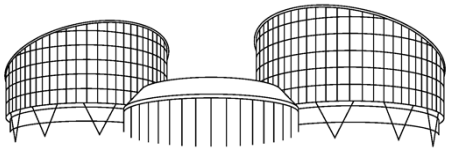

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF JOHANNA FRÖHLICH v. GERMANY

(Application no. 16741/16)

JUDGMENT

STRASBOURG

24 January 2019

FINAL

24/04/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Johanna Fröhlich v. Germany,

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

Yonko Grozev, *President,*
Angelika Nußberger,
André Potocki,
Carlo Ranzoni,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 18 December 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 16741/16) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Ms Johanna Fröhlich ("the applicant"), on 17 March 2016.

2. The applicant was represented by Mr G. Rixe, a lawyer practising in Bielefeld. The German Government ("the Government") were represented by their Agent, Mr H.-J. Behrens, of the Federal Ministry of Justice and Consumer Protection.

3. On 7 July 2016 the complaint, which concerned the length of the civil proceedings, was communicated to the Government.

4. On the same day the Vice-President of the Section, sitting in a single-judge formation, declared the remainder of the application inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Buseck.

A. Background to the case

6. In 2003, the applicant purchased one of four residential property units in a shared complex, into which she moved with her family.

7. In January 2005, the applicant and the owners of the other three properties instigated independent evidentiary proceedings before the Regional Court against the property developers on the basis of alleged defects in the residential property units, in particular the water drainage system. On 25 February 2005 the court ordered an expert report from H.K., an expert in residential buildings; H.K. wrote a report dated 16 July 2005 and presented his findings to the court, most recently in a hearing held on 30 March 2007.

B. Proceedings at issue

1. Compensation proceedings

8. On 23 June 2007 the applicant instigated proceedings against the property developer seeking compensation for alleged defects in her residential unit – namely, defects in the drainage system, together with defects in other parts of the building which had led to damp and mold on the walls. She sought compensation of roughly 17,000 Euros (EUR).

9. Over the following months, after the applicant had made an advance payment on the court fees, the Regional Court forwarded to the other parties to the proceedings the applicant's statement of claim and the defendants' statement of defence; extended the deadline for the applicant to make further submissions; forwarded the submissions of the applicant's neighbours (in which they (i) declared their wish to join the proceedings by way of intervention and (ii) sought EUR 8,000 in damages); held an oral hearing, in which it discussed the factual and legal situation and suggested a friendly settlement; waited for the applicant to propose the basis for a friendly settlement agreement; and forwarded further submissions made by the parties.

10. On 17 March 2008 after the applicant's final rejection of a friendly-settlement proposal, the Regional Court ordered an expert opinion from H.K., who had already been involved in the independent evidentiary proceedings. In the following weeks, the applicant complained about the ordering of the expert opinion and challenged H.K.'s impartiality. On 26 June 2008 after obtaining further submissions from the parties and the interveners, the Regional Court once again suggested a friendly settlement. On the following day, it sent the case file to H.K. The parties several times exchanged submissions and suggestions regarding the basis for a friendly settlement. On 14 July 2008 H.K. invited the parties to participate in an onsite visit, which took place on 28 August 2008. Subsequently, H.K.

informed the parties that another onsite visit was necessary; this finally took place on 22 October 2008.

11. On 5 January 2009 the Regional Court requested H.K. for a progress report; H.K. replied to that request by stating that he needed to undergo urgent medical surgery, which he assumed would result in a delay of at least eight weeks. On 11 February 2009 the wife of H.K. informed the Regional Court that there would be a further delay of at least six months, due to the illness of her husband. The Regional Court informed the parties of this and invited them to submit comments. The applicant requested a replacement for H.K.

12. On 23 February 2009 the Regional Court dismissed H.K. and ordered the return of the case file. On 31 March 2009, H.K. returned the file. On 12 May 2009 the Regional Court asked the Chamber of Commerce to suggest potential replacement experts. On 26 May 2009 the Chamber of Commerce suggested two experts, one of whom was G.K. On the same day, the Regional Court forwarded those suggestions to the parties. On 15 June 2009 the defendants rejected both suggestions. On 17 June 2009 the applicant made further submissions and applied for permission to inspect the case file. On 2 July 2009 the applicant's representative returned the file to the court. On 7 July 2009 the Regional Court asked for further advance payments on the court fees, which the applicant paid on 3 August 2009. On 7 August 2009 the Regional Court made a suggestion regarding how to proceed with regard to the expert. On 20 August 2009 the applicant agreed. On the same day, the Regional Court forwarded to the defendant the applicant's statement that he agreed to the proposed expert.

13. On 25 September 2009 the Regional Court amended the decision to order an expert opinion (see paragraph 10 above) and ordered an expert opinion from G.K. (instead of H.K.). The following four months were dominated by a dispute between G.K., the Regional Court and the applicant about the amount due in further advance payments of court fees; during that dispute various submissions and objections were made. The dispute lasted until the middle of January 2010.

14. On 28 May 2010 the Regional Court asked G.K. for a progress report. On 26 June 2010 G.K.'s office informed the Regional Court that the progress report would only be submitted in the twenty-eighth calendar week (12-18 July 2010). On 10 August 2010 the Regional Court again asked G.K. for a progress report. On 31 August 2010 G.K. informed the Regional Court that he was overloaded with work and suggested that the court order the opinion from H.K. (the original expert), to which the parties to the proceedings agreed.

15. On 21 September 2010 the Regional Court ordered the opinion from H.K.

16. On 30 September 2010, H.K. invited the parties to participate in another onsite visit, which was scheduled for 28 October 2010. However, the visit had to be rescheduled several times – once because the defendants were unable to attend and three times because the applicant was unable to attend; eventually the visit took place on 17 January 2011. On 4 May 2011, the applicant complained about the length of time it was taking for the expert to prepare his opinion.

17. On 9 May 2011, the Regional Court asked H.K. for a progress report. On 18 May 2011, H.K. informed the Court that the opinion would be provided in the twenty-second calendar week (30 May-5 June 2011). On 5 August 2011, H.K. provided his opinion in written form.

18. On 8 August 2011 the Regional Court forwarded the expert opinion to the parties and asked them to submit comments within five weeks. On 30 August 2011 the applicant lodged an objection to the method of calculating the fee for the expert opinion and applied for an extension of the deadline in order to be able to prepare substantial submissions in the light of the content of the expert opinion. On 10 October 2010 the applicant submitted substantial reasoning for her objection and made substantial submissions in the light of the expert opinion. The Regional Court also invited H.K. to submit comments.

19. On 5 December 2011 the Regional Court dismissed the applicant's objection regarding the method of calculating the fee for the expert opinion. On 20 December 2011 the applicant appealed against that decision and, on 24 January 2012, submitted arguments supporting her appeal. On 12 March 2012 the Court of Appeal ruled that the fee for the expert opinion had been calculated wrongly and annulled the decision setting out that fee.

20. On 11 May 2012 the Regional Court asked H.K. for his views on the comments of the parties regarding his expert opinion. On 24 May 2012 H.K.'s wife informed the Regional Court that he had fallen ill, again, and that it was unclear when he would recover. On 29 May 2012 the Regional Court forwarded that information to the parties and invited them to submit comments. On 22 June 2012 the applicant applied for an extension of the deadline for the submission of comments. On 3 July 2012 the applicant applied to be allowed to inspect the case file.

21. On 24 July 2012 the Regional Court scheduled an oral hearing for 12 October 2012.

22. On 12 October 2012 the oral hearing took place and the parties agreed on a friendly settlement.

2. Proceedings regarding compensation for the excessive length of the civil proceedings

23. On 23 July 2012 the applicant lodged a complaint with the Court of Appeal in which she sought compensation, alleging that the civil proceedings had been excessively lengthy.

24. On 30 January 2013 the Court of Appeal rejected the complaint as unfounded. It ruled – explicitly referring to section 198 of the Courts Constitution Act (see § 18 below), as well as Article 6 § 1 of the Convention and judgments of the Court – that the proceedings before the Regional Court had not been unreasonably long.

25. The Court of Appeal ruled that any assessment of the reasonableness of the length of proceedings had to start with the principle that a court must conduct proceedings expeditiously. That court had to make use of all available options in order to expedite the proceedings in question. A lengthening of the proceedings by the court would not give rise to a compensation claim if it had been based on a reasonable legal position and had taken place in accordance with the rules of procedure. It had to be established whether or not there had been a delay which, at least in principle, constituted grounds for a claim for compensation; different delays at different stages of the proceedings had to be added together and calculated as one single figure. Lastly, an overall assessment of whether the length of proceedings had been reasonable had to be carried out, with regard being paid to the circumstances of the case – in particular the complexity and difficulty of the proceedings.

26. In application of these principles, the Court of Appeal assessed all phases of the proceedings and reasoned that the Regional Court had generally expedited the proceedings sufficiently and that it had caused a delay only in the summer of 2010 because it had failed to sufficiently instruct the expert at the time in question and had failed to undertake the measures necessary to ensure that the expert submitted his opinion in good time. Had the court done so, the expert's excessive workload would have become apparent and a different expert could have been appointed earlier. Furthermore, it had to be taken into account that the proceedings had been complex; this had in particular been due to the complexity of the relevant facts and the difficulty in gathering evidence. Moreover, there had been three intervening parties on the side of the applicant, which had contributed substantially to the length of the proceedings. In addition, the applicant had repeatedly lodged applications, objections and appeals throughout the proceedings, and this had also substantially contributed to the length of the proceedings. Finally, the Court of Appeal took into account that the applicant herself attributed substantial importance to the proceedings, for both financial and health reasons. Nevertheless, viewed overall, the length of the proceedings did not appear unreasonably long.

27. On 5 December 2013 the Federal Court of Justice dismissed an appeal lodged by the applicant on points of law. It found the judgment of 30 January 2013 to be in line with section 198 of the Courts Constitution Act, as well as with Article 6 § 1 of the Convention.

28. The applicant lodged a constitutional complaint; on 3 February 2016, the Federal Constitutional Court declined to accept the constitutional complaint for adjudication, without giving any reasons for its decision (2 BvR 157/14).

II. RELEVANT DOMESTIC LAW

29. Under section 198 of the Courts Constitution Act, a party to proceedings who suffers a disadvantage from the protracted length of those proceedings is entitled to adequate monetary compensation. In so far as relevant, section 198 of the Courts Constitution Act reads:

> "(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 the proceedings shall be assessed in the light of the circumstances of the case in question – 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."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which in so far as relevant to the present case reads as follows:

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

31. The Government contested that argument.

32. The Court considers that the independent evidentiary proceedings do not form part of the proceedings at issue (see *Lamprecht v. Austria* (dec.), no. 71888/01, 25 March 2004). The period to be taken into consideration thus began on 23 June 2007 and ended on 12 October 2012. It lasted five years and almost four months at one level of jurisdiction.

A. Admissibility

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It notes in particular that the compensation claim under section 198 of the Courts Constitution Act failed. Therefore the applicant can still claim to be a victim (see

Majewski v. Poland, no. 52690/99, § 33, 11 October 2005). The application must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. The applicant maintained that the duration of the proceedings had been in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention. The Regional Court, in particular, had disregarded its obligation to set deadlines for the expert opinions to be produced, which would have speeded up the proceedings. The violation of that obligation had become all the more obvious the longer the proceedings had lasted. Furthermore, when the original expert had had to be replaced, the appointment of new experts had taken too long. The applicant reminded the Court that independent evidentiary proceedings had previously been held, during which evidence had been taken by the same expert and which had lasted roughly two years and seven months. Lastly, the Regional Court had been obliged to schedule an oral hearing immediately after the expert opinion had been submitted on 5 August 2010 – there had been no convincing reasons to wait until 12 October 2012.

35. The applicant furthermore submitted that the proceedings had been of great importance to her – in particular, owing to the amount at stake, as well as the specific nature of the constructional defects, which had posed a risk to her and her family's health. Moreover, the proceedings had not been complex, as could be deduced from the fact that there had only been two court hearings and three onsite visits. Furthermore, the fact that more than two parties had been involved had not contributed to a delay in the proceedings. The applicant lastly submitted that the lengthy duration of the proceedings had not been attributable to her, as her submissions, applications and appeals had all been reasonable.

36. The Government submitted that the Regional Court had expedited the proceedings at all times; no substantial periods of inactivity could be identified. It had regularly forwarded submissions without undue delay. The fact that at times it had refrained from taking immediate action had clearly been due to the necessity of awaiting other developments or assessing complicated questions of law. The Regional Court had also fulfilled its obligation to help to expedite the preparation of the expert opinion. The delays that had occurred in this regard were not attributable to the Regional Court, since the original expert had fallen ill, the second expert had taken more time than expected and the re-appointed original expert had fallen ill again. In so far as the Regional Court had refrained from imposing deadlines on the experts, it had been legitimate to assume that those experts would expeditiously execute the preparation of the opinion. This was

particularly true in respect of the time between 21 September 2010 and the submission of the expert opinion on 5 August 2011, since the expert had taken up his duties at short notice.

37. The Government furthermore submitted that, with regard to the period between 5 August 2011 and 12 October 2012, the applicant and the defendants had made new submissions and had made full use of the statutory deadlines (which they had asked to be extended) – that is to say the applicant and the defendants had only submitted their respective comments shortly before the deadline expired. Lastly, the applicant had appealed against a decision of the Regional Court – again making full use of the relevant deadlines. Moreover, it had been justified, on 24 July 2012, to schedule the oral hearing for 12 October 2012, since it had been necessary to summon several lawyers. The Government also considered that the proceedings had been quite complex because (i) they had required the extensive taking of evidence, (ii) new, extensive and changing factual submissions had been made throughout the proceedings, and (iii) several parties had been involved, each represented by a different lawyer. The proceedings had undoubtedly been of importance to the applicant, but the subject matter of the claim had been of a purely pecuniary nature. Lastly, the Government held that the applicant had contributed to the duration of the proceedings, in particular by challenging the court's decisions regarding the advance payment of court fees and by engaging in friendly-settlement negotiations.

2. The Court's assessment

38. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

39. The Court notes that the national authorities are in principle better placed than an international court to evaluate the facts of the case. In addition, the Court accepts that the domestic courts enjoy a certain margin of appreciation in assessing whether the length of the proceedings in the case before them exceeded a reasonable time. Nevertheless, in their assessment and appreciation they must apply standards which are in conformity with the principles embodied in the Convention, as developed in the case-law of the Court (see *Majewski*, cited above, § 34).

40. As to the complexity of the case, the Court takes note of the fact that the domestic courts held the proceedings to have been rather complex, taking account of the facts, the necessity to take evidence, and the number of intervening parties. It therefore agrees that the case was at least of some complexity. Several parties alleged different defects in the residential unit,

which had to be explored by an expert (see *Wohlmeyer Bau GmbH v. Austria*, no. 20077/02, § 52, 8 July 2004).

41. As to the conduct of the applicant, the Court considers that the domestic courts partially explained the duration of the proceedings by referring to the number of applications, objections and appeals lodged by the applicant. The Court shares the view that during the proceedings, regular fresh submissions concerning matters of fact and law, the rejection of the proposed experts, and appeals lodged against decisions gave rise to further activity on the part of the Regional Court and the Court of Appeal; none of this can be attributed to either the applicant or the respondent State, but this conduct contributed to the length of the proceedings to a certain extent (see *Herbolzheimer v. Germany*, no. 57249/00, § 47, 31 July 2003). Moreover, at least concerning certain parts of the proceedings, the applicant did not contribute to the expediting of the proceedings. In particular, she applied several times for the onsite visits to be rescheduled, regularly made full use of the relevant time-limits and applied several times for those time-limits to be extended.

42. As to the conduct of the proceedings by the Regional Court, the Court takes note of the domestic courts' assessment that it had, with few exceptions, expedited the proceedings at all times. It agrees that the Regional Court generally took all necessary action quickly and cannot be held accountable for substantial periods of inactivity. It furthermore notes that much of the delay was caused by the fact that the first expert fell ill and the second expert was overloaded with work. The Court reiterates that in cases in which cooperation with an expert proves necessary, it is the responsibility of the domestic courts to ensure that the proceedings are not excessively prolonged (see *Ewald v. Germany*, no. 2693/07, § 24, 21 October 2010, and *Bozlar v. Germany*, no. 7634/05, § 23, 5 March 2009). In this respect, the domestic court's conduct after the first expert had fallen ill cannot be categorised as unreasonable. The court directed the proceedings towards the appointment of a new expert at all times. However, the domestic court's conduct after the appointment of the second expert lacked the necessary degree of resolve, as was established by the domestic courts in the compensation proceedings. The Regional Court failed (taking into account the time that had elapsed between the introduction of the case in June 2007 and the assignment of the second expert in September 2009) to point out to the second expert that given the advanced stage of the proceedings, the ordered opinion should be prepared within an accelerated working process. The domestic court's requests of 28 May 2010 and 10 August 2010 for progress reports were rather reluctant in that respect. In contrast, the domestic court's conduct after the first expert had been reappointed does not lack the necessary degree of resolve.

43. In this context, the applicant submitted that the Regional Court had been under a specific obligation to expedite the proceedings as of their very initiation because independent evidentiary proceedings had taken place beforehand (see paragraph 7 above). As established above (see paragraph 32 above), these specific proceedings themselves do not form part of the proceedings at issue. In any event, the scope of the independent evidentiary proceedings and the subsequent main proceedings were not identical. Rather, the applicant herself submitted that the former had concerned defects in the drainage system, whereas the latter had in addition encompassed further defects. Against this background, the Court cannot but conclude that the independent evidentiary proceedings were not able to substantially simplify the subsequent main proceedings.

44. As to what was at stake for the applicant, the Court takes note of the fact that the domestic courts established that the proceedings were of a certain importance from the point of view of the applicant. In this context, the Court would like to add that those proceedings concerned pecuniary damages stemming from the purchase of a residential unit – that is to say not from facts comparable to those which the Court has deemed to be of particular importance in the past (compare *D.E. v. Germany*, no. 1126/05, § 70, 16 July 2009, and *Bozlar*, cited above, § 24). As far as the applicant alleged that the specific defects of the residential unit had been of such a nature as to potentially cause harm to her and her family's health, the Court finds that the applicant did not substantiate this allegation. Lastly, the amount of the pecuniary damages claimed appears to have been far less than the original investment in the property. Hence, it cannot be said that the applicant's economic existence was at stake (see *Grässer v. Germany*, no. 66491/01, § 57, 5 October 2006).

45. Lastly, the Court observes that the Court of Appeal and the Federal Court of Justice made explicit reference to Article 6 § 1 of the Convention and substantially applied the above-mentioned criteria. The Court of Appeal took the conduct of the Regional Court as a starting point, assessed it in the light of its obligation to expedite proceedings, and then viewed it within the context of the complexity of the case, the conduct of the applicant and the question of what was at stake for the applicant. It concluded that the delays (where they related to the conduct of the Regional Court towards the second expert) were to a minor extent attributable to the respondent State; however, those delays (which amounted to a total of about a month) did not constitute an excessive length overall. The Court does not find any reason to depart from this conclusion of the domestic courts in the compensation proceedings.

46. Regard being had to all the circumstances of the case, the Court finds that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 24 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Yonko Grozev
Deputy Registrar	President