



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

THIRD SECTION

CASE OF WALDER v. AUSTRIA

(Application no. 33915/96)

JUDGMENT

STRASBOURG

30 January 2001

FINAL

05/09/2001

In the case of WALDER 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 P. KÜRIS,
Mr K. JUNGWIERT,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 January 1999, 27 April, 5 September 2000 and 9 January 2001;

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

PROCEDURE

1. The case originated in an application (no. 33915/96) 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, Mr Franz Walder (“the applicant”), on 23 May 1996.

2. The applicant was represented by Mr R. Kerschbaumer, a lawyer practising in Lienz (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 land consolidation proceedings involving his property lasted unreasonably long.

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 as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 27 April 2000 the Chamber declared the application partly 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 15 April 1971 the Tirol Regional Government acting as the Agricultural Authority of First Instance (*Landesregierung als Agrarbehörde I. Instanz*, “the Agricultural Authority”) received a motion dated 19 January 1971 for opening land consolidation proceedings at Kalkstein in the municipality of Innervillgraten, signed by the land owners concerned including the applicant.

9. On 3 May 1971 the Agricultural Authority *ex officio* opened the Kalkstein land consolidation proceedings (*Zusammenlegungsverfahren*), involving property in Innervillgraten of which the applicant and his siblings are co-owners.

10. On 28 May 1974 the Agricultural Authority held a hearing with the land owners concerned as regards the provisional transfer of land (*vorläufige Übergabe*). The majority of land owners accepted the authority’s proposal, whereas the applicant opposed it. At the close of the hearing the authority orally delivered the decision ordering the provisional transfer of land and informed the participants that no remedy was available against it under the Tirol Agricultural Land Planning Act 1969 (*Flurverfassungsgesetz*).

11. On 7 May 1979 the Agricultural Authority issued the consolidation scheme (*Zusammenlegungsplan*).

12. On 5 February 1981 the Provincial Board upon, *inter alia*, the applicant’s appeal, set aside the consolidation scheme on the ground that the Agricultural Authority had failed to carry out a proper valuation of the plots of land involved. Further, it declared that the area had to be cultivated as provided for in the provisional transfer of land of 28 May 1974 until a new consolidation scheme was issued.

13. On 14 September 1982 the Administrative Court (*Verwaltungsgerichtshof*), upon the complaint of the applicant and his co-owners, quashed the Provincial Board’s declaration that the consolidation area had to be cultivated as provided for in the provisional transfer until a new consolidation scheme was issued. It found that the Provincial Board had not been competent to make such a declaration. It was only called upon to decide on the merits of the case which had been before the Agricultural Authority, i.e. in the present case it had to decide on the lawfulness of the consolidation scheme. In any event, the decision on the provisional transfer of land had become final long ago.

14. After having held a hearing on 28 April 1983, the Agricultural Authority issued an occupation and valuation schedule (*Besitzstandsausweis und Bewertungsplan*).

15. On 1 December 1983 the Provincial Board dismissed the applicant's appeal. It noted that the applicant had not contested the occupation schedule and had not submitted any arguments as regards the valuation of specific plots of land. There were no reasons to depart from the Agricultural Authority's findings.

16. On 8 October 1984 the Constitutional Court (*Verfassungsgerichtshof*) declined to deal with the applicant's complaint and referred the case to the Administrative Court.

17. On 28 May 1985 the Administrative Court dismissed the applicant's complaint, finding that he had not submitted any specific objections against the occupation and valuation schedule.

18. On 28 January 1990 the Agricultural Authority received further documents relating to a number of changes in the valuation of land.

19. On 17 May 1991 the Agricultural Authority issued a new consolidation scheme. It found, having regard to the valuation of the land, that the difference in value between the plots the applicant had owned prior to the proceedings and the plots allocated to him was less than the 5% which were admissible under the Agricultural Land Planning Act. For this difference it ordered payment of compensation. The consolidation scheme was open to public inspection at the Innervillgraten local authority during two weeks in July 1991.

20. The applicant did not appeal against the consolidation scheme which, following its publication, became final on 1 July 1991. However he appealed against the notification of 17 May 1991 by which the Agricultural Authority had informed the parties of the publication of the consolidation scheme.

21. On 29 October 1992 the Provincial Board rejected the applicant's appeal as being inadmissible. It noted that the said appeal was directed against the notification of 17 May 1991, which was in itself not subject to appeal.

22. On 14 June 1993 the Constitutional Court declined to deal with the applicant's complaint and referred the case to the Administrative Court.

23. On 24 October 1995 the Administrative Court dismissed the applicant's complaint.

24. By decision of 12 April 1996 the Agricultural Authority closed the consolidation proceedings following the entry of all changes of property in the land register in 1993 and the final settlement of the costs in early 1996.

25. On 21 June 1996 the Provincial Board dismissed the applicant's appeal against the decision of 12 April 1996.

THE LAW

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

26. The applicant complained that the overall duration of the land consolidation proceedings involving his property was unreasonable. He relied on Article 6 § 1 of the Convention, which so far 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...”

27. The Government contended that the proceedings lasted from 15 April 1971, when the request to conduct land consolidation proceedings was received by the Agricultural Authority, until 1 July 1991, when the consolidation scheme became final, that is twenty years and two and a half months. The Government argued that the proceedings were complex, as land consolidation proceedings generally are. Nevertheless, the authorities tried to conduct the proceedings expeditiously, whereas the applicant filed a large number of often unsuccessful actions and therefore contributed to the length of the proceedings.

28. As to the period to be taken into consideration, the Court considers that a “dispute” within the meaning of Article 6 § 1 of the Convention only arose on 28 May 1974 when the applicant opposed the provisional transfer of land (see *mutatis mutandis*, the Erkner and Hofauer v. Austria judgment of 23 April 1987, Series A no. 117, p. 61, § 64) As regards the end of the period, the Court refers to its admissibility decision of 27 April 2000 in the present case, where it found that the final decision was given on 21 June 1996 when the Provincial Board dismissed the applicant’s appeal against the decision which closed the land consolidation proceedings. The proceedings thus lasted more than twenty-two years.

29. The reasonableness of the length of the proceedings is to be assessed according to the particular circumstances and having regard to the case-law of the Court, especially the degree of complexity of the case, the applicant’s behaviour and the conduct of the relevant authorities (see among many others the Erkner and Hofauer judgment, cited above, p. 62, § 66, and the Wiesinger v. Austria judgment of 30 October 1991, Series A no. 213, p. 21, § 54).

30. As to the complexity of the proceedings, the Court recalls that land consolidation is by its nature a complex process, affecting the interests of both individuals and the community as a whole (see again the Erkner and Hofauer judgment, cited above, p. 62, § 67).

31. As to the conduct of the applicant, the Court has consistently held that applicants cannot be blamed for making full use of the remedies

available to them under domestic law. However, an applicant's behaviour constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account for the purpose of determining whether or not the reasonable time referred to in Article 6 § 1 has been exceeded (*ibid.*, p. 63, § 68). In the present case, the Court notes that the applicant's appeal against the first consolidation scheme of May 1979 was successful. It is true that his appeal against the occupation and valuation schedule of April 1983, which was finally dismissed by the Administrative Court in May 1985, contributed to a certain extent to the length of the proceedings. Moreover, the lodging of an appeal against the notification of the second consolidation scheme of May 1991, which was finally dismissed by the Administrative Court in October 1995, is somewhat difficult to understand and may also have delayed the termination of the proceedings.

32. As to the conduct of the authorities, the Court observes in particular that, following the provisional transfer of land in May 1974, it took the Agricultural Authority five years, i.e. until May 1979, to issue a consolidation scheme. After the consolidation scheme was set aside in February 1981, it took the Agricultural Authority more than ten years, until May 1991, to issue a second consolidation scheme. Furthermore, six years elapsed after the Administrative Court's decision of May 1985 until the issue of the new consolidation scheme, a delay for which the Government have failed to give any viable explanation.

33. Having regard to the considerable delays attributable to the authorities, the Court finds that the overall duration of the land consolidation proceedings of more than twenty-two years cannot be regarded as reasonable, despite the inherent complexity of such proceedings and the fact that the applicant himself contributed to a certain extent to their length. There has thus been a violation of Article 6 §1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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. Damage

35. The applicant claimed 1 million Austrian schillings (ATS) in respect of pecuniary damage for loss of yield allegedly suffered from the allocation of parcels of poor quality in the land consolidation proceedings. Further, he requested ATS 4,4 million in respect of non-pecuniary damage, in particular

for the stress and anxiety suffered during the twenty-two years of proceedings.

36. The Government contended that the applicant's claims were excessive. In particular, they argued that there was no causal link between the length of the proceedings and the alleged pecuniary damage. As regards non-pecuniary damage, the Government suggested that some guidance could be taken from the *Wiesinger v. Austria* judgment (cited above), whereby allowance should be made for the fact that, contrary to the *Wiesinger* case, the applicant in the present case received adequate compensation in land, which means from an objective point of view that he must have suffered less anxiety.

37. The Court, like the Government, finds that there is no causal link between the pecuniary damage sought by the applicant and the violation found. It, therefore, makes no award under this head.

38. As regards non-pecuniary damage, the Court notes that in the *Wiesinger* case, concerning land consolidation proceedings which had lasted nine years at the time of the Court's judgment and were still pending, the applicant received ATS 200,000 under this head (see the *Wiesinger* judgment, cited above, p. 29, §§ 84-85). The Court agrees with the Government that the two cases are not fully comparable, as the proceedings in the *Wiesinger* case were marked by a special feature which is absent in the present case, namely that the applicant's former plots of land were re-designated as building land after the provisional transfer (*ibid.*, p. 23, § 62), occasioning a considerable change in value for which he had not received final compensation at the time of the Court's judgment. However, in the present case the applicant received parcels of approximately equal value and financial compensation for the remaining difference. Nevertheless, the proceedings in the present application lasted more than twice as long as the proceedings in the *Wiesinger* case. In conclusion, the Court, having regard to the sums usually awarded in civil length of proceedings cases and making an assessment on an equitable basis, grants the applicant ATS 200,000 for non-pecuniary damage.

B. Costs and expenses

39. The applicant requested ATS 982,000 in respect of costs incurred in the domestic proceedings. This amount includes ATS 600,000 for "costs incurred with neighbours on account of the land consolidation proceedings and discrimination by public authorities" and ATS 150,000 for "submissions by the applicant". The remainder is composed of legal costs of various criminal and administrative proceedings and further unspecified costs of legal representation. The applicant further claimed ATS 233,483.40 in respect of costs incurred in the Convention proceedings.

40. The Government contended in particular that the costs claimed in respect of the domestic proceedings concerned numerous matters which were wholly unrelated to the present proceedings.

41. As to the costs of the domestic proceedings, the Court notes that none of the costs listed by the applicant can be considered as having been incurred in an attempt to prevent or redress the violation found. However, considering that unreasonable delays in proceedings necessarily involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, 7.12.99, § 33), the Court awards ATS 10,000 under this head.

42. As to the costs of the Convention proceedings, the Court notes that the applicant did not have the benefit of legal aid. Having regard to the sums usually put forward in length of proceedings cases, the Court awards the applicant ATS 15,000.

43. In sum, the Court awards a total amount of ATS 25,000 in respect of costs and expenses.

C. Default interest

44. 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, 200,000 (two hundred thousand) Austrian schillings in respect of non-pecuniary damage and 25,000 (twenty 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 30 January 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President