



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

SECOND SECTION

CASE OF MÜLLER v. SWITZERLAND

(Application no. 41202/98)

JUDGMENT

STRASBOURG

5 November 2002

FINAL

05/02/2003

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 Müller v. Switzerland,

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

Mr J.-P. COSTA, *President*,
Mr L. WILDHABER,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 5 March and 8 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 41202/98) against Switzerland 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 a Swiss national, Josef Müller (“the applicant”), on 2 April 1998.

2. The Swiss Government (“the Government”) were represented before the Court by their Agent, Mr P. Boillat, Head of the International Affairs Division of the Federal Office of Justice.

3. The applicant complained under Article 6 § 1 of the Convention of the length of compensation proceedings.

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 Second 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 12 April 2001, the Chamber decided to declare the application partly inadmissible. On 5 March 2002 the Chamber declared the remainder of the application admissible.

7. After consulting the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 2 *in fine*).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court). The above application was retained by the Second Section, newly composed (Rule 52 § 1).

THE FACTS

9. The applicant, Josef Müller, is a Swiss citizen born in 1924. A businessman by profession, he resides in Zurich in Switzerland.

10. In 1957 and 1959 the applicant acquired three adjacent properties, used for farming purposes, in Niederhasli in the vicinity of Zurich airport. The combined surfaces of the properties amount to approximately 25,500m². During the ensuing proceedings at issue, there were, apart from an empty storehouse, no constructions on the properties.

11. In 1966 these properties were attributed to the residential zone, and in 1984 to the commercial zone.

12. Meanwhile, in 1983, the area of these properties was designated as pertaining to Security Zone I of Zurich airport and therefore the construction height of any new buildings was to be limited to between 21 and 38 meters.

13. On 8 July 1983 the applicant applied to the President of the Federal Assessment Commission (*Eidgenössische Schätzungskommission*), requesting the institution of compensation proceedings on account of an alleged de facto expropriation (*materielle Expropriation*). The request was refused by the Commission in 1984 and, upon appeal, by the Federal Court (*Bundesgericht*) on 29 May 1986.

14. On 7 March 1986 the applicant filed a new request for compensation which was declared inadmissible by the Commission “for the time being” (*zur Zeit*) on 4 February 1987 although, following the designation of new noise protection zones, the Commission decided to resume proceedings in 1988. Against both decisions the applicant filed administrative law appeals which were dismissed by the Federal Court in 1989.

15. Meanwhile the applicant requested compensation from the Niederhasli municipality for the change in zone of his properties. The case was transmitted successively to the Federal Assessment Commission, the Dielsdorf District Council and the Government of the Canton of Zurich, which in 1990 ordered the Niederhasli municipality to institute compensation proceedings. Against this last decision the applicant filed an appeal with the Administrative Court of the Canton of Zurich, which in 1992 found that it was up to the Cantonal Assessment Commission rather than the Niederhasli municipality to conduct the compensation proceedings. These proceedings were then instituted before the Cantonal Assessment Commission, though on 30 June 1995 the Federal Assessment Commission decided to suspend the proceedings until the Federal Court had given its judgment.

16. Meanwhile, the Federal Assessment Commission dismissed on 26 October 1990 the applicant’s request for compensation of 7 March 1986 as, *inter alia*, there were still adequate possibilities for the applicant to use his properties.

17. On 6 February 1991 the applicant filed an administrative law appeal (*Verwaltungsgerichtsbeschwerde*) with the Federal Court against this decision, requesting compensation for the depreciation in value of his properties on account of the extension and operations of Zurich airport. He also challenged all the Federal Court judges as they had previously sat in other proceedings concerning himself.

18. By decision of 5 June 1991, the Federal Court dismissed the applicant's challenge.

19. The Federal Court then brought the applicant's administrative appeal to the attention of the Government of the Canton of Zurich, which in its observations requested the court to dismiss the appeal. The Federal Assessment Commission refrained from filing observations. Upon the applicant's request, the court authorised a further exchange of observations between the parties.

20. On 19 August 1993 a delegation of the Federal Court visited the applicant's properties. On that occasion he was informed that other cases concerning noise protection zones at Geneva airport raised similar problems as the applicant's case, and that they all had to be dealt with together.

21. On 14 March 1995 the applicant went bankrupt. The proceedings before the Federal Court were suspended and the bankruptcy office of the Küsnacht municipality was requested to inform the court whether the bankruptcy estate, or individual creditors, wished to continue the proceedings. Following an extension of the time-limit, the Küsnacht bankruptcy office filed its reply on 29 January 1997 whereupon the Federal Court resumed proceedings. On 11 March 1997 the applicant informed the court that he wished to continue the proceedings.

22. On 4 June 1997, upon the Federal Court's request, the Federal Agency for Examining Materials and Research (*Eidgenössische Materialprüfungs- und Forschungsanstalt*) submitted a report on the noise nuisance affecting the applicant's properties. By letter dated 11 June 1997, the applicant expressed his disagreement with the report, whereas the Government of the Canton of Zurich accepted it on 26 June 1997.

23. On 17 September 1997 the Federal Court conducted a hearing at which the applicant took the floor, complaining, *inter alia*, of the duration of the proceedings. The court then deliberated in public, whereby the Rapporteur (*Referent*) explained the legal considerations of his report and proposed to dismiss the applicant's appeal. In the further discussion, it transpired that the other four judges shared the Rapporteur's opinion. The presiding judge then read out the operative part of the judgment.

24. The judgment, numbering 30 pages, was served on the applicant on 9 October 1997. The Federal Court concluded that the situation of the applicant's properties did not warrant compensation.

THE LAW

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

25. Before the Court the applicant complained of the length of the proceedings. He relied on Article 6 § 1 of the Convention which states, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

A. Period to be taken into consideration

26. The applicant claimed that the period to be considered lasted over 40 years. In the Government’s opinion, the period to be considered commenced on 7 March 1986 when the applicant filed a request for compensation with the Federal Assessment Commission, and ended on 17 September 1997 when the Federal Court read out its judgment in public.

27. The Court agrees with the Government. Accordingly, the proceedings to be taken into consideration lasted 11 years, 6 months and 10 days.

B. Reasonableness of the length of the period in issue

28. The applicant contended that he could not be held responsible for the delays experienced by the Federal Court in dealing with his case, for instance by having to group it with cases concerning Geneva airport. Indeed, the Federal noise protection and security zoning plans had been completed by 1987, and the Federal Court unnecessarily attempted to fill gaps in the relevant legislation. The applicant also pointed out that the use of his properties was limited in that the noise protection zoning plans were linked to an absolute building prohibition.

29. The Government submitted that the proceedings at issue did not exceed the notion of a reasonable time within the meaning of Article 6 § 1 of the Convention. The proceedings before the Federal Assessment Commission (1986-1991) and the Federal Court (1991-1997) were not excessively long. The Commission could not be blamed for having originally suspended the proceedings, as long as the plans concerning the noise protection zones had not entered into legal force. When the Commission eventually resumed the proceedings, the applicant, surprisingly, contested the decision before the Federal Court. In respect of the proceedings before that court, the Government considered that the applicant, upon filing his administrative law appeal, contributed to their

length by immediately challenging all the Federal Court judges. Furthermore, he did not react when, on 19 August 1993, he was informed that the Federal Court would group similar cases concerning another airport. The Government submitted that, in the light of the Court's case-law (see the *Süssmann v. Germany* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1174, § 58 et seq.), the Federal Court could justifiably decide to proceed in this manner. When the applicant went bankrupt in 1995, the Federal Court suspended the proceedings, though during the bankruptcy proceedings he again employed all legal means at his disposal, thereby further prolonging the proceedings.

30. In the Government's opinion, the case was extraordinarily complex since it concerned novel and fundamental issues of compensation for expropriation on account of noise nuisance. On the one hand, statutory law was incomplete at that time, and the Federal Court was called upon to act as "legislator" and had carefully to examine the various pertinent factual and legal aspects. On the other hand, little was at stake for the applicant, as the proceedings only concerned compensation for alleged restrictions on the use of his agricultural property.

31. 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 and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant (see among other authorities *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Zimmermann and Steiner v. Switzerland* judgment of 13 July 1983, Series A no. 66, p. 11, § 24).

32. Turning to the circumstances of the present case, the Court notes that the domestic authorities were confronted with certain novel issues of compensation for the alleged depreciation in value of the applicant's properties on account of the extension and the operations of Zurich airport. The Court accepts, therefore, that the proceedings at issue were complex.

33. As regards the applicant's conduct, the Court notes, on the one hand, that he had no means under Swiss law of expediting the proceedings in particular before the Federal Court (see the *Zimmermann and Steiner* judgment cited above, p. 11, § 26). On the other hand, the applicant contributed to some extent himself to the length of the proceedings. For instance, when new noise protection zones were introduced and the Federal Assessment Commission resumed proceedings in the applicant's case in 1988, he unsuccessfully filed administrative law appeals with the Federal Court (see above, paragraph 14). When the applicant filed a further administrative appeal with the Federal Court, he immediately challenged all Federal Court judges (paragraph 17). As a result of the applicant's bankruptcy, declared on 14 March 1995, the Federal Court suspended the proceedings for approximately two years (paragraph 21).

34. The Court has next examined what was at stake for the applicant. It is true that the applicant's properties, once attributed to the residential and commercial zone, were limited in their use, for instance in respect of the construction height of buildings. The Court nevertheless notes the decision of the Federal Assessment Commission of 26 October 1990 according to which there were still adequate possibilities for the applicant to use his properties (see above, paragraph 16).

35. As to the conduct of the authorities, the Court notes that the proceedings were first pending for approximately four and a half years before the Federal Assessment Commission (7 March 1986 to 6 October 1990). Thereafter, more than six years elapsed before the Federal Court until the latter gave its judgment (6 February 1991 to 17 September 1997). Even if the proceedings were suspended for two years following the applicant's bankruptcy, much of the remaining period in the proceedings before the Federal Court remains unaccounted for. The Court notes, for instance, that as from 5 June 1991, when the applicant's challenge was dismissed, until 14 March 1995 when the applicant went bankrupt, the Federal Court, other than visiting the applicant's properties, undertook only a few, merely procedural steps.

36. The Government, referring to the *Süssmann v. Germany* judgment (cited above), have nevertheless justified this period with the special circumstances confronting the Federal Court. Thus, at that time Swiss statutory law concerning the legal matters at issue had been incomplete, and the Federal Court was called upon to act as "legislator" and carefully to examine the various pertinent factual and legal aspects also in respect of Geneva airport.

37. In the Court's opinion, however, the *Süssmann* case, involving proceedings before the German Federal Constitutional Court lasting three years and approximately five months, concerned the "unique political context of German reunification" (ibid. p. 1174, § 60) and thus falls to be distinguished in its singular importance from the present one.

38. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, the Court considers that the length of proceedings complained of, in particular that of the proceedings before the Federal Court between 1991 to 1995, was excessive and failed to satisfy the reasonable time requirement laid down in Article 6 § 1 of the Convention.

39. There has, therefore, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed the following items of pecuniary damage: between 700 and 1000 Swiss Francs (CHF)/m² (equivalent to between 479 and 684 euro) for the de facto expropriation of his three properties; CHF 200,000 (equivalent to 138,813 euro) for legal costs for various proceedings which he had been conducting in Switzerland since 1983; an unspecified amount for damages encountered in connexion with his bankruptcy; and CHF 83,400 (equivalent to 57,059 euro) for various fines which the Federal Court had imposed on him in the course of the various proceedings. The applicant also requested non-pecuniary damage, without specifying an amount.

42. The Government saw no causal link between the possible finding of a violation and the pecuniary damage claimed. In respect of non-pecuniary damage, the Government asked the Court to rule that the finding of a violation constituted sufficient just satisfaction.

43. In the Court’s opinion, there is no causal connection between the violation complained of and the pecuniary damage alleged. As regards any non-pecuniary damage, the Court considers that it is sufficiently compensated for by the finding of a breach of Article 6 § 1 of the Convention.

B. Costs and expenses

44. The applicant claimed CHF 3,261.50 (equivalent to 2,231 euro) for costs and expenses incurred for the proceedings before the Court. The Government did not contest this amount.

45. Applying the principles laid down in its case-law and having regard to the fact that only part of his application was declared admissible, the Court finds the sum of 2,000 euro reasonable and awards it to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* by six votes to one that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
3. *Holds* unanimously
 - (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, EUR 2,000 euro (two thousand euro) for costs and expenses to be converted into the national currency of the respondent State, at the rate applicable at the date of settlement;
 - (b) that simple interest at a 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;
4. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly concurring dissenting opinion of Mr L. Loucaides is annexed to this judgment.

J.-P.C.
S.D.

PARTLY CONCURRING DISSENTING OPINION
OF JUDGE LOUCAIDES

1. I agree with the finding that there has been a violation of Article 6 § 1 of the Convention in this case in which the proceedings in question lasted 11 years, 6 months and 10 days. The length of the proceedings before the Federal Court between 1991-1995, was found to be particularly excessive.

2. However, I disagree that as regards non-pecuniary damage the finding of a breach of Article 6 § 1 of the Convention is sufficient. I believe that in the circumstance of the case, taking into account in particular the length of the proceedings the applicant should be awarded damages. In this respect I take into account the practice of the Court in comparable cases.