



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

THIRD SECTION

CASE OF SIEBENHANDL v. AUSTRIA

(Application no. 31778/96)

JUDGMENT

STRASBOURG

12 June 2001

In the case of Siebenhandl 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,
Mrs F. TULKENS,
Sir Nicolas BRATZA,
Mrs H.S. GREVE, *judges*,
Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 May 2000, 6 March 2001 and 22 May 2001,

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

PROCEDURE

1. The case originated in an application (no. 31778/96) 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, Johann Siebenhandl (“the applicant”), on 19 April 1996.

2. The applicant was represented by Mr T. Höhne, a lawyer practising in Vienna. 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 complained under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention that restrictions placed on his property by various planning decisions of the Vienna municipality were discriminatory and violated his right to property. He also invoked Article 18 in this respect. With regard to one particular measure, namely a building prohibition, he also complained about a lack of access to court, relying on Articles 6 and 13.

4. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 16 May 2000, having obtained the parties’ observations, the Court declared the application admissible.

5. On 6 March 2001, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On

9 April and on 10 April 2001 the Agent of the Government and the applicant's representative, respectively, submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant, Mr Johann Siebenhandl, is the owner of a plot of land in a densely built-up district of Vienna. When he acquired the property in 1980 it was designated as a building and housing area and development of the entire plot of land was possible. In 1983 the applicant requested a building permit in order to regularise a warehouse which had been built there in the nineteen thirties without permission.

7. On 26 June 1985 the Vienna Local Council (*Gemeinderat*) issued a new zoning and building plan ("the 1985 ordinance") designating the applicant's land for horticultural use. Subsequently, the Vienna municipality, which owns the adjacent plot of land, constructed a block of flats on its property. The applicant's request for a building permit was refused as being contrary to the zoning and building plan.

8. On 11 October 1993 the Constitutional Court set aside the 1985 ordinance as being unlawful insofar as it related to a small area delimited by four streets in which the applicant's property is situated. It found, in particular, that the change of designation of the applicant's property served the exclusive purpose of favouring the construction project of the owner of the adjacent plot of land and therefore violated the principle of non-discrimination.

9. As a consequence of the Constitutional Court's judgment, a building prohibition was applied to the applicant's property and his request for a building permit was dismissed on this ground.

10. On 22 February 1996 the Vienna Local Council issued a new zoning and building plan for the area in question ("the 1996 ordinance"). It re-designated the applicant's property as a building and housing area. Subject to the condition that any roof has to be grassed and flat, about half of the plot may be developed. The latter restriction does not apply to any other plot of land covered by the 1996 ordinance.

THE LAW

11. On 9 April and on 10 April 2001, respectively, the Court received the following declaration from the Agent of the Government and from the applicant's representative:

“With reference to Article 38 § 1 (b) of the Convention for the Protection of Human Rights and Fundamental Freedoms, the parties in the proceedings concerning application no. 31778/96 lodged by Mr Johann Siebenhandl declare, with a view to a friendly settlement reached with the assistance of the European Court of Human Rights, as follows:

1. The Government of the Republic of Austria will pay the applicant a sum of altogether 3,150,000 (three million one hundred and fifty thousand) Austrian schillings (ATS) as compensation in respect of any possible claims relating to the present application. This sum includes ATS 150,000 in respect of costs and expenses incurred in the domestic proceedings and in the Convention proceedings.

This sum will be payable to the applicant’s representative, Dr. Thomas Höhne in Vienna, immediately after the notification of the judgment delivered by the Court pursuant to Article 39 of the Convention.

2. The applicant declares his application settled.

3. The applicant waives any further claims against the Republic of Austria relating to the facts underlying the present application.

4. The parties undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court’s judgment.”

12. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

13. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties’ undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 12 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President