

Peter LOSER: Switzerland

Switzerland condemned by the European Court of Human Rights

Period of Limitation too short in cases of injuries with long latency period

ECHR Decision Howald Moor and Others v. Switzerland of 11 March 2014

Facts

- Hans Moor was exposed to asbestos dust from 1965 to 1978
- 1975/76 practice of asbestos spraying was banned in Switzerland; since 1989 general ban on asbestos
- 2004 Mr Moor was diagnosed with malignant pleural mesothelioma of which he died 2005 at the age of 58

National Law and Decisions

- Swiss national accident insurance fund ("SUVA") paid to Mr Moor – and Ms Howald Moor – the statutory benefits
- Claim against his employer in respect of non-pecuniary and pecuniary damage dismissed by the Federal Court (BGE 137 III 16)
 - 10 year period has lapsed
- Claim against SUVA in respect of non-pecuniary damage dismissed by the Federal Court (BGE 136 II 187)
 - 10 year period has lapsed

Judgments of the ECHR

- Period of Limitation deprived the injured persons of the chance to assert their rights before the courts

Judgments of the ECHR

Article 6 § 1 of the Convention

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Commentaries

- Limitation rule is only impermissible if it violates the right to access to a court in its substance
- Means not: Limitation of material claims does not at all pertain to the question of access to the court
- Means not: Social insurance benefits are a sufficient alternative
- Might mean: ECHR's statements must not be understood too restrictively

Commentaries

- Proposed extension of limitation for personal injuries in Swiss Law
 - 30 years
- Problem of the proposed transitional provisions
- Principles of European Contract Law (PECL) and Draft Common Frame of Reference (DCFR)
 - 30 years