



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

THIRD SECTION

CASE OF G.H. v. AUSTRIA

(Application no. 31266/96)

JUDGMENT

STRASBOURG

3 October 2000

FINAL

03/01/2001

In the case of G.H. v. Austria,

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

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Sir NICOLAS BRATZA,

Mrs H.S. GREVE,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 October 1999 and 12 September 2000,

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

PROCEDURE

1. The case originated in an application (no. 31266/96) against the Republic of Austria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, G.H. (“the applicant”), on 26 March 1996.

2. The applicant was represented by Mr H. Walther, a lawyer practising in Klagenfurt (Austria). The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that proceedings involving a request for planning permission were not concluded within a reasonable time.

On 23 October 1997 the Commission (First Chamber) declared the application partly inadmissible and adjourned the examination of the above complaint.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted in accordance with Rule 26 § 1 of the Rules of Court.

6. By a decision of 12 October 1999 the Chamber declared the remaining complaint admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 6 May 1991 the applicant applied to the mayor of Baldramsdorf for an amendment to planning permission he had been granted in 1988 for a game fence. The amendment concerned the fence's boundaries. The mayor convened an on-site meeting for 5 July 1991, which was also attended by a neighbour ("the neighbour").

9. On 20 November 1991, the applicant applied to have a higher authority (the local council: *Gemeindevorstand*) decide his application. On 13 October 1992, the council accepted jurisdiction, but refused the substantive application.

10. On 7 April 1993 the Kärnten Regional Government (*Landesregierung*), on the applicant's appeal, quashed the decision of 13 October 1992 and remitted the case to the council. An objection by the neighbour was dismissed.

11. The council took a second decision on 17 May 1993. On this occasion, it again accepted jurisdiction and granted the applicant's amendment request.

12. The neighbour challenged the decision of 17 May 1993 before the Regional Government, which on 21 September 1993 quashed the decision of 17 May and again remitted the case to the council. However, on 8 November 1993 the applicant challenged the decision of 21 September 1993 by way of an administrative complaint to the Administrative Court (*Verwaltungsgerichtshof*), which on 21 May 1996 quashed the Regional Government's decision. The case therefore returned to the procedural stage at which the council's decision of 17 May 1993 had been made and challenged by the neighbour.

13. On 7 May 1997 the Regional Government dismissed the neighbour's objection. The neighbour did not appeal to the Administrative Court.

THE LAW

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

14. The applicant complains that the proceedings involving his request for amended planning permission have not been concluded within a reasonable time as required by Article 6 § 1 of the Convention which, insofar as relevant 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...”

15. As regards the period to be taken into account, the applicant submits that the proceedings started on 6 May 1991, when he filed his amendment request. Furthermore, he submits that the case was not complex and that throughout the proceedings, in particular before the Administrative Court, delays occurred for which the Austrian authorities were responsible.

16. This is contested by the Government. In their view the relevant period started later, namely on 20 November 1991. Further, even if the subject matter of the proceedings was not in itself complex, it nevertheless led to five decisions by administrative authorities and one by the Administrative Court. Taking this element into account, the proceeding were not excessively long. As regards the proceedings before the Administrative Court, the Government concede that a period of two and half a year seems lengthy. However, account should be taken of the fact that the Administrative Court is one of the highest judicial authorities in Austria and, because of the particularly formal nature of proceedings before such courts, cases tend to take longer than before lower authorities or courts.

17. The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see as a recent authority, the *Humen v. Poland* judgment of 15 October 1999, [GC], no. 26614/95, ECHR 1999, § 60).

18. As to the duration of the proceedings, the Court considers that the date to be taken into consideration as a starting point is, at the latest, 6 November 1991 when the applicant applied to the local council for a decision on his application. The dispute in the present case effectively started on that date because the mayor had failed to reply to his original application within the statutory time limit. The proceedings ended on 7 May 1997 when the Regional Government dismissed the neighbour's objection. Thus, they lasted five and half a years.

19. The Court finds that the proceedings were not particularly complex. As regard the conduct of the applicant, the Court cannot find that any delays were attributable him. As regards the conduct of the authorities, the Court observes that the proceedings before the Administrative Court lasted a particularly long time, namely from 8 November 1993 to 21 May 1996 - over two and a half years.

20. The Court is not persuaded by the Government's explanation for this delay that proceedings before the highest judicial authorities are longer because of their particular formalities. It recalls that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (see, for instance, the *Vocatur v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17).

21. In sum, the Court finds that the length of the proceedings as a whole, and in particular the length of the proceedings before the Administrative Court, exceeded a "reasonable time". It follows that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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."

A. Damages

23. The applicant does not claim any non-pecuniary damages. As regards pecuniary damages, he claims 179,400 Austrian schillings (ATS), as he had to build a temporary game fence and had to repair and maintain it.

24. The Government contest to this claim. They submit that there is no causal link between the violation found and the compensation claimed because the applicant had had no right to build the fence before he had received the planning permission.

25. Like the Government, the Court finds that there is no causal link between the breach of which complaint is made and the alleged pecuniary damage; it is impossible to speculate as to what the outcome of the proceedings would have been if they had satisfied the requirements of Article 6 § 1 (see e.g. the *Werner v. Austria* judgment of 24 November 1997, Reports 1997-VII, p. 2514, § 72). Thus, no award can be made under this head.

B. Costs and expenses

26. The applicant claimed a total of ATS 190.191,12 for costs and expenses incurred in the domestic proceedings and before the Convention institutions. ATS 98,145.60 of this amount relate to the proceedings before the Commission and the Court. The Government submitted that the applicant's claims were excessive and that, in any event, only his claims relating to the Convention proceedings should be taken into account.

27. Although it is true that only those costs incurred in domestic proceedings in an attempt to prevent or redress the violation found by the Court may be reimbursed, nevertheless unreasonable delays in proceedings necessarily involve an increase in an applicant's costs (see the *Bouilly v. France* judgment of 7 December 1999, no. 38952/97, Section 3, ECHR 1999, § 33). Consequently, the Court awards the applicant ATS 10,000 for this element on an equitable basis.

28. As regards the cost of the Convention proceedings, the Court observes that the applicant has not furnished any details as to the calculation of his claim. Therefore the Court, having regard to the sums usually granted in length of proceedings cases and making an assessment on an equitable basis, awards the applicant ATS 25,000.

C. Default interest

29. 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 applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, a total of 35,000 (thirty five thousand) Austrian schillings for costs and expenses;
 - (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* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 3 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President