

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

FIFTH SECTION

DECISION

Application no. 6099/15
Jörn-Sebastian KALWAT
against Germany

The European Court of Human Rights (Fifth Section), sitting on 19 April 2016 as a Committee composed of:

Erik Møse, *President,*
Yonko Grozev,
Mārtiņš Mits, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 29 January 2015,

Having regard to the declaration submitted by the respondent Government on 18 January 2016 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jörn-Sebastian Kalwat, is a German national, who was born in 1968 and lives in Timmendorfer Strand. He was represented before the Court by Mr R. Giebenrath, a lawyer practising in Strasbourg.

The German Government ("the Government") were represented by one of their Agents, Mrs K. Behr, of the Federal Ministry of Justice.

The application was communicated to the Government.

A. The circumstances of the case

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

On 21 August 2005 the applicant was hit by a car while cycling and was severely injured. On 15 December 2005 the applicant took action before the Lübeck Regional Court with the aim of establishing the liability of the vehicle's driver and his insurance company. On 24 April 2013 the Regional Court delivered a partial judgment establishing full liability of the driver's heirs and his insurance company and furthermore that part of the claims had to be paid for, including 40,000 euros (EUR) for non-pecuniary damage.

The applicant made use of the remedy under Section 198 of the Courts' Act (see domestic law below) and claimed EUR 9,600 in compensation before the Schleswig Court of Appeal, claiming an unjustified delay of four years.

On 8 April 2013 the Court of Appeal established that the length of proceedings had been unreasonable, referring to the period from 16 November 2010 to 21 August 2012 but dismissed the applicant's claim for compensation as unfounded.

On 11 July 2014 the Federal Constitutional Court declined to consider the applicant's complaint concerning the Court of Appeal's judgment and the length of proceedings at the Regional Court without providing reasons (1 BvR 1346/13).

B. Relevant domestic law

The relevant domestic law is summarised in the judgment of *Kuppinger v. Germany* (no. 62198/11, § 86, 15 January 2015), and the decision of *Garcia Cancio v. Germany* (no. 19488/09, §§ 26-35, 29 May 2012).

COMPLAINT

The applicant complained under Article 6 of the Convention that the length of proceedings before the Regional Court, prior to the partial judgment of 24 April 2013, was unreasonably long.

THE LAW

The applicant complained about the length of the civil proceedings at issue. He relied on Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

> "In the determination of his civil rights and obligations ...., everyone is entitled to a hearing ... within a reasonable time by (a) tribunal..."

After the failure of attempts to reach a friendly settlement, the Government informed the Court by a letter of 18 January 2016 that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "1. The Federal Government hereby informs the Court that it was unable to reach a settlement with the Applicant.
>
> 2. In light of this, the Federal Government now acknowledges - by way of unilateral declaration – that the Applicant's right to a decision within a reasonable time as guaranteed by Article 6 (1) of the Convention was violated by the length of the civil proceedings before Lübeck Regional Court for the period until the issuance of the partial judgment on 24 April 2013.
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> 3. If the Court were to strike this Application from its list of cases, the Federal Government would be willing to accept a claim for compensation in the amount of € 6,500 and would furthermore be prepared to waive the demand for € 881.79 stemming from the cost assessment order issued by Schleswig-Holstein Higher Regional Court [Court of Appeal] on 25 May 2013 (18 SchH 3/13).
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> 4. This assurance worth € 7,381.79 would be deemed to settle all the Applicant's claims in connection with the above-mentioned Application against the Federal Republic of Germany and the Land of Schleswig-Holstein, specifically including compensation for the Applicant's damage as well as costs and expenses."

By letter of 17 February 2016, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the Government did not propose adequate compensation.

The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also points out that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine the declaration carefully in the light of the principles emerging from its case-law (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

The Court notes that the present case raises the issue of undue length of proceedings before the Lübeck Regional Court within the meaning of Article 6 of the Convention.

It points out that it has already specified in various judgments and decisions the nature and extent of the obligations which arise for the respondent State as regards the determination of "civil rights and obligations" within a "reasonable time", also in respect of the Federal Republic of Germany (see, among many others, *Sürmeli v. Germany* [GC], no. 75529/01, ECHR 2006-VI; *Nold v. Germany*, no. 27250/02, 29 June 2006). The Court has also dealt with applications concerning the new remedy act (see *Kuppinger v. Germany*, cited above, §§ 139 et seq., 15 January 2015; *Peter v. Germany* (dec.), no. 68919/10, §§ 54 et seq., 4 September 2014).

Having regard to the nature of the admissions contained in the Government's declaration, the Court notes that the Government recognised that the applicant's right under Article 6 of the Convention had been violated because the length of the proceedings in the instant case was not in accordance with the "reasonable time" requirement. Moreover, the Government proposed to provide redress to the applicant by paying him compensation for non-pecuniary damage as well as costs and expenses. The amount of compensation is consistent with the amounts awarded in similar cases and thus adequate.

The Court therefore considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 12 May 2016.

Milan Blaško
Deputy Registrar

Erik Møse
President