



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF KINDEREIT v. GERMANY

(Application no. 37820/06)

JUDGMENT

STRASBOURG

8 October 2009

FINAL

08/01/2010

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 Kindereit 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,

Mark Villiger,

Isabelle Berro-Lefèvre,

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. 37820/06) 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, Ms Christel Kindereit (“the applicant”), on 18 September 2006.

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

3. On 14 January 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1941 and lives in Dortmund.

5. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background to the case

6. In 1992 the applicant and her husband transferred the ownership of a flat to the applicant's niece. In the notarial deed they agreed upon a life annuity in the amount of 400 German marks (DEM) and a “purchase price” of DEM 53,000. Prior to the drawing up of the notarial deed both parties had moreover agreed that the niece was not entitled to sell the flat to a third party.

7. In 1995, after the parties' relationship had deteriorated, the applicant's niece sold the flat. In March 1996 the applicant and her husband therefore revoked the transfer of ownership, which they had considered a gift, on account of the recipient's gross ingratitude.

B. Proceedings before the Dortmund and the Hagen Regional Court

8. On 9 January 1997 the applicant and her husband introduced a claim against the niece with the Dortmund Regional Court for the payment of DEM 137,000.

9. At a hearing of 18 April 1997, after the niece had challenged the court's competence to examine the case, the case was transferred to the Hagen Regional Court, which informed the parties that they had to be represented by a lawyer admitted to plead before the court (as foreseen in section 78 of the Code of Civil Procedure at the relevant time; see below).

10. On 24 November 1997 the lawyer who had been appointed by the applicant and her husband addressed the court for the first time. The Regional Court then scheduled a hearing for 4 February 1998.

11. On 4 March 1998, following that hearing, the court decided that the value of the flat was to be evaluated by an expert.

12. On 6 November 1998, following the submission of further information by the parties requested by the expert and an inspection of the property, the expert submitted the report.

13. After having received the parties' submissions on this report, the court scheduled a hearing for 24 February 1999. It also summoned the expert. On account of his absence, the hearing had to be postponed to 24 March 1999.

14. On 28 April 1999 the Hagen Regional Court decided that the niece was to pay the applicant and her husband the amount of DEM 81,479.34. It dismissed the remainder of the claim.

C. Proceedings before the Hamm Court of Appeal

15. On 4 June 1999 the niece appealed. In September 1999, following an extension of the time-limit, she filed her pleadings.

16. On 24 September 1999 the Hamm Court of Appeal – with the help of a special body at the Court of Appeal entrusted with the organisation of the hearings – scheduled a hearing for 18 February 2000. This was the first date at which both parties' representatives had been able to attend. It also set the applicant and her husband a deadline for their observations.

17. In January 2000 the applicant and her husband lodged a cross-appeal (*Anschlußberufung*).

18. At the hearing of 18 February 2000 the parties concluded a friendly settlement.

19. On 5 April 2000 the niece revoked the friendly settlement.

20. On 26 April 2000 the Hamm Court of Appeal therefore scheduled a new hearing for 25 August 2000. Again, no previous hearing date at which both parties' representatives could attend had been found. Due to the absence of a witness summoned at the request of the applicant and her husband, it had to be postponed to 21 November 2000.

21. At the hearing the court proposed a settlement to the parties. On 28 December 2000 the applicant and her husband refused to give their consent.

22. On 19 January 2001 the court therefore scheduled another hearing for 17 August 2001. Again, this had been the first date at which the parties' representatives were able to attend. In April 2001, on account of the absence of a witness named by the applicant and her husband, the hearing had to be rescheduled for 20 November 2001. Further submissions by both parties, partly requested by the court, followed.

23. At the hearing the court decided to obtain an expert opinion on the value of the life annuity. In January 2002, after the applicant had paid the requisite advance, the court commissioned the expert.

24. On 31 May 2002 the expert submitted his report.

25. On 28 June 2002 the court scheduled a hearing for 5 November 2002. Again, an earlier date had been impossible to arrange. Further submissions by the parties and a supplementary statement by the expert followed.

26. On 5 November 2002 the Hamm Court of Appeal dismissed the niece's appeal.

D. Proceedings before the Federal Court of Justice

27. On 8 January 2003 the niece lodged an appeal against the refusal for leave to appeal. On 19 May 2003, following an extension of the time-limit, she reasoned her appeal.

28. On 3 December 2003 the applicant and her husband submitted observations they had undertaken to make in June.

29. On 17 February 2004 the Federal Court of Justice granted leave to appeal.

30. In June 2004 a conciliation hearing (*Güteverhandlung*) took place.

31. On 14 December 2004 the Federal Court of Justice quashed the judgment of 5 November 2002 and referred the matter back to the Hamm Court of Appeal. It held that while the transfer had rightly been considered a partial gift, the Hamm Court of Appeal had failed to establish that the niece was guilty of gross ingratitude.

E. Proceedings before the Hamm Court of Appeal following the remittal

32. On 25 February 2005 the Hamm Court of Appeal requested the parties to file their submissions on the question of gross ingratitude, which they did in April 2005.

33. On 3 May 2005 it scheduled a hearing for 31 May 2005. On that day the parties reached a friendly settlement.

34. On 2 June 2005 the applicant and her husband revoked the friendly settlement.

35. On 30 August 2005 the Hamm Court of Appeal partly quashed the judgment of the Hagen Regional Court of 28 April 1999 and dismissed the applicant and her husband's claim. It held that the applicant's niece had not acted in gross ingratitude when selling the flat. It also refused leave to appeal on points of law.

F. Proceedings before the Federal Court of Justice

36. In October 2005 and January 2006 the applicant and her husband reasoned their request for leave to appeal.

37. In February and March 2006 the niece replied.

38. On 13 June 2006 the Federal Court of Justice refused leave to appeal on points of law.

II. RELEVANT DOMESTIC LAW

39. Section 78 of the German Code of Civil Procedure – as applicable by 1 January 2000 – prescribed that, before regional courts and courts of appeal, only lawyers admitted to the bar of a certain court could plead before that court. As of 1 August 2002 there are no such restrictions any more and lawyers may now plead before any German court of appeal, regardless of which bar they are admitted to.

THE LAW

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

40. 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...”

41. The Government contested that argument.

42. The period to be taken into consideration began on 9 January 1997, when the applicant introduced her claim with the Dortmund Regional Court, and ended on 13 June 2006 when the Federal Court of Justice refused leave to appeal on points of law. The proceedings thus lasted for about nine years and five months for three levels of jurisdiction including one remittal.

A. Admissibility

43. 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

44. 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. She did not file any further submissions on the Government's observations.

45. The Government argued that the case was of some difficulty and that a certain part of the delay was clearly attributable to the applicant. They thereby relied in particular on the fact that she had lodged her claim with a court which was not competent to examine it, that her lawyer had only addressed the court almost 11 months after the introduction of the claim and that hearings had had to be postponed on account of the absence of witnesses named by the applicant and her husband.

46. The Government moreover submitted that delays caused by the authorities had contributed only to a minor extent to the overall length of the proceedings. They pointed out that the courts had primarily encouraged the

parties to reach a friendly settlement. Finally, they submitted that the body at the Court of Appeal entrusted with the organisation of the hearings had minimised any delays in connection with the scheduling of the hearings which were caused by the fact that at the relevant time only a few lawyers had been admitted to plead before the Court of Appeal.

2. The Court's assessment

47. 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).

48. The Court observes that the proceedings concerned the question whether the transfer of ownership of the flat had been a partial gift which the applicant had effectively revoked on account of gross ingratitude on the part of her niece. The Court finds that, although two expert opinions were obtained, the present case was not of an exceptional factual or legal complexity.

49. The Court moreover observes that, even though the applicant caused some delays – in particular in the first year after the introduction of the claim (see paragraphs 8 – 10 above) and also due to the fact that, on two occasions, hearings scheduled had to be postponed because witnesses named by the applicant could not attend – the applicant's conduct cannot explain the overall length of the proceedings.

50. It finds, however, that – also irrespective of attempts to reach a friendly settlement – rather substantial delays are attributable to the national courts. In this respect it notes in particular that the two expert opinions commissioned by the courts turned out to be unnecessary on legal grounds and that, moreover, the Hamm Court of Appeal regularly failed to schedule hearings promptly (see paragraphs 16, 20, 22 and 25 above). In this latter regard the Court would like to point out, that delays in connection with the scheduling of the hearings, caused by the former requirement to be represented by a lawyer admitted to plead before the Court of Appeal, as part of the organisation statute are clearly attributable to the State – irrespective of the court's attempts to minimise them.

51. Assessing the circumstances of the case as a whole and especially in view of the delays caused by the Hamm Court of Appeal, the Court therefore finds 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. OTHER ALLEGED VIOLATION

52. The applicant also complained under Article 6 § 1 of the Convention that the proceedings had been unfair.

53. The Court, having regard to all the material in its possession, finds that it does 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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.”

55. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

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 a 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