



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

THIRD SECTION

CASE OF MORSCHER v. AUSTRIA

(Application no. 54039/00)

JUDGMENT

STRASBOURG

5 February 2004

FINAL

05/05/2004

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 Morscher v. Austria,

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr P. KÜRIS,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs H.S. GREVE,

Mrs E. STEINER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 5 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 54039/00) 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, Mr Quido Morscher (“the applicant”), on 10 December 1999.

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 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 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.

5. By a decision of 20 March 2003 the Court declared the application partly admissible.

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

THE FACTS

7. The applicant was born in 1952 and lives in Weiler (Austria).

8. On 7 January 1994 the applicant applied for a planning permission as he wished to construct a storehouse and production facilities to produce wood chips on his plot of land acquired in 1989.

9. On 24 May 1994 the Feldkirch District Authority (*Bezirkshauptmannschaft*) dismissed this request, finding that there was no adequate access to the applicant's plot of land. On 9 June 1994 the applicant filed an appeal against this decision.

10. On 29 September 1994 the Weiler Municipality issued a building prohibition for the area within which the applicant's plot of land was situated, as it was planning to open re-allocation proceedings (*Umlegungsverfahren*) to ensure a more efficient use of the area. The Vorarlberg Regional Government (*Landesregierung*), which had to decide on the applicant's appeal of 9 June 1994, requested the applicant to comment on the building prohibition.

11. On 9 November 1994 the Weiler Municipality issued a new building prohibition as the previous one had been quashed by the District Authority *ex officio*. The Vorarlberg Regional Government requested the applicant to comment on the new building prohibition.

12. On 29 December 1994 the Vorarlberg Regional Government, referring to the building prohibition, dismissed the applicant's appeal against the District Authority's decision of 24 May 1994. The decision was served on 15 February 1995.

13. Meanwhile, on 2 February 1995 the applicant had lodged an application against the administration's failure to decide (*Säumnisbeschwerde*) with the Administrative Court (*Verwaltungsgerichtshof*), as the Regional Government had not decided on his appeal of 9 June 1994 within the statutory six-month time-limit. On 18 May 1995 the Administrative Court discontinued the proceedings for failure to decide, as the Regional Government had already issued its decision on 29 December 1994 but ordered the Regional Government to reimburse the applicant's legal costs.

14. On 29 March 1995 the applicant filed a complaint with the Constitutional Court (*Verfassungsgerichtshof*) against the Regional Government's decision of 29 December 1994. He complained that the building prohibition and consequently the refusal of the planning permission were unlawful.

15. On 25 September 1995 the Constitutional Court rejected the complaint for lack of prospects of success. Subsequently, the applicant requested the case to be transferred to the Administrative Court.

16. On 19 December 1995 the Administrative Court ordered the applicant to supplement his complaint. On 9 February 1996 he complied with this order, and on 3 May 1996 the Regional Government submitted its observations.

17. On 29 August 1996 the Administrative Court allowed the complaint and quashed the Regional Government's decision. It found that there was no indication that the applicant's project interfered with the objective of the intended re-allocation proceedings for which reason the refusal of the planning permission was unlawful.

18. On 15 January 1997 the Regional Government remitted the case to the District Authority.

19. In January 1997 the Weiler Municipality opened the re-allocation proceedings and the District Authority asked the applicant to comment thereupon, as a planning permission could only be issued under the Vorarlberg Regional Planning Act (*Raumplanungsgesetz*) if the project did not interfere with the objective of the re-allocation proceedings and if the Regional Government authorised the project. On 27 March 1997 the District Authority held a hearing.

20. On 2 May 1997 the applicant filed a request with the Regional Government for the authorisation of his project, as required under the Regional Planning Act.

21. On 5 March 1998, after the applicant had filed a number of comments and requests, he lodged an application for a transfer of jurisdiction (*Devolutionsantrag*) with the Regional Government, as the District Authority had not decided within the statutory six-month time-limit.

22. On the same day, the applicant lodged an application against the administration's failure to decide with the Administrative Court, on the ground that the Regional Government has failed to give the authorisation as requested under the Regional Planning Act.

23. On 23 March 1998 the Administrative Court ordered the Regional Government to give a decision.

24. On 29 April 1998 the Regional Government refused the authorisation required under the Regional Planning Act.

25. On 14 May 1998 the Regional Government allowed the application for a transfer of jurisdiction, but dismissed the request for the planning permission on the ground that the applicant's project would interfere with the objective of the re-allocation proceedings.

26. On 20 May 1998 the Administrative Court discontinued the proceedings concerning the applicant's application against the administration's failure to decide of 5 March 1998 as, meanwhile, the Regional Government had given the relevant decision on 29 April 1998.

Further it ordered the Regional Government to reimburse the applicant's legal costs.

27. On 17 June 1998 the applicant lodged a complaint with the Administrative Court against the Regional Government's decisions of 29 April and 14 Mai 1998.

28. On 5 June 1999 the Regional Government discontinued the re-allocation proceedings *ex officio*, as the Municipality had not issued a re-allocation plan within two years as required under the applicable law. Since at this stage there was no building prohibition in force, the applicant requested the Regional Government to grant a planning permission on 26 August 1999.

29. On 1 October 1999 the Regional Government rejected the application on the ground that new re-allocation proceedings had meanwhile been opened for which reason the District Authority would have been the competent authority.

30. On 14 October 1999 the applicant applied for a planning permission with the District Authority.

31. On 14 June 2000 the District Authority dismissed the new application. On 16 June 2000 the applicant filed an appeal against this decision with the Regional Government.

32. On 27 April 2000 the Administrative Court again quashed the decisions of the Regional Government of 29 April 1998 and of 14 May 1998, finding that there was no indication that the applicant's project interfered with the objective of the re-allocation proceedings. This decision was served on 13 June 2000.

33. On 28 August 2000 the Regional Government granted both the authorisation which was required under the Regional Planning Act and the planning permission. This decision was served on 30 August 2000.

THE LAW

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

34. The applicant complained that the administrative proceedings were not 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...”

35. The Government argued that the proceedings started on 24 May 1994 when the District Authority dismissed the applicant's request for planning permission, and ended in August 2000 when the Regional

Government granted the requested permission. In the Government's view the proceedings were of some complexity, as the authorities had to consider if the applicant's project would interfere with the re-allocation proceedings and that, at all stages, the authorities conducted the proceedings speedily and without any standstill. As to the applicant's conduct, the Government submitted that the applicant did not demonstrate much interest in a speedy conduct of the proceedings.

36. The applicant replied that the proceedings were not at all complex and that the complicated division of jurisdiction in land planning matters under Austrian law had been one of the main reasons for the long duration of the proceedings. Moreover, he contended that he made use of all available remedies in order to accelerate the proceedings.

37. 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).

38. The Court considers that the proceedings at issue started on 24 May 1994, when the District Authority dismissed the applicant's request for a planning permission, as it was then that a "dispute" within the meaning of Article 6 § 1 arose, the administrative authority's decision being a necessary preliminary for bringing the dispute before a tribunal (see *mutatis mutandis*, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 98). They ended when the Provincial Government's decision was served on 30 August 2000. Thus, they lasted six years, three months and three days. The proceedings were conducted before four levels of jurisdiction.

39. The Court finds that the case was of some complexity as the planning permission proceedings were linked to re-allocation proceedings. However, this fact cannot in itself justify the duration of the planning permission proceedings at issue, in particular as it appears that the re-allocation proceedings were not conducted with due diligence. On 5 June 1999 the Regional Government discontinued them on the ground that the Weiler Municipality had failed to issue a re-allocation plan within the time-limit provided for by law.

40. As to the conduct of the applicant, the Court notes that he did not cause any significant delays. On the contrary, he repeatedly made use of remedies to accelerate the proceedings. On 2 February 1995, and again on 5 March 1998, he lodged an application against the administration's failure to decide and on the latter date he also lodged an application for a transfer of jurisdiction.

41. On the other hand, substantial delays are attributable to the authorities. There was, for instance, a standstill in the proceedings of one

year and four months from 15 January 1997 until 14 May 1998 when the Regional Government issued the decision, in the District Authority's place, after a transfer of jurisdiction. Further, there was a delay of one year and ten months before the Administrative Court from 17 June 1998 when the applicant lodged his complaint, until 27 April 2000 when the Administrative Court gave its decision.

42 Having regard to these circumstances, the Court finds that the length of the proceedings exceeded a "reasonable time". It follows that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. Under the head of pecuniary damage the applicant requested 112,290.70 euros (EUR), in particulars for loss of earnings as a result of the duration of the proceedings. He further claimed EUR 13,000 as compensation for non-pecuniary damage for anxiety suffered on account of their length.

45. The Government contended that there was no causal link between the length of the proceedings and the pecuniary damage claimed by the applicant. Further, the amount requested are considered to be excessive.

46. The Court agrees with the Government that there is no causal link between the alleged pecuniary damage and the violation found. The Court accordingly dismisses the claim.

47. The Court accepts that the applicant has suffered non-pecuniary damage, such as distress and frustration relating to the length of the proceedings, which is not sufficiently compensated by the finding of violation of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,000 under this head.

B. Costs and expenses

48. The applicant claimed reimbursement of costs and expenses incurred in the domestic proceedings in the amount of EUR 32,709.19 and EUR 5,551.38 for costs incurred in the Strasbourg proceedings.

49. As regards the claim relating to the domestic proceedings, the Government contended that the requested sum would be a reimbursement of the total costs incurred in the domestic proceedings, whereas only those costs which were incurred in an attempt to redress the violation of the Convention could be taken into account. Further, the Government contended that the requested amount relating to the Convention proceedings was excessive and that the applicant was only partly successful with his application.

50. As to the costs of the domestic proceedings, the Court notes that, insofar as the length of proceedings is concerned, only the 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 applicant's applications against the administrative authorities' failure to decide lodged on 2 February 1995 and 5 March 1998 and his request for transfer of jurisdiction lodged on 5 March 1998 would fulfil this requirement. However, as regards the applications against the administrative authorities' failure to decide, the Court observes that the legal costs for the applications were already reimbursed by the Austrian authorities (see paragraphs 13 and 26 above). Consequently, the applicant cannot claim that any specific costs were incurred in relation to these remedies.

51. However, the costs for the request for transfer of jurisdiction of ATS 4,036.50 (EUR 293.34) can be considered as having been incurred in an attempt to prevent or redress the violation found. The Court, therefore, awards this amount. Moreover, the Court cannot exclude that the excessive duration of the proceedings increased the overall costs incurred (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999). Thus, the Court awards the applicant EUR 1,000 under this head. In sum, the Court awards a total amount of EUR 1,293.34 for costs incurred in the domestic proceedings.

52. 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 applicant EUR 2,000 under this head on an equitable basis.

53. Thus, a total award of EUR 3,293.34 is made for costs and expenses.

C. Default interest

54. 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 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 3,293.34 (three thousand two hundred ninety three euros and thirty four cent) 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 5 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President