



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

FIRST SECTION

CASE OF LUDESCHER v. AUSTRIA

(Application no. 35019/97)

JUDGMENT

STRASBOURG

20 December 2001

FINAL

20/03/2002

This judgment will become final in the circumstances set out in Article 44
§ 2.

In the case of Ludescher v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr G. BONELLO,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 6 December 2001,

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

PROCEDURE

1. The case originated in an application (no. 35019/97) 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, Helmut Ludescher (“the applicant”), on 16 January 1997.

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

3. The applicant alleged in particular that proceedings concerning a reforestation order were not concluded within a reasonable time.

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 7 September 1999 the Court declared the application partly inadmissible. By a decision of the 23 January 2001 the Court declared the remainder of the applications admissible.

7. As from 1 November 2001 the application was reallocated to the First Section of the 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.

8. Neither the applicant nor the Government filed observations on the merits (Rule 59 § 1).

THE FACTS

9. On 19 March 1991 the Feldkirch District Administrative Authority (*Bezirkshauptmannschaft*), referring to the relevant provisions of the Forestry Act (*Forstgesetz*), ordered the applicant to reforest a plot of land owned by him. In its decision, the authority specified that the applicant should plant 270 larches. In its reasoning, it noted that until October 1986 the northern part of the plot of land had been fully covered with larches and robinias and that the previous stock of trees was shown by the still existing stumps. Following the unlawful felling of the forest, the applicant had used the land as a sheep-run.

10. On 4 July 1991 Vorarlberg Regional Government (*Landeshauptmann*) dismissed the applicant's appeal.

11. On 18 September 1991 the Administrative Court (*Verwaltungsgerichtshof*), upon the applicant's complaint dated 26 August 1991, opened proceedings and requested the Vorarlberg Regional Government to file observations within a period of eight weeks. These observations were received by the Administrative Court on 25 October 1991.

12. On 24 June 1996 the Administrative Court dismissed the applicant's complaint. The decision was served on 17 July 1996.

THE LAW

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

13. The applicant complains of the length of the proceedings before the Administrative Court concerning the reforestation of his land. He relies on 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...”

A. Applicability of Article 6 § 1 of the Convention

14. In the applicant's view the civil law limb of Article 6 § 1 applies to the proceedings at issue. In the proceedings on the reforestation order there has been a genuine dispute over questions of fact and law. The main question underlying the reforestation order, and on which its lawfulness depended, was whether before the applicant had removed the trees from his land there had existed a forest within the meaning of the Forest Act. This was a question of fact on which he and the authorities had been in dispute. While he considered that the trees on his land did not constitute a forest, the authorities and the Administrative Court did.

15. The Government submit that Article 6 § 1 is not applicable to the proceedings at issue. The proceedings concerned an order for reforestation land after the applicant had removed trees without being entitled to do so. Thus, he had not used the land in a way prescribed by law, and the proceedings on the reforestation order did not therefore relate to a dispute over a right which was recognised under domestic law.

16. The Court would agree with the applicant. The proceedings at issue concerned neither a request for using land in a way inconsistent with general regulations, nor a general prohibition of that kind. The authorities issued an order against the applicant specifying *in which manner he had to use his land* and the applicant could at least rely on the right not to be restricted in the use of his land more than was provided for by law. In this respect the Court recalls that a dispute may relate not only to the existence of a right but also to its scope and the manner of its exercise (*Allan Jacobson v. Sweden* judgment of 25 October 1989, Series A no. 163, p. 19, § 67).

17. The Court therefore concludes that Article 6 § 1 applies to the proceedings in the present case.

B. Compliance with Article 6 § 1 of the Convention

18. In the applicant's view the length of the proceedings before the Austrian Administrative Court, is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

19. The Government submit that the length of the proceedings before the Administrative Court was caused by a considerable and unforeseen rise in the number of complaints between 1990 and 1995 which led to an overburdening of that court. However, the legislator took a number of measures to alleviate the workload of the Administrative Court and the number of Administrative Court judges and non-judicial personnel was increased.

20. 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, *Humen v. Poland* [GC], no. 26614/95, § 60, ECHR 1999).

21. The Court observes that the proceedings started before the Administrative Court on 26 August 1991 when the applicant lodged his complaint. The proceedings terminated on 7 July 1996 when the decision of the Administrative Court of 24 June 1996 was served upon the applicant. The proceedings thus lasted nearly four years and ten months for one instance.

22. In the Court's view the proceedings were not particularly complex. As regard the conduct of the applicant, the Court cannot find that any delays were attributable to him. As regards the conduct of the authorities however, the Court finds that a substantial delay occurred in the proceedings before the Administrative Court following the submission of observations by the Vorarlberg Regional Government.

23. The Court is not persuaded by the Government's explanation for this delay that there has been a rise of applications between 1990 and 1995. 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, *Vocaturo v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17 and *G.S. v. Austria*, no. 26297/95, § 35, 21.12.99).

24. In sum, the Court finds that the length of the proceedings 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

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 damages in the amount of 130,000 Austrian schillings (ATS). The prejudice suffered consisted in loss of earnings and wasted expenses for the planting of a vineyard. Further he asked the court to award punitive damages in the amount of 500,000 ATS.

27. The Government submitted that no punitive damages should be awarded and did not comment on the applicant's further claims.

28. Insofar as the applicant may be understood to claim compensation for pecuniary damage, the Court finds that there is no causal link between the breach of which the complaint is made and the alleged 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).

29. Insofar as the applicant may be understood to claim non-pecuniary damage, the Court considers that the applicant may be taken to have suffered distress on account of the delays in the case. On an equitable basis, the Court awards non-pecuniary damages of 30,000 ATS.

30. Lastly, the Court finds no basis, in the circumstances of the present cases, for accepting the applicant's claim for punitive damages (see *Cable and Others v. the United Kingdom*, no. 24436/94, §§ 29-30, 18.2.99 with further references).

B. Costs and expenses

31. The applicant claimed a total of 70,330.20 ATS for costs and expenses incurred in the domestic proceedings and before the Convention institutions. 56,446.20 ATS of this amount relate to the proceedings before the Commission and the Court.

32. 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 may involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, § 33, 7.12.99). The Court awards the applicant 5,000 ATS for this element on an equitable basis.

33. As regards the cost of the Convention proceedings, 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 25,000 ATS.

C. Default interest

34. 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, the following amounts:
 - (i) 30,000 (thirty-thousand) Austrian schillings in respect of non-pecuniary damage;
 - (ii) 30,000 (thirty-thousand) Austrian schillings in respect of 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 claim for just satisfaction.

Done in English, and notified in writing on 20 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President