



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

FIRST SECTION

CASE OF RICHTER v. AUSTRIA

(Application no. 4490/06)

JUDGMENT

STRASBOURG

18 December 2008

FINAL

18/03/2009

This judgment may be subject to editorial revision.

In the case of Richter v. Austria,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 4490/06) 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, Mr Richard Richter (“the applicant”), on 18 January 2006.

2. The applicant was represented by Mr W.L. Weh, a lawyer practising in Bregenz. The Austrian Government (“the Government”) were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the Law Department at the Federal Ministry for European and International Affairs.

3. On 4 April 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Wolfurt.

5. By decision of 17 November 1998 the Hard municipality granted a request by H., a building company, for permission to construct an apartment block, situated next to the applicant’s property. H. carried out the construction work and, since the building deviated from one of the

authorised height levels by 21 centimetres, it requested an amendment of the building permit on 19 November 1999.

6. On 7 February 2000 the mayor of Hard granted the amended building permit. He dismissed the applicant's objection that the ramp of the building's underground car park failed to comply with the statutory distance from his property.

7. The applicant lodged an appeal with the Hard Municipal Council (*Gemeinderat*) on 23 February 2000. He alleged, in particular, that the covered ramp of the underground car park did not constitute a construction (*Bauwerk*) within the meaning of section 2(e) of the Vorarlberg Building Act, for which a distance of two metres from the adjacent property was required, but was a part of the building within the meaning of section 2(g) of the said Act, for which a minimum distance of three metres had to be observed. In addition he claimed that, at any rate, the ramp was too high.

8. On 12 December 2000 the Hard Municipal Council dismissed the applicant's appeal. It found that the applicant had failed to raise his argument in the initial proceedings concerning the building permit and was therefore precluded from raising it now in the proceedings concerning a mere request for amendment of the building permit. In any event, the covered ramp to the underground car park could neither be classified as a building or part of a building, but qualified as a construction within the meaning of section 2(e) of the Vorarlberg Building Act. The minimum distance from the applicant's plot of land was therefore two metres and had in fact been respected.

9. Subsequently, on 28 December 2000 the applicant filed an objection (*Vorstellung*) with the Bregenz District Administrative Authority, contesting the Municipal Council's competence, because the respective appeals commission had not been duly composed following municipal elections. In addition, he repeated that the amendment of the permit did not only involve minor changes, but constituted an overall change of the project.

10. On 31 May 2001 the District Administrative Authority dismissed the applicant's objection.

11. The applicant lodged a complaint with the Administrative Court on 20 July 2001, repeating his arguments. Moreover, he requested an oral hearing.

12. On 28 September 2001 the District Administrative Authority submitted its observations.

13. On 20 March 2003 the Administrative Court, without a hearing, quashed the District Administrative Authority's decision and remitted the case back to it. Referring to a previous decision in a similar case, it found that contrary to section 53 of the Vorarlberg Municipal Act the Municipal Council's decision had been signed by the mayor and not by the president of the appeals commission.

14. On 14 May 2003 the District Administrative Authority granted the applicant's objection of 28 December 2000 and remitted the case to the Hard Municipal Council.

15. Upholding its decision of 12 December 2000, the Municipal Council again dismissed the applicant's appeal on 19 August 2003.

16. On 2 September 2003 the applicant lodged a further objection (*Vorstellung*) with the Bregenz District Administrative Authority, which the latter dismissed by a decision of 21 January 2004. It found that the ramp of the underground car park was only partly covered and was thus to be qualified as a construction within the meaning of section 2(e) of the Vorarlberg Building Act. The fact that the building was 21 centimetres higher than initially authorised did not change that assessment.

17. Subsequently, on 6 February 2004, the applicant lodged a further complaint with the Administrative Court. He requested an oral hearing and, relying on Article 6 of the Convention, complained that he had never been heard in person during the proceedings. He contested the authority's finding that the ramp of the underground car park was only partly covered. The authority had wrongly applied the statutory minimum distance between his plot of land and that ramp. Complying with an order of the Administrative Court, the applicant supplemented his complaint on 13 April 2004. The District Administrative Authority submitted its observations on 6 July 2004.

18. On 21 June 2005 the Administrative Court, without a hearing, dismissed the applicant's complaint as being unfounded. It upheld the District Administrative Authority's decision as to the minimum distance from the applicant's property. Referring to the case of *Allan Jacobsson v. Sweden* (no. 2) (19 February 1998, *Reports of Judgments and Decisions* 1998-I) it held that no legal or factual questions had been at stake, which required the holding of an oral hearing.

19. The decision was served on the applicant's counsel on 25 July 2005.

THE LAW

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

20. The applicant complained about the length of the proceedings and about the lack of a hearing before the Administrative Court. He relied on Article 6 § 1 of the Convention, the relevant part of 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 ..."

A. Admissibility

21. The Government asserted that Article 6 was not applicable in the present case. They underlined that the applicant had not appealed against the decision granting the initial building permit to the H. company. In the proceedings which concerned the amendment of that building permit, the applicant's objection as to the distance of the ramp from his property was dismissed as being precluded. The only point in dispute was the increased height of the building. In the Government's view a minor increase in the height of the building could not affect the applicant's civil rights or pecuniary interests and the case therefore had to be distinguished from the *Ortenberg v. Austria* judgment (25 November 1994, Series A no. 295-B).

22. For his part the applicant maintained that Article 6 applied. He argued in particular that the change in the height of building negatively affected his property.

23. The Court observes that in the *Ortenberg* judgment (cited above, § 28) it found that the civil limb of Article 6 § 1 applied to proceedings in which the applicant opposed the granting of planning permission to her neighbour. In coming to that conclusion the Court had regard to the close link between the proceedings and the consequences of their outcome for the applicant's property. The present proceedings concerned an amendment of the building permit granted to the applicant's neighbour allowing an increase of the height of the building. Moreover, the authorities dealt with the merits of the applicant's objection concerning the distance between the ramp of the underground car park and his property. The Court sees no reason to doubt that an increase in the height of a neighbouring building or its distance has consequences for the applicant's property. The civil limb of Article 6 §1 therefore applies.

24. 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.

B. Merits

1. *The length of the proceedings*

25. The applicant maintained that the duration of the proceedings was unreasonable.

26. The Government referred to the facts of the case, arguing that they did not disclose a violation of Article 6 of the Convention.

27. The period to be taken into consideration began on 7 February 2000 when the mayor of Hard granted the amended building permit to the applicant's neighbour, dismissing at the same time the applicant's objection

against it, and ended on 25 July 2005, when the Administrative Court's decision was served on the applicant's counsel. It thus lasted five years and five and a half months for four levels of jurisdiction.

28. 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).

29. The present case was not complex and the applicant did not contribute to their duration. As regards the conduct of the domestic authorities, the Court notes that while the administrative authorities dealt expeditiously with the case, considerable delays occurred in the proceedings before the Administrative Court. There were periods of inactivity in both sets of proceedings, namely from September 2001 to March 2003 and from July 2004 to June 2005, thus amounting to a total delay of two years and five months.

30. 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, for instance, *Gierlinger v. Austria*, no. 38032/05, §§ 18-20, 29 November 2007; *Bösch v. Austria*, no. 17912/05, §§ 20-22, 3 May 2007; *Brunnthaler v. Austria*, no. 45289/99, §§ 38-41, 29 June 2006; and *Alge v. Austria*, no. 38185/97, §§ 23-25, 22 January 2000).

31. 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. Having regard to its case-law on the subject, the Court 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.

2. The lack of a hearing before the Administrative Court

32. The applicant argued that the legal and factual questions raised by the case were not straightforward and would have benefitted from oral argument.

33. The Government asserted that the Administrative Court had to deal exclusively with questions of law which could be determined on the basis of the case file without a hearing. Furthermore, the applicant had failed to give any reasons for his request for an oral hearing.

34. The Court notes that the applicant's case was heard by the mayor of Hard, the Hard Municipal Council and the Bregenz District Administrative Authority, that is, purely administrative authorities, and then by the Administrative Court, which was the first and only tribunal to examine the case.

35. 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), 23 February 1994, §§ 21-22, Series A no. 283-A; *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312; *Stallinger and Kuso v. Austria*, 23 April 1997, § 51, Reports 1997-II; and *Allan Jacobsson*, cited above, § 46).

36. The Court has accepted such exceptional circumstances in cases where the proceedings concerned exclusively legal or highly technical questions (see *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263; *Varela Assalino v. Portugal* (dec.), no. 64336/01, 25 April 2002; and *Speil v. Austria* (dec.) no. 42057/98, 5 September 2002). In particular, the Court has 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, among other authorities, *Döry v. Sweden*, no. 28394/95, 12 November 2002, and *Pitkänen v. Sweden* (dec.), no. 52793/99, 26 August 2003).

37. Turning to the circumstances of the present case, the Court notes that the dispute, as presented by the applicant to the Administrative Court, involved legal issues but also questions of fact. In particular the applicant contested the District Administrative Authority's finding that the ramp of the underground car park was only partly covered.

38. The Court cannot find that the subject matter of the dispute was of such a nature, namely highly technical or exclusively legal, as to dispense the Administrative Court from the obligation to hold a hearing. It notes that it has found violations of Article 6 § 1 of the Convention in a number of similar cases (see, for instance, *Emmer-Reissig v. Austria*, no. 11032/04, §§ 29-31, 10 May 2007; *Hofbauer v. Austria*, no. 7401/04, §§ 28-30, 10 May 2007; *Bösch*, cited above, §§ 29-31; *Brugger v. Austria*, no. 76293/01, §§ 23-25, 26 January 2006; *Schelling v. Austria*, no. 55193/00, §§ 31-33, 10 November 2005; *Birnleitner v. Austria*, no. 45203/99, §§ 40-41, 24 February 2005; and *Alge*, cited above, §§ 30-31). It does not see any reason to come to a different conclusion in the present case.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the unreasonable duration of the proceedings.

42. The Government contested the claim.

43. The Court, having regard to the sums awarded in comparable cases and making an assessment on an equitable basis, awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount.

B. Costs and expenses

44. The applicant also claimed EUR 7,402.32, inclusive of value-added tax (VAT), for the costs and expenses incurred in the second set of domestic proceedings and in the Convention proceedings. He argued that the duration of the proceedings would have remained reasonable had the Administrative Court had the power to rule on the merits of the case instead of referring it back to the administrative authorities.

45. The Government commented that the costs incurred in the domestic proceedings were not caused by an attempt to prevent or redress the violation at issue. The costs claimed in respect of the Convention proceedings were excessive.

46. According to the Court’s case-law, an applicant is entitled to the reimbursement of 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.

47. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings. As regards the Convention proceedings, the Court finds that an amount of EUR 2,000 is reasonable. This sum includes VAT.

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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a hearing before a tribunal;
4. *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 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount, and EUR 2,000 (two thousand euros), which includes value-added tax, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President