



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF YILDIZ v. GERMANY

(Application no. 23279/06)

JUDGMENT

STRASBOURG

8 October 2009

FINAL

01/03/2010

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 Yildiz v. Germany,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 15 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 23279/06) 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 Ilyas Yildiz (“the applicant”), on 6 June 2006.

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

3. On 30 April 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

4. The applicant was born in 1963 and lives in Anzing.

A. Background to the case

5. On 8 August 1994 the applicant had an accident at work – a cut of about one centimetre to his right wrist. The same day he was treated by the company doctor, Dr B. On 10 August 1994 his general practitioner transferred him to hospital. That day and again on 24 August 1994 he was examined by a Dr M. On his second examination Dr M. diagnosed that the

applicant was unable to flex his thumb. On 5 September 1994, following a further examination, he had surgery on a muscle, the flexor pollicis longus.

B. Proceedings before the Munich Regional Court

6. On 28 January 1997 the applicant instituted proceedings in the Munich Regional Court against Dr B. and Dr M., seeking an award of compensation for pecuniary and non-pecuniary damage in the amount of 60,000 euros (EUR). He argued that if the defendants had treated him properly, the operation would have been avoided, which in turn would have avoided severe pain and further problems, including reactive depression.

7. In February 1997 the court scheduled a hearing for 21 April 1997. Submissions by the parties followed and in April the case was transferred to a single judge.

8. On 12 May 1997, following the hearing, the Munich Regional Court decided to hear the applicant's general practitioner and scheduled a new hearing for 28 July 1997. On account of the absence of the first defendant's legal counsel, it later postponed it to 24 November 1997. It refused a subsequent request for a further postponement.

9. On 18 August 1997 the applicant's legal counsel ceased taking instructions from the applicant. On 24 October 1997 his new lawyer addressed the court.

10. In November 1997 the parties agreed on written submissions.

11. In February 1998 the applicant's second lawyer also ceased taking instructions from the applicant; subsequently, a new lawyer was appointed and requested access to the files.

12. On 26 March 1998 the applicant requested the court to await the outcome of the social court proceedings, which were also pending, and returned the files.

13. On 13 April 1999 the applicant's third lawyer also ceased taking instructions but was subsequently reappointed in May.

14. On 15 April 1999, upon the request of one of the defendants to continue the proceedings, the court scheduled a hearing for 10 May 1999. At the hearing the parties agreed that the files of the social court proceedings should be consulted. Between June and September 1999, having been granted access to those files, the parties submitted further observations.

15. In October 1999 the applicant asked for an expert to be commissioned. In November 1999 he submitted documents which had until then been missing.

16. In February and April 2000 he requested the court to continue with the proceedings. On 5 April 2000 he was informed that the judge had fallen ill.

17. On 23 June 2000 the Munich Regional Court decided to obtain an expert opinion. On 22 August 2000 the expert submitted his report.

18. The court then set the parties a time-limit for their observations of 18 September 2000.

19. On 5 October 2000 the court decided to obtain a supplementary report. On 31 October 2000, after payment of an advance, it transferred the files to the expert. In January 2001 it asked the expert when he would be submitting his report.

20. On 20 February 2001 the applicant did not attend the examination arranged with the expert. On 16 May 2001 the expert examined the applicant.

21. On 31 May 2001 the court set the expert a time-limit of four weeks for the submission of his report. On 27 June 2001 it set him another deadline of two weeks. On 3 July 2001 the expert submitted the supplementary report. The parties' submissions followed.

22. On 28 August 2001 the court scheduled the hearing for 29 October 2001 and also summoned the expert. It later had to be postponed to 13 November 2001 on account of the absence of one of the legal counsel.

23. On 27 December 2001, following the hearing, the Munich Regional Court rejected the applicant's claim. Relying on the expert opinion obtained and a statement from the applicant's general practitioner, it found that the muscle had not been cut and that no liability on the part of the doctors could be established.

C. Proceedings before the Munich Court of Appeal

24. On 11 February 2002 the applicant appealed. In April 2002, following an extension of the time-limit, he submitted the grounds of his appeal.

25. On 18 April 2002 the Munich Court of Appeal scheduled the hearing for 16 May 2002. A subsequent request by the applicant for a postponement was rejected.

26. At the hearing the Munich Court of Appeal heard the doctor who had operated on the applicant.

27. The parties' submissions followed. In July 2002 the applicant requested a further expert opinion regarding a number of questions.

28. The court then scheduled a hearing for 17 October 2002 and decided to obtain an additional statement from the expert appointed at first instance, which was submitted on 22 August 2002.

29. On 18 September 2002 the applicant challenged the expert on grounds of bias. On 2 October 2002 the Munich Court of Appeal rejected this challenge.

30. Subsequently, it commissioned another expert. The parties did not object when the expert announced that he would not submit his report before the following summer.

31. In May 2003 the applicant transferred further documents. On 16 June 2003 the expert examined the applicant.

32. On 1 August 2003 the expert submitted his report. The court then scheduled the hearing for 13 November 2003. The applicant again requested the court to obtain another expert opinion.

33. On 27 November 2003, following the hearing, the Munich Court of Appeal dismissed the applicant's appeal and refused leave to appeal on points of law. Relying on the experts' statements, it found that no liability of the defendants could be established.

D. Proceedings before the Federal Court of Justice and the Federal Constitutional Court

34. On 29 December 2003 the applicant appealed against the refusal of leave to appeal. On 30 April 2004, following two requests for an extension of the time-limit set, he lodged the grounds of his appeal.

35. On 29 June 2004 the Federal Court of Justice dismissed the applicant's appeal.

36. On 2 August 2004 the applicant lodged a constitutional complaint.

37. On 7 December 2005 the Federal Constitutional Court refused to accept his constitutional complaint for examination.

THE LAW

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

38. 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..."

39. The Government contested that argument.

40. The period to be taken into consideration began on 28 January 1997 when the applicant lodged a claim with the Munich Regional Court. The proceedings ended on 7 December 2005 when the Federal Constitutional Court refused to accept his constitutional complaint for examination. The proceedings thus lasted for eight years, ten months and eleven days for four levels of jurisdiction.

A. Admissibility

41. 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. The parties' submissions

42. The applicant maintained that the overall duration of the proceedings was in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

43. He submitted that the Munich Regional Court had caused delays of almost two years (in particular when scheduling the second hearing and in connection with the commissioning of the expert). He also submitted that while the case had been complicated from a factual point of view, no difficult legal questions had arisen. Moreover, he emphasised that the case was of particular importance to him, not only because of the large amount at stake, but also since, as a result of the accident, he was suffering serious pain and could not carry on his profession any more. He also pointed out that the defendants had not opposed his request to await the outcome of the social court proceedings and that the delays caused by the expert were not attributable to him.

44. The Government argued that this case was of a particular factual complexity since it concerned the question of liability for medical malpractice and necessarily involved the taking of a number of expert opinions. They also referred to the extensive submissions of the applicant. In their view, the case was also complicated from a legal point of view.

45. Moreover, the Government emphasised that delays of at least two and a half years were clearly attributable to the applicant. They referred in particular to the applicant's request to await the outcome of the social court proceedings, the delayed submission of documents, his failure to attend an examination, his repeated requests for an extension of the time-limit set and the fact that, although his submissions were always within the agreed time-limits, they were often close to the deadlines. The Government also pointed out that the applicant had contributed significantly to the length of the proceedings in that he had made extensive submissions (sixty-five attestations, reports and expert statements alone and another eighty-two additional documents) and in that he had repeatedly requested further expert opinions when a report turned out not to be in his favour. In so doing, in their view, the applicant had clearly accepted the protracted proceedings.

46. As regards the authorities' conduct, the Government conceded that as a result of the judge's illness the Munich Regional Court had caused delays of about seven months. In their view, however, all in all the authorities had used the means available to them to accelerate the case since they had scheduled the hearings promptly, rejected requests for a postponement of a hearing, repeatedly asked the expert for the report and its submission and set reasonable time-limits.

47. The Government conceded that, in view of the high amount of compensation claimed, the case was of importance to the applicant. However, they pointed out that finally his claims had been rejected.

2. *The Court's assessment*

48. 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).

49. The Court observes at the outset that the proceedings concerned the question of medical liability of the two doctors who had treated the applicant after his accident at work, which had taken place three years before the introduction of the claim. It notes that, in the course of these proceedings, the applicant submitted numerous attestations and reports. Moreover, three expert opinions and additional statements had been obtained. Therefore, the Court agrees with the Government that the case was of a rather complex nature.

50. As regards the applicant's own conduct, the Court notes firstly that before the Munich Regional Court, the applicant had already been represented by three different lawyers. These frequent changes of legal counsel – two of them had ceased taking instructions from the applicant within thirteen months of the claim being introduced – had caused delays of several months since they resulted in the granting of access to the files on the part of the court. Moreover, in March 1998, the applicant had expressly requested the court to await the outcome of the social court proceedings. And it was only at the defendant's request that the court resumed the proceedings one year later. The applicant had caused further delays by yet more problems with his legal counsel, his request to include the files from the social court proceedings, the delayed submission of documents requested by the court and his failure to attend an examination with an expert. The applicant also caused delays in the appeal proceedings particularly on account of his repeated requests for an extension of the time-limit set and also, although within his rights, in that he challenged the expert on grounds of bias. Finally, it should also be noted that, even at later

stages of the proceedings, the applicant repeatedly requested the court to obtain a new expert opinion.

51. Turning to the conduct of the domestic authorities, the Court observes that the case was pending for almost five years before the Munich Regional Court. It notes – and this has also been conceded by the Government – that, on account of the illness of the court judge, delays of several months are attributable to the respondent State. Further, minor delays had been caused by two postponements of the scheduled hearings. Nonetheless, the Court also observes that the Munich Regional Court (and also the Court of Appeal) repeatedly set the parties and also the experts time-limits, enquired as to the progress of the reports and also rejected requests for a further postponement of the scheduled hearings.

52. As to what was at stake for the applicant in the dispute, the Court finds that even though a rather large amount of money had been claimed, no particular diligence was required.

53. Assessing the circumstances of the case as a whole and in view of the complexity of the case and the considerable delays caused by the applicant before the Munich Regional Court, the Court considers that in the instant case the length of the proceedings did not fail to meet the “reasonable time” requirement.

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

II. OTHER ALLEGED VIOLATION

55. The applicant also complained under Article 6 § 1 of the Convention that the proceedings were unfair.

56. The Court, having regard to all the material in its possession, finds that they do not disclose any appearance of a violation of Article 6 § 1 of the Convention. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 8 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President