



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

FIRST SECTION

CASE OF GOLLNER v. AUSTRIA

(Application no. 49455/99)

JUDGMENT

STRASBOURG

17 January 2002

FINAL

17/04/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gollner 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 13 December 2001,

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

PROCEDURE

1. The case originated in an application (no. 49455/99) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mrs Maria Gollner ("the applicant"), on 28 June 1999.

2. The applicant was represented before the Court by Mr M. Urbanek, a lawyer practising in St. Pölten. 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 her lasted unreasonably long.

4. 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.

5. By a decision of 21 November 2000 the Court declared the application partly admissible.

6. 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 for in Rule 26 § 1 of the Rules of Court.

THE FACTS

7. On 23 October 1992 the applicant filed a maintenance application with the Herzogenburg District Court (*Bezirksgericht*) against her husband. At the same time she requested legal aid, which was granted on 28 October 1992. On 18 November 1992 a hearing was held. On 22 December 1992 the proceedings were discontinued following an agreement between the parties. They were resumed on 2 December 1993 and on 16 February 1994 a hearing was held. A further hearing which was scheduled for 3 May 1994 had to be cancelled due to the judge's illness. On 7 November 1994 the applicant requested to be placed under the care of a guardian as far as the maintenance proceedings were concerned. This motion was granted by the St. Pölten Regional Court (*Landesgericht*) on 27 February 1995.

8. On 9 November 1994 a hearing was held and an expert was appointed to assess the income of the applicant's husband. On 7 December 1994 the expert asked to be discharged. On 9 January 1995 the court appointed a new expert who submitted his opinion on 27 January 1995. Following two requests by the applicant for extensions of the time-limit for filing observations on the expert's opinion, that time-limit was fixed at 28 April 1995. On 8 August 1995 a further hearing was held. On 7 September 1995 the court requested the expert to supplement his opinion which he did on 23 October 1995. Following two requests by the applicant for extensions of the time-limit, she submitted her comments on the supplemented expert opinion on 10 January 1996. On 21 March 1996 a further hearing was held. On 2 April 1996 the applicant lodged an application for the preservation of evidence (*Beweissicherungsantrag*). A hearing which had been scheduled for 15 April was cancelled upon the applicant's request. It was held on 27 June 1996, when the taking of evidence was closed.

9. On 14 August 1996 the District Court gave judgment, partly dismissing the applicant's claim. Following her appeal, the St. Pölten Regional Court quashed the decision for procedural errors on 13 December 1996 and referred the case back to the District Court. On 25 February 1997 the applicant appealed against the St. Pölten Regional Court's decision. On 24 November 1997 the Supreme Court (*Oberster Gerichtshof*) confirmed the decision of the St. Pölten Regional Court, by which it had quashed the District Court's decision of 14 August 1996.

10. Meanwhile, on 24 February 1997, the applicant lodged requests for provisional maintenance (*vorläufiger Unterhalt*) and for the preservation of evidence with the District Court. On 18 March 1997 the District Court dismissed the applicant's motions. On 28 March 1997 the applicant appealed against this decision and filed a motion challenging the judge for bias.

11. On 13 February 1998 the bias motion was dismissed by the St. Pölten Regional Court. It noted that the complaint concerned alleged procedural errors and the length of the proceedings, which matters had no bearing on a challenge for bias. On 24 March 1998 the applicant's appeal was dismissed by the Vienna Court of Appeal (*Oberlandesgericht*).

12. On 30 April 1998 the St. Pölten Regional Court dismissed the appeal concerning a motion for the preservation of evidence, but quashed the District Court's refusal of the motions for provisional maintenance and referred the case back.

13. On 22 June and 17 September 1998 the District Court held hearings. On 24 September 1998 it partly dismissed the applicant's maintenance claim.

14. On 23 October 1998 the applicant appealed against this decision and requested, pursuant to section 91 of the Courts Act (*Gerichtsorganisationsgesetz*), that a time-limit be fixed for the decision on the motions for provisional maintenance.

15. On 29 October 1998 the motions for provisional maintenance were partly dismissed by the District Court. On 23 November 1998 the applicant appealed against this decision.

16. On 3 March 1999 the St. Pölten Regional Court quashed the District Court's judgment of 24 September 1998 for procedural errors and referred the case back. The appeal concerning the motions for provisional maintenance was partly dismissed. On 15 April 1999 the applicant therefore lodged a further appeal and requested that it be given suspensive effect to preserve the status quo before the Regional Court's decision. On 27 April 1999 the District Court granted this request. On 22 June 1999 the applicant requested, pursuant to section 91 of the Courts Act, that a time-limit be fixed for the decision on her further appeal. On 23 June 1999 the St. Pölten Regional Court dismissed the further appeal against its decision of 3 March 1999 concerning the motions for provisional maintenance.

17. In the main proceedings a hearing scheduled for 17 August 1999 was postponed upon the applicant's request. It was held on 30 September 1999. A further hearing scheduled for 1 December 1999 was cancelled due to the judge's illness. Further hearings were held on 3 May 2000 and 15 June 2000.

18. On 25 August 2000 the Herzogenburg District Court rejected the applicant's maintenance claim.

19. On 11 January 2001 the St. Pölten Regional Court, upon the applicant's appeal, partly granted her maintenance claim. The judgment was served on 13 February 2001.

THE LAW

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

20. The applicant complained that the proceedings lasted unreasonably long. She 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...”

21. The applicant maintained that the case was not particularly complex. According to her the duration of the proceedings was mainly due to the fact that the case had to be referred back twice to the first instance court, both times on the ground that the proceedings had been defective. As to the discontinuing of the proceedings between December 1992 and December 1993, the applicant points out that, at that time, she did not have a guardian and only “agreed” to the discontinuing under pressure from her husband. Finally, she argues that the delays caused by her motions for extension of time-limits and postponement of hearings were not substantial.

22. For their part, the Government contended that the case was complex as it required an estimate of the agricultural income of the applicant’s husband, which necessitated the taking of expert evidence. Further, they pointed out that the proceedings were discontinued between 22 December 1992 and 2 December 1993 upon an agreement between the parties. While no avoidable delays were caused by the courts, the applicant contributed to the duration of the proceedings by filing a motion for bias against the judge and by requesting several extensions of time-limits and the postponement of hearings.

23. 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 for instance *Humen v. Poland* [GC], no. 26614/95, 15.10.99, § 60).

24. The present proceedings started on 23 October 1992 and were terminated on 13 February 2001. Thus, they lasted for eight years and three and a half months including one year when the proceedings were discontinued following an agreement between the parties. The Court observes that the proceedings concerning the applicant’s maintenance claim were of particular importance for her (see *mutatis mutandis* *Obermeier v. Austria* judgment of 28 June 1990, Series A no. 179, p. 23, § 72) and should therefore have been conducted with particular diligence. Even if the

proceedings were of a certain complexity as an expert opinion had to be taken, and a number of ancillary proceedings had to be conducted, their duration appears mainly to be due to the fact that the appellate court twice had to refer the case back to the first instance on account of procedural defects. As to the applicant's conduct, the Court finds that he requests for extension of time-limits and postponement of two hearings did not cause any substantial delays.

25. Having regard to the circumstances of the case, the Court finds that the overall duration of the proceedings exceeded a "reasonable time". There has, thus, been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 916,000 Austrian schillings (ATS) (66,569.77 euros (EUR)) plus 4 % default interest as compensation for pecuniary damage. She asserted that this was the amount of maintenance due since the start of the proceedings, and alleged that due to the duration of the proceedings her husband was in a position to donate his property to their daughter in late 1997 which means that she had to introduce further proceedings challenging the validity of the donation. The applicant further submitted that an amount between ATS 280,000 (EUR 20,348.84) and 728,000 (EUR 52,906.98) would be appropriate as regards non-pecuniary damage, as the duration of the proceedings caused her feelings of anxiety and distress.

28. The Government contended that there was no causal link between the length of the proceedings and the pecuniary damage claimed by the applicant. They did not comment on her claim for non-pecuniary damage.

29. The Court agrees with the Government that there is no causal link between the pecuniary damage claimed and the violation found. In particular it is not for the Court to speculate what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 (see the *Werner v. Austria* judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2514, § 72). Consequently, no award is made under this head.

30. As to non-pecuniary damage, the Court, having regard to its case-law, taking into account the importance of the proceedings at issue for the applicant and making an assessment on an equitable basis, awards the applicant ATS 130,000 (EUR 9,447.66).

B. Costs and expenses

31. The applicant claimed reimbursement of costs incurred in the domestic proceedings of altogether ATS 898,988 (EUR 65,333.43) and of costs incurred in the Strasbourg proceedings of altogether ATS 263,444 (EUR 19,145.66).

32. The Government did not comment.

33. As to the costs of the domestic proceedings, the Court observes that only an amount of ATS 3,667 (EUR 266.49) relating to the applicant's requests for time-limits to be set can be considered as having been incurred in an attempt to prevent or redress the violation found. It therefore grants the said amount. Moreover, 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 the applicant a further amount of ATS 10,000 (EUR 726.74). Thus, the Court awards a total amount of 13,667 in respect of costs incurred in the domestic proceedings,

34. As to the costs of the Strasbourg proceedings, the Court notes that the applicant who was represented by counsel did not have the benefit of legal aid. Making an assessment on an equitable basis and having regard to the sums usually put forward in length of proceedings cases, the Court awards the applicant ATS 20,000 (EUR 1,453.49) under this head.

35. Thus, a total award of ATS 33,667 (EUR 2,446.73) is made for costs and expenses.

C. Default interest

36. 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: 130,000 (one-hundred and thirty thousand) Austrian schillings ie. 9,447.66 EUR (nine-thousand four-hundred and forty-seven euros and sixty-six cents) in respect of non-pecuniary damage and 33,667 (thirty-three thousand six-hundred and sixty-seven) Austrian schillings ie. 2,446.73 EUR (two-thousand four-hundred and forty-six euros and seventy-three cents) 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 claim for just satisfaction.

Done in English, and notified in writing on 17 January 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President