



Janssen v. Germany

App. No. 23959/94, 2001 Eur. Ct. H.R. 879 (2001).

Country: Germany

Region: Europe

Year: 1999

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Chronic and noncommunicable diseases, Health care and health services, Health systems and financing, Occupational health

Human Rights: Right to due process/fair trial

Facts

German applicants filed a claim alleging violation of Article 6 Â§ 1 (right to fair trial) of the Convention by the German courts when the case their mother commenced regarding her asbestos dust-related lung disease was not heard within a reasonable amount of time.

The husband of the original plaintiff, Mrs. Gretel Janssen, worked as an asbestos fabric cutter and as a result contracted an asbestos dust-related lung disease subsequently recognized and compensated for as an occupational disease by the Düsseldorf Health Insurance Association (DHIA). The plaintiff's application to be compensated for contracting an asbestos related disease herself from cleaning her husband's work clothes daily, however, was rejected by the DHIA, which claimed her activity was not covered as she acted on a private basis and was not an employee. Mrs Gretel Janssen filed an objection, which was rejected by the DHIA Appeals Board whereupon she commenced proceedings before the Duisburg Social Court but died before the hearings. Her son and daughter took over the proceedings and after several cancellations, the Social Court dismissed the action finding Mrs Gretel did not qualify as an employee and finding that, pursuant to Section 539 Â§ 1 and 2 of the Social Security Act, she was not insured against accidents at work. The applicants successfully appealed to the Social Court of Appeal, which found Mrs Gretel Janssen's death was the consequence of an occupational disease. At this stage, Mrs Janssen's son died and proceedings were taken up by his widow and daughter. The DHIA successfully appealed to the Federal Social Court, which found that Mrs Gretel Janssen's death was not the consequence of an occupational disease as the cleaning of her husband's work clothes mainly served the interests of the couple's household and not the employer's interests. The applicants then lodged a constitutional complaint alleging that the interpretation of Section 539 of the Social Security Act by the Social Security Courts violated the principle of equality before the law and the right to a fair hearing. Invoking Article 6 of the Convention, the applicants further submitted that proceedings relating to professional diseases allegedly caused by asbestos lasted too long. The Federal Constitutional Court declined to adjudicate the appeal; the Court found it inadmissible for lack of substantiation, pointing out that a constitutional complaint could not be based on an alleged violation of the European Convention on Human Rights.

The applicants complained to the European Court of Human Rights that the case had not been heard within a reasonable amount of time under Article 6 Â§ 1 of the Convention by the German social courts. The applicants maintain that Mrs Gretel Janssen acted like an employee when she cleaned her husband's work clothes, that she was covered by the employer's insurance, and that there was a causal link between her exposure to asbestos and disease. As such the compensation to be awarded was determined by law and was thus not very complex and hearings should have been fixed more promptly. The government disputed the length of the case and claimed the applicants had contributed considerably to the length of the proceedings.

Decision and Reasoning

The Court agreed with the Government that the relevant period lasted just over seven years [March 1986 - January 1994] and assessed the reasonableness of the length of proceedings in light of "the particular circumstances of the case" having regard to the complexity of the case, the conduct of the parties and that of the competent authorities.

While the Court considered that the case involved points of fact and law of some complexity and that the applicants were responsible for a portion of the proceedings' delay, these facts taken together could not justify

the unreasonable the unreasonable length of the proceedings.

While the applicants contributed to the Social Court's significant delay during the proceedings, the Court considered that what was at stake in the contested proceedings was of crucial importance for Mrs Gretel Janssen in view of the incurable disease from which she was suffering and her reduced life expectancy. As the competent judicial authorities were under a positive obligation under Article 6 §1 to act with the exceptional diligence in disputes of this nature, the Duisburg Social Court exceeded the reasonable time requirement. In the Court's view, the Social Court of Appeal was primarily responsible for prolonging the procedure and caused general delays due to bureaucratic incompetence and redundancy. While Mrs Janssen's prior death reduced the importance of what was at stake in the dispute, the Court found the period of nearly and three and a half years exceeded a reasonable time.

Assessing the circumstances of the case as a whole, the Court concluded that the duration of the proceedings before the Duisburg Social Court and the Social Court of Appeal could not be regarded as reasonable and that the applicants' rights under Article 6 § 1 of the Convention had been breached.

Decision Excerpts

"47. The Court considers that what was at stake in the contested proceedings was of crucial importance for Mrs Gretel Janssen in view of the incurable disease from which she was suffering and her reduced life expectancy. Accordingly the competent judicial authorities were under a positive obligation under Article 6 § 1 to act with the exceptional diligence required by the Court's case-law in disputes of this nature (see the *A and Others v. Denmark* judgment. of 8 February 1996, Reports 1996-I, p. 107, § 78)."

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