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

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Lengthy civil proceedings before a Brussels court resulted from a structural problem, which Belgium must address

In today's **Chamber** judgment[1] in the case of Van den Kerkhof v. Belgium (application no. 13630/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) of the European Convention on Human Rights.

The case concerned the length of civil proceedings pending before a court of the Brussels judicial district. In the present case the proceedings were brought by the applicant against the vendors of a flat and the real estate agency that had served as an intermediary for the sale.

The Court held that the applicant's case had not been heard within a reasonable time, noting that seven years and eight months had elapsed for two levels of jurisdiction and that the proceedings were still pending before the French-Language Brussels Court of First Instance.

It emphasised that the system for protecting the rights guaranteed by the Convention was based on the principle of subsidiarity and that it was first and foremost for the national courts to secure respect for the rights guaranteed by the Convention. That system could not function properly if the domestic courts failed to administer justice within a reasonable time.

It found in that regard that the problems in connection with the excessive length of proceedings in the Brussels judicial district were structural in nature and held that it was for the Belgian State to take the necessary measures to guarantee the right to a hearing within a reasonable time in that judicial district.

A legal summary of this case will be available in the Court's database HUDOC (link)

Principal facts

The applicant, Tom Karel Elisabeth Van den Kerkhof, is a Belgian national who was born in 1977 and lives in Oud-Turnhout (Belgium).

In 2015 the applicant brought civil proceedings before the French-Language Brussels Court of First Instance to have the sale of a flat set aside on grounds of vitiated consent. Alternatively, he requested that the respondents be ordered to pay him a sum equal to the difference between the sale price and the price of the property, or that the contract of sale be declared void for negligence and the sale price reimbursed, or that he be awarded damages. He also asked that an expert be appointed to assess the value of the property and the cost of work already undertaken and still to be carried out.

In 2017 the court dismissed the application to set aside the sale but appointed an expert and re-entered the case in its list. The respondents appealed against that decision. The expert submitted the report the following year.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In 2018, when the case was ready for hearing on appeal, the Registry of the Brussels Court of Appeal informed the applicant that his case was on a waiting list and that it could not promise that a date would be set before March 2026.

The applicant contacted the First President of the Court of Appeal, asking him to review the hearing date, but without success. He also lodged a complaint with the National Council of Justice, which found that the delays in the applicant's case reflected a "dysfunction of the judiciary". He also served the Ministry of Justice with formal notice to take the necessary measures to reduce the excessive waiting time.

Then, in 2021, the Brussels Court of Appeal delivered a judgment in which it declared the respondents' appeal unfounded and upheld the initial judgment, delivered in 2017. It then sent the case back to the French-language Brussels Court of Appeal, before which a hearing was initially scheduled for March 2022 but subsequently postponed until November 2023, on account of the absence of the judge in charge of the case and a lack of titular judges.

In 2022 the registry of that court confirmed that the difficult situation encountered by it on account of the shortage of judges meant that it could no longer schedule cases in good time.

According to the information submitted to the Court, the proceedings were still pending.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing within a reasonable time), the applicant complained of the excessive length of the proceedings before the Brussels French-Language Court of First Instance.

The application was lodged with the European Court of Human Rights on 6 March 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*,
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Saadet **Yüksel** (Türkiye),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

Article 6

Admissibility

The Government argued that the applicant ought to have brought a claim for damages against the Belgian State under Article 1382 of the Civil Code before lodging an application with the Court. They nevertheless failed to demonstrate before the Court that there was a realistic prospect that such a claim would have proceeded more rapidly than the main proceedings, which were still pending. The Court noted, among other points, that the claim for damages against the Belgian State would have had to be lodged with the same courts which the applicant had criticised in his application as being too slow. Moreover, it could not be ruled out that the Belgian State would have appealed against any judgment against it, in which case the proceedings would have been further drawn out. Consequently, the Court took the view that the Government had not shown that, in the present case, a claim for damages under Article 1382 of the Civil Code satisfied the requirements in terms of

effectiveness in order to complain about the excessive length of the proceedings brought by the applicant.

Merits

The Court noted that seven years and eight months had already elapsed for two levels of jurisdiction and that, according to the information submitted by the parties, the proceedings were still pending. The Government had failed to provide an explanation for these delays.

It further noted that the applicant had already lodged a complaint with the National Council of Justice in 2018 on account of the excessively slow pace at which procedural steps were being taken in his case. The Council had declared his complaint well-founded in January 2019, finding that these delays reflected a "dysfunction of the judiciary".

In this connection, the Court reaffirmed the importance of administering justice without delays which might jeopardise its effectiveness and credibility. Excessive delays in administering justice affected public trust in the judicial system and seriously jeopardised the rule of law on which the Convention was based.

Lastly, the Court pointed out that the system for protecting the rights guaranteed by the Convention was based on the principle of subsidiarity and that, in accordance with that principle, it was first and foremost for the national courts to secure respect for the rights guaranteed by the Convention. This system could not function properly if the domestic courts failed to administer justice within a reasonable time for the purposes of Article 6 § 1 of the Convention.

The Court held that the applicant's case had not been heard within a reasonable time and that there had been a violation of Article 6 § 1 of the Convention.

Article 46 (binding force and execution of judgments)

The Court found that the problems in connection with the excessive length of proceedings in the Brussels judicial district were structural in nature and not confined solely to the applicant's personal situation. In that regard it relied in particular on the National Council of Justice's findings to that effect in its June 2022 audit of the Brussels Court of Appeal. It also took into account the concerns expressed by the Committee of Ministers of the Council of Europe[2]. It reiterated that, under the Convention, the States Parties were responsible for the delays attributable to their legal systems.

Accordingly, and in view of the national authorities' freedom in choosing how best to implement their obligations under the Convention, the Court held that it was for the respondent State to take the necessary measures to guarantee the right to a hearing within a reasonable time in the Brussels judicial district.

Just satisfaction (Article 41)

The Court held that Belgium was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

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[2] On 9 June 2021 the Committee of Ministers adopted an Interim Resolution (CM/ResDH(2021)103) in the case of *Bell v. Belgium* (no. 44826/05, 4 November 2008), which concerned the excessive length of civil proceedings before the courts of first instance.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.