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

FIFTH SECTION

DECISION

Application no. 58410/17
Horst GLANZER
against Germany

The European Court of Human Rights (Fifth Section), sitting on 31 october 2017 as a Committee composed of:

Erik Møse, *President,*
Yonko Grozev,
Gabriele Kucsko-Stadlmayer, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 7 August 2017,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Horst Glanzer, is a German national who was born in 1965 and lives in Künzing.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. In August/September 2003 the applicant suffered from purulent sinusitis. He asked his health insurers to cover in-patient treatment in a specialised Swiss hospital. On 5 December 2003, after an exchange of letters and supplementary information, his health insurers agreed on the stationary treatment.

4. In 2006 the applicant sued his health insurers for damages, arguing that they had not given their agreement in due time and that, as a consequence, his disease had worsened, his life had been put in danger and he was suffering from long-term effects including permanent invalidity.

5. On 24 August 2007, after an oral hearing, the Regensburg Regional Court dismissed the claims. The applicant appealed. On 20 December 2007, the Nuremberg Court of Appeal informed the applicant of its intention to reject the appeal without holding a hearing, pursuant to section 522 § 2 of the Civil Code of Procedure (see paragraph 8) and granted the applicant two weeks to submit further submissions. On 26 February 2008 the Court of Appeal rejected the applicant's appeal without holding a hearing. On 26 May 2008 it dismissed the applicant's request to be heard (*Anhörunsgrüge*).

6. On 8 June 2010 the Federal Constitutional Court declined to consider the applicant's constitutional complaint (no. 1 BvR 1633/08), providing short reasoning.

B. Subsequent proceedings before the Court

7. On 28 November 2010 the applicant lodged an application with the Court which was registered under no. 70432/10. On 8 January 2013 the Court, sitting as a Committee of three judges, declared the application inadmissible in application of Article 28 § 1 (a) of the Convention and Rule 53 § 1 of the Rules of Court. The applicant was informed of the decision by letter dated 15 January 2013, pursuant to Rule 53 § 5. On 4 March 2014 the Committee refused to reconsider the application and informed the applicant accordingly by letter of 11 March 2014.

C. Relevant domestic law and practice

8. Section 522 of the Civil Code of Procedure, as in force at the relevant time, is set out in the Court's decision *Rippe v. Germany* (no. 5398/03, 2 February 2006, see also *Jung v. Germany* (dec.), no. 5643/07, 29 September 2009).

COMPLAINTS

9. The applicant complained about the outcome of the proceedings before the German courts. He further complained about the Court's decision to declare his previous application inadmissible, to abstain from providing reasons for its decision and of the Court's refusal to reconsider its decision. He moreover complained of the unfairness of the proceedings concerning his previous application before the Court. In this respect he submitted in particular that the Court had not taken into account the new version of section 522 of the Civil Code of Procedure as modified on 27 October 2011.

THE LAW

10. The applicant complained about the proceedings before the domestic civil courts and about the proceedings before the Court. He relied on Articles 6 and 45 § 1 of the Convention which read, as far as relevant for the present case, as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 45

"1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible (...)

11. As regards the alleged unfairness of the proceedings before the German civil courts, the Court notes that these proceedings were the subject matter of application no. 70432/10 which was declared inadmissible by the Court, sitting in a Committee of three judges, on 8 January 2013. The Court considers that this complaint is substantially the same as the matter already examined by the Court (compare *Harkins v. the United Kingdom* (dec.) [GC], no. 71537/14, §§ 41-42, 15 June 2017) and must be declared inadmissible under Article 35 §§ 2 (b) and 4 of the Convention.

12. As regards the alleged violations by the Court in the proceedings concerning application no. 70432/10, even assuming compatibility *ratione personae* with the provisions of the Convention (see, *mutatis mutandis*, *Beygo v. 46 Member States of the Council of Europe* (dec.), no. 36099/06, 16 June 2009), the Court reiterates that inadmissibility decisions of a Committee are final (Article 28 § 2 of the Convention) and can therefore not be subject to a new application.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 November 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Erik Møse
President