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

FIRST SECTION

CASE OF RIEPL v. AUSTRIA

(Application no. 37040/02)

JUDGMENT

STRASBOURG

3 February 2005

FINAL

03/05/2005

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 Riepl v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 13 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 37040/02) 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 two Austrian nationals, Franz and Christina Riepl ("the applicants"), on 1 October 2002.

2. The applicants were represented by Mr H. Blum, a lawyer practising in Linz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Departement at the Federal Ministry for Foreign Affairs.

3. On 12 November 2003 the Court decided to communicate the application. 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. The applicants were born in 1935 and 1939 respectively and live in Freistadt.

5. On 11 April 1994 the applicants applied for a building permit for an adjoining building with a garage on their property.

6. On 16 August 1994 the Mayor (*Bürgermeister*) of Freistadt granted the building permit.

7. On 31 August 1994 the applicants' neighbours appealed.

8. On 30 March 1995 the Municipal Council granted the appeal and refused the building permit.

9. On 12 July 1995 the Upper Austria Regional Government (*Landesregierung*) dismissed the applicant's appeal (*Vorstellung*).

10. On 27 February 1996 the Administrative Court (*Verwaltungsgerichtshof*), upon the applicants' complaint, quashed this decision.

11. Subsequently, on 25 June 1996, the Regional Government quashed the Municipal Council's decision and remitted the case back to the Municipal Council.

12. On 10 February 1997 the applicants lodged an application with the Administrative Court against the Municipal Council's failure to decide (*Säumnisbeschwerde*).

13. On 21 April 1997 the Municipal Council again dismissed the applicants' request for a building permit.

14. On 17 June 1997 the Regional Government dismissed the applicants' appeal.

15. On 31 July 1997 the applicants filed a complaint with the Constitutional Court (*Verfassungsgerichtshof*). In October 1997 the Upper Austria Regional Government and the Mayor of Freistadt submitted their observations. On 28 September 1999 the Constitutional Court instituted proceedings for the review of the lawfulness of the ordinance (*Verordnungsprüfungsverfahren*) upon which the Municipal Council had based its decision.

16. On 15 March 2000 the Constitutional Court found that the ordinance at issue was unlawful. On 6 April 2000 this decision was served on the applicants' counsel.

17. On 26 May 2000 the Regional Government quashed the Municipal Council's decision and remitted the case back to the Municipal Council.

18. In January 2001, following negotiations, the applicants reached an agreement with the Municipal Council to the effect that the latter accepted to pay the fees incurred by the applicants' representation in the proceedings so far, on the condition that the applicants amended their request for a building permit in accordance with the newly established building scheme (*Bebauungsplan*).

19. On 6 February 2001 the applicants amended their request for a building permit.

20. Subsequently, on 28 May 2001, the Municipal Council quashed the building permit of 16 August 1994 and remitted the case back to the Mayor of Freistadt. It noted that the applicants had amended their request for the building permit with a view to the new building scheme.

21. On 28 June 2001 the Mayor of Freistadt requested the applicants to submit plans concerning their amended building project. On 28 September 2001 the Mayor of Freistadt reiterated this request.

22. On 30 October 2001 the applicants submitted the requested plans, which, however, turned out to be incomplete.

23. On 21 November 2001 the Mayor of Freistadt requested the applicants to correct the plans within two weeks.

24. On 14 December 2001 the applicants requested to extend this time-limit until 15 January 2002. On 15 January 2002 they submitted the corrected plans.

25. On 28 March 2002 the Mayor of Freistadt granted a building permit for a double garage with a parking area. This decision was served upon the applicants' counsel on 4 April 2002.

THE LAW

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

26. The applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in 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 ... hearing within a reasonable time by [a] ... tribunal..."

27. The Government contested that argument.

28. As regards the period to be taken into account, the Government submitted that the proceedings started on 30 March 1995, when the Municipal Council quashed the first instance's decision and refused the building permit requested by the applicants. This is disputed by the applicants. In their view, the proceedings started already on 11 April 1994 when they instituted proceedings for the issuing of a building permit.

29. The Court considers that the period to be taken into consideration started on 31 August 1994, when the applicants' neighbours appealed against the Mayor's decision of 16 August 1994, as it was only then that a "dispute" within the meaning of Article 6 § 1 arose (see for instance *Emsenhuber v. Austria* (dec.), no. 54536/00, 11 September 2003). It ended on 4 April 2002 when the decision granting the applicants a building permit was served on their counsel. It thus lasted seven years and some seven months.

A. Admissibility

30. The Government argued that the applicants did not suffer any damage from the proceedings at issue because - as a result of their agreement with the Municipal Council - they were compensated for a part of their lawyer's fees.

31. The applicants contested this argument.

32. According to the Court's well-established case-law an applicant's status as a victim may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court and on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention. Only when those two conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 et seq., and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X; *Scordino v. Italy* (no.1)(dec.), no. 36813/97, ECHR 2003-IV).

33. These conditions are, however, not satisfied in the present case. The Austrian authorities did not acknowledge at any stage of the proceedings the alleged infringement of the Convention. It is true that the Municipal Council paid a part of the fees incurred by the applicants' representation in the proceedings at issue. However, it did so on the basis of an agreement with the applicants which required them to amend their request for a building permit, and not in order to provide redress for the length of the proceedings.

34. Accordingly, the Court finds that the applicants may claim to be victims of a violation of their right to have a determination of their civil rights within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

35. The Court notes that the application 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

36. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

37. The Government argued that the proceedings at issue were complex, namely because they involved the review of the lawfulness of an ordinance. There were no delays to be attributed to the Austrian authorities, while the applicants caused some delay, in that they complied only in January 2002 with the Mayor's request of June 2001 to submit amended plans.

38. The applicant maintained that the proceedings lasted unreasonably long and that major delays were attributable to the authorities.

39. The Court considers that the proceedings at issue were of some complexity since they involved the review of the lawfulness of an ordinance. In addition, the case came before five levels of jurisdiction.

40. As to the applicant's conduct, the Court observes that, on the Mayor's request of June 2001, they submitted plans in October 2001. As these were incomplete, they were requested to correct them which they did January in 2002. Some delay is, therefore, attributable to the applicants.

41. Nonetheless, more substantial periods of delay are attributable to the authorities. The Court notes that the case was pending for some ten months before the Municipal Council until, following the applicants' complaint about its failure to decide, it took a decision of 21 April 1997. Furthermore, the case was pending for two years and eight months before the Constitutional Court. There was a period of inactivity of almost two years, between October 1997 when the lower instances submitted their observations on the applicants' complaint against the refusal of the building permit and 28 September 1999, when the Constitutional Court decided to institute proceedings for the review of the lawfulness of the underlying ordinance.

42. Having regard, in particular, to the above mentioned delays attributable to the authorities, the Court considers that the overall duration of the proceedings did not comply with the "reasonable time" requirement. There has, accordingly, been a breach of Article 6 § 1.

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. The applicants claimed 5,000 euros (EUR) in respect of non-pecuniary damage, asserting that the excessive duration of the proceedings put considerable stress on them.

45. The Government contested the claim. They argued that the applicants did not suffer any damage as they eventually obtained the building permit and were compensated for part of their lawyer's fees.

46. The Court, having regard to the circumstances of the case and making an assessment on an equitable basis, awards the applicants EUR 4,000 under the head of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

47. The applicants also claimed EUR 2,447.56, including VAT, for costs and expenses incurred in the domestic proceedings and EUR 1,629.97, including VAT, for costs incurred before the Court.

48. The Government contested the claim concerning costs and expenses incurred in the domestic proceedings. They did not comment on the applicants' claims concerning the Convention proceedings.

49. As to the costs of the domestic proceedings, the Court notes that, insofar as the length of proceedings is concerned only costs incurred in an attempt to accelerate the proceedings or to obtain redress for their excessive length can be regarded as having been necessarily incurred. In the present case, only the costs for the applicants' application of 10 February 1997 against the Municipal Council's failure to decide fulfil this requirement. However, as a result of the agreement reached between the applicants and the Municipal Council (see paragraph 18 above), the applicants have already been compensated for these costs. The Court, therefore, rejects the claim for costs and expenses incurred in the domestic proceedings.

50. As regards the costs of the Convention proceedings, the Court notes that the applicants, who were represented by counsel, did not have the benefit of legal aid. The sum claimed, EUR 1,629.97, is reasonable as to quantum and is therefore awarded in full.

C. Default interest

51. 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 application admissible;

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 applicants, 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 plus any tax that may be chargeable on that amount, and EUR 1,629.97 (one thousand six hundred twenty nine euros and ninety seven cents) in respect of costs and expenses;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President