



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

FIRST SECTION

CASE OF BAUMANN v. AUSTRIA

(Application no. 76809/01)

JUDGMENT

*This judgment was revised in accordance with Rule 80 of the Rules of Court
in a judgment of 9 June 2005*

STRASBOURG

7 October 2004

FINAL

07/01/2005

*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 Baumann v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 16 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 76809/01) 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, Mrs Ulrike Baumann (“the applicant”), on 30 October 2001.

2. The applicant was represented by Mr W. Strigl, 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. On 10 February 2003 the Court 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 1950 and lives in Vienna.

Proceedings concerning the division of the matrimonial property and savings (the first round)

5. On 4 December 1987 the applicant’s former husband A., and on 15 December 1987 the applicant herself, requested the division of the matrimonial property and savings (*Aufteilung des ehelichen*

Gebrauchsvermögens und der ehelichen Ersparnisse) following their divorce.

6. On 13 March 1989 the Döbling District Court (*Bezirksgericht*), after having held seven hearings, divided the matrimonial property. It decided, *inter alia*, to transfer A.'s title concerning the land and the house to the applicant, who was ordered to pay to A. the sum of 2,876,000 Austrian Schilling (ATS) by way of compensation. The applicant and A. appealed against this decision.

7. On 31 August 1989 the Vienna Regional Civil Court (*Landesgericht für Zivilrechtssachen*) allowed the appeals due to procedural deficiencies and remitted the case to the District Court. Both parties filed an appeal on points of law (*Revisionsrekurs*) against this decision.

8. On 29 January 1991 the Supreme Court dismissed these appeals.

The second round of the proceedings

9. Subsequently, due to the District Court's rule concerning the distribution of cases (*Geschäftsverteilung*), another judge was assigned who held three more hearings, heard additional witnesses in order to assess the applicant's contribution to the matrimonial property and obtained an expert opinion concerning the value of the property at issue.

10. On 24 July 1991 the District Court divided the matrimonial property. It decided, *inter alia*, to transfer the applicant's title concerning the land and the house to A., who was ordered to pay the applicant the sum of ATS 3,358,200 by way of compensation. Both parties appealed.

11. On 18 March 1992 the Regional Civil Court allowed the appeals and remitted the case to the District Court. It found that the District Court had failed to consider the applicant's observations on the expert opinion.

The third round of the proceedings

12. On 23 October 1992 the District Court, after having held two hearings on 19 May and 22 July 1992, took a partial decision and decided, *inter alia*, to transfer the applicant's title concerning the land and the house to A., who was ordered to pay to the applicant the sum of ATS 4,000,000 by way of compensation. As regards the applicant's additional claim for compensation for her contribution to A.'s business, it decided to suspend the proceedings as tax assessment proceedings against A. were pending. The outcome of the tax assessment had to be taken into account in the instant proceedings. The applicant and A. again appealed.

13. On 10 March 1993 the Regional Civil Court allowed the appeals and remitted the case to the District Court. It found that the District Court had failed to calculate properly the value of the house.

The fourth round of the proceedings

14. Subsequently, the case was assigned to another judge due to the court's rule concerning the distribution of cases. On 16 July, 13 September, 14 October, 3 and 17 November 1993, A. requested extensions of time-limits for the submission of documents or comments, respectively.

15. On 27 September 1993 and 19 January 1994 the District Court held another two hearings.

16. On 21 July 1994 the applicant filed a request for the acceleration of the proceedings under Section 91 of the Austrian Court Act (*Fristsetzungsantrag*). In particular she requested that a time limit be set for the District Court to reach its decision.

17. On 12 August 1994 the District Court took a partial decision and decided, *inter alia*, to transfer the applicant's title concerning the land and the house to A., who was ordered to pay to the applicant the sum of ATS 4,300,000 by way of compensation. As regards the applicant's additional claim, the court again decided to suspend the proceedings until the termination of the tax assessment proceedings. Both parties appealed.

18. On 13 February 1995 the applicant filed a further request for an acceleration of the proceedings under Section 91 of the Court Act. In particular, she requested that a time limit be set for the Regional Court to determine her appeal against the decision of 12 August 1994.

19. On 22 February 1995 the Regional Civil Court partly confirmed the decision of 12 August 1994. It allowed the applicant's appeal as regards the interest to be paid on the award of compensation, but dismissed the remainder as being otherwise unfounded or out of time. A request by A. for his reinstatement in the proceedings was unsuccessful.

20. On 20 September 1995 the Supreme Court rejected A.'s appeal on points of law. Thereby, the proceedings were terminated concerning the transfer of the land and the house and the related compensation payment. As regards possible further compensation to the applicant for her contribution to A.'s business, the proceedings remained pending until the termination of the tax assessment.

The applicant's claim for further compensation

21. On 11 October 1995 the applicant asked the court to obtain information on the current state of the tax assessment proceedings. This the court did and the applicant commented on it.

22. On 3 June 1996 the applicant asked the court to take a final decision.

23. On 4 July 1996 the District Court replied that the tax assessment proceedings were still pending.

24. On 30 July 1996 the applicant filed a request to continue the suspended proceedings.

25. On 28 November 1996 the District Court dismissed the request as the tax assessment proceedings were still pending.

26. On 13 October 1997 the District Court held a hearing and decided to continue the suspension of the proceedings.

27. On 21 April 1998 the District Court dismissed a further request by the applicant to continue the proceedings.

28. In August 1998 the Vienna Tax Office (*Finanzamt*) determined A.'s tax liability. This decision became final.

29. On 1 September 1998 the applicant requested the resumption of the suspended proceedings and submitted that, meanwhile, the tax assessment proceedings against A. had been terminated.

30. On 3 November 1998 A. requested the postponement of a hearing until after 7 January 1999, on the ground that his counsel was unable to attend.

31. On 12 January and 21 October 1999 the District Court held two hearings.

32. On 15 May 2000 the District Court partly allowed the applicant's additional claims and awarded her ATS 300,000. It found that each party had to bear its own costs.

33. On 13 June 2000 the applicant filed an appeal. She submitted that the court should have awarded her ATS 550,000 and that the costs decision was unreasonable.

34. On 8 November 2000 the Regional Civil Court partly allowed the applicant's appeal and awarded her ATS 550,000, but dismissed the complaint against the costs order. Further, it ordered A. to pay the applicant's legal costs in the appeal proceedings. It found that, when taking a decision about such costs under Section 234 of the Non-Contentious Proceedings Act (*Außerstreitgesetz*), it had to take into account, *inter alia*, the outcome of the proceedings, the financial standing of the parties and their conduct in the proceedings. Given that neither party could be regarded as being predominantly successful in the case, that both parties had about the same income and that neither of them had made any marked contribution to the acceleration of the proceedings, the decision that each party bear its own legal costs appeared equitable. A. appealed on points of law against this decision.

35. On 2 May 2001 the Regional Civil Court refused leave to appeal on points of law. This decision was served on the applicant's counsel on 22 May 2001.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LENGTH OF THE PROCEEDINGS

36. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, 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 ... hearing within a reasonable time by [a] ... tribunal...”

37. The Government contested that argument.

38. The period to be taken into consideration began on 15 December 1987, when the applicant filed her request for the division of the matrimonial property and savings following her divorce, and ended on 22 May 2001, when the Regional Court’s decision was served on the applicant’s counsel. It thus lasted thirteen years and five months for three levels of jurisdiction, with re-hearings.

A. Admissibility

39. The applicant referred to her former husband’s application, which concerned the length of the same proceedings, albeit at an earlier stage, and in which a friendly settlement was concluded after it had been declared admissible (see *Baumann v. Austria*, no. 25818/94, the Commission’s decision of 10 September 1997).

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

B. Merits

41. The Government submitted that the proceedings were complex as two proceedings were joined; the parties made repeated requests for the taking of evidence and several expert opinions had to be obtained. Moreover, the decision on the division of the matrimonial property and savings required the prior clarification of existing tax liabilities by the fiscal authorities which lasted seven years. Delays were mainly attributable to the parties, particularly because of their numerous requests to and lack of co-operation with the District Court, whereas the Austrian courts conducted the proceedings speedily and constantly worked on the case. Responsibility for the delay which occurred after the partial decision of 12 August 1994,

when the courts had to wait for the final determination of the fiscal debts of the applicant's former husband A., had to be born by the latter, who apparently tried to conceal his income vis-à-vis the tax authorities for quite some time.

42. The applicant contested this view and submitted that the proceedings were not complex. They only involved the determination of the value of the house, for which expert opinions had to be obtained as her former husband had underestimated its value. The applicant, as the claimant in the proceedings, was interested in their expeditious conduct and only made use of the legal remedies available in order to obtain her rights. Delays were mainly attributable to the domestic courts which conducted the proceedings with unusual slowness. In particular, the judge dealing with the case was replaced several times. Even the appeal proceedings took an exceptionally long time, necessitating a request under Section 91 of the Courts Act for an acceleration of the proceedings. The case was remitted to the first instance court for the taking of further evidence about five times.

43. 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).

44. The Court shares the applicant's view that the financial nature of the claim did not, of itself, make the proceedings especially complex. It notes that the applicant did not cause significant delays, but requested on several occasions that the proceedings be accelerated or resumed. Some delays are attributable to the applicant's former husband who requested extensions of time-limits or the postponement of hearings. Both parties made appeals against certain decisions, which were mostly successful. Thus, the case was remitted three times to the first instance court for the taking of further evidence. Major delays occurred due to the suspension of the proceedings pending the outcome of the related tax assessment case.

45. The Court reiterates in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see, among other authorities, *Pélissier and Sassi v. France*, judgment of 25 March 1999, *Reports of Judgments and Decisions* 1999-II, p. 301, § 74). Consequently, it takes the view that an overall period of thirteen years and five months could not, in itself, be deemed to satisfy the "reasonable time" requirement in Article 6 § 1 of the Convention.

46. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE COSTS ORDER AND THE LACK OF A FURTHER APPEAL

47. The applicant further complained that the decision that each party had to bear its own costs was unreasonable and that there was no further remedy against the Regional Court's dismissal of her appeal against the costs order.

A. Admissibility

48. The Court reiterates that Article 6 § 1 is applicable to costs proceedings, provided that the legal costs which form the subject matter of the proceedings were incurred during the resolution of a dispute which involved the determination of civil rights and obligations (see *Beer v. Austria*, no. 30428/96, § 12, 6 February 2001). Since the costs order in the present case was clearly related to the principal civil claim, Article 6 § 1 of the Convention was also applicable to the costs procedure.

49. As regards the alleged unreasonableness of the costs order, the Court considers that it is not for the Court to act as a court of appeal or, as is sometimes said, as a court of fourth instance, from the decisions taken by domestic courts. It is the role of the domestic courts to interpret and apply the relevant rules of procedural or substantive law. Furthermore, it is the domestic courts which are best placed for assessing the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 32; *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, § 34).

50. The Court finds that the legislative policy reflected in the Non-Contentious Proceedings Act, leaving the costs issue to the discretion of the domestic courts, which take account of the outcome of the proceedings, the financial standing of the parties and their conduct in the proceedings, appears neither arbitrary nor unreasonable (see *mutatis mutandis*, *Fransson and Fransson v. Sweden* (dec.), no. 8719/02, 16 March 2004). Further, there is no indication that the procedures or decisions adopted by the domestic courts in the costs proceedings infringed the core fairness requirement of Article 6 § 1 of the Convention.

51. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

52. As regards the applicant's complaint about the lack of a further remedy against the costs order of the appeal court, the Court reiterates that

the right of appeal in civil cases does not feature among the rights and freedoms guaranteed by the Convention. No provision of the Convention, therefore, requires a State to grant persons under its jurisdiction an appeal to a Supreme Court acting as a third instance court (see *Suslo v. Ukraine* (dec.), no. 30605/02, 5 November 2002, with further references).

It follows that this complaint must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government submitted that the claim was excessive.

56. The Court finds that the applicant has sustained non-pecuniary damage which cannot be compensated by the finding of a violation. Assessing the claim on an equitable basis, it awards EUR 9,000 under this head.

57. In so far as the applicant may be understood to seek reimbursement of her legal costs incurred in the domestic proceedings under the head of pecuniary damage, no award can be made as the applicant has not specified her claim. Further, the Court cannot speculate what the outcome would have been if the applicant had obtained a final decision on her action within a reasonable time. The Court accordingly dismisses this aspect of her claim.

B. Costs and expenses

58. The applicant also claimed reimbursement of EUR 97,000 for costs and expenses incurred before the domestic courts and EUR 13,081.11 for those incurred before the Court. The applicant did not submit any supporting documents.

59. The Government pointed out that only costs incurred in an attempt to redress the violation found could be reimbursed. Assessing the claim on the basis of the applicable law, only EUR 2,906.91 could possibly be claimed for the two applications under Section 91 of the Courts Act. The

Government did not comment on the costs claim concerning the Convention proceedings.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of such costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court agrees with the Government as regards the amount to be reimbursed for the applications under Section 91 of the Austrian Courts Act. It accordingly awards the sum of EUR 2,906.91. However, the Court does not consider it necessary to determine whether the applicant's costs related to her requests for the resumption of the proceedings meet this requirement as she has failed to specify them. Nevertheless, it cannot be excluded that the excessive duration of the proceedings increased the overall costs incurred (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999). It therefore awards EUR 1,000 in this respect.

61. As to the costs in the Convention proceedings, the Court notes that the applicant, who was represented by counsel, did not have the benefit of legal aid. It considers it reasonable to award the applicant EUR 2,000 under this head.

62. In sum, the Court awards a total of EUR 5,906.91 for the applicant's costs and expenses.

C. Default interest

63. 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. *Declares* the complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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,
 - (i) EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage;

- (ii) EUR 5,906.91 (five thousand nine hundred and six euros and ninety-one cents) in respect of costs and expenses;
- (iii) 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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President