



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

FIRST SECTION

CASE OF PRISCHL v. AUSTRIA

(Application no. 2881/04)

JUDGMENT

STRASBOURG

26 April 2007

FINAL

26/07/2007

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 Prischl v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mrs N. VAJIĆ,

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 29 March 2007,

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

PROCEDURE

1. The case originated in an application (no. 2881/04) 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 Franziska Prischl (“the applicant”), on 20 January 2004.

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

3. On 5 January 2006 the Court decided to give notice of the application to the Government. 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1930 and lives in Gerasdorf.

5. The application concerns land consolidation proceedings involving land belonging to some 500 owners, including the applicant's husband.

6. In 1986 a valuation schedule (*Bewertungsplan*) was issued, which became final in October of that year. None of the plots of land belonging to the applicant's husband was considered to be of special value. By decision

of 13 November 1986 the provisional transfer of land (*vorläufige Übernahme*) was ordered.

7. In 1990 the Regional Land Reform Board (*Landesargarsenat*) issued a consolidation plan (*Zusammenlegungsplan*) for the Gerasdorf community. The applicant's husband did not appeal, while a number of other parties did. Some of these appeals were successful and the case was remitted to the Regional Land Reform Board.

8. The applicant's husband died in 1993 and, by court decision of 15 November 1994, the applicant became his principal heir.

9. On 20 June 1995 the Regional Land Reform Board amended the consolidation plan making changes, *inter alia*, as regards one of the applicant's compensatory parcels. The applicant appealed on 21 August 1995, claiming that some of the plots of land which had belonged to her late husband and had been allocated to another party, were of special value since they could be used for gravel production and that her late husband had not been duly compensated. The applicant was represented by counsel in these and the subsequent proceedings.

10. On 6 December 1995 the Supreme Land Reform Board (*Oberster Agrarsenat*) decided to suspend the appeal proceedings pending further amendments of the consolidation plan.

11. The applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*). On 13 March 1996 the Constitutional Court declined to deal with the complaint and transferred the case to the Administrative Court (*Verwaltungsgerichtshof*) which received the file on 7 May 1996. On 7 November 1996 the Supreme Land Reform Board submitted its comments.

12. On 26 May 1998 the Administrative Court quashed the Supreme Land Reform Board's decision and ordered it to continue the proceedings.

13. The Supreme Land Reform Board resumed the proceedings and carried out a visit on the spot on 30 September 1998. Subsequently, it took an expert opinion concerning the value of the plots of land given up by the applicant's late husband and those received in compensation. On 2 December 1998 the Supreme Land Reform Board, after having held a hearing dismissed the applicant's appeal. It found that the compensation in land she had received fulfilled the requirements of the Regional Agricultural Act. A change in value of land could only be taken into account before the valuation schedule became final. This was not the applicant's case, since the licences allowing gravel production had only been issued between 1995 and 1997.

14. On 12 February 1999 the applicant filed a complaint with the Constitutional Court. On 8 June 1999 the latter declined to deal with the applicant's case for lack of prospects of success and transferred the case to the Administrative Court. In 1999 six other complaints also relating to the

Gerasdorf land consolidation proceedings were lodged with the Administrative Court. The proceedings in all these cases were joined.

15. On 3 July 2003 the Administrative Court dismissed the applicant's complaint. It referred to its case-law relating to Section 18 § 4 of the Regional Agricultural Act (*Flurverfassungs-Landesgesetz*) according to which a change in value of land could only be taken into account until the validation schedule became final. In support of this view it quoted a number of its judgments given between September 1986 and October 1997.

16. The judgment was served on the applicant's counsel on 22 July 2003.

II. RELEVANT DOMESTIC LAW

17. Since the 1993 amendment of the Federal Agricultural Proceedings Act (*Agrarverfahrensgesetz*), Section 9 § 1 provides that hearings before the agricultural authorities are held in public.

THE LAW

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

18. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement. Moreover, she complained that she did not have a public hearing before the Constitutional Court or the Administrative Court and that the proceedings were unfair. She relied on Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. Length of proceedings

19. The Court notes that this complaint 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.

2. Other complaints

20. The applicant complained that she did not have a public hearing before the Constitutional Court and the Administrative Court.

21. The Court reiterates that the Regional and Supreme Land Reform Boards qualify as a tribunals (see *Stallinger and Kuso v. Austria*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-II, p. 677, § 37). Moreover, hearings before them are public pursuant to Section 9 § 1 of the Federal Agricultural Proceedings Act (see paragraph 17 above). In the present case, the Supreme Land Reform Board which carried out a full review of the case on points of fact and law held a hearing (see paragraph 13 above). The applicant has not claimed that this hearing was not public, nor has she adduced any argument as to why a further hearing would have been required before the Constitutional Court or the Administrative Court which dealt exclusively with questions of law.

22. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

23. The applicant complains that the authorities wrongly refused to review the valuation of her plots of land.

24. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among many others, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

25. In the present case, there is nothing to indicate that the applicant who was assisted by counsel throughout the proceedings could not duly forward her arguments or that the proceedings were otherwise unfair.

26. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

27. The applicant asserted that the proceedings lasted some twenty years and maintained that there were considerable delays attributable to the authorities.

28. The Government contested this. They argued that 21 August 1995, the date of the first remedy used by the applicant should be taken as the starting point for calculating the duration of the proceedings. They asserted that land consolidation proceedings are by their nature complex and that the present proceedings involved a great number of land owners and were among the most complex proceedings ever conducted by the agricultural

authorities. Nevertheless, no major delays occurred. As regards the duration of the proceedings before the Administrative Court, the Government pointed out that the applicant's complaint was joined to six other complaints also relating to the Gerasdorf land consolidation proceedings. Moreover, the Administrative Court experienced a peak in its workload during the relevant period.

29. In accordance with the Court's case-law in similar cases, the date when a "dispute" arose is to be taken as a starting point for the calculation of the length of the proceedings. Consequently, the period to be taken into consideration began on 21 August 1995, when the applicant appealed against the amended consolidation plan (see *Kolb and Others v. Austria*, nos. 35021/97 and 45774/99, § 49, 17 April 2003 with a reference to *Wiesinger v. Austria*, judgment of 30 October 1991, Series A no. 213, p. 20, § 51). It ended on 22 July 2003 when the Administrative Court's judgment was served. It has thus lasted seven years and eleven months for three levels of jurisdiction.

30. 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).

31. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Kolb and Others*, cited above, § 56, which concerned land consolidation proceedings which lasted between 7 years and 8 months and 10 years and 4 months respectively).

32. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although land consolidation proceedings are by their very nature complex (see, *Wiesinger*, cited above, p. 21, § 55), the Court notes in particular that long delays occurred in both sets of proceedings before the Administrative Court, namely between 7 November 1996 and 26 May 1998 and between 8 June 1999 and 3 July 2003, respectively. No explanation has been provided for the delay in the first set of proceedings. The fact that the applicant's case was joined to six other complaints relating to the same land consolidation proceedings is not capable of explaining the delay of more than four years in the second set of proceedings. The applicant made repeatedly use of remedies, but it cannot be said that any delays are attributable to her. In sum, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

33. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

34. The applicant complained that the Administrative Court, when assessing the compensation issue, refused to take into account that some of her former plots of land were of special value since they were suited for gravel production. She alleged a violation of Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Admissibility

35. The Court notes that in Austrian land consolidation proceedings land owners lose ownership of their original plots of land with the provisional transfer. In a comparable case, the Court has therefore found that land which has been transferred can no longer be considered as a “possession” within the meaning of Article 1 of Protocol No. 1. Moreover, where the law makes it clear that possible changes in value which arise after the provisional transfer are not to be taken into account, no legitimate expectation arises (*Kolb and Others v. Austria* (dec.), nos. 35021/97 and 45774/99, 21 February 2002).

36. In the present case, the valuation schedule was adopted in October 1986 and applicant's late husband lost his ownership of the plots of land at issue in November 1986 when the provisional transfer was carried out (see paragraph 6 above). In addition, it was the Administrative Court's constant case-law that changes in value of land could only be taken into account until the validation schedule became final (see paragraph 15 above). Thus, there is no basis for arguing that the applicant had any legitimate expectation to have a possible change in value taken into account which occurred in the mid-1990s. She therefore did not have a “possession” for the purpose of Article 1 of Protocol No. 1.

37. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 300,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. As to pecuniary damage she asserted that she had suffered losses since the plots suited for gravel production were not reassigned to her.

40. The Government observed that there was no causal link between the length of the proceedings and the pecuniary damage claimed. Moreover, they noted that the applicant did not explain to what extent she had suffered non-pecuniary damage.

41. The Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim. However, having regard to its case-law in comparable cases (see *Kolb and Others*, cited above, § 67) and ruling on an equitable basis, it awards her EUR 5,500 under the head of non-pecuniary damage.

B. Costs and expenses

42. The applicant also claimed a total amount of EUR 10,984.70, including value-added tax (VAT) for costs and expenses. It follows from the itemised bill submitted by the applicant that this sum includes the costs of the domestic proceedings and EUR 686.88, including VAT, incurred in the proceedings before the Court.

43. The Government commented that the costs of domestic proceedings were not incurred in order to prevent or redress the violation at issue.

44. 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.

45. In the present case, the Court observes that the costs of the domestic proceedings were not incurred in order to prevent or redress the unreasonable duration of the proceedings. As to the costs incurred in the Convention proceedings, the Court notes that the application was only partly declared admissible. The Court considers it reasonable to award the applicant the sum of EUR 500 under this head. This sum includes VAT.

C. Default interest

46. 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 excessive 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 in accordance with Article 44 § 2 of the Convention, EUR 5,500 (five thousand five hundred euros) in respect of non-pecuniary damage and EUR 500 (five hundred euros) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President