



## Persons suffering from asbestos-related diseases were unable to assert their rights owing to the rules on limitation periods

In today's Chamber judgment in the case of [Howald Moor and Others v. Switzerland](#) (application nos. 52067/10 and 41072/11), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**A violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.**

The case concerned a worker who was diagnosed in May 2004 with malignant pleural mesothelioma (a highly aggressive malignant tumour) caused by his exposure to asbestos in the course of his work in the 1960s and 1970s. He died in 2005. The Swiss courts dismissed the claims for damages brought by his wife and two children against Mr Moor's employer and the Swiss authorities, on the grounds that they were time-barred.

The Court held that the rules on limitation periods infringed the rights of persons suffering from diseases which, like asbestos-related diseases, could not be diagnosed until many years after the events. Under the law in force, claims by asbestos victims were invariably time-barred. The Court considered that in cases where it was scientifically proven that an individual could not know that he or she was suffering from a particular disease, that fact should be taken into account in calculating the limitation period.

### Principal facts

The first applicant, Renate Anita Howald Moor, is a Swiss national who was born in 1949 and lives in Untersiggenthal (Switzerland). She is the second wife of Hans Moor. The second and third applicants, Caroline Moor and Monika Moor, are the children of Hans Moor's first marriage. They were born in 1973 and 1976 respectively and live in Zürich.

Hans Moor was born in 1946 and spent his entire career working in a machinery plant. From 1965 until at least 1978, he was exposed to asbestos dust in the course of his different activities. Between 1975 and 1976 the practice of asbestos spraying was banned. Since 1989 there has been a general ban on the use of asbestos in Switzerland.

In May 2004 Hans Moor was diagnosed with malignant pleural mesothelioma caused by exposure to asbestos. This work-related disease was treated as an occupational accident under Federal law. The Swiss national accident insurance fund ("the CNA") paid Mr Moor the statutory annuity and benefits until his death.

On 25 October 2005 Hans Moor applied to the courts seeking an award from his employer in respect of pecuniary and non-pecuniary damage. He contended that he had contracted the disease at his workplace and that his employer had failed in its obligations by omitting to take the necessary measures to protect employees exposed to asbestos on a regular basis. Hans Moor died of the

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

disease in November 2005 at the age of 58. Since December 2005 the CNA has paid his widow Ms Howald Moor a lifetime widow's annuity together with a further annuity under the Federal Law on old-age and survivors' pensions. Ms Howald Moor also receives payments under the compensation scheme operated by her husband's employer.

On 14 November 2005 Ms Howald Moor lodged a claim with the CNA in respect of non-pecuniary damage. She contended that the insurance fund and her husband's employer were jointly and severally liable for his death and that the CNA had failed in its obligations concerning occupational health and safety. In October 2006 Hans Moor's two daughters joined the proceedings and submitted further claims.

The CNA dismissed the claims for damages on the grounds that it could not itself be held responsible for Hans Moor's death. It observed that the Federal Law on liability laid down a period of ten years after the occurrence of the damage beyond which all claims lapsed, and identified 1978 as the date when the damage had last occurred. As to those claims which had not lapsed, the CNA found that there was no evidence that Hans Moor had been exposed to asbestos at any time after 1995. The applicants appealed against that decision. In April 2009 the courts endorsed the finding that the claims relating to events prior to 1995 had lapsed and that there was no evidence of subsequent exposure to asbestos. Ms Howald Moor appealed against that decision to the Federal Court.

In a judgment of 29 January 2010 the Federal Court held that Ms Howald Moor's claims had lapsed, on the grounds that the absolute time-limit of ten years from the date of the occurrence of the damage had expired. The Federal Court found that, where liability claims were concerned, the limitation period began running from the date on which the damage had occurred, irrespective of when it had become apparent. The court found that this rule was justified by the need for legal certainty and "legal peace".

On 6 May 2006 Caroline Moor and Monika Moor, in their capacity as heirs, stated their intention to pursue the case brought by their father against his employer. In February 2009 the court dismissed their claims, finding that those relating to events prior to 1995 were time-barred. The applicants appealed to the Cantonal Court, which dismissed the appeal and upheld the finding that the limitation period should commence running on the date on which the employer had breached its obligations rather than the date on which the damage had become apparent. Caroline Moor and Monika Moor lodged an appeal with the Federal Court, which held that their claims were time-barred. However, the Federal Court acknowledged that in the case of certain diseases the damage became apparent only when the disease manifested itself and that the damage could not be predicted with certainty before the expiry of the limitation period. The court observed that the legislature had not laid down any specific rules on asbestos-related damage; it therefore held that the applicants' appeal was unfounded.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court) and Article 14 (prohibition of discrimination) taken in conjunction with Article 6 § 1, the applicants complained mainly that their right of access to a court had been breached.

The application was lodged with the European Court of Human Rights on 4 August 2010.

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

**Guido Raimondi** (Italy), *President*,  
**Işıl Karakaş** (Turkey),  
**Peer Lorenzen** (Denmark),  
**András Sajó** (Hungary),  
**Helen Keller** (Switzerland),

Paul Lemmens (Belgium),  
Robert Spano (Iceland),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court noted at the outset that the dispute concerned a complex issue, namely the fixing of the starting point of the ten-year limitation period under Swiss law in relation to claims lodged by individuals suffering from asbestos-related diseases. Noting that the latency period for these diseases could be several decades, the Court observed that the ten-year period – which started running on the date when the person concerned had been exposed to the asbestos dust – would invariably have expired. Consequently, any claims for damages would be bound from the outset to fail, as they would become time-barred before the victims could even be objectively aware of their rights.

The Court further observed that a bill had been tabled revising the law on limitation periods in Switzerland. However, it did not provide for any equitable solution to the problem, if only on a transitional basis in the form of a "period of grace".

While the Court was satisfied that the legal rule on limitation periods pursued a legitimate aim, namely legal certainty, it acknowledged that the systematic application of the rule to persons suffering from diseases which could not be diagnosed until many years after the triggering events deprived those persons of the chance to assert their rights before the courts.

The Court considered that in cases where it was scientifically proven that a person could not know that he or she was suffering from a certain disease, that fact should be taken into account in calculating the limitation period. In view of the exceptional circumstances in the present case it considered that the application of the periods in question had restricted the applicants' access to a court to the point of breaching Article 6 § 1 of the Convention.

### Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicants 12,180 euros (EUR) jointly in respect of non-pecuniary damage. It awarded EUR 5,000 to Ms Howald Moor and EUR 4,000 jointly to Caroline Moor and Monika Moor in respect of costs and expenses.

*The judgment is available only in French.*

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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.