CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 27156/05
by Ingeborg ZINGRAF
against Germany

The European Court of Human Rights (Fifth Section), sitting on 12 February 2008 as a Chamber composed of:

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 21 July 2005,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the partial decision of 28 August 2007,

Having regard to the unsuccessful friendly-settlement negotiations conducted pursuant to Article 38 § 1 (b) of the Convention,

Having regard to the Government's request to strike the case partly out of its list of cases and the text of a unilateral declaration made with a view to resolving the complaint about the length of the proceedings,

Having regard to the applicant's comments on the Government's proposal for a unilateral declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Ingeborg Zingraf, is a German national who was born in 1945 and lives in Baden-Baden. She was represented before the Court by Mr A. Fischer, a lawyer practising in Baden-Baden. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

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

In 1985 the applicant requested the Cologne Health Insurance Association to establish that she was suffering from a respiratory disease which had been caused by the exposure to formaldehyde during her work as a medical-technical assistant from 1972 to 1974.

On 21 September 1988 the Health Insurance dismissed the applicant's request. On 24 April 1990 the insurance rejected the applicant's administrative appeal lodged in October 1988.

On 11 May 1990 the applicant appealed to the Düsseldorf Social Court.

Meanwhile, in 1989 the applicant alleged that a number of other diseases had been caused by her having been exposed to formaldehyde. On 3 September 1990 the Health Insurance rejected the applicant's request. On 18 December 1990 the Health Insurance rejected the applicant's administrative appeal.

On 14 January 1991 the applicant appealed to the Düsseldorf Social Court.

On 24 April 1992 the Social Court decided to join the applicant's two motions and to summon two further health insurance associations to the proceedings.

On 10 May 1994 the Northrhine-Westphalia Health Insurance refused to accept that the applicant's alleged disease had been caused by her laboratory work. The applicant's administrative appeal was dismissed on 13 April 1995.

The Düsseldorf Social Court joined these decisions to the pending proceedings.

During the court proceedings, the applicant submitted a considerable number of medical expert opinions and further documents.

On 30 April 1997 the Social Court heard three witnesses.

On 23 July 1998 the Düsseldorf Social Court dismissed the applicant's motion. This judgment was served on the applicant on 10 December 1998.

On 30 December 1998 the applicant lodged an appeal with the Northrhine-Westphalia Social Court of Appeal.

On 22 November 2004 the Social Court of Appeal, having heard two expert opinions, dismissed the applicant's appeal and refused to grant the applicant leave to appeal to the Federal Social Court.

On 10 February 2005 the applicant lodged a complaint against the refusal to be granted leave to appeal, which was rejected by the Federal Social Court on 11 March 2005.

On 15 April 2005 the applicant lodged a constitutional complaint. On 23 June 2005 the Federal Constitutional Court, sitting as a panel of three judges, refused to admit the applicant's constitutional complaint. This decision was served on the applicant on 2 July 2005.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of the proceedings.

THE LAW

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

Article 6 §1

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

On 5 November 2007 the Court received the following declaration from the Government signed on 29 October 2007:

> "In this case the court proposed a friendly settlement which was rejected by the applicant by letter dated 1 October 2007. The Federal Government would have been prepared to accept the proposal.
>
> The Federal Government would therefore like to acknowledge – by way of a unilateral declaration – that the length of the proceedings at issue was incompatible with the "reasonable time" requirement within the meaning of Article 6 para. 1 of the Convention.
>
> If the Court strikes this case from its list, the Federal Government is willing to accept the Applicant's claim for compensation in the amount of EUR 7,200.00. This sum of EUR 7,200.00, which would be paid within three months after the Court has decided to strike the case from its list, would be deemed to settle all claims of the Applicant in connection with the above-mentioned Application against the Federal Republic of Germany or the Land of Nordrhein-Westfalen, including, in particular, compensation for the Applicant's damage (including non-pecuniary damage) as well as costs and expenses. In light of the Court's rulings in similar cases, the Federal Government considers the amount of EUR 7,200.00 to be reasonable.

> The Federal Government therefore requests that this Application be struck out of the Court's list of cases pursuant to Article 37 para. 1 (c) of the Convention. The Federal Government's acknowledgment of a violation of Article 6 para. 1 of the Convention as regards the length of the proceedings and its acceptance of the claim for compensation in the amount of EUR 7,200.00 constitutes "[an]other reason" within the meaning of this provision."

In a letter of 18 December 2007 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low**.**

The Court recalls 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 recalls 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.

In deciding whether or not it should strike the present case out its list of cases, the Court will have regard to the criteria emerging from its case-law (see, among other authorities, *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *Oleksiw v. Germany* (dec.), no. 31384/02, 11 September 2007 and *Hassdenteufel v. Germany* (dec.), no. 21214/03, 6 November 2007).

The Court notes that the present case raises as issue the length of the proceedings within the meaning of Article 6 of the Convention.

It recalls 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-...; *Nold v. Germany*, no. 27250/02, 29 June 2006; *Stork v. Germany*, no. 38033/02, 13 July 2006; *Klasen v. Germany*, no. 75204/01, 5 October 2006; *Grässer v. Germany*, no. 66491/01, 5 October 2006; *Herbst v. Germany*, no. 20027/02, 1 January 2007).

The Government's declaration contains an acknowledgment that the length of the proceedings in the instant case was not in accordance with the "reasonable time" requirement. Furthermore, the Court considers the amount of compensation proposed - which is consistent with the amounts awarded in similar cases - to be acceptable.

Moreover, in 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*).

Accordingly, it should be struck out of the list.

In view of the above conclusions, it is appropriate to discontinue the application of Article 29 § 3 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration;

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

Claudia Westerdiek
Registrar

Peer Lorenzen
President