



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

FIRST SECTION

CASE OF PETSCHAR v. AUSTRIA

(Application no. 36519/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

17 April 2003

This judgment is final but it may be subject to editorial revision.

In the case of Petschar 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 S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 27 March 2003,

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

PROCEDURE

1. The case originated in an application (no. 36519/97) 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, Marianne Petschar (“the applicant”), on 6 October 1996.

2. The applicant was represented by Mr J. Gradenegger. 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 complained mainly under Article 6 § 1 of the Convention about the length of a set of administrative civil proceedings and that she had been a victim of a violation of Article 1 of Protocol No. 1 to the Convention because of their length.

4. On 1 November 1998 the case was transferred to the Court by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 7 November 2000 the Court (Third Section) communicated the above complaints to the Government.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. On 17 January 2002, having obtained the parties’ observations, the Court declared the application admissible insofar as it had been communicated to the Government. The applicant’s further complaints were declared inadmissible.

7. On 23 January and on 13 February 2003 the applicant and the Government, respectively, submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

8. The applicant, Marianne Petschar, is an Austrian national, born in 1940, and living in Villach. She is represented before the Court by Mr J. Gradenegger.

9. On 10 August 1987 the applicant and other land-owners requested the Villach District Agricultural Authority (*Agrarbezirksbehörde*) to grant them rights to construct a road for transporting wood over third person's property (*Bringungsrechte*).

10. On 28 November 1988 the District Agricultural Authority, referring to the Regional Forestry Roads Act (*Güter- und Seilwege Landesgesetz*) issued a decree granting the applicant and other land owners a right to construct a road for transporting timber over third persons' property during six months per year.

11. On 18 September 1989 the Regional Agricultural Authority (*Landesagrarchehörde*) quashed the District Agricultural Authority's decision and referred the case back to it.

12. On 4 December 1990 the District Agricultural Authority re-issued an order granting the applicant and other land owners the right to construct a road for transporting timber over third persons' property. One of the land-owners concerned appealed.

13. On 21 October 1991 the Regional Agricultural Authority quashed the District Agricultural Authority's decision and again referred the case back to it.

14. On 3 November 1992 the District Agricultural Authority requested the District Administrative Authority (*Bezirkshauptmannschaft*) to issue permits required under the Environmental Protection Act (*Naturschutzgesetz*) and the Forestry Act.

15. On 19 May 1993 the District Administrative Authority suspended the proceedings as the District Agricultural Authority had stated that it would elaborate a new draft project. Subsequently several expert opinions were obtained and the new draft project elaborated.

16. On 13 August 1997 all issues of water rights, forestry and nature conservation affected by the construction of a road for transporting timber were dealt with in a common hearing. In the following months the permits under the Environmental Protection Act, the Water Rights Act and the Forestry Act were given.

17. On 15 September 1998 the Villach District Agricultural Authority granted the applicant and other land owners the right to construct a road and to transport timber over third persons' property.

THE LAW

18. On 23 January and on 13 February 2003, respectively, the Court received the following declaration from the applicant and the Government:

“With reference to Article 38 § 1 (b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the parties in the proceedings concerning application no. 36519/97, lodged by Marianne Petschar, declare with a view to a friendly settlement reached with the assistance of the European Court of Human Rights, as follows:

1. The Government of the Republic of Austria will pay the applicant a sum of altogether 11,000 euros (EUR) as compensation in respect of any possible claims relating to the present application. This sum includes EUR 3,000 in respect of costs and expenses incurred in the domestic proceedings and Convention proceedings.

This sum will be payable to the applicant's representative, Mr Johannes Gradenegger in Villach, within three months from the date of delivery of the judgment given by the Court pursuant to Article 39 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

2. The applicant declares the application settled.

3. The applicant waives any further claims against the Republic of Austria relating to the facts underlying the present application.

4. The parties undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.”

19. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

20. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 17 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President