living expenses. However, in so far as the applicant alleged that the length of the proceedings had curtailed his rights in connection with the supervisory-review proceedings, the Court notes that the Insurance Association rejected the applicant's request to revoke its earlier decisions. Thus the applicant did not qualify for a retroactive payment of the pension in dispute and so was not affected by the four-year time-limit he referred to. The applicant's allegation in this connection is therefore unsubstantiated.

72. In conclusion, the Court considers that in view of the particular circumstances of the case, notably the high complexity of its subject matter and the considerable delays caused by the applicant's own conduct, the overall length of the proceedings can still be regarded as reasonable.

73. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 26 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President