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

THIRD SECTION

CASE OF ALGE v. AUSTRIA

(Application no. 38185/97)

JUDGMENT

STRASBOURG

22 January 2004

FINAL

22/04/2004

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 Alge v. Austria,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr R. TÜRMEN,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mrs E. STEINER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 16 December 2003,

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

PROCEDURE

1. The case originated in an application (no. 38185/97) 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, Alfred Alge ("the applicant"), on 1 October 1997.

2. The applicant was represented by Mr W.L. Weh, a lawyer practising in Bregenz (Austria). The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department of the Federal Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that proceedings for a permit to install a drainage system had lasted unreasonably long and that in these proceedings no public hearing had been held.

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.

6. By a decision of 10 April 2003 the Court declared the application partly admissible.

THE FACTS

7. The applicant, a farmer living in Lustenau (Austria), owns, *inter alia*, parcels of land which, by an ordinance (*Verordnung*) issued by the Vorarlberg Regional Government (*Landesregierung*), were registered as protected wetland in 1990 (Ordinance No. 1990/40 of the Regional Law Gazette).

8. On 24 July 1991 the applicant filed a request with the Vorarlberg Regional Government for an exemption permit (*Ausnahmebewilligung*) from the above ordinance in order to install a drainage system as he intended to cultivate and exploit his land.

9. On 2 August 1991 the Landscape Protection Officer (*Landschaftsschutzanwalt*), on 5 August 1991 the Landscape Protection Board (*Naturschau*) and on 29 August 1991 the Agricultural Chamber (*Landwirtschaftskammer*) all submitted comments on the applicant's request which were communicated to him on 6 September 1991. Only the opinion of the Agricultural Chamber was in favour of the applicant's request.

10. On 17 September, 1 and 31 October 1991 the applicant filed observations with the Vorarlberg Regional Government.

On 20 November 1991 the opinion of an official expert for landscape protection (*Amtssachverständiger für Natur- und Landschaftsschutz*) was communicated to the applicant who, on 4 December 1991, filed his comments.

11. On 10 April 1992 the Vorarlberg Regional Government refused to grant an exemption permit.

12. On 27 May 1992 the applicant filed a complaint with the Constitutional Court (*Verfassungsgerichtshof*). The applicant complained, *inter alia*, that the ordinance on which the refusal of the exemption permit was based was unlawful.

13. On 14 June 1993 the Constitutional Court refused to deal with the case as it lacked any prospects of success, and transferred it to the Administrative Court (*Verwaltungsgerichtshof*).

14. On 29 November 1993 the applicant supplemented his complaint and requested the Administrative Court to hold a hearing and an on-site inspection, in the presence of a further expert to be appointed by the Administrative Court. As reason for his request he stated that such a hearing would show that the arguments given by the Regional Government in its decision were not correct.

15. On 4 January 1994 the Vorarlberg Regional Government submitted their comments on the applicant's complaint (*Gegenschrift*).

16. On 17 March 1997 the Administrative Court dismissed the applicant's complaint. It found that it had not been in dispute between the parties that the parcels of land at issue were subject to Ordinance No 1990/40. Accordingly, this land could only be used in the traditional manner. Cultivating, grazing, draining or using chemical fertilisers was prohibited. An exemption from these limitations could be granted if the interests of landscape protection were not seriously and permanently harmed and other interests, in particular agricultural ones, prevailed. Thus, if the interests of landscape protection were seriously and permanently harmed, it was no longer necessary to consider the interests of agriculture. In refusing the request the authority had essentially relied on the report by the expert on landscape protection. This expert had explained in detail which animals and plants would have been endangered by the measures envisaged by the applicant. The report had been communicated to the applicant who had been given the opportunity to react. The applicant, however, merely disputed the findings of the expert and failed to submit any scientifically valid argument. In such circumstances, the Administrative Court concluded, the authority's decision had neither been unreasonable, nor the proceedings defective. As regards the complaint that the ordinance had been unlawful, the Administrative Court found that in view of the fact that the Constitutional Court had declined to deal with the applicant's case for lack of prospect of success and that the applicant has not submitted any fresh arguments as regards the alleged unlawfulness of that ordinance, it did not see any reason to apply to the Constitutional Court for the opening of proceedings for the review of the lawfulness of the ordinance. The Administrative Court had neither held the requested hearing nor appointed the requested expert. It did not give any reasons why it considered that neither the hearing nor the appointment of a further expert was necessary.

17. On 1 April 1997 the decision was served upon the applicant's counsel.

THE LAW

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

18. The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings and the lack of a hearing in the proceedings before the Administrative Court.

19. Article 6 § 1, insofar as relevant 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 an independent and impartial tribunal established by law."

A. Applicability of Article 6 § 1

20. It is not in dispute between the parties that Article 6 § 1 of the Convention applies to the proceedings at issue.

B. Compliance with Article 6 § 1

1. The complaint about the length of the proceedings

21. The applicant complained that the administrative proceedings on his request for an exemption permit from the Vorarlberg Regional Government's Ordinance no. 1990/40 had lasted unreasonably long.

22. The Government did not make any submissions on this point.

23. The Court observes that the relevant period for the purposes of Article 6 § 1 started on 27 May 1992, when the applicant filed a complaint with the Constitutional Court against the refusal of the requested permit, and terminated on 1 April 1997 when the Administrative Court's decision was served upon the applicant's counsel. Thus, the proceedings lasted approximately four years and ten months.

24. 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*, judgment of 30 October 1991, Series A no. 213, p. 21, § 54; *Erkner and Hofauer v. Austria*, judgment of 23 April 1987, Series A no. 117, p. 62, § 65).

25. The Court notes in particular that before the Administrative Court the proceedings lasted for more than three years, namely from 4 January 1994 (when the Regional Government filed observations) until 17 March 1997 (when the Administrative Court decided). In the absence of any explanation for this period, the Court finds that the applicant's case has not been determined within a reasonable time. There has thus been a violation of Article 6 § 1 of the Convention.

2. The complaint about the lack of a hearing

26. The applicant complained that in the proceedings before the Administrative Court that court had failed to hold a public hearing although he had requested one.

27. The Government did not make any submissions on this point.

28. 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).

29. The Court finds that the Administrative Court was the only instance in the proceedings which qualifies as a tribunal within the meaning of Article 6 § 1 of the Convention (*Fischer v. Austria,* judgment of 26 April 1995, Series A no. 312, pp. 20-21, § 44; *Pauger v. Austria*, judgment of 28 May 1997, Reports 1997-III). Thus the applicant had been entitled to a hearing before that court unless exceptional circumstances would have dispensed it from doing so (*Håkansson and Sturesson v. Sweden,* judgment of 21 February 1990, Series A no. 171, p. 20 § 64).

30. However, no hearing was held before the Administrative Court, even though the applicant had explicitly requested one and, moreover, the Administrative Court did not give any reasons why it considered that no hearing was necessary. Since also 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" (*Stallinger and Kuso v. Austria*, judgment of 23 April 1997, Reports 1997-II., p. 680, § 51).

31. Consequently, there has been a violation 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 20,000 euros (EUR) as compensation for pecuniary damage and submitted that this amount corresponds to loss of earnings sustained because he had been prevented from exploiting his land in the most efficient way. He further claimed compensation for non-material damage in the amount of EUR 20,000.

34. The Government requested the Court to reject the applicant's claim for pecuniary damage as there was no causal link between the breaches of the Convention complained of and the alleged damage. As regards the claim for non-pecuniary damage they consider the amount claimed by the applicant excessive.

35. The Court agrees with the Government that there is no causal link between the pecuniary damage claimed and the violation found.

36. As to non-pecuniary damage, the Court, having regard to its case-law and making an assessment on an equitable basis, awards the applicant EUR 3,000.

B. Costs and expenses

37. The applicant claimed EUR 16,495,71 as costs incurred in the proceedings before the Constitutional Court and in the Convention proceedings.

38. The Government submitted that this claim was excessive and, as regards the proceedings before the Constitutional Court, it could not be seen that these were intended to prevent the breach of the Convention submitted to this Court.

39. The Court recalls 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). In the present case, it does not appear from the applicant's submissions that any specific costs were incurred in relation to the demands for an oral hearing or that costs were incurred in an attempt to accelerate the proceedings.

40. 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, and *Wiesinger*, cited above, p. 30, § 88). Thus, the Court awards the applicants EUR 1,000 under this head.

41. As to the costs of the Convention proceedings, the Court notes that the applicant, who was represented by counsel, did not have the benefit of legal aid. Making an assessment on an equitable basis and having regard to the sums awarded in similar cases, the Court awards the applicants EUR 2,000 under this head.

42. In sum, the Court makes an award of EUR 3,000 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.

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 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 3,000 (three thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
   (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 22 January 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President