



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF D.E. v. GERMANY

(Application no. 1126/05)

JUDGMENT

STRASBOURG

16 July 2009

FINAL

06/11/2009

This judgment may be subject to editorial revision.

In the case of D.E. 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,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 1126/05) 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 D.E. (“the applicant”), on 27 December 2004. The President of the Chamber acceded to the applicant’s request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

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

3. On 13 November 2007 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

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1947 and lives in Barnag, Hungary.

1. Background to the case

5. The applicant used to work as a business consultant. He was insured with the Mülheim Administrative Health Insurance Association (*Verwaltungs-Berufsgenossenschaft*, hereinafter referred to as “the Insurance Association”).

6. Between 1982 and 1987 he lived and worked in premises of which the wood-panelled walls and ceilings had been treated with timber preservative. During this time he began to suffer from concentration and respiration problems.

7. In 1986 the medical service of the Insurance Association established that as of 28 October 1986 the applicant was incapable of practising his profession. A specialist in internal diseases informed the Insurance Association that the applicant was presumably allergic to timber preservatives.

8. The applicant subsequently gave up his profession, moved out and later moved to Hungary.

2. Administrative proceedings

9. The applicant then applied to have his illness recognised as work-related within the meaning of the Occupational Disease Act (*Berufskrankenverordnung*).

10. In the course of these administrative proceedings a number of expert opinions and statements were obtained.

11. On 25 October 1990 the Insurance Association rejected his application.

12. On 19 November 1990 the Appeals Board of the Insurance Association dismissed his administrative appeal.

3. Proceedings before the Duisburg Social Court

13. On 19 December 1990 the applicant lodged a claim with the Duisburg Social Court for the recognition of his health problems as a work-related disease within the meaning of the Occupational Disease Act (*Berufskrankenverordnung*). He announced that he would file further submissions.

14. On 30 July 1991, after having received four reminders from the Social Court, the applicant filed those submissions.

15. Between August 1991 and August 1992 both the Insurance Association and the applicant filed numerous further pleadings and additional documents.

16. On 3 August 1992 the Social Court scheduled the hearing – first for 19 August 1992 and then, on the applicant's requests for a postponement, for 26 October 1992. At the hearing the parties agreed that Prof. S., an expert at the institute for hygiene and micro-biology at the University of Bochum, should be commissioned to produce an expert opinion.

17. On 10 December 1992 the Social Court appointed the expert.

18. In July 1993, after receiving a reminder from the Social Court, the expert announced that on account of his workload and health problems, he would not submit his report until December 1993.

19. On two occasions in the course of the year 1994 the Social Court set the expert a time-limit for the submission of his report – the latter deadline was further extended twice on the ground that the expert had to undergo an operation. In February and March 1995 the court warned the expert that it would fine him in the amount of 1,000 euros (EUR) if he failed to submit the expert opinion again.

20. On 30 March 1995 Prof. S. submitted his report. He returned the files in May.

21. On 21 August 1995, following an extension of the time-limit set by the Social Court and a reminder, the Insurance Association submitted its observations on the expert opinion.

22. Thereafter, the court informed the applicant that it intended to obtain another expert opinion.

23. In December 1995 the applicant filed his observations on the expert opinion.

24. In January 1996 the Nordrhein-Westfalen Social Court of Appeal requested the files, since further proceedings on the applicant's grade of disability were pending before it. It returned the files in May 1996.

25. In July 1996 the Social Court again informed the parties that it intended to obtain another expert opinion. The applicant agreed to an examination by Dr. Sch., a specialist in environmental medicine.

26. On 20 November 1996 he paid the advance requested by the court on 4 September 1996.

27. On 4 April 1997 Dr. Sch. submitted his report.

28. The Social Court then set the Insurance Association a time-limit of eight weeks to submit further observations. On 10 December 1997, having received a reminder from the court in November, the Insurance Association submitted the observations.

29. On 8 January 1998 the Social Court quashed the decision of the Insurance Association of 25 October 1990 and declared that the applicant's brain-related organic psycho syndrome (*hirnorganisches Psychosyndrom*), which diminished his ability to concentrate and his memory, was the result

of a work-related disease within the meaning of the Occupational Disease Act.

4. Proceedings before the Nordrhein-Westfalen Social Court of Appeal

30. On 20 February 1998 the Insurance Association lodged an appeal with the Nordrhein-Westfalen Social Court of Appeal. In April 1998 it further reasoned the appeal and thereby also submitted a further expert statement.

31. On 29 June 1998 – having been sent a reminder by the court and given access to the files – the applicant opposed the appeal. Between August 1998 and January 1999 he filed further observations.

32. On 5 February 1999 the Court of Appeal scheduled the hearing for 10 March 1999. On the applicant's request to postpone the hearing the court cancelled it.

33. On 3 May 1999 the Court of Appeal informed the parties that it considered another expert opinion and the examination of the applicant to be necessary. It also requested the applicant to submit information as to his medical record.

34. In August 1999, in response to the court's reminder to submit the requested documents, the applicant replied that correspondence was usually delayed for about three weeks in Hungary and requested more time for the submission of the documents.

35. Subsequently the court again reminded the applicant to submit the requested documents and moreover set him a deadline. It also rejected his request to be examined in Hungary.

36. On 12 January 2000 it commissioned an expert opinion from a Dr. D., to be submitted by 12 May 2000.

37. On 10 August 2000, having received a reminder from the court in May, Dr. D. submitted his report.

38. On 3 November 2000 the Insurance Association filed further observations, including a further medical statement by a Dr. Som.

39. In November 2000 and January 2001 the Court of Appeal requested an additional report from Dr. D. and further information from the applicant and his Hungarian doctor.

40. In April and June 2001 the Insurance Association submitted further documents – partly also expressly requested by the court.

41. On 26 July 2001 the Court of Appeal commissioned a Dr. K. to prepare a further expert opinion on the basis of the files.

42. In August 2001 the applicant declared that he had always been willing to be examined. The court therefore amended its decision respectively.

43. On 10 September 2001 Dr. K. submitted a report elaborated on the basis of the files.

44. In October 2001 the applicant missed an appointment with the expert – apparently because he had moved to a new address.

45. A number of pleadings, in particular by the applicant, followed. The applicant severely criticised the expert opinion. In January 2002 the expert admitted that in parts his report had been based on findings concerning another person. The applicant then requested access to the files.

46. On 20 March 2002 the applicant filed further observations and also submitted the documents requested by the court on 3 May 1999.

47. In its reply of 16 April 2002 the Insurance Association submitted a further statement by Dr. Som. The applicant challenged those submissions.

48. In June 2002 the court asked the applicant whether he was willing to be examined. In July 2002 the applicant requested more time to reply.

49. On 30 September 2002, following a number of pleadings and orders, the Court of Appeal commissioned a supplementary expert opinion from a Dr. P., another expert in occupational- social- and environmental-medicine, and from a Prof. F.

50. The applicant did not attend the examination arranged for 22 October 2002. He explained this again by submitting that correspondence in Hungary was often delayed for about three weeks.

51. On 13 November 2002 he challenged Dr. P. for bias. On 29 January 2003 the court rejected the motion for bias.

52. On 23 February 2003 the applicant refused to undergo an examination.

53. The court then first ordered the expert opinion to be based on the files and then, since the applicant opposed to it, decided that no further expert opinion should be obtained.

54. On 16 May 2003, on the applicant's request, the hearing which had been scheduled for 21 May 2003 was postponed to 11 June 2003.

55. On 11 June 2003 the Court of Appeal quashed the judgment of the Social Court of 8 January 1998, dismissed the applicant's claim and refused to grant leave to appeal on points of law.

5. Proceedings before the Federal Social Court and Federal Constitutional Court

56. On 11 September 2003 the applicant lodged an appeal against the refusal for leave to appeal.

57. On 11 March 2004 the Federal Social Court rejected this appeal on the ground that he failed to sufficiently substantiate it.

58. On 28 June 2004 the Federal Constitutional Court refused to admit the applicant's constitutional complaint.

THE LAW

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

59. The applicant complained that the length of the 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...”

60. The Government contested that argument.

61. The Court notes that the period to be taken into consideration began in November 1990 when the applicant lodged his administrative appeal against the decision of 25 October 1990 (the exact date is not known, but it is safe to assume that the applicant lodged the appeal in the beginning of November 1990 since the Appeals Board decided on it on 19 November 1990) and ended on 28 June 2004 when the Federal Constitutional Court rendered its decision. It thus lasted 13 years and almost 8 months for one level of compulsory administrative appeal and four levels of jurisdiction.

A. Admissibility

62. The Court observes that the application 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. The parties’ submissions

63. The applicant maintained that the authorities had deliberately delayed the proceedings. He thereby relied in particular on belated submissions on the part of the Insurance Association, a belated notification of the judgment of the Social Court of Appeal and delays allegedly caused by changes of the judge rapporteur. He moreover drew on the time-consuming and, in his view, unnecessary commissioning of further expert opinions – in this connection he also submitted that he had been urged to give his consent. The applicant finally also opposed the Government’s submissions that his move to Hungary had caused delays, arguing that the authorities could have written to his legal counsel.

64. The Government submitted that even though the duration of the proceedings had in fact been very long, it did not exceed the reasonable time requirement. They emphasised that the case was of an unusual complexity and that the question of a causal link between low-level exposure to timber preservative and health impairments had been a matter of serious dispute in Germany at the relevant time. They also pointed out that there had only been a few highly specialised experts in the field, who were consequentially overworked, and that the parties had nonetheless agreed to commission Prof. S. in particular. They also submitted that the courts had exploited all judicial means of expediting the proceedings by reminders, deadlines and also threats of fines. The Government moreover considered that the applicant had made a decisive contribution to the length of the proceedings in that he had delayed the reasoning of his claim, requested the postponement of hearings, delayed observations – such as in particular the submission of the requested and relevant medical record – and the payment of an advance and in that he had not fully cooperated with the authorities and refused to be examined. They also submitted that his move to Hungary had prolonged the proceedings – not least on account of insufficient information given by the applicant in this respect and correspondence difficulties. Finally, they emphasised that no delays had been caused by changes of the judge rapporteur.

2. The Court's assessment

65. 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).

66. The Court observes, at the outset, that the proceedings concerned the question whether the applicant's illness qualified as a work-related disease, which decisively depended on the questions whether the applicant had been exposed to timber preservatives on account of his work and whether, moreover, a causal link between this exposure and his health problems existed.

67. The Court therefore recognises that the proceedings were of a considerable complexity and that the social courts were faced with difficult legal and factual questions. The Court also accepts the Government's explanation that only a few specialists could be commissioned to produce expert opinions and that they produced differing opinions on the issue.

68. As regards the applicant's conduct, the Court observes that he caused considerable delays on account of belated submissions and statements. In this respect the Court notes in particular that he only reasoned his claim with the Social Court seven months after its introduction and only

submitted information as to his medical record, requested by the Court of Appeal on 5 May 1999, in March 2003. It moreover observes that substantial delays had been caused on account of the fact that, whereas the applicant had first declared to be willing to be examined, he then missed two appointments with different experts in Germany and in the end completely refused to be examined and challenged the expert for bias. Further delays in the course of the social court proceedings stemmed from several requests to postpone scheduled hearings, difficulties in correspondence caused by the applicant's residence in Hungary and the delayed payment of the advance for an expert opinion. The Court therefore finds that the applicant clearly contributed to delays of almost four years.

69. Turning to the conduct of the national authorities, the Court notes that the proceedings were pending for seven years before the Social Court alone and for another five years before the Social Court of Appeal. The length of the proceedings before the Social Court was to a large extent caused by the expert Prof. S., who only submitted his report after two years and three months. The Court recalls in this respect that in cases where cooperation with an expert proves necessary, it is the responsibility of the domestic courts to ensure that the proceedings are not excessively prolonged (see, among other authorities, *Volkwein v. Germany*, no. 45181/99, § 39, 4 April 2002). It notes that in the present case the Social Court did set Prof. S. a number of time-limits for the submission of his report – in the end it also announced the imposition of a coercive fine. Nonetheless, it finds that the Social Court only reluctantly inquired about the progress of the report, and the expert's repeated failure to comply with the time-limits set did not have any further consequences. Moreover, after the submission of the report, no real attempts to substantially further the case were made either – the Social Court merely awaited the return of the files and the comments of the applicant and then transferred the files, without making copies, to the Social Court of Appeal, where they remained for half a year (there is no indication that the outcome of these proceedings was of any relevance to the proceedings at issue here). Also, after the submission of the second expert opinion several months elapsed before the Social Court reminded the Insurance Association to submit observations. The Social Court of Appeal on its part also – at least in parts – failed sufficiently to further the proceedings. That court also partly merely awaited the parties' submissions, and on the applicant's request to postpone the hearing just cancelled it, and moreover only reluctantly commissioned the first expert report. As regards the Federal Social Court and the Federal Constitutional Court, the Court notes that both decided within a year. Thus, no delays were caused by those courts.

70. As to the importance of what was at stake for the applicant, the Court observes that the recognition of the applicant's health problems as a work related disease was at issue, which is a precondition for the payment

of a pension. The Court thus recognises that the proceedings were of some importance to the applicant.

71. Having examined all the material submitted to it, the Court considers that, in view in particular of the overall length of the proceedings and the failure of the authorities to substantially further the case, 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 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed non-pecuniary damage. He expressly left the amount to the Court’s discretion; however, he referred to a similar case in which the Court awarded EUR 20,000.

74. The Government left the matter to the Court’s discretion.

75. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 1,500 under that head.

B. Costs and expenses

76. The applicant also claimed EUR 10,306 for costs and expenses incurred before the domestic courts (lawyers’ fees, travel expenses, phone calls and expenses for office equipment) and about EUR 4,000 for those incurred before the Court. In this latter respect, he did not submit any documentary evidence.

77. The Government maintained that the costs claimed for the conduct of the domestic proceedings could not be attributed to the length of the proceedings. They did not comment on the applicant’s claim concerning the Convention proceedings.

78. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicant has

not established that the costs and expenses claimed for the proceedings before the domestic courts were incurred by him 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 applicants’ costs (see, among other authorities, *Sürmeli v. Germany* [GC], no. 75529/01, § 148, ECHR 2006-...), it does not find it unreasonable to award the applicant EUR 250 under this head. With regard to the costs incurred in the proceedings before it, the Court, having regard to its case-law and in the absence of any documentation, makes no award in this respect.

C. Default interest

79. 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 excessive length of the proceedings admissible;
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 applicant, 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 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) EUR 250 (two hundred and fifty euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to him 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 applicant’s claim for just satisfaction.

Done in English, and notified in writing on 16 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President