CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KLUG v. AUSTRIA

(Application no. 33928/05)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

15/04/2009

This judgment may be subject to editorial revision.

In the case of Klug 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,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 33928/05) 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, Mr Karl and Mrs Christine Klug ("the applicants"), on 16 September 2005.

2. The applicants were 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. The applicants alleged, in particular, that that the land consolidation proceedings concerning their property had lasted an unreasonably long time.

4. On 28 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1955 and 1961 respectively. They are farmers residing at Ginsenberg, Styria.

6. On 8 June 1972 the Graz District Agricultural Authority (*Agrarbezirksbehörde*, "the District Authority") opened the Mooskirchen

land consolidation proceedings (*Zusammenlegungsverfahren*) which also concerned the applicants' land.

7. On 16 November 1984 the District Authority adopted the consolidation scheme (*Zusammenlegungsplan*) and on 10 December 1984 the parties to the proceedings were notified.

8. Subsequently, on 20 December 1984 K. and A., the applicants' predecessors (the first applicant's parents), lodged an appeal, alleging that they had not been duly compensated.

9. On 19 September 1990 the Regional Agricultural Panel (*Landes-agrarsenat*) dismissed their appeal as unfounded. By decision of 25 February 1991 the Constitutional Court refused to deal with the case for lack of prospect of success and upon the applicants' predecessors' request remitted the case to the Administrative Court.

10. Thereupon K. and A. lodged a complaint with the Administrative Court, which, on 21 September 1995, quashed the decision of 19 September 1990 for failure to comply with procedural rules and remitted the case back to the Regional Agricultural Panel.

11. Since the Regional Agricultural Panel failed to decide within a reasonable time K. and the first applicant on 12 January 1998 lodged a request for transfer of jurisdiction (*Devolutionsantrag*).

12. On 1 April 1998 the Supreme Land Reform Board (*Oberster Agrarsenat*) granted the request and assumed competence. By decision of 3 May 2000 it granted the appeal of 20 December 1984 and remitted the case to the District Authority.

13. As the District Authority failed to take a decision within the statutory period of six months, K. and the two applicants on 16 January 2001 lodged another request for the transfer of jurisdiction (*Devolutionsantrag*).

14. Having granted the request the Regional Agricultural Panel issued a new consolidation scheme on 26 September 2001. Subsequently the applicants lodged another appeal.

15. On 4 December 2002 the Supreme Land Reform Board dismissed the applicants' appeal. Hence the applicants, on 29 January 2003, lodged a complaint with the Constitutional Court.

16. On 30 September 2004 the Constitutional Court dealt with the applicants' complaint. It found that the proceedings had lasted an unreasonably long time and that this constituted a violation of Article 6 of the Convention in this respect. However, it held also that for this reason alone it could not quash the impugned decision and dismissed the complaint. Upon the applicants' request it referred the case to the Administrative Court.

17. On 24 February 2005 the Administrative Court, upholding the lower-instance decisions, dismissed the applicants' complaint. It found that the consolidation proceedings were in conformity with the regulations as set out

under the consolidation scheme and that the applicants had been duly compensated. As regards plot no. 278a which had initially been of inferior value it noted that in the meantime measures for improving its value by constructing an appropriate drainage system had been adopted. The decision was served on the applicants' counsel on 18 March 2005.

18. On 8 May 2006 the applicants lodged public liability proceedings with a view to receiving reimbursement of the remaining difference between the compensation which had been granted by the Supreme Land Reform Board on 3 May 2005 and the amount claimed by them. According to the applicants' allegations the proceedings are still pending before the Graz Regional Court.

19. In a different set of proceedings, on 8 January 2003 the applicants lodged a request for compensation under Section 27 § 9 of the Land Consolidation Act (*Zusammenlegungsgesetz*). They claimed loss of profits because for a period of some twenty-five years, the time of the provisional transfer of land, they had to cultivate land, in particular plot no. 278a, which was of inferior value and yielded less than their original plots.

20. On 25 May 2005 the Regional Agricultural Panel granted the applicants 4,282 Euros (EUR), rejecting any further requests. It found that it could not grant compensation for the period before the entering into force of Section 27 § 9 of the Land Consolidation Act in 1995. Thereupon the applicants appealed. On 7 December 2005 the Supreme Land Reform Board dismissed the applicants' appeal.

21. On 1 March 2007 the Constitutional Court quashed the Supreme Land Reform Board's decision and referred the case to the subordinate authorities. It found that from the object and purpose of the amendment of the Land Consolidation Act of 1995 it was evident that this amendment should also extend to compensation claims concerning losses incurred in years before that act had entered into force.

22. On 18 June 2007 the Supreme Land Reform Board partly granted the applicants' appeal and awarded them EUR 21,719.17.

II. RELEVANT DOMESTIC LAW

23. Land consolidation proceedings in Styria are regulated by the Land Consolidation Act of 1982 (*Zusammenlegungsgesetz*), a regional act (*Landesgesetz*) for Styria. Under this Act a party to consolidation proceedings is normally entitled to receive land corresponding in value to the land the party owned prior to the consolidation proceedings as compensation in kind. In exceptional cases compensation in kind is partly or fully replaced by compensation in money. The calculation of the compensation claims is specified in Section 27 of the Act. Section 27 § 9, introduced in 1995 (Regional Law Gazette no. 26/1995), provides for a special compensation claim in money in case compensation in kind had

been calculated incorrectly. According to Section 27 § 10 the calculation of such compensation is based on the difference in profit drawn from farming of the land brought into the consolidation proceedings and the profit drawn from land which has been assigned in breach of the relevant provisions (*gesetzwidrige Abfindung*).

THE LAW

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

24. The applicants complained under Article 6 of the Convention that the proceedings had lasted too long. They 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 ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

25. The Government submitted that the applicants were no longer victims of an alleged breach of the Convention as regards their complaint about the length of the proceedings, because the Austrian courts had explicitly accepted a breach of Article 6 § 1 as regards the length of the proceedings and had afforded appropriate redress. In its decision of 30 September 2004 the Constitutional Court found that Article 6 § 1 of the Convention had been violated and, in separate proceedings, the Supreme Land Reform Board, on 18 June 2007, granted the applicants compensation in the amount of EUR 21,719.17. In fixing that amount the Supreme Land Reform Board took the length of the proceedings into account.

26. Further, the Government argued that the applicants had failed to exhaust domestic remedies properly as they had not used remedies for expediting proceedings on all occasions when they could have done so and could have introduced the remedies they had actually used much earlier.

27. This is disputed by the applicants. They submitted in particular that on two occasions they had requested a transfer of jurisdiction, which is sufficient for the purposes of Article 35 § 1 of the Convention.

28. As regards the first element the Court reiterates that according to its well-established case-law an applicant's victim status 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 *Riepl v. Austria*, no. 37040/02, § 32, 3 February 2005; *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, §§ 69 et seq.; *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X; and *Scordino v. Italy* (no.1)(dec.), no. 36813/97, ECHR 2003-IV).

29. These conditions are, however, not satisfied in the present case. It is true that the Constitutional Court, in its decision of 30 September 2004, explicitly acknowledged a breach of Article 6 § 1 of the Convention because the proceedings had not been conducted within a reasonable time. As regards compensation awarded for that breach the Government referred to the compensation granted to the applicant by the Supreme Land Reform Board on 18 June 2007. However, having regard to the wording of Section 27 § 9 of the Land Consolidation Act, the Court observes that this provision provides for compensation of pecuniary losses suffered because of shortcomings at the stage of the provisional transfer of land and not in order to provide redress for the length of the proceedings.

30. 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.

31. As to the question whether the applicants have exhausted domestic remedies, the Court reiterates that a request for transfer of jurisdiction under Section 73 of the General Administrative Procedure Act (*Devolutions-antrag*) constitutes, in principle, an effective remedy which has to be used in respect of complaints about the length of administrative proceedings (see *Egger v. Austria* (dec.), no. 74159/01, 9 October 2003). In the Court's view, a detailed examination as to whether the applicants, or their predecessors, 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 *Kern v. Austria*, no. 14206/02, § 49, 24 February 2005, and, *mutatis mutandis, Wohlmeyer Bau GmbH v. Austria*, no. 20077/02, § 45, 8 July 2004). This is all the more so, as the applicants have used the remedy not only once but on two occasions, namely on 12 January 1998 and again on 16 January 2001. The Court concludes that the applicants complied with their obligation to exhaust domestic remedies. Thus, the Government's objection on non-exhaustion has to be dismissed.

32. 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

33. As regards the period to be taken into consideration, the Court, in accordance with its case-law in similar cases, finds that 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 20 December 1984, when the applicants' predecessors opposed the provisional transfer of land (see *Prischl v. Austria*, no. 2881/04, § 29, 26 April 2007; *Walder v. Austria*, no. 33915/96, § 28, 30 January 2001; and *Wiesinger v. Austria*, 30 October 1991, § 51, Series A no. 213). It ended on 18 March 2005, when the Administrative Court's judgment was served. It has thus lasted more than twenty years.

34. The applicants maintained that lengthy periods of inactivity were attributable to the authorities. The Government contested this.

35. 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).

36. 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 *Ortne v. Austria*, no. 2884/04, § 23, 31 May 2007; *Prischl v. Austria*, cited above, § 29 and *Walder v. Austria*, cited above, § 28, which concerned land consolidation proceedings which lasted approximately twelve years, seven years and eleven months and twenty-two years respectively).

37. 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 that it took the authorities twelve years to adopt the first consolidation plan. Subsequently a delay of five years occurred between the applicants' appeal and the Regional Agricultural Panel's decision. Further, substantial delays occurred while the case was pending before the Administrative Court and, in the second round of proceedings, before the Regional Agricultural Panel and the District Authority. 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

Admissibility

39. In their observations of 25 February 2008 the applicants also complained that the land consolidation proceedings as such constituted an unjustified interference with their rights to peaceful enjoyment of their possession, as there was no public interest in carrying out such agricultural operations. They relied on 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."

40. However, the Court observes that the land consolidation proceedings terminated on 18 March 2005, when the Administrative Court's final decision was served on the applicants' lawyer.

41. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

42. The applicants also complained under the same provision that they had not been fully compensated for having been allotted less valuable plots of land according to the consolidation plan.

43. The Court finds that the domestic authorities examined the issue thoroughly and, giving detailed reasons, found that the applicants had been duly compensated and were even in a better situation than before the institution of the consolidation proceedings. Due to the Constitutional Court's finding in its decision of 1 March 2007 they were finally granted compensation for being unlawfully prevented from using a certain plot of land, which has been part of the consolidation proceedings. This reflects a diligent and careful examination of the applicants' case. There is no indication that an excessive burden was placed on the applicants. Thus, there is no appearance of a violation of Article 1 of Protocol No. 1.

44. It follows that these complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicants claimed pecuniary damage in the amount of 523,814.46 Euros (EUR) consisting in the reduction of net revenues following the land consolidation as they had been forced to restructure their farm from fruit growing and pig breeding to cattle rearing which required considerable investment including the acquisition of milk quotas.

47. The Government asserted that there was no causal link between the violation at issue and the pecuniary damage alleged by the applicants. The change of agriculture by the applicants was their own free decision and they had not been compelled to do so by the consolidation proceedings. Moreover the applicants have already received compensation for pecuniary damage at domestic level in the amount of EUR 21,719.17 under Section 27 §§ 9 and 10 of the Styria Land Consolidation Act.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the applicants' claim.

B. Costs and expenses

49. The applicants claimed a total of EUR 58,460.90 including VAT for costs and expenses incurred in the domestic proceedings and before the Court. EUR 1,518.60 plus VAT of this amount relate to the proceedings before the Court.

50. Although it is true that only those costs incurred in domestic proceedings in an attempt to prevent or redress the violation found by the Court may be reimbursed, nevertheless unreasonable delays in proceedings may involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999). The Court awards the applicants jointly EUR 1,000 for this element on an equitable basis.

51. As regards the cost of the Convention proceedings, the Court, having regard to the sums usually granted in length of proceedings cases and making an assessment on an equitable basis, awards the applicants jointly EUR 1,600.

C. Default interest

52. 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 applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,600 (two thousand six hundred Euros), plus any tax that may be chargeable to the applicants on that amount, 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;

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

Done in English, and notified in writing on 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President