

APPLICATION/REQUÊTE N° 12686/87

D. v/BELGIUM

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DECISION of 3 October 1990 on the admissibility of the application

DÉCISION du 3 octobre 1990 sur la recevabilité de la requête

Article 26 of the Convention .

a) In respect of the length of civil proceedings, the question of the methods by which the applicant could have accelerated the proceedings is not one which concerns the problem of exhaustion of domestic remedies.

b) The burden of proving the existence of effective and sufficient remedies lies upon the State invoking the rule

Absence of an effective remedy for a complaint about the length of civil proceedings before the Belgian courts.

Article 26 de la Convention .

a) S'agissant de la durée d'une procédure civile, la question des moyens que le requérant aurait pu utiliser pour accélérer la procédure ne relève pas du problème de l'épuisement des voies de recours internes

b) C'est à l'Etat qui excipe du non-épuisement des voies de recours internes qu'il appartient d'établir l'existence de recours efficaces et suffisants.

Absence de recours efficace pour se plaindre de la durée d'une procédure civile pendante devant les juridictions belges

Summary of the relevant facts

The applicant, the victim of a road accident, spent the period from 5 May to 22 June 1977 in a Brussels clinic, where he underwent five operations. He spent the period from 18 August to 10 December 1977 in a different Belgian clinic, where he underwent a further operation

By writs of summons dated 23 and 25 July 1980, the applicant brought an action for damages against two doctors. On 25 June 1981 the Brussels Court of First Instance appointed the three experts proposed by the applicant. Between November 1981 and November 1983 the experts held four meetings with the parties. In a letter to the court dated 29 August 1983 the applicant complained of the length of the proceedings. He allegedly received no answer. In November 1985 it was decided not to take any further action on a complaint by the applicant against one of the experts.

Before the Commission the applicant complains of the length of the proceedings in his action for damages, which is still pending, and relies on Article 6 para. 1 of the Convention

(TRANSLATION)

THE LAW (Extract)

1. The applicant complains of the length of the investigation proceedings in the action for damages he brought against two Brussels doctors, and in particular of the length of time taken for the expert opinion ordered in connection with these proceedings. He relies on Article 6 para. 1 of the Convention.

Article 6 para. 1 of the Convention provides: "In the determination of his civil rights and obligations... , everyone is entitled to a ... hearing within a reasonable time by (a) ... tribunal ..."

The Commission notes that the proceedings instituted by the applicant on 23 and 25 July 1980 are still pending. To date, therefore, they have lasted more than ten years and two months

The respondent Government raise an objection relating to the failure to exhaust domestic remedies in respect of this complaint.

The Government claim that the applicant had the opportunity, even during the course of the proceedings, to complain to the Belgian courts of the time being taken to produce the expert report and to request adequate compensation. Observing that the complaint is directed essentially against the length of the expert assessment, the Government explain that under the Code of Judicial Procedure it is possible for the court to impose a penalty on an expert who is slow to produce an expert opinion. Article 875 of this code enables a party to bring a case back before the court if an investigative measure has not been completed within the prescribed time-limit, in order to obtain an appropriate decision in that connection, while Article 977 makes it possible to have an expert replaced. However, the applicant did not avail himself of these remedies and never took any initiative to speed up the expert assessment. Although the Code of Judicial Procedure gives the judge the power to supervise the preparation of expert reports, he still needs to be informed by one of the parties of any difficulties encountered. The Government also assert that the letter allegedly sent by the applicant on 29 August 1983 has never been found. Moreover, even if it was really sent, it would not have constituted an application for the resumption of the proceedings or for the replacement of the experts, as provided for in the Code of Judicial Procedure. Lastly, the Government observe that the applicant has remained inactive since the filing of the expert report. He has still not submitted his final pleadings, whereas it is for him to do so first, since he is the plaintiff in the action for damages and since it was at his request that experts were appointed.

The applicant asserts that he wrote to complain of the attitude of the experts, inter alia, and of one of them in particular, to the press, the president of the Brussels Bar Association, the president of the Brabant Medical Association and the judge who had acted as president at the hearing of 25 June 1981. Lastly, he had complained to the police about the lack of integrity of one of the experts. He asserts that no action was taken in response to any of these initiatives.

The Commission first reiterates that, according to its constant case-law, it is for the State which pleads non-exhaustion of domestic remedies to prove the existence of an available, effective and sufficient remedy capable of affording redress for the violation complained of by the applicant. It notes that the Government have not established the existence in Belgian law of a remedy whereby a litigant can raise a general complaint relating to the length of civil proceedings pending before the Belgian courts.

Secondly, the Commission recalls that it has already held that the question of the methods by which an applicant, if necessary, can speed up proceedings

does not relate to the problem of the exhaustion of domestic remedies but to that of the substance of the application, in other words whether the length of the proceedings exceeded a reasonable time (No. 8961/80, Dec. 8.12.81, D.R. 26 p.200).

It follows that the objection relating to the failure to exhaust domestic remedies cannot be upheld.

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