



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

FIFTH SECTION

CASE OF KURT MÜLLER v. GERMANY

(Application no. 36395/07)

JUDGMENT

STRASBOURG

25 February 2010

FINAL

25/05/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kurt Müller 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 2 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 36395/07) 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 Kurt Müller (“the applicant”), on 17 August 2007.

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

3. On 11 March 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**THE CIRCUMSTANCES OF THE CASE***1. Background to the case*

4. The applicant was born in 1956 and lives in Binsfeld.

5. The applicant's aunt (V.) inherited a plot of land with a barn in 1964. In 1967 the barn was converted for residential use by a number of families.

The building is close to the runway of the Spangdahlem military airport, built in 1952.

2. Proceedings before the Trier Regional Court

6. On 26 August 1994 V. brought an action against the Federal Republic of Germany (“the defendant”) before the Trier Regional Court. She claimed compensation for depreciation in the value of her property due to the noise generated by the Spangdahlem airport.

7. On 30 September 1994 the Regional Court granted V. a time-limit of three weeks to make further observations. On 21 December 1994 V. made her submissions.

8. On 24 January 1995 the Regional Court requested V. to make her observations on the defendant's submissions within four weeks. On 18 April 1995 she submitted her observations and on 24 April 1995 the defendant replied to them.

9. On 17 January 1996 the Regional Court ordered V. to comment on the question as to whether she had been entitled to bring the proceedings in question (*Aktivlegitimation*) within a time-limit of one month.

10. On 22 September 1999 the Regional Court scheduled a hearing and requested V. to comment on the defendant's further observations of 16 September 1999.

11. On 18 November 1999 V.'s representative informed the court that V. had died on 1 February 1996 and that the applicant would continue her proceedings before the Regional Court as the successor of the deceased.

12. In an oral hearing of 23 November 1999 the court adjourned the proceedings until 18 January 2000. The hearing scheduled on the latter date was cancelled because one judge's post in the chamber of the Regional Court had been abolished.

13. On 15 August 2000 the Regional Court held an oral hearing.

14. By a judgment of 5 December 2000 it ordered the defendant to grant the applicant reasonable compensation for the depreciation in the value of his property caused by the noise at the airport. The court relied on the findings of several pilot judgments rendered on 6 May 1998 in respect of other residents who owned property near the airport and who had lodged actions for compensation in 1990. It pointed out that, “in view of the long period during which the applicant and his predecessor had patiently awaited the end of the pilot proceedings (ten years), it had to be expected that the defendant would speedily take the necessary measures to compensate for the depreciation of the value of the property in question”.

3. Proceedings before the Koblenz Court of Appeal

15. On 4 January 2001 the defendant appealed to the Koblenz Court of Appeal. At the defendant's request the Court of Appeal extended the

time-limit for the submission of its statement of grounds of appeal to 8 May 2001. On 20 March 2001 the statement of grounds of appeal was submitted to the court, which forwarded it to the applicant, granting him a time-limit for submissions of 18 June 2001. On 28 May 2001 the applicant requested the court to dismiss the appeal.

16. On 11 June 2001 the Court of Appeal made a proposal for a friendly settlement and invited the parties to comment on it by 27 July 2001. On 15 August 2001 the defendant informed the court that it preferred a clarification of the legal issues at stake to a resolution by way of a friendly settlement. On 15 October 2001 the defendant made further submissions. On 30 January 2002 it declared that in principle it would be willing to reach a friendly settlement on the basis of the court's proposal of 11 June 2001 provided that all plaintiffs (including those in the parallel proceedings) gave their full consent to the proposal.

17. On 23 March 2002 the applicant's representative informed the court that he had not received any statement from the applicant concerning the settlement proposal. On 22 August 2002 the applicant informed the court that he would be ready to accept the proposal under certain circumstances.

18. On 21 January 2003 the court informed the parties that it would commission an expert report on the noise levels generated by the airport and thereafter undertake a site inspection.

19. On 24 February 2003 the court stayed the proceedings until regular military aviation noise from the airport resumed, which was expected in August 2003.

20. On 16 December 2003 the Court of Appeal requested the defendant to inform the court by 15 January 2004 as to whether normal military flight activity had been resumed in the meantime. On 2 February 2004 the information was given.

21. On 5 February 2004 the Court of Appeal scheduled a date for an oral hearing and a site inspection of 30 June 2004.

22. On 11 August 2004 the Court of Appeal ordered the commissioning of an expert report. Following a court inquiry, the expert informed it on 23 November 2004 that he was still waiting for important technical information from the American armed forces. On 4 April 2005 the expert submitted his report and the parties were invited to make their comments by 24 May 2005.

23. On 14 June 2005 the Court of Appeal scheduled a hearing for 28 September 2005.

24. On 11 October 2005 the defendant submitted a proposal for a friendly settlement. Due to the subsequent friendly settlement negotiations between the parties the Court of Appeal postponed the hearing to 16 November 2005. However, on 8 November 2005 the defendant informed the court that the negotiations had been unsuccessful.

25. On 16 November 2005 the Court of Appeal declared that the defendant was required to pay damages for the loss of value of the applicant's property. However, it amended the Regional Court's judgment in that it found that the depreciation in the value of the applicant's property should be calculated not on the basis of the building's status as a residential dwelling, but on its pre-1967 status, when it was still a barn.

4. Proceedings before the Federal Court of Justice

26. On 9 December 2005 the applicant requested the Federal Court of Justice to grant him leave to appeal on points of law against the Court of Appeal's judgment and to extend the time-limit for the submission of his statement of grounds by two months.

27. On 9 March 2006 the applicant requested the court to fix the value of the amount of his request for leave to appeal on points of law (*Beschwerdewert*) at more than 20,000 euros (EUR) and to extend the time-limit for his statement of grounds until the court had decided on his request for the value of the amount on appeal to be fixed. The applicant lodged three further requests to extend the above time-limit, up to 12 July 2006.

28. On 18 July 2006 he submitted a private expert report and requested the court to fix the value of his request for leave to appeal on points of law at EUR 20,452. Between 3 August 2006 and 11 October 2006 he requested three further extensions of the time-limit.

29. In the meantime, on 21 September 2006 the Federal Court of Justice had fixed the value of the request for leave to appeal on points of law at EUR 20,452.

30. On 25 October 2006 the applicant submitted his statement of grounds and the defendant made its submissions on 9 January 2007.

31. On 15 February 2007 the Federal Court of Justice rejected the applicant's request as the matter at issue was not of fundamental importance. On 21 February 2007 that decision was served on the applicant's lawyer.

THE LAW

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

32. 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...”

33. The Court reiterates that in cases concerning the intervention of third parties in civil proceedings the applicant can complain of the entire length of the proceedings if he or she has declared an intention to continue the proceedings as heir (see, *inter alia*, *M.Ö. v. Turkey*, no. 26136/95, § 25, 19 May 2005, and *Cocchiarella v. Italy* [GC], no. 64886/01, § 113, ECHR 2006-). Accordingly, the period to be taken into consideration began on 26 August 1994, when the applicant's predecessor lodged her action with the Trier Regional Court, and ended on 21 February 2007, when the decision of the Federal Court of Justice was served on the applicant. It thus lasted twelve years and six months at three levels of jurisdiction.

A. Admissibility

34. 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

a. Submissions made before the Court

35. The applicant contested that he had been responsible for some delays to the proceedings, referring to V.'s illness, the necessity to administer her estate, the fact that the defendant had rejected the friendly settlement proposal, that it had exerted pressure on him to accept a disadvantageous settlement, and that construction works on the airport had been aimed at its expansion.

36. The Government maintained that several questions of fact and law had to be clarified which necessitated the commissioning of an expert report and a site inspection. The Government emphasised that a period of some six years and two months was attributable to the applicant's own conduct, as he had failed to inform the court of V.'s death and his intention to pursue her proceedings. Moreover the applicant had delayed in making his submissions and in submitting his comments on the Court of Appeal's friendly settlement proposal and his statement of grounds with the Federal Court of Justice.

37. As to the conduct of the courts, the Government pointed out that the Regional Court had failed to further the proceedings between 24 April 1995 and 17 January 1996 where it apparently awaited the outcome of the pilot proceedings which were pending at the same time. A further period of inactivity (between 4 January 2000 and 15 August 2000) was due to the

Regional Court being understaffed. The Court of Appeal could not be blamed for the delays caused by the parties' friendly settlement negotiations, the difficulties caused in respect of the taking of evidence which had made it necessary to wait until the regular military flight activity had been resumed and the required information had been obtained from the U.S. armed forces. Furthermore, the proceedings before the Court of Appeal were influenced by the fact that numerous similar proceedings had simultaneously been pending before the Court of Appeal.

b. The Court's assessment

38. 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).

39. The Court observes that the applicant's action claiming damages for the depreciation of his property was of a certain complexity. Thus the domestic courts had to establish whether and to what extent the Federal Republic of Germany was responsible for the noise levels generated by the military airport, which involved the commissioning of an expert report and a site inspection. The Court also notes that the taking of evidence was complicated by the construction works carried out on the airport and the fact that information had to be obtained from the U.S. military authorities.

40. As regards the conduct of the applicant and his predecessor, the Court observes that V. delayed the proceedings in that she twice exceeded the time-limits to submit her observations by two months. Moreover, the proceedings came to a standstill when V. died. In this connection it took the applicant three years and eight months to inform the Regional Court about her death and his intention to pursue the proceedings. The Court also notes that the applicant submitted his comments on the Court of Appeal's friendly settlement proposal more than one year and one month after the court had requested him to do so. Finally, on eight occasions during the proceedings before the Federal Court of Justice he requested extensions of the time-limits to submit his statement of grounds, which contributed to delays of ten months.

41. Turning to the conduct of the domestic courts, the Court notes that while the Federal Court of Justice conducted the proceedings before it speedily, they were pending for six years and three months before the Regional Court and four years and ten months before the Court of Appeal.

42. The Court observes that the length of the proceedings before the Regional Court was mainly due to the fact that pilot proceedings in similar cases were pending before the Court of Appeal. Thus, it observes that the Regional Court remained inactive between 24 April 1995 and

17 January 1996. The Court reiterates that it might be reasonable for national courts to await under certain circumstances the outcome of parallel proceedings as a measure of procedural efficiency. However, this decision must be proportionate to the particular circumstances of the case (see *Klasen v. Germany*, no. 75204/01, § 35, 5 October 2006, and *Stork v. Germany*, no. 38033/02, § 44, 13 July 2006). In this connection the Court notes that numerous similar proceedings of other neighbours had been pending before the domestic courts. These precedents had been pending for nine years before the Court of Appeal rendered its decisions. This duration of the proceedings casts doubts as to whether the domestic courts had dealt with the precedents expeditiously (see, by contrast, *Klasen*, cited above, § 35). However, given that the applicant and his predecessor equally failed to further the proceedings during that period (see paragraph 40 above), the Court considers that the domestic courts cannot alone be held responsible for the delays occurred. Finally, the Court notes that the Regional Court had to cancel a hearing due to organisational problems, which resulted in a delay of seven months (see paragraph 12 above).

43. Concerning the conduct of the Court of Appeal, the Court agrees with the Government that the Court of Appeal did make efforts between 11 June 2001 and 22 August 2002, albeit fruitlessly, to reconcile the parties at their own request and to help them to settle their dispute amicably. The Court further notes that the Court of Appeal cannot be blamed for the delays caused by the reconstruction of the airport and the difficulties in obtaining the necessary information from the U.S. authorities. However, it also notes that the Government did not provide any information about the court's inactivity between 22 August 2002 and 21 January 2003 and about why it took the court five months to schedule the site inspection.

44. Given the considerable time that had already elapsed before the domestic courts, the Court considers that the latter had a particular duty to speed up the proceedings by adhering to a tight time schedule or by setting (final) time-limits for the parties to ensure their swift compliance with the court orders. As there is no indication that the domestic courts made such additional efforts, the Court considers that the domestic courts failed to conduct the applicant's proceedings with the required diligence.

45. Therefore, the Court concludes that despite the delays caused by the applicant's own conduct, the overall length of the proceedings of twelve years and six months 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

46. 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

47. The applicant claimed EUR 241,168.20 in respect of pecuniary damage (EUR 154,595 as compensation for the depreciation of the value of his property plus 7% interest (EUR 86,573.20) on that amount for the Government's refusal since 1 December 1998 to pay the requested compensation. The applicant did not submit a claim for just satisfaction in respect of non-pecuniary damage.

48. The Government contested the applicant's claims for pecuniary damages, arguing that they were not causally connected to the delay in the proceedings.

49. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Costs and expenses

50. The applicant also claimed EUR 15,422.76 for court costs and lawyers' fees incurred before the domestic courts.

51. The Government contested the claim. They maintained that these costs would have also been incurred if there had been no violation of Article 6 § 1 of the Convention.

52. 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 500.

C. Default interest

53. 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 application 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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 25 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President