



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

FIRST SECTION

CASE OF BRUGGER v. AUSTRIA

(Application no. 76293/01)

JUDGMENT

STRASBOURG

26 January 2006

FINAL

26/04/2006

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 Brugger v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

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 5 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 76293/01) 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, Matthias Brugger (“the applicant”), on 17 September 2001.

2. The applicant was represented by Mr G. Waibel, a lawyer practising in Dornbirn. The Austrian Government (“the Government”) were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. On 10 July 2003 the Court decided to communicate the application 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1947 and lives in Austria.

5. On 11 March 1992 the Kärnten Regional Government (*Landesregierung*) dismissed the applicant’s request for a permit under the Kärnten Environmental Protection Act (*Naturschutzgesetz*) to build a tool shed on his agricultural and forestal estate. It noted that the project was contrary to the objectives of the area zoning plan (*Flächenwidmungsplan*) as

a tool shed was not necessary in order to cultivate a forestal estate of less than 10 hectares.

6. Two further requests of the applicant for the granting of a permit were rejected on the ground of *res iudicata*: On 28 November 1994 the Kärnten Regional Government found that the extension of the applicant's forestal estate to approximately 6 hectares did not constitute any relevant change of the circumstances. The Administrative Court confirmed this decision on 23 October 1995. On 16 January 1996 the applicant again requested a permit and submitted that he had acquired further 13 hectares of land. On 22 August 1997 the Kärnten Regional Government rejected this request as it found that the purchase contract was not valid and there was, therefore, no change of the relevant circumstances.

7. On 2 April 1998 the applicant again requested a permit for the tool shed which he had in the meanwhile built. He submitted that the relevant circumstances of his case had changed in that his brother-in-law was disposed to rent him approximately 5 hectares of land.

8. On 5 October 1998 the applicant filed a request for transfer of jurisdiction (*Devolutionsantrag*) to the Kärnten Regional Government as the Spittal an der Drau District Administrative Authority (*Bezirkshauptmannschaft*) failed to decide within the statutory six months time-limit.

9. Upon request of the Regional Government, the building office (*Baubezirksamt*) at the District Administrative Authority issued an expert opinion on 20 November 1998. This opinion was communicated to the applicant, who, on 26 March and 21 June 1999 respectively, submitted two opinions of the private experts H and M in reply.

10. Meanwhile, on 26 May 1999, the building office at the District Administrative Authority, upon request of the Regional Government, commented on the private expert opinion of H. On 22 June 1999 the forestry inspection office (*Bezirksforstinspektion*) at the District Administrative Authority, upon request of the Regional Government, issued a further statement. Neither document was communicated to the applicant.

11. On 7 July 1999, the Kärnten Regional Government allowed the applicant's request for transfer of jurisdiction but dismissed his request for the permit under the Environmental Protection Act. It noted that, due to changes in the relevant legislation, the question whether a project was in accordance with the objectives of the area zoning plan was not any longer relevant in the proceedings concerning a permit under the Environmental Protection Act. The permit could, however, not be granted as the tool shed had an adverse effect on the character of the concerned landscape. The Regional Government referred in this regard to the official expert's opinion of 20 November 1998, who had found that the project led to urban sprawl. The Regional Government further noted that the construction of the tool shed was not a measure of public interest. It referred in this regard to expert opinions submitted in the previous proceedings which had found that the

tool shed was not necessary for the cultivation of the applicant's forest. The Regional Government finally noted that the applicant had only alleged that he would rent another 5 hectares and had not submitted the rent contract.

12. The applicant filed a complaint with the Administrative Court (*Verwaltungsgerichtshof*) and requested it to hold a hearing. Referring to the findings of the two private expert opinions he had submitted in the proceedings before the Regional Government, the applicant contested the Regional Government's conclusions. The applicant further complained that the Regional Government had not given sufficient reasons as to why it preferred the findings of the official expert against those of the private expert opinions. In the view of the divergent findings of the experts the Regional Government should have taken another expert opinion. He finally submitted that the Regional Government should have requested him to submit the rent contract if it considered this relevant for the proceedings at issue.

13. On 25 October 1999 the Regional Government submitted its comments on the applicant's complaint. It noted *inter alia* that the private expert opinions had been examined by the building office at the District Administrative Authority. The findings of the private experts were, however, not suitable to disprove the findings of the official expert. In his further comments of 11 December 1999 the applicant complained that he had not been informed about the examination by the building office of the private experts' opinions and had, therefore, not been able to comment on it.

14. On 21 March 2001 the Administrative Court dismissed the applicant's complaint and the request for a hearing. It confirmed the Regional Government's conclusions and, giving extensive reasons, found that the findings of the private experts had not been relevant and had not disproved the opinion of the official expert. It referred *inter alia* to an official expert opinion submitted in previous proceedings and the forestry inspection office's statement of 22 June 1999 which referred to this opinion. The Administrative Court's decision was served on the applicant's counsel on 9 April 2001.

15. The applicant subsequently removed the tool shed.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE LACK OF A PUBLIC ORAL HEARING

16. The applicant complained under Article 6 § 1 of the Convention about the Administrative Court's refusal to hold an oral hearing.

Article 6 § 1, as far as relevant, reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

A. Admissibility

17. The Court notes that this part of 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

18. The Government argued that the special features of the proceedings constituted “exceptional circumstances” which justified the absence of a public hearing. The Government noted in this regard that before being submitted to the Administrative Court the applicant's case had been examined by “quasi-judicial” authorities where the applicant had sufficient opportunity to comment on his case. The Regional Government had dealt with the divergent findings of the expert opinions and had given reasons as to why it followed the opinion of the official expert. The proceedings before the Administrative Court concerned in essence the correct interpretation of the diverging expert opinions. Referring in particular to the cases of *Pitkänen v. Sweden* ((dec.), no. 52793/99, 26 August 2003) and *Döry v. Sweden* (no. 28394/95, 12 November 2002) the Government argued that this question could adequately be decided on the basis of the case file. The applicant had not given any concrete reasons as to why a hearing before the Administrative Court was necessary, in particular he had not requested the Administrative Court to hear him as a witness. The Government finally pointed out that the Administrative Court had already dealt with the case at issue in its judgment of 23 October 1995 and that it, therefore, having regard to demands of efficiency and economy, could abstain from holding a hearing.

19. The applicant contested that the special features of the proceedings constituted “exceptional circumstances” which justified the absence of a public hearing. He submitted that the Administrative Court should have held a hearing in which the expert opinions should have been discussed, this all the more so as their findings had been divergent and the facts of the case had, therefore, been in dispute.

20. The Court notes that the applicant’s case was heard by the District Administrative Authority and the Regional Government, i.e. purely administrative authorities, and then by the Administrative Court, which dismissed the applicant’s complaint. The applicant did not contest that the Administrative Court qualifies as a tribunal, and there is no indication in the file that the Administrative Court’s scope of review was insufficient in the circumstances of the case (see, for instance, *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, pp. 17-18, §§ 30-34 with further references). Thus, the Administrative Court was the first and only tribunal which examined the applicant’s case.

21. As the Austrian reservation in respect of Article 6 § 1 concerning the requirement that hearings be public, has been found to be invalid (see, *Eisenstecken v. Austria*, no. 29477/95, § 29, ECHR 2000-X), the applicant was in principle entitled to a public hearing before the first and only tribunal examining his case, unless there were exceptional circumstances which justified dispensing with such a hearing (see, for instance, *Fredin v. Sweden* (no.2), judgment of 23 February 1994, Series A no. 283-A, pp.10-11, §§ 21-22; *Fischer*, cited above, p. 20-21, § 44; *Stallinger and Kuso v. Austria*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-II, pp. 679-80, § 51, *Allan Jacobsson v. Sweden* (no. 2), judgement of 19 February 1998, *Reports* 1998-I, p. 168, § 46).

22. The Court has accepted such exceptional circumstances in cases where proceedings concerned exclusively legal or highly technical questions (see *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, p. 19-20, § 58; *Varela Assalino v. Portugal* (dec.), no. 64336/01, 25 April 2002; *Speil v. Austria* (dec.) no. 42057/98, 5 September 2002). In particular, the Court had regard to the rather technical nature of disputes over benefits under social-security schemes and has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing if the case could be adequately resolved on the basis of the case-file and the parties’ written observations (see, amongst others, *Döry v. Sweden* and *Pitkänen v. Sweden*, both cited above).

23. Turning to the circumstances of the present case, the Court notes that the dispute, as presented by the applicant to the Administrative Court, concerned the questions whether his tool shed had an adverse effect on the character of the concerned landscape and was necessary for the cultivation

of the applicant's forest. The applicant further complained that the Regional Government had not taken sufficient evidence. In later submissions the applicant finally complained that he had not been informed about the statement of the competent office on the private experts' opinions and that, therefore, not been able to comment on it.

24. The Court cannot find in such circumstances that the subject matter of the dispute was of such a nature, namely a highly technical issue or of mere legal nature, as to dispense the national authorities with their obligation to hold a hearing.

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

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

26. The applicant complained that the proceedings had been unfair in that the statement of the building office on the private expert opinions and the expert opinion of 22 June 1999 had not been communicated to him. Finally, he complained that the proceedings had been unfair in that the Administrative Court had preferred the findings of the official expert who was bound by instructions and, therefore, biased, to the findings of the private experts' opinions submitted by him.

27. The Court finds that these complaints are closely linked to the complaint examined above. It finds, therefore, that this part of the application should likewise be declared admissible. However, in the view of its findings in paragraph 25 above the Court does not find it necessary to examine these complaints separately under Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 6,877.50 euros (EUR) in respect of pecuniary damage for the costs incurred because of the building and removal of the tool shed. Under the head of non-pecuniary damage the applicant claimed EUR 7,000 and submitted that the absence of a tool shed increased the costs of his forest's cultivation.

30. The Government asserted that there was no causal link between the pecuniary damage claimed and the lack of an oral hearing before the Administrative Court. They further contended that the finding of a violation constituted sufficient reparation in respect of any non-pecuniary damage suffered.

31. The Court reiterates that it cannot speculate what the outcome of the proceedings would be if they had been in conformity with Article 6 of the Convention. Accordingly, it dismisses the claim for damages for pecuniary loss. Further, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicant may have sustained in the present case (see *mutatis mutandis* *Osinger v. Austria*, no. 54645/00, § 58, 24 March 2005, with further references).

B. Costs and expenses

32. The applicant also claimed EUR 3,268.55 (including turnover tax) for the costs and expenses incurred before the domestic courts and EUR 2,842.74 (including turnover tax) for those incurred before the Court.

33. The Government argued that there was no casual link between the costs incurred before the domestic courts and the lack of an oral hearing. They further asserted that the applicant's claims concerning the proceedings before the Court were excessive.

34. 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, it does not appear from the applicant's submissions that any specific costs were incurred in relation to the demand for an oral hearing. Therefore no award can be made under this head.

35. As regards the costs and expenses incurred before the Court, the Court notes that the applicant, who was represented by counsel, did not have the benefit of legal aid. It considers it reasonable that the sum claimed should be awarded in full.

C. Default interest

36. 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 as regards the lack of an oral hearing before the Administrative Court;
3. *Holds* that it is unnecessary to examine the applicant's further complaints under Article 6 § 1 of the Convention;
4. *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 2,842.74 (two thousand eight hundred forty two euros and seventy four 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President