CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF H.E. v. AUSTRIA

(Application no. 33505/96)

JUDGMENT

STRASBOURG

11 July 2002

FINAL

06/11/2002

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 H.E. 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,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 27 June 2002,

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

PROCEDURE

1. The case originated in an application (no. 33505/96) 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, Mr H.E. ("the applicant"), on 1 January 1954.

2. The applicant was represented by Mr P. Gatternig, 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. The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged, in particular, that civil proceedings concerning him lasted unreasonably long in breach of Article 6 § 1 of the Convention.

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 28 August 2001 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 21 March 1985, the applicant applied to the Vienna Arbitration Board (*Schlichtungsstelle*) for an increase in the rent payable by his tenants to enable repairs to the house. The increase was granted on 25 June 1985.

8. On 28 June 1985, several tenants filed an appeal against this decision with the Hernals District Court (*Bezirksgericht*). The court held hearings on 25 October 1985, 24 January and 28 February 1986. On 27 May 1986, the court determined the classification of the respective apartments for the purposes of rent calculation under the Rent Act. It dismissed one tenant's request to render an interlocutory decision on a preliminary issue as it could be joined to the merits. On 18 November 1987, the Vienna Regional Civil Court (*Landesgericht für Zivilrechtssachen*) dismissed that tenant's appeal concerning an interlocutory decision.

9. The District Court held a further hearing on 26 August 1988. It appointed an expert on 8 September and, after this expert had declared bias, appointed another expert on 5 October 1988. On 2 March 1989, following two extensions of the time-limit set for this purpose, the applicant submitted documents required by the court. On 16 May 1989 the expert submitted his opinion. Thereupon, further hearings were held on 5 October 1989, 23 January, 18 May and 18 October 1990 and 6 February 1991. A hearing which had been scheduled for 16 May 1991 had to be postponed to 9 August 1991 as the court had failed to serve the applicant's submissions on the other parties in time. At the hearing of 9 August 1991 the judge closed the taking of evidence.

10. On 16 March 1992, the proceedings were resumed for the taking of further evidence and hearings were held on 8 July and 18 December 1992, and on 20 April 1993 when the proceedings were adjourned for delivery of a written judgment. The applicant was ordered to submit further documents which he did on 11 May 1993.

11. Throughout the District Court proceedings the judge responsible for dealing with the case changed four times. The parties made numerous requests for the taking of evidence. One tenant in particular filed numerous objections against the minutes of the hearings.

12. On 29 June 1994, the applicant filed an application under section 91 of the Courts Act (*Gerichtsorganisationsgesetz*) for a time-limit to be fixed for the delivery of the written judgment. On 20 October 1994, the Vienna Regional Civil Court granted this application and set a time-limit of six weeks.

13. On 12 June 1995, the District Court dismissed the applicant's claim for a rent increase. The applicant's appeal against the decision of 1 July 1995 was dismissed by the Vienna Regional Civil Court on 12 December 1995.

14. On 16 April 1996, the Supreme Court (*Oberster Gerichtshof*) dismissed the applicant's appeal on points of law, noting that the conditions of section 528 § 1 of the Code of Civil Procedure were not met. According to this provision, an appeal on points of law against the decision of an appellate court is only admissible if it raises a legal issue of particular importance for the uniformity, certainty, or further development of the law. The judgment was served on 24 May 1996.

THE LAW

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

15. 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..."

16. The Government contested this view. They asserted that the duration of the proceedings was due to the fact that the case was highly complex, necessitating that expert opinions be obtained, involving a large volume of documents and requiring the examination of numerous witnesses. Further, they contended that the applicant and other parties to the proceedings filed numerous requests, including several requests for the extension of time-limits for the submission of documents, which caused considerable delays. Moreover, while five judges in a row had to study the voluminous case-file, the applicant and, in particular, one opponent to the proceedings failed to cooperate in these phases of the proceedings.

17. 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).

18. The proceedings started on 28 June 1985 when the tenants appealed against the Arbitration Board's decision and the "dispute" within the meaning of Article 6 arose. They ended on 24 May 1996 when the decision of the Supreme Court was served. They therefore lasted ten years and almost eleven months.

19. In the Court's view the proceedings were of some complexity. As regards the conduct of the applicant, the Court cannot find that the delays

caused by the applicant contributed significantly to the overall duration. As regards the conduct of the authorities, however, the Court finds that substantial delays occurred due to four changes of judges while the proceedings were pending before the first instance court for almost ten years.

20. 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

21. 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

22. The applicant claimed 636,921.10 Austrian schillings (ATS) as compensation for pecuniary damage.

23. The Government contended that there was no causal link between the length of the proceedings and the pecuniary damage claimed by the applicant.

24. 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 had been 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). The Court notes that the applicant has not claimed compensation for non-pecuniary damage. Consequently, no award is made under this head.

B. Costs and expenses

25. The applicant claimed reimbursement of costs incurred in the domestic proceedings of a total amount of ATS 337,418.59 (EUR 24,521.17) and of costs incurred in the Strasbourg proceedings of ATS 245,448 (EUR 17,837.40).

26. The Government noted that the amounts were excessive and, in particular as regards the domestic proceedings, only the application of section 91 of the Courts Act can be charged, however, based on the lower fee for simple writs.

27. As to the costs of the domestic proceedings, the Court observes that only an amount of EUR 370 relating to the applicant's request for a time-limit to be fixed can be considered as having been incurred in an attempt to prevent or redress the violation found. Furthermore, 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 EUR 1,000 under the count on an equitable basis.

28. As to the costs of the Convention 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 awarded in similar cases, the Court awards the applicant EUR 2,000 under this head.

29. Thus, a total award of EUR 3,370 is made for costs and expenses.

C. Default interest

30. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

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, for costs and expenses, EUR 3,370 (three-thousand three-hundred and seventy euros);
   (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points 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 11 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President