



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

FIRST SECTION

CASE OF KOLB and Others v. AUSTRIA

(Applications nos. 35021/97 and 45774/99)

JUDGMENT

STRASBOURG

17 April 2003

FINAL

17/07/2003

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 Kolb and Others 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 April 2002, 21 February 2002 and 27 March 2003,

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

PROCEDURE

1. The case originated in two applications (nos. 35021/97 and 45774/99) 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 four Austrian nationals, Mr Max Kolb, Mr Josef Halaus, Mr Georg Taxacher and Mr Georg Wechselberger (“the applicants”), on 14 November 1996 and 15 September 1998 respectively.

2. The applicants, who had been granted legal aid, were represented by Mr E. Proksch, 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 for Foreign Affairs.

3. The applicants alleged, in particular, that the length of land consolidation proceedings involving their property exceeded the “reasonable time” requirement of Article 6 of the Convention. The first applicant also complained about the lack of a public hearing in these proceedings.

4. The applications were 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 applications were 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.

6. By a decision of 27 April 2000 the Court decided to join the applications and to communicate them to the respondent Government.

7. On 1 November 2000 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

8. By a decision of 21 February 2002 the Court declared the applications partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants were born in 1938, 1942, 1948 and 1962 respectively. They are farmers living in Stumm (Austria).

10. On 7 July 1966 the Tirol Regional Government as the Agricultural Authority of First Instance (*Landesregierung als Agrarbehörde erster Instanz* - “the Agricultural Authority”) instituted land consolidation proceedings (*Zusammenlegungsverfahren*) involving property belonging to the first applicant, the second applicant’s mother, the third applicant and the fourth applicant’s father.

11. On 18 December 1974 the Agricultural Authority ordered the provisional transfer (*vorläufige Übernahme*) of compensatory parcels (*Grundabfindung*).

12. On 28 December 1980 the municipal council amended the area zoning plan (*Flächenwidmungsplan*) re-designating agricultural land which had, before 1974, belonged to the first applicant, the second applicant’s mother and to the fourth applicant’s father, as building land.

13. In February 1988 the second applicant took over his mother’s farm.

14. On 28 July 1988 the consolidation scheme (*Zusammenlegungsplan*) was issued by the Agricultural Authority confirming the situation created by the provisional transfer.

15. On 16 September 1988 the third applicant appealed against the consolidation scheme. The first and second applicants as well as the fourth applicant’s father did so on 19 September 1988.

16. In May, June and October 1989, the Provincial Land Reform Board (*Landesagrarsenat* - “the Provincial Board”), sitting in camera, held hearings on these appeals. Subsequently, the fourth applicant took over his father’s farm.

17. On 26 November 1990 all four applicants filed a request for transfer of jurisdiction to the Supreme Land Reform Board (*Oberster Agrarsenat* - “the Supreme Board”), which the latter dismissed on 27 February 1991.

A. As to the first applicant (Mr Max Kolb)

18. On 18 April 1991 the Provincial Board, after having held a hearing in camera, dismissed the first applicant's appeal.

19. On 3 June 1991 the first applicant filed complaints with the Constitutional Court (*Verfassungsgerichtshof*) and the Administrative Court (*Verwaltungsgerichtshof*). In the complaint to the Administrative Court he requested that a public oral hearing be held.

20. On 25 November 1991 the Constitutional Court refused to deal with the case and referred it to the Administrative Court.

21. On 16 November 1993 the Administrative Court requested the Constitutional Court to review the constitutionality of section 15 § 1 of the Tirol Land Planning Act (*Flurverfassungslandesgesetz*), which provides that changes in value which occur after the provisional transfer cannot be taken into account in the determination of compensation.

22. On 13 October 1995 the Constitutional Court found that section 15 § 1 of the Tirol Land Planning Act was in conformity with the Constitution.

23. On 28 February 1996 the Administrative Court dismissed the first applicant's complaint rejecting at the same time, in accordance with section 39 § 2 (6) of the Administrative Court Act (*Verwaltungsgerichtshofgesetz*), the applicant's request for a hearing.

24. The Administrative Court found in particular that the calculation of compensation as regards the plots of land transferred to the municipality for building a street, had been carried out in a detailed and comprehensible manner and confirmed that the said compensation was in accordance with the relevant law. The decision was served on 24 May 1996.

B. As to the second applicant (Mr Josef Halaus)

25. On 18 April 1991 the Provincial Board, after having held a hearing in camera, dismissed the second applicant's appeal as being unfounded.

26. On 3 June 1991 the second applicant filed complaints with the Constitutional Court and the Administrative Court.

27. On 25 November 1991 the Constitutional Court refused to deal with the case and referred it to the Administrative Court.

28. On 16 November 1993 the Administrative Court requested the Constitutional Court to review the constitutionality of section 15 § 1 of the Tirol Land Planning Act.

29. On 13 October 1995 the Constitutional Court found that section 15 § 1 of the Tirol Land Planning Act was in conformity with the Constitution.

30. On 28 February 1996 the Administrative Court quashed the Provincial Board's decision as far as the second applicant was concerned. It found that the Provincial Board had not given sufficient reasons for calculating the size of a particular part of the applicant's property involved in the land consolidation proceedings. In this respect, the lawfulness of the compensation could not be assessed.

31. On 25 July 1996 the Provincial Board, after having held a public hearing, rejected the second applicant's appeal against the consolidation scheme as being inadmissible. It noted that the second applicant and his mother had concluded a contract of transfer of land on 5 February 1988. However, the request to enter the contract into the land register had only been lodged with the competent court on 19 November 1991. Consequently, the second applicant had not been the legal owner of the land at issue and had not been entitled to file an appeal in 1988.

32. On 11 September 1996 the applicant filed a complaint with the Constitutional Court arguing in particular that he had been the legal owner of the land already in 1988 and, therefore, had been entitled to file an appeal.

33. On 9 June 1997 the Constitutional Court refused to deal with the complaint and transferred it to the Administrative Court. On 6 October 1997 and on 20 November 1997, respectively, the applicant and the Provincial Board filed further comments.

34. On 10 December 1998 the Administrative Court dismissed the second applicant's complaint, confirming the reasoning of the Provincial Board. The decision was served on 22 January 1999.

C. As to the third and fourth applicants (Mr Georg Taxacher and Mr Georg Wechselberger)

35. On 18 April 1991 in the case of the third applicant and on 20 June 1991 in the case of the fourth applicant, the Provincial Board - in both cases having held a hearing in camera - partly dismissed their appeals. The third applicant appealed in May 1991 and the fourth applicant in July 1991.

36. On 7 October 1992 the Supreme Board dismissed the applicants' further appeals. It found that the transfer of property to the municipality for building a street was in accordance with the law and that the applicants had been duly compensated.

37. On 21 December 1992 the third applicant, and on 21 January 1993 the fourth applicant, filed a complaint with the Constitutional Court which transferred their appeals to the Administrative Court on 15 June 1993.

38. On 14 December 1995 and on 21 May 1996, respectively, the Administrative Court quashed the Supreme Board's decision on the ground that the latter had given insufficient reasons for its calculation of compensation.

39. On 6 November 1996 the Supreme Board, having held a public hearing, partly dismissed the applicants' appeals.

40. On 31 January 1997 the applicants complained to the Constitutional Court which, on 16 June 1997, transferred both cases to the Administrative Court.

41. On 26 February 1998 the Administrative Court dismissed the applicants' complaints. The Administrative Court found in particular that the Supreme Board had carried out the calculation of compensation in a detailed and comprehensible manner and confirmed its finding that the said compensation was in accordance with the relevant law. The decision was served on 18 March 1998.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Hearings before land reform boards

42. According to section 9 §§ 1 and 2 of the Federal Agricultural Proceedings Act (*Agrarverfahrensgesetz*), in the version in force before December 1993, land reform boards took their decisions after an oral hearing in the presence of the parties. It was the constant practice of the authorities to hold hearings in camera.

Legislation enacted in December 1993 (*Bundesgesetzblatt* 901/1993), changed the said law to the effect that hearings before land reform boards are public.

B. Hearings before the Administrative Court

43. According to section 39 § 1 of the Administrative Court Act, the Administrative Court is to hold a hearing after its preliminary investigation of the case where a complainant has requested a hearing within the time-limit. Section 39 § 2 (6) provides however that, notwithstanding a party's application, the Administrative Court may decide not to hold a hearing if it is apparent to the court, from the written pleadings of the parties and the files relating to the previous proceedings, that an oral hearing is not likely to contribute to the clarification of the case.

THE LAW

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

44. The applicants alleged violations of Article 6 § 1 of the Convention which, so far as material, reads as follows:

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

A. The length of the proceedings

45. All four applicants alleged that the land consolidation proceedings involving their property lasted unreasonably long. In their view, 18 December 1974, the date when the provisional transfer of land was ordered, had to be taken as a starting point for purpose of calculating the length of the proceedings. Furthermore, the applicants asserted that the proceedings were not particularly complex. According to them, they involved only ninety-seven parcels of land belonging to the municipality and fifty-seven other land owners. Compared to other land consolidation proceedings they were of a rather small size.

46. The Government, for their part, argued that 16 and 19 September 1988, respectively, had to be taken as the starting point for the duration of the proceedings, as it was only when the applicants appealed against the land consolidation scheme that a “dispute” within the meaning of Article 6 § 1 arose between the applicants and the authorities.

47. The Government argued that land consolidation proceedings are complex, involving a multitude of parties - in the present case 950 parcels belonging to 410 land owners - and having to achieve a balance between the public interest and the interests of the individual land owners. They asserted that, on the whole, the authorities dealt with the proceedings without delay. As to the delay in the proceedings before the Administrative Court, the Government submitted that it was due to the heavy increase in that court’s work load. However, measures were taken to alleviate the workload of the Administrative Court. In particular, Independent Administrative Panels were set up in the Austrian provinces as of 1 January 1991. Complainants must now turn to these Panels prior to seizing the Administrative Court. If a decision of an Independent Administrative Panel is challenged before the Administrative Court, the latter may reject the appeal if it is of minor importance. Moreover, the judicial and non-judicial staff of the

Administrative Court were increased. Finally, the applicants also contributed to the length of the proceedings.

48. As to the period to be taken into consideration, the Court observes that the land consolidation proceedings at issue were instituted on 7 July 1966, the provisional transfer of parcels was ordered on 18 December 1974 and the consolidation scheme was issued on 28 July 1988.

49. The Court agrees, however, with the Government that a “dispute” only arose on 16 and 19 September 1988, respectively, when the first, second and third applicants and the fourth applicant’s father appealed against the consolidation scheme (see, *Wiesinger v. Austria*, judgment of 30 October 1991, Series A no. 213, p. 20, § 51). The proceedings were terminated on 24 May 1996, as regards the first applicant, on 22 January 1999, as regards the second applicant, and on 18 March 1998 as regards the third and fourth applicants.

50. The proceedings, therefore, lasted seven years and eight months as regards the first applicant, ten years and four months as regards the second applicant and nine and a half years as regards the third and fourth applicants.

51. The Court reiterates that the reasonableness of the length of proceedings is to be assessed in each case according to the particular circumstances and having regard to the criteria laid down in the Court’s case-law, namely the complexity of the case, the conduct of the authorities and the conduct of the parties (see *Wiesinger v. Austria*, cited above, p. 21, § 54; *Erkner and Hofauer v. Austria*, judgment of 23 April 1987, Series A no. 117, p. 62, § 65).

52. The Court notes that the parties’ submissions differ as regards the number of land owners and parcels of land involved in the proceedings at issue. Be that as it may, the Court reiterates that - quite apart from the number of parties involved - land consolidation is by its nature a complex process, affecting the interests of both individuals and the community as a whole (see *Wiesinger v. Austria*, cited above, p. 21, § 55; *Walder v. Austria*, no. 33915/96, § 30, 30 January 2001, unreported)). In the present case, the change of designation of parcels of land belonging to the first applicant and to the predecessors of the second and fourth applicants and the review of the constitutionality of section 15 § 1 of the Tirol Land Planning Act, which excludes compensation for a change in value occurring after the provisional transfer, added to this inherent complexity.

53. However, the Court finds that considerable delays are attributable to the authorities. To begin with, the Court notes that after the Provincial Board had held a couple of hearings on the applicants’ appeals between May and October 1989, a year elapsed without any apparent activity until November 1990, when the applicants requested that jurisdiction be transferred to the higher authority.

54. Further, substantial delays occurred in the respective proceedings before the Administrative Court. As to the Government's argument that these delays were due to a heavy increase in the Administrative Court's workload, the Court reiterates 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). The Court notes that the respondent State has taken certain measures to reduce the workload of the Administrative Court, particularly with the introduction of Independent Administrative Panels. This measure took effect at the beginning of 1991. Nevertheless, in the first and second applicants' case, it took over two years, namely from November 1991 until November 1993, until the Administrative Court requested the Constitutional Court to review the constitutionality of section 15 § 1 of the Tirol Land Planning Act. The Constitutional Court then took another two years to give its decision. In the third applicant's case it took two and a half years, namely from June 1993 until December 1995, and in the fourth applicant's case almost three years, namely from June 1993 until May 1996, until the Administrative Court decided upon their complaints.

55. On the other hand, the Court finds that no substantial delay can be attributed to the applicants.

56. The Court, accordingly, concludes that the applicants' case has not been determined within a reasonable time. There has thus been a violation of Article 6 § 1 of the Convention.

B. The alleged lack of a public hearing in the proceedings concerning the first applicant

57. The first applicant also complained that throughout the proceedings he did not have a public hearing.

58. The Government conceded that under Austrian law as it stood until December 1993, hearings before the land reform boards were only open to the parties but not to the general public. However, following the amendment of the Federal Agricultural Proceedings Act, their hearings became public. Consequently, any hearings held in the proceedings at issue after the said change in law complied with the requirements of Article 6.

59. The Court recalls at the outset that the Austrian reservation in respect of Article 6 § 1 concerning the requirement that hearings be public, has been found to be invalid (*Eisenstecken v. Austria*, no. 29477/95, § 29, ECHR 2000-X).

60. Further, the Court observes that, in the first applicant's case, the hearings held by the Provincial Board in 1989 and 1991 were only open to the parties but not to the public at large. No hearing was held by the

Provincial Board or the Supreme Board after the change in the Federal Agricultural Proceedings Act in December 1993. The Court reiterates that, in a case like the present one, it is sufficient for compliance with Article 6 § 1 if the lack of a public hearing before a lower instance is remedied in the course of subsequent control to be carried out by a “judicial body that has full jurisdiction” (*Stallinger and Kuso v. Austria*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-II, p. 679, § 46).

61. It has not been suggested in the present case, that the Administrative Court did not have the requisite scope of review. However, the Administrative Court dismissed the first applicant’s explicit request for a public oral hearing. Since the Government have not identified any exceptional circumstances that might have justified dispensing with a hearing, the Administrative Court’s refusal amounted to a breach of the applicant’s right to a “public hearing” (*ibid.*, p. 680, § 51).

62. Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants requested a total amount of 87,207.40 euros (EUR) for damages, that is EUR 21,801.85 for each of the four applicants. They argued that the excessive duration of the proceedings caused them insecurity and considerable inconvenience but also losses in the running of their farms. Moreover, they had suffered losses in connection with the change of designation of their land for which they were not compensated in the land consolidation proceedings.

65. The Government asserted that there was no causal link between the pecuniary damage claimed by the applicants and the breaches of the Convention at issue.

66. The Court agrees with the Government that there is no causal link between the pecuniary damage alleged by the applicants and the violations of the Convention found, namely the excessive length of the proceedings and, in the first applicant’s case, also the lack of a public hearing. Consequently, it makes no award under this head.

67. As to non-pecuniary damage sustained on account of the duration of the proceedings, the Court, making an assessment on an equitable basis as required in Article 41 of the Convention, awards the first applicant EUR 5,500, the second applicant EUR 7,500 and the third and fourth applicants EUR 7,000 each.

B. Costs and expenses

68. In respect of costs and expenses incurred in the domestic proceedings and in the Convention proceedings the first applicant requested EUR 17,449.37, the second applicant EUR 7,017.64, the third applicant EUR 3,908.25 and the fourth applicant EUR 6,282.12.

69. The Government for their part submitted that the costs claimed by the applicants were much higher than the sums awarded by the Court in comparable cases. As to the costs of the domestic proceedings, the Government asserted that they had not been incurred in order to prevent the violation at issue.

70. The Court reiterates that, in order to be the subject of an award, costs and expenses must have been actually and necessarily incurred and must be reasonable as to quantum (*Wiesinger v. Austria*, cited above, p. 30, § 88).

71. As to the costs of the domestic proceedings, the Court notes that, insofar as the length of proceedings is concerned, only costs incurred in an attempt to accelerate the proceedings can be regarded as having been necessary to prevent the violation found. In this connection, the Court notes that the applicants' request for transfer of jurisdiction lodged on 26 November 1990 would fulfil this requirement, but observes that the bill of fees submitted by them does not contain any claim in this respect. Nevertheless, the Court cannot exclude that the excessive duration of the proceedings increased the overall costs incurred therefore (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999, unreported and, *Wiesinger v. Austria*, cited above, p. 30, § 88). Thus, the Court awards the applicants EUR 1,500 under this head.

72. Furthermore, as regards the first applicant, the Court finds that costs and expenses related to the request for a public hearing are of relevance (see *Stallinger and Kuso v. Austria*, cited above, p. 681, § 60). The first applicant made such a request in his complaint to the Administrative Court of 3 June 1991. However, the bill of fees submitted by him does not contain a claim in this respect. The Court therefore makes no award in this connection.

73. Finally, as to the costs incurred in the Convention proceedings, the Court finds the applicants' claim excessive. The Court takes in particular the following factors into account: Firstly, that there was no necessity to lodge two separate applications as they both concern the same proceedings and the applicants in application no. 45774/99 are identical with the third and fourth

applicants in no. 35021/97; secondly, that the applicants were granted legal aid and, thirdly, that their applications were only partly declared admissible. On the other hand the case does not only concern the length of the proceedings but, in the first applicant's case, also the lack of a public hearing. Making an assessment on an equitable basis, the Court awards the applicants EUR 2,500 for costs and expenses incurred in the Convention proceedings.

74. In sum, the Court makes an award of EUR 4,000 for costs and expenses.

C. Default interest

75. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following sums:
 - (i) the first applicant EUR 5,500 (five-thousand five hundred euros) in respect of non-pecuniary damage;
 - (ii) the second applicant EUR 7,500 (seven-thousand five hundred euros) in respect of non-pecuniary damage;
 - (iii) the third applicant EUR 7,000 (seven-thousand euros) in respect of non-pecuniary damage;
 - (iv) the fourth applicant EUR 7,000 (seven-thousand euros) in respect of non-pecuniary damage;
 - (v) all four applicants together EUR 4,000 (four-thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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