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

THIRD SECTION

CASE OF Ernst and Anna LUGHOFER v. AUSTRIA

(Application no. 22811/93)

JUDGMENT

STRASBOURG

30 November 1999

[This judgment is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.]

In the case of Ernst and Anna LUGHOFER v. Austria,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of the following judges:

Mr J.-P. COSTA, *President*,
Mr P. KŪRIS,
Mrs F. TULKENS,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mrs H.S. GREVE,
Mr K. TRAJA,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 November 1999,

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

PROCEDURE

1. The case was referred to the Court by Mr Ernst Lughofer and Mrs Anna Lughofer ("the applicants"), Austrian nationals, on 22 October 1998, within the three-month period laid down by former Articles 32 § 1 and 47 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It originated in an application (no. 22811/93) against the Republic of Austria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 by the applicants. The applicants are represented by Mr E. Proksch, a lawyer practising in Vienna (Austria). The Government of Austria are represented by their Agent, Mr F. Cede, Ambassador, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

The applicants' application to the Court referred to Article 48 as amended by Protocol No. 9[1], which Austria had ratified. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

2. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with Article 5 § 4 thereof read in conjunction with Rule 100 § 1 and Rule 24 § 6 of the Rules of Court, a Panel of the Grand Chamber decided on 14 January 1999 that the case should be dealt with by a Chamber constituted within one of the Sections of the Court.

3. In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Third Section. The

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[*Notes by the Registry*]

1. Protocol No. 9 came into force on 1 October 1994 and was repealed by Protocol No. 11.

Chamber ultimately constituted within the Section included Mr. J.-P. Costa, Mr P. Kūris, Mrs F. Tulkens, Mr W. Fuhrmann, Mr K. Jungwiert, Mrs H.S. Greve and Mr K. Traja.

4. On 12 March 1999 the President of the Chamber invited the parties to submit a memorial on the issues of the case. By letter of 29 April 1999 the applicants informed the Court that they did not wish to submit a memorial; on 17 May 1999 the Government conceded that there had been a violation of Article 6 § 1 of the Convention in the circumstances of the case.

5. After consulting the Agent of the Government and applicants' lawyer the Chamber decided not to hold a hearing in the case.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants' farm was the object of land consolidation proceedings (*Zusammenlegungsverfahren*) instituted by the Gmunden District Agricultural Authority (*Agrarbezirksbehörde*) on 22 February 1973.

7. On 21 August 1984 the District Authority held a hearing at which the farmers concerned could express their wishes (*Wunschverhandlung*) and on 22 August 1985 the District Authority ordered the provisional transfer of the properties concerned, inter alia, land owned by the applicants. In July 1989 the District Authority issued a consolidation plan (*Zusammenlegungsplan*). The applicants appealed, claiming that they had not received adequate land in exchange for their parcels AK 2 and AK 8. On 5 July 1990 the Upper Austria Regional Land Reform Board (*Landesagrarsenat*) dismissed the applicants' appeal after an oral hearing held in private, but in the presence of the parties and their lawyer.

8. On 25 September 1990 the applicants filed a complaint with the Administrative Court (*Verwaltungsgerichtshof*) against the above decision. They also asked the Court to hold an oral hearing.

9. On 15 December 1992 the Administrative Court dismissed the complaint, rejecting at the same time, in accordance with Section 39 (2) no. 6 of the Administrative Court Act, the applicants' request for an oral hearing.

II. RELEVANT DOMESTIC LAW

A. Hearings before Land Reform Boards

10. Section 9 (1) of the Federal Agricultural Proceedings Act (*Agrarverfahrensgesetz*) provided as follows:

> "Land Reform Boards take their decisions after an oral hearing in the presence of the parties."

It is the constant practice of administrative authorities to hold oral hearings in camera unless the law provides otherwise.

By virtue of legislation enacted in December 1993 (*Bundesgesetzblatt* no. 901, p. 7160), hearings before Land Reform Boards are now public.

B. Hearings before the Administrative Court

11. Pursuant to Section 36 of the Administrative Court Act (*Verwaltungsgerichtshofgesetz*), proceedings consist essentially in an exchange of written pleadings. If one of the parties so requests the Administrative Court may hold a hearing which is in principle held in public (Sections 39 (1) no. 1 and 40 (4)).

12. Section 39 (1) of the Administrative Court Act provides that the Administrative Court is to hold a hearing after its preliminary investigation of the case where a complainant has requested a hearing within the time-limit. Section 39 (2) no. 6, which was added to the Act in 1982, provides however:

> "Notwithstanding a party's application ..., the Administrative Court may decide not to hold a hearing where ...
>
> 6. it is apparent to the Court from the pleadings of the parties to the proceedings before it and from the files relating to the earlier administrative proceedings that an oral hearing is not likely to clarify the case further."

PROCEEDINGS BEFORE THE COMMISSION

13. The applicants applied to the Commission on 27 September 1993. They alleged, inter alia, a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing in the land consolidation proceedings.

14. The Commission declared the application (no. 22811/93) partly admissible on 16 April 1998. In its report of 9 September 1998 (former

Article 31 of the Convention), it expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention[1].

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

15. By letter of 17 May 1999 the Government conceded that there had been a violation of Article 6 § 1 of the Convention in the circumstances of this application.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

16. Article 6 § 1 of the Convention reads, insofar as relevant, as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ... ."

17. The Government did not contest the opinion of the Commission on the allegation of a breach of this provision (see § 15 above).

18. The Court sees no reason to disagree with the conclusion reached by the Commission, which, moreover, coincides with the Court's own findings in the case of Stallinger and Kuso v. Austria (judgment of 23 April 1997, Reports of Judgments and Decisions 1997-II, pp. 677-680, §§ 38-51). It concludes in the present case that the failure to hold a public hearing in the land consolidation proceedings was not compatible with Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

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1. *Note by the Registrar*. A copy of the Commission's report is obtainable from the Registry.

A. Damages

20. The applicants submitted that the pecuniary damage resulting from the improper procedure to which they were subject amounted to a total of 600,000 Austrian schillings (ATS). Moreover, as compensation for non-pecuniary damage they claimed an amount of ATS 50,000.

21. In the Government's submission, compensation could not be awarded on the basis of speculation as to what the outcome of the proceedings would have been had a public hearing taken place. If the Court should consider to award compensation at all under this head, the amount should not exceed ATS 100,000.

22. The Court observes that the applicants have not sought to substantiate their claim for just satisfaction under Article 41. In any event, in so far as the claim may concern damage of a pecuniary nature, the Court cannot speculate as to the outcome of the proceedings had a public hearing taken place before the Administrative Court; the claim must therefore be rejected. As to non-pecuniary damage, the Court recalls its conclusion in the Stallinger and Kuso case that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction (op. cit. pp. 680-681, § 57). The Court is unable to find any features distinguishing the present case from that of Stallinger and Kuso which might justify a departure from the Court's approach in that judgment. Accordingly, it concludes that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction for the applicants' alleged non-pecuniary damage.

B. Costs and expenses

23. The applicants further claimed a total of ATS 81,172.82 in respect of costs and expenses incurred in the domestic proceedings and in those before the Convention organs. ATS 30,965.42 of this amount relate to the proceedings before the Commission and the Court. The Government made no comment on this claim.

24. The Court finds that compensation for costs incurred in domestic proceedings may only be granted insofar as they were necessary in trying to prevent the violation found (see the König v. Germany judgment of 10 March 1980 (Article 50), Series A no. 36, p.17, § 20). In the present case it does not appear from the applicants' submissions that any specific costs were incurred in relation to the demand for an oral hearing. This part of the claim must therefore be rejected. As regards the costs for the proceedings before the Convention organs, the Court finds the claim reasonable, and consequently allows it in full.

C. Default interest

25. According to the information available to the Court, the statutory rate of interest applicable in Austria at the date of adoption of the present judgment is 4% per annum.

FOR THESE REASONS THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicants, within three months for costs and expenses, 30,965 (thirty thousand nine hundred sixty-five) Austrian Schillings and 42 (forty-two) Groschen;
   (b) that simple interest at an annual rate of 4% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* unanimously, the remainder of the applicants' claims for just satisfaction.

Done in English and notified in writing on 30 November 1999, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President