



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

THIRD SECTION

CASE OF WIDMANN v. AUSTRIA

(Application no. 42032/98)

JUDGMENT

STRASBOURG

19 June 2003

FINAL

19/09/2003

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 Widmann v. Austria,

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

Mr I. CABRAL BARRETO, *President*,
Mr P. KŪRIS,
Mr R. TÜRMEŇ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mrs E. STEINER, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 27 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 42032/98) 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, Mr Johann Widmann (“the applicant”), on 23 March 1998.

2. The applicant was 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 of Foreign Affairs.

3. The applicant alleged, in particular, that the length of the administrative proceedings exceeded the reasonable time requirement under Article 6 § 1 of the Convention.

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 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. On 20 March 2001 the Court communicated the above complaint to the Government and declared the remaining complaints inadmissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1). Within that Section, the Chamber that would

consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 6 June 2002 the Court declared the application admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant is living in Mittersill/Austria, where he is a farmer and owner of the Rossweg alp. According to a regulatory deed (*Regulierungsurkunde*) of 1868 concerning the alp, the owner of this alp is entitled to obtain timber from the Austrian Federal Forestry Administration to the extent necessary for the maintenance of the alp's cabins.

1. First round of proceedings

10. On 30 October 1987 the applicant requested the Office of the Salzburg Regional Government as the agricultural authority of first instance (*Landesregierung als Agrarbehörde erster Instanz* - “the Agricultural Authority”) to grant him the necessary quantity of timber for the maintenance of existing and the edification of new alpine cabins.

11. On 14 July 1988 the Agricultural Authority held a hearing and on 20 June 1989 a forestry expert delivered his opinion.

12. On 4 September 1989 the Agricultural Authority gave its decision, ordering the Federal Forestry Administration to provide the applicant with a certain quantity of timber within four weeks.

13. On 25 September 1989 the applicant appealed against this decision.

14. On 2 February 1990 the Salzburg Regional Land Reform Board (*Landesagrarsenat* - “the Regional Board”) dismissed the appeal and ordered the Federal Forestry Administration to provide the applicant with a smaller quantity of timber within four weeks.

15. On 27 June 1990 the applicant filed a complaint against this decision with the Administrative Court (*Verwaltungsgerichtshof*).

16. On 12 October 1993 the Administrative Court quashed the Regional Board's decision.

17. On 28 January 1994 the Regional Board granted the applicant's appeal of 25 September 1989 and referred the case back to the Agricultural Authority.

2. Second round of proceedings

18. By a decision of 6 June 1994 the Agricultural Authority opened supplementary proceedings with a view to amending the regulatory deed of 1868 concerning the alp. On 25 August 1994 and 25 January 1995 hearings were held. On 12 December 1994 an agricultural expert delivered his opinion as to the average annual timber supply necessary for the maintenance of the cabins.

19. On 6 February 1995 the Agricultural Authority issued a decision, by which it amended the regulatory deed of 1868 and determined the provision of timber for the owner of the Rossweg alp. The applicant appealed against this decision, claiming that a fixed annual supply of timber should be granted irrespective of the need to maintain the cabins.

20. On 23 June 1995 the Regional Board partly granted the appeal and amended the Agricultural Authority's decision.

21. On 17 November 1995 the Regional Board granted the applicant's request for leave to appeal out of time (*Wiedereinsetzung in den vorigen Stand*) to the Supreme Land Reform Board (*Oberster Agrarsenat* - "the Supreme Board") against the Regional Board's decision.

22. On 6 March 1996 the Supreme Board, after having held a hearing, dismissed the applicant's further appeal. It found that the legal instrument of 1868 only conferred a right to obtain timber for the maintenance of cabins, not a right to a fixed annual quantity of timber.

23. On 30 May 1996 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*).

24. On 24 September 1996 the Constitutional Court refused to deal with the complaint for lack of sufficient prospects of success and remitted the case to the Administrative Court.

25. On 11 December 1997 the Administrative Court dismissed the applicant's complaint. It confirmed that the applicant was entitled to obtain a variable quantity of timber dependent on the need to maintain his alp's cabins, but not to obtain a fixed annual quantity. The decision was served on the applicant's counsel on 28 January 1998.

THE LAW

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

26. The applicant complained that the administrative proceedings had not been determined within a reasonable time as required by Article 6 § 1, which, as far as material, 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...”

27. The Government argued that the proceedings were of some complexity and were, taken as a whole, conducted with reasonable speed. The applicant did not comment.

28. The Court reiterates 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 *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999, unreported).

29. The proceedings started on 4 September 1989 with the decision by the Agricultural Authority, when the “dispute” within the meaning of Article 6 § 1 of the Convention arose (see for instance *G.H. v. Austria*, no. 31266/96, § 15, 3 October 2000, unpublished). They ended on 28 January 1998, when the Administrative Court's judgment was served (see *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, § 33). Thus, the proceedings lasted over eight years and four and a half months.

30. The Court considers that the proceedings had not been particularly complex. As to the conduct of the applicant, the Court notes that he had not caused any significant delays. As regards the conduct of the domestic authorities, however, the Court observes that there had been a substantial period of inactivity of more than three years and three months before the Administrative Court, i.e. between 27 June 1990, when the applicant lodged his appeal and 12 October 1993, when the Administrative Court gave its decision. The Court considers that this period of inertia is incompatible with the “reasonable time” requirement under Article 6, which cannot be made up by the overall duration of the proceedings, during which the case had been dealt with once at three levels of jurisdiction and, in a second round, at four levels of jurisdiction.

31. There has, thus, been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 75,000 euros (EUR) as compensation for pecuniary damage and non-pecuniary damage, in particular, for the inconvenience caused by the the length of the proceedings.

34. The Government argued that, as the claim for pecuniary damage had not been specified, no award should be made under this head. Further, the amount requested for non-pecuniary damage was excessive.

35. Subsequently, the applicant specified his claim for pecuniary damage, requesting in particular EUR 2,160 for travel costs, ATS 4,000 (EUR 290.69) for obtaining an expert opinion and EUR 14,534 for loss of earnings as regards the price of timber he could have obtained and EUR 7,267 for loss of returns on interest of the afore amount.

36. As regards the claim for pecuniary damage, the Court notes that it cannot speculate what the outcome of the proceedings would be if they had been in conformity with the requirements of Article 6 § 1 (see *Werner v. Austria*, judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2514, § 72). The Court accordingly dismisses the claim of pecuniary damage.

37. As to non-pecuniary damage, the Court, having regard to its case-law and taking into account the importance of the proceedings at issue for the applicant, makes an assessment on an equitable basis and awards the applicant EUR 6,000.

B. Costs and expenses

38. The applicant requested reimbursement of costs and expenses of a total amount of EUR 5,555.41, including EUR 582.92 for costs incurred in the Convention proceedings.

39. As regards the claim for costs and expenses in the domestic proceedings, the Government contended that these were not incurred in an attempt to redress the violation of the Convention. Therefore, only the amount requested for the Convention proceedings could be granted.

40. The Court reiterates that, according to its case-law, it has to consider whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 80, ECHR 1999-III). The Court notes that none of the costs claimed in respect of the domestic proceedings were incurred in order to prevent the violation found. However, unreasonable delays in proceedings may involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, § 33,

7 December 1999). The Court awards the applicant EUR 1,000 under this head on an equitable basis.

41. The Court further grants the requested amount of EUR 582.92 for costs incurred in the Convention proceedings.

42. In sum, the Court therefore awards a total of EUR 1,582.92 for costs and expenses.

C. Default interest

43. 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 (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/97, § 124, ECHR 2002-).

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, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, and EUR 1,582.92 (one thousand five hundred eighty-two euros and ninety-two cents) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Ireneu CABRAL BARRETO
President