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

THIRD SECTION

CASE OF GIRARDI v. AUSTRIA

(Application no. 50064/99)

JUDGMENT

STRASBOURG

11 December 2003

FINAL

11/03/2004

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 Girardi v. Austria,

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

Mr G. RESS, *President*,
Mr L. CAFLISH,
Mr P. KŪRIS,
Mr R. TÜRMEN,
Mr J. HEDIGAN,
Mrs H.S. GREVE
Mrs E. STEINER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 50064/99) 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, Elisabeth Girardi ("the applicant"), on 9 July 1999.

2. The Austrian Government ("the Government") were represented by their Agent, Mr Mautner-Markhof.

3. On 4 July 2002 the Third Section declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1951 and lives in Vienna.

She is the mother of M, L and R, born in wedlock in 1973, 1974 and 1976, respectively. The spouses separated in 1982. Custody of L and M was assigned to the applicant, the custody of R to the father.

5. In December 1989 M was admitted in a public girls' home as she refused to stay with her mother. She stayed there until January 1992. From December 1989 until September 1995 custody proceedings concerning the temporary transfer of M's custody to the Vienna Youth Welfare Office for the time M had spent at the girls' home were pending before the Austrian courts.

A. The Youth Welfare Office's request for reimbursement of expenses

6. On 3 January 1990 the Vienna Youth Welfare Office, on behalf of M, filed a request with the Floridsdorf District Court that the applicant should pay a monthly contribution to the expenses incurred for M's stay in the girls' home.

7. The file was later on transferred to the competent Juvenile Court and, in January 1990, the court heard M's parents.

8. On 8 March 1991 the Youth Welfare Office reduced the amount of the requested monthly contribution.

9. On 10 April 1991 the President of the Juvenile Court granted the applicant's motion for bias against the competent court clerk (*Rechtspfleger*).

10. A hearing scheduled for 25 July 1991 was cancelled due to the applicant's illness. Further hearings scheduled for 2 September 1991 and 11 September 1991 had to be cancelled because the court's attempts to deliver the summons to the applicant were unsuccessful.

11. On 10 February 1992 the Juvenile Court ordered that the applicant had to pay ATS 2,500 in monthly maintenance for M. The applicant appealed, claiming that she was fit to work to an extent of 75% only.

12. On 4 March 1992 the case was assigned to another judge as the competent judge had declared himself biased.

13. On 13 May 1992 the Appeal Chamber quashed the decision and remitted the case back to the Juvenile Court, instructing the latter to take a new decision after having supplemented its proceedings. In particular, it stated that the first instance court ought to appoint a forensic medical expert in order to establish the applicant's fitness to work.

14. On 20 May 1998 the Juvenile Court ordered the applicant to pay ATS 1,550 in monthly maintenance for M. At that stage of the proceedings, no expert had been heard yet.

15. Referring to the Appeal Chamber's decision of 13 May 1992, the applicant appealed, again relying on her reduced fitness to work.

16. On 13 August 1998 the Juvenile Court appointed an expert in forensic medicine to file a report on the question as to which extent the applicant's capacities to earn her living were reduced.

17. The applicant appealed against this decision, claiming that it no longer made sense to appoint a medical expert, now that the court had already dismissed her request by a decision of 20 May 1998. Further, she claimed that there was no need for a further report as, in this respect, she had already submitted two reports of different medical officers *(Amtsarzt)*.

18. On 17 and 20 August 1998 the applicant filed motions for bias against the court clerk *(Rechtspfleger)* I.S., who was dealing with her case, claiming that the appointment of a further medical expert was not justified,

that I.S. was handling the case file in a negligent manner, namely that several documents were missing from the file, and that I.S. had been rude to her on the telephone.

19. On 25 August 1998 the President of the Vienna Juvenile Court *(Präsident des Jugendgerichtshofs)* dismissed her motion for bias, finding that the mere fact that she had appointed a medical expert was not sufficient to cast doubt upon I.S.' impartiality. He also noted that there were no documents missing from the file.

20. On 17 September 1998 the Appeal Chamber dismissed the applicant's appeal against the appointment of a medical expert, but granted her appeal against the decision of 20 May 1998. In this respect, it referred the case to the Juvenile Court for supplementing the taking of evidence, namely to comply with its decision of 13 May 1992.

21. On 21 and 23 March 1999 the applicant requested that, pursuant to Section 91 of the Courts Act (*Gerichtsorganisationsgesetz),* a time-limit be fixed for the decision on the Youth Welfare Office's application of 3 January 1990.

22. On 23 March 1999 the applicant filed a motion for bias against I.S., claiming that the latter had not been available to her during office hours and that she had refused to give her information requested over the telephone.

23. On 29 March 1999 the President of the Vienna Juvenile Court dismissed her motion as being unfounded.

24. On 30 March 1999 the President rejected her appeal against this decision, as the relevant provisions of the Court Clerks Act *(Rechtspflegergesetz)* did not provide for such remedy.

25. On 8 April 1999 the applicant was summoned by the appointed medical expert to undergo a medical examination at the Institute for Forensic Medicine *(Institut für Gerichtsmedizin)* on 22 April 1999.

26. It appears that the applicant filed numerous complaints with the President of the Juvenile Court, again claiming that documents were missing from the file and that I.S. as well as various judges of the Juvenile Court were biased.

27. On 4 May 1999 the President of the Juvenile Court decided to exclude I.S. from the proceedings. He noted that the latter had expressed that she considered herself biased following a telephone conversation in the course of which the applicant had said she would kill her daughter if I.S. continued to harass her. In these circumstances, the President found it advisable that the matter be re-assigned in accordance with the Juvenile Court's rules on the distribution of cases *(Geschäftsverteilung).*

28. On the same day, the Juvenile Court dismissed the applicant's requests for a time-limit to be set. Referring to the applicant's numerous requests, complaints and motions for bias filed with the court, it found that there was no indication of a lack of due diligence on behalf of the Juvenile

Court, it being rather the applicant who prevented that a decision on the merits had been taken so far.

29. On 17 May 1999 the Vienna Youth Welfare Office withdrew its request dated of 3 January 1990.

30. Thereupon, the applicant, on 27 May 1999, withdrew all requests and complaints still pending before the Juvenile Court at that stage.

B. The applicant's request for reimbursement of expenses

31. From 30 July 1990 to 3 September 1990 M stayed with her mother. The latter, on 4 September 1990 filed a request with the Juvenile Court, claiming reimbursement of her expenses incurred during this period.

32. In September 1990 the Vienna Youth Welfare Office reimbursed the applicant for M's stay with her from 30 July 1990 to 21 August 1990.

33. On 10 August 1993 the Juvenile Court dismissed the applicant's request for expenses incurred during the rest of the period.

34. On 30 August 1993 the President of the Vienna Juvenile Court dismissed the applicant's motion of bias against the competent judge. On 30 December 1993 the Vienna Court of Appeal granted the applicant's appeal against this decision and quashed the decision.

35. On 20 January 1994 the Appeal Chamber of the Juvenile Court again dismissed the applicant's motion for bias. On 6 May 1994 the Court of Appeal rejected the applicant's appeal. A further appeal to the Supreme Court was to no avail. A further motion for bias against the President of the Juvenile Court was to no avail either.

36. On 5 January 1995 the Appeal Chamber quashed the decision of 10 August 1993 and remitted the case back to the first instance court.

37. On 19 April 1998 the applicant requested that, pursuant to Section 91 of the Courts Act*,* a time-limit be fixed for the decision on her application of 4 September 1990.

38. On 8 June 1998 the President of the Vienna Juvenile Court ordered the Juvenile Court to decide on the applicant's request no later than on 31 July 1998.

39. On 5 August 1998 the Juvenile Court dismissed the applicant's request for maintenance payments of 4 September 1990.

40. The applicant appealed against this decision.

41. It appears from the documents submitted that the applicant filed several complaints with the Vienna Court of Appeal *(Oberlandesgericht)*, claiming that I.S. had not complied with the time limit set by the President of the Juvenile Court because she had gone on holidays, that the competent judicial officer, I.S. was to be found at her office only twice a week and that she had been extraordinarily impolite to her.

42. Thereupon, the President of the Juvenile Court, on 31 August 1998, informed the applicant that both I.S.'s office hours as well as her right to

vacation were in accordance with her assignment. He also expressed his regret that, if, in the course of one of the applicant's numerous telephone calls, I.S. might have acted in a slightly indignant way. However, he emphasised that the applicant's allegations had remained unproved.

43. On 17 September 1998 the Appeal Chamber dismissed her appeal against the Juvenile Court's decision of 5 August 1998 as being unfounded. Further, it stated that there was no further appeal on points of law in the applicant's case as it did not raise questions of law of fundamental importance *(Ausspruch über die Unzulässigkeit der ordentlichen Revision)*.

44. Nevertheless, the applicant filed an extraordinary appeal on points of law *(ausserordentliche Revision)* with the Supreme Court.

45. Referring to an amendment of Section 14 a of the Non-Contentious Proceedings Act *(Ausserstreitgesetz)*, the Supreme Court on 18 December 1998 remitted the case back to the Vienna Juvenile Appeal Court. According to that provision, instead of filing an extraordinary appeal on points of law with the Supreme Court, a party to non-contentious proceedings must now request the Court of Appeal to re-consider its opinion on the admissibility of an ordinary appeal on points of law. The Supreme Court found that, even if in her appeal the applicant had not explicitly requested the Juvenile Appeal Court to declare that a further appeal on points of law be allowed, her appeal should have been understood in such a way.

46. Thereupon, on 11 January 1999 the Juvenile Appeal Court requested the applicant to remedy procedural defects of her appeal, namely to request that an ordinary appeal in her case be allowed.

47. As the applicant did not comply with this request, the Juvenile Appeal Court, on 25 February 1999, rejected her appeal.

THE LAW

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

48. The applicant complained that the length of the maintenance payment proceedings had been incompatible with the “reasonable time” principle as provided in Article 6 § 1 of the Convention, which reads as follows:

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

49. As regards the first set of proceedings, the period to be taken into consideration began on 3 January 1990 and ended on 22 May 1999. Thus, they lasted more than nine years and four months.

50. As regards the second set of proceedings, the period to be taken into consideration began on 4 September 1990 and ended on 25 February 1999. Thus, they lasted for more than eight years and five months.

A. Admissibility

51. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

52. The Government submitted that the maintenance proceedings were complex. In particular, they had to be seen as a part of highly complex custody proceedings which required extensive expert opinions. While the authorities tried to conduct the proceedings expeditiously, the applicant filed a multitude of motions of bias, appeals and requests for extension of time-limits and therefore herself contributed considerably to the length of the proceedings. The Government further stressed that the applicant repeatedly thwarted attempts to deliver summons on her and failed to obey them.

53. The applicant did not submit any observations on these issues.

54. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

55. The Court considers that the present proceedings can clearly be distinguished from the custody proceedings, as they concerned merely the fixing of maintenance payments and were not particularly complex.

56. As regards the conduct of the applicant the Court has consistently held that applicants cannot be blamed for making full use of the remedies available to them under domestic law. However, an applicant's behaviour constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account for the purpose of determining whether or not the reasonable time referred to in Article 6 § 1 has been exceeded (see *Erkner and Hofbauer v. Austria*, no. 9616/81, Commission decision of 23 April 1987, A 117, § 68)

57. In the present case, the Court acknowledges that the applicant had filed numerous requests, complaints and motions and had repeatedly failed to obey the authorities' summons. Although such conduct contributed to

prolonging the proceedings, it is not in itself sufficient to explain the length of the extensive proceedings.

58. On the other hand, the Court notes that there are substantial delays attributable to the authorities. In particular, in the first set of proceedings, there is a period of inactivity of more than two years (from 3 January 1990 to 10 February 1992) while the case was pending before the Vienna Juvenile Court, and a further one of six years (from 13 May 1992 to 20 May 1998) before that court took a new decision after the first one had been quashed on appeal. In the second set of proceedings, there is a period of inactivity of some three years (from 4 September 1990 to 10 August 1993), while the case was pending before the Vienna Juvenile Court, and a further such period of three years and seven months (from 5 January 1995 to 5 August 1998) before that court took a new decision after the first one had been quashed on appeal. The Court cannot find that the Government has given sufficient explanation for these delays that occurred.

59. The Court therefore finds that the overall length of the proceedings cannot be regarded as "reasonable". Accordingly, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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."

61. The applicant has not filed a claim for just satisfaction. Accordingly, the Court considers that no award can be made under this provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 11 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President