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

Communicated on 7 September 2015

FIFTH SECTION

Application no. 6099/15
Jörn-Sebastian KALWAT
against Germany
lodged on 29 January 2015

STATEMENT OF FACTS

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

A. The circumstances of the case

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

1. Background to the case

3. The applicant used to work as a self-employed insurance agent. He used this occupation, *inter alia*, to compensate for his physical disabilities which were the consequence of an accident he had had in 1977.

4. On 21 August 2005 he was hit by a car while cycling and was severely injured. He underwent medical treatment for the next four months. As a result he was not able to tend to his business and encountered constant financial difficulties. In 2007, the consequences of his accident and the subsequent resurgence of the trauma of his childhood accident caused severe depression, which led to his permanent inability to work and left him dependent on public welfare. In 2012 the applicant filed for bankruptcy.

2. The proceedings before the Regional Court

5. 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. In May 2006 he specified his compensation claim before the court. In the following years he increased the desired compensation sum several times, *inter alia,* asking for compensation

for his loss of income for subsequent years until 2008. The parties attempted, but failed, to conclude out-of-court settlements.

6. The Regional Court scheduled a first hearing for 4 May 2006. The hearing was postponed five times and finally took place on 30 November 2006 when the court heard witnesses of the accident and a technical expert.

7. On 12 August 2010 the Regional Court decided to take evidence regarding the applicant's medical situation and named an orthopaedist and a psychiatrist as medical experts.

8. On 16 November 2010 the orthopaedic expert gave his oral report. Thereafter, until August 2012 nothing was done to advance the proceedings. The applicant complained about this inactivity to the Regional Court by submissions of 22 August 2011, 6 December 2011, 13 January 2012, 7 March 2012 and 31 July 2012.

9. In August 2012, after the applicant had filed a compensation claim with the Schleswig Court of Appeal (see below), his case was transferred to another chamber of the Regional Court. On 18 September 2012 the chamber named a new psychiatric expert who produced his written report on 16 November 2012.

10. On 15 March 2013 the last hearing was closed. 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. However, no decision was reached on how much loss of income had been caused by the accident. On the same day the Regional Court named an expert to calculate the loss of income in the years 2005 to 2008.

11. On 4 August 2014 the expert handed in his report. The outcome of the proceedings is unknown. They had not been concluded when the applicant lodged the application.

3. The proceedings under the Courts' Act

12. While the initial proceedings were still pending, the applicant made use of the remedy introduced in December 2011 under Section 198 of the Courts' Act (see domestic law below) and claimed EUR 9,600 in compensation before the Schleswig Court of Appeal. In his view there was an unjustified delay of four years.

13. On 8 April 2013 the Court of Appeal established that the length of proceedings was unreasonable, referring to the period from 16 November 2010 to 21 August 2012. As far as other delays were concerned, the Court of Appeal attributed those to actions of the parties or considered them insignificant in the light of the length of the proceedings as a whole. Moreover, the Court of Appeal dismissed the applicant's claim for compensation as unfounded. It held that, even if there was a delay attributable to the Regional Court, it had to be taken into account that the matter had been complicated, that the applicant himself had contributed to the considerable length of the proceedings and that the proceedings would not have been concluded much earlier anyway. Finally, the applicant was ordered to pay 80% of the costs.

14. 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

(1 BvR 1346/13), without providing reasons. This was served on the applicant's lawyer on 29 July 2014.

B. Relevant domestic law

15. Section 198 of the Court's Act, as far as relevant, reads as follows:

"(1) Whoever as the result of the unreasonable length of a set of court proceedings experiences a disadvantage as a participant in those proceedings shall be given reasonable compensation. The reasonableness of the length of proceedings shall be assessed in the light of the circumstances of the particular case concerned, in particular the complexity thereof, the importance of what was at stake in the case, and the conduct of the participants and of third persons therein.

(2) A disadvantage not constituting a pecuniary disadvantage shall be presumed to have occurred in a case where a set of court proceedings has been of unreasonably long duration. Compensation can be claimed therefor only insofar as reparation by other means, having regard to the circumstances of the particular case, is not sufficient in accordance with subsection (4). Compensation pursuant to the second sentence shall amount to EUR 1,200 for every year of the delay. Where having regard to the circumstances of the particular case the sum pursuant to the third sentence is inequitable, the court can assess a higher or lower sum.

(3) A participant in proceedings shall obtain compensation only if he has complained about the length of the proceedings to the court seized of the case (censure of delay). A censure of delay can be filed only if there is cause to fear that the case will not be concluded within a reasonable time; a censure of delay can be reiterated at the earliest after six months, but not in a case where a shorter duration is necessary by way of exception. Where expedition of the proceedings depends on factors that have not yet been introduced into the proceedings, reference shall be made thereto in the complaint. Otherwise, in the assessment of the reasonable length of proceedings, account shall not be taken of these factors by the court required to give the decision on compensation (court of compensation). Where the proceedings are further delayed before another court, it shall be necessary to file a new censure of delay.

(4) Reparation by other means shall be possible in particular where the court of compensation makes a finding that the length of the proceedings was unreasonable. Such finding shall not require the making of a prior application. In serious cases the finding can be made in addition to compensation; it can also be made where one, or more than one, precondition under subsection (3) has not been fulfilled."

...

COMPLAINT

The applicant complains 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. According to him the fact that he amended his claim several times did not delay the proceedings. The Regional Court could have established the liability of the defendant much earlier. In his opinion there had been a delay of six years which was not justifiable.

QUESTION TO THE PARTIES

Was the length of the civil proceedings before the Regional Court, prior to the partial judgment of 24 April 2013, in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?