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

FIRST SECTION

CASE OF ULLRICH v. AUSTRIA

(Application no. 66956/01)

JUDGMENT

STRASBOURG

21 October 2004

FINAL

21/01/2005

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 Ullrich 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,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 30 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 66956/01) 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, Ingrid Ullrich (“the applicant”), on 12 October 1999.

2. 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 6 May 2003 the Court decided to communicate the complaint concerning the length of the proceedings. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. In March 1993 welding work was carried out in the applicant’s fashion boutique. On 26 May 1995 the applicant filed an action for damages against the company which had carried out the welding work. She alleged that the welding work had soiled stored clothes and the salesroom of her boutique and had affected her health. The Salzburg Regional Court (*Landesgericht*), upon her request, had previously granted her legal aid for these proceedings on 4 May 1995.

5. On 29 August 1995 the Salzburg Regional Court held a first hearing.

6. On 6 October 1995 it appointed an expert and instructed him to prepare a report. The expert delivered his report on 29 January 1997.

7. On 2 June 1997 the court held a further hearing. It heard some witnesses and then adjourned the proceedings to hear the expert and further witnesses. On the same day the defendant challenged the expert for bias. The court dismissed this motion on 19 September 1997.

8. On 17 December 1997 the court held another hearing and heard further witnesses and the expert. It also ordered the parties to submit their extensive questions in writing and, on 3 February 1998, instructed the expert to supplement his opinion.

9. On 6 July 1998 the expert delivered his supplementary opinion. On 16 November 1998 the court held a hearing and, upon the applicant's request, decided to appoint a further expert in order to assess the amount of damages. It further requested the applicant to declare whether she still claimed damages for injuries to her health. The proceedings were adjourned in order to appoint the expert and to hear a witness who had not appeared.

10. In a statement of 14 January 1999 the applicant declared that she maintained her claim for damages as regards injuries to her health.

11. On 4 March 1999 the court, noting that the applicant had made incorrect statements when declaring her financial situation, withdrew the legal aid granted to her. On 20 April 1999 the Linz Court of Appeal confirmed this decision. Subsequently, on 18 May 1999 the Salzburg Regional Court imposed a fine on the applicant for abuse of process. It further informed the parties that it considered it necessary to decide first whether the claim for damages was well-founded in principle before ordering further expert opinions.

12. On 2 July 1999 the court dismissed the applicant's further request for legal aid. On 9 August 1999 the Linz Court of Appeal confirmed this decision.

13. Meanwhile, on 26 July 1999 the applicant filed an application under Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*). In particular, she requested that the Regional Court be ordered to hold a further hearing, to question the witness H. and to take a decision. The Regional Court subsequently scheduled a hearing for 10 November 1999. On 17 August 1999 the Linz Court of Appeal dismissed the application. It found that, until the hearing of 17 December 1997, the court had been mainly concerned with obtaining the necessary expert opinions. There were no delays either during this period, or during the following period until the hearing of 16 November 1998. Subsequently, a number of procedural steps were taken by the applicant relating to the withdrawal of legal aid. Having regard to the circumstances of the case, the Regional Court had not been dilatory.

14. The applicant subsequently challenged the competent judge S. and, in a letter of 15 October 1999, complained that S. had not cancelled the hearing of 10 November 1999. On 15 November 1999 the applicant requested that records prepared in1994 in connection with her legal aid case be rectified.

15. On 16 December 1999 the Salzburg Regional Court sitting with three judges dismissed the applicant's challenge as unfounded but found that judge S. was biased according to his own declaration (*Befangenheitsanzeige*). On 7 March 2000 the Linz Court of Appeal confirmed this decision.

16. On 28 April and on 30 May 2000, the Salzburg Regional Court, presided over by another judge, held oral hearings. On 31 August 2000, upon the parties' requests, the court appointed two further experts. On 11 December 2000 both of the experts delivered their reports.

17. On 9 February 2001 the court, presided over by another judge, held another hearing and heard one expert. During this hearing the applicant's counsel declared that he would inform the court of the outcome of friendly settlement discussions within four weeks. The court adjourned the proceedings *sine die* in order to obtain an opinion of another expert.

18. On 22 March 2001 the applicant requested the court to hear another witness. On 3 April 2001 the applicant's counsel requested the court not to schedule any hearings because of ongoing friendly settlement discussions. The applicant's counsel repeated this request on 23 August 2001, 25 September 2001, 17 December 2001, 26 February 2002 and on 17 May 2002. In the meantime, on 31 August 2001, the defendant's counsel had informed the applicant's counsel that the defendant did not agree with their proposal for a friendly settlement.

19. On 5 December 2002 the applicant's counsel requested the court to hold a further hearing. On 21 January 2003 and on 25 April 2003 the court held further hearings.

20. On 15 July 2003 the Regional Court dismissed the applicant's claim. It noted that the applicant's claim had become time-barred as the applicant had not duly continued the proceedings after friendly settlement negotiations had failed in August 2001.

21. On 14 October 2003 the Vienna Court of Appeal dismissed the applicant's appeal.

22. On 3 December 2003 the Supreme Court rejected the applicant's extraordinary appeal.

THE LAW

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

23. The applicant complained about the length of the proceedings. She further complained that judge S. was biased and that the proceedings

concerning her motion for bias against him were unfair. She relied on Article 6 § 1 of the Convention which, as far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal..."

24. The Government contested that the proceedings were incompatible with the reasonable time requirement.

25. The period to be taken into consideration began on 26 May 1995 when the applicant instituted civil proceedings and ended with the Supreme Court's judgment on 3 December 2003. It thus lasted eight years and some six months. The proceedings came before three levels of jurisdiction.

A. Admissibility

26. The Government requested the Court to declare the applicant's complaint about the length of the proceedings inadmissible for non-exhaustion because the applicant had not efficiently made use of the domestic remedies available. They submitted in this regard that the applicant had only once filed an application under Section 91 of the Courts Act and this at an advanced stage of the proceedings. They further submitted that subsequent to her application under Section 91 of the Courts Act the applicant had delayed the proceedings in that she had challenged the competent judge and requested the postponement of a scheduled hearing.

27. The Court recalls that according to its case-law, an application under Section 91 of the Austrian Courts Act is an effective remedy which has to be used in the context of complaints about the length of court proceedings. (see *Holzinger v. Austria (no. 1)*, no. 23459/94, §§ 22-25, ECHR 2001-I).

28. In the present case, the applicant did make use of this remedy on 26 July 1999, when the proceedings had already been pending for more than four years before the Regional Court, and requested *inter alia* that the Regional Court be ordered to take a decision. The Court of Appeal dismissed this application finding that the Regional Court had, so far, not been dilatory. Proceedings were subsequently pending for another three years before the Regional Court.

29. It follows that the applicant has raised the "reasonable time "issue before the competent domestic courts and invited them to accelerate the proceedings. A further detailed examination as to whether the applicant could have made more efficient use of the remedy by using it at other stages of the proceedings, would overstretch the duties incumbent on an applicant pursuant to Article 35 § 1 of the Convention (see *mutatis mutandis Wohlmeyer Bau GmbH v. Austria*, no. 20077/02, § 45, 8 July 2004).

30. The Court, therefore, concludes that the applicant has complied with her obligation to exhaust domestic remedies.

31. The Court notes that the applicant's complaint about the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

32. The applicant further complained under Article 6 § 1 that judge S. was biased and that the proceedings concerning her motion of bias against him were unfair. The Court notes, however, that the Salzburg Regional Court, on 16 December 1999, in any way, found that the judge S. was biased and that the proceedings were subsequently conducted by another judge. In these circumstances, the Court finds that this part of the application discloses no appearance of a violation of the applicant's rights under Article 6 of the Convention.

33. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

B. Merits

34. 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 following criteria: the complexity of the case, the conduct of the applicant and 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).

35. The Government contended that the length of the proceedings may still be regarded as reasonable. They argued that the case was extremely complex in that it necessitated the taking of several expert opinions. They further submitted that the applicant contributed to a considerable extent to the length of the proceedings, namely in that she challenged the competent judge and requested a rectification of five-year-old records relating to her legal aid case. She had further repeatedly requested the court to stay the proceedings in order to wait for the outcome of friendly settlement negotiations.

36. The applicant maintained that the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

37. The Court finds that the proceedings at issue were of some complexity, as they required the taking of expert opinions.

38. As regards the conduct of the applicant, the Court notes that from April 2001 until May 2002 the applicant repeatedly requested the Regional Court not to schedule any hearings because of ongoing friendly settlement negotiations. It was only on 5 December 2002 that the applicant requested

the court to hold another hearing. The applicant, therefore, undoubtedly contributed to the length of the proceedings.

39. The Court finds, however, that neither the fact that the proceedings were of some complexity, nor the conduct of the applicant are in themselves sufficient to explain the overall length of the proceedings at issue which lasted for eight years and some six months, in particular as the proceedings were pending for eight years and some two months before the first instance court.

40. The Court considers, therefore, considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 3,106.16 euros (EUR) in respect of pecuniary damage, namely the costs of a tax consultant, and 7,500 euros (EUR) in respect of non-pecuniary damage.

43. The Government contested these claims.

44. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court considers, however, that the applicant must have sustained non-pecuniary damage due to the length of the proceedings. Ruling on an equitable basis, it awards her EUR 5,000 under this head.

B. Costs and expenses

45. The applicant also claimed EUR 100 for the costs and expenses incurred before the domestic courts and the European Court of Human Rights. She referred in this regard to the costs incurred for her application under Section 91 of the Courts Act and the costs for photocopies, postage and telephone calls concerning her application to the Court.

46. The Government left the matter to the Court's discretion.

47. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 made to the information in its possession and the above criteria, the Court finds that the sum claimed should be awarded in full.

C. Default interest

48. 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, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 100 (one hundred 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;

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

Done in English, and notified in writing on 21 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA — Christos ROZAKIS
Deputy Registrar — President