



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

FIRST SECTION

CASE OF SCHREDER v. AUSTRIA

(Application no. 38536/97)

JUDGMENT

STRASBOURG

13 December 2001

FINAL

13/03/2002

This judgment may be subject to editorial revision.

In the case of Schreder v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*

Having deliberated in private on 22 November 2001,

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

PROCEDURE

1. The case originated in an application (no. 38536/97) 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 Josef Schreder (“the applicant”), on 9 January 1997.

2. The applicant was represented before the Court by Mr W. Dellacher, a lawyer practising in Klagenfurt. 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 civil proceedings concerning him 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 21 November 2000 the Court declared the application partly admissible.

7. As of 1 November 2001 the application was allocated to the First Section of the Court. Within that Section, the Chamber that would consider the case was constituted as provided in Rule 26 § 1 of the Rules of Court.

THE FACTS

8. The applicant was a shareholder in a limited liability company, but assigned his shares to another shareholder in 1985. Subsequently, the company went bankrupt.

9. On 8 April 1986 a bank which had extended credit to the company filed an action against the applicant with the Innsbruck Regional Court (*Landesgericht*) requesting repayment because of his joint and several liability for the credit.

10. On 29 April 1986 the first hearing was held and on 14 July 1986 the second. On 1 August 1986 the file was transmitted to the Lienz District Court (*Bezirksgericht*) to hear two witnesses and the applicant. On 18 November 1986 the Lienz District Court returned the file to the Innsbruck District Court. On 25 November 1986 the file was transmitted to the Salzburg District Court to hear witnesses. The file was returned on 12 May 1987 and 10 September 1987 was set down as date for the next hearing. It was postponed upon the applicant's request and was eventually held on 6 October 1987. On 18 November 1987 the court appointed a banking expert. On 11 February 1988 the file was again transmitted to the Lienz District Court for the hearing of a further witness. It was returned on 3 March and sent to the expert on 22 April 1988. The expert delivered his opinion on 23 September 1988. The applicant's request for an extension of the time-limit to comment on the expert opinion was granted and the time-limit set at 14 November 1988. On 19 January 1989 another hearing was held.

11. On 20 February 1989 the Regional Court granted the bank's claim having regard to the submissions of the parties, witnesses and the expert, to documentary evidence and to the case files of the bankruptcy proceedings.

12. On 29 March 1989 the applicant appealed against this decision. On 25 August 1989 the Innsbruck Court of Appeal (*Oberlandesgericht*) quashed the decision and referred the case back to the Regional Court.

13. A hearing which was scheduled by the Innsbruck Regional Court for 22 March 1990 had to be postponed as the claimant had failed to submit necessary documents and a witness could not be summoned. It was held on 29 August 1990. Subsequently, the applicant requested legal aid and on 24 September 1990 requested an extension by four weeks of the time-limit for submitting his declaration of means. On 3 December 1990, after the applicant had been granted legal aid, the expert was ordered to supplement his opinion. The expert complied with this order on 11 October 1991. After a hearing was held on 7 May 1992, the expert was again ordered to supplement his opinion. On 14 September 1993 the expert informed the court that both parties had failed to submit documents required. On 29 September 1993 a further hearing was held at which the court dismissed the applicant's motion for bias concerning the expert. The next hearing was

held on 25 April 1994 and on 9 May 1994 the file was again transmitted to the expert. On 30 January 1995 the expert submitted his supplemented opinion. On 15 March 1995 a further hearing was held.

14. On 12 February 1996 the Innsbruck Regional Court again granted the bank's claim. On 3 April 1996 the applicant appealed against the decision.

15. On 12 July 1996 the Innsbruck Court of Appeal dismissed the applicant's appeal.

16. On 30 January 1997 the Supreme Court (*Oberster Gerichtshof*) dismissed the applicant's appeal. The decision was served on 18 February 1997.

THE LAW

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

17. The applicant complained that the proceedings lasted unreasonably long. He invoked 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...”

18. The applicant maintained that the proceedings were not of such a complexity as to justify a duration of altogether five years for the completion of the expert opinion. The Regional Court was responsible for this delay as it failed to exercise the requisite control and to urge the expert to complete his opinion. Further, the applicant asserts that his occasional requests for the extension of time-limits or the postponement of a hearing caused only minor delays.

19. The Government for their part asserted that the proceedings were of considerable complexity, as they necessitated the taking of an expert opinion on various banking issues and the hearing of witnesses by way of judicial assistance. Further, the Government contended that the courts dealt with the case diligently without unnecessary delays, while the applicant

contributed to the duration of the proceedings in that he failed to make submissions to the expert and in that he asked for a postponement of a hearing and the extension of time-limits.

20. The Court recalls that the reasonableness of the length of proceedings is to 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 (see for instance *Humen v. Poland* [GC], no. 26614/95, 15.10.99, § 60).

21. The proceedings at issue in the present case started on 8 April 1986 and ended on 18 February 1997. Thus, they lasted ten years and more than ten months at three levels of jurisdiction, whereby the case was once referred back to the first instance. Accepting that the proceedings were of a certain complexity for the reasons adduced by the Government, the Court finds that considerable delays occurred in particular in the second set of proceedings before the Innsbruck Regional Court. The proceedings were pending before that court between 25 August 1989 and 12 February 1996 that is for some six and a half years. The Court finds that such a considerable duration cannot be justified by the need to prepare and supplement an expert opinion, even if it appears that part of the delay was caused by the parties' reticence to submit documents to the expert. Moreover, there is no explanation for the lapse of eleven months between the hearing of 15 March 1995 and 12 February 1996 when the Regional Court gave its judgment. On the other hand there are no major delays attributable to the applicant.

22. In these circumstances, the Court finds that the proceedings exceeded a "reasonable time". There has, thus, been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

23. The applicant also complained about a violation of his property rights due to the length of the proceedings. He relied on Article 1 of Protocol No. 1 which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

24. In view of the circumstances of the case and the conclusion reached in paragraph 22 above, the Court considers it unnecessary to examine also the complaint based on Article 1 of Protocol No. 1 (see the *Zanghì v. Italy* judgment of 19 February 1991, Series A no. 194-C, p. , § 23).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed reimbursement of 353,608 Austrian schillings (ATS) which he had to pay to the claimant as a result of the proceedings at issue.

27. The Government did not comment.

28. The Court considers that there is no causal link between the alleged pecuniary damage and the breach of the Convention found. Consequently, it makes no award under this head.

B. Costs and expenses

29. The applicant claimed ATS 545,009 for costs incurred in the domestic proceedings. He did not claim reimbursement of costs incurred in the Strasbourg proceedings.

30. The Government did not comment.

31. The Court finds that the costs of the domestic proceedings cannot be considered as having been incurred in an attempt to prevent or redress the violation found. However, considering that unreasonable delays in proceedings involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, 7.12.99, § 33), the Court awards the applicant ATS 10,000 under this head.

C. Default interest

32. 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* that it is unnecessary to rule on the complaint based on Article 1 of Protocol No. 1;
3. *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, 10,000 (ten-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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos L. ROZAKIS
President