



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

SECOND SECTION

CASE OF L'ERABLIÈRE A.S.B.L. v. BELGIUM

(Application no. 49230/07)

JUDGMENT
[Extracts]

STRASBOURG

24 February 2009

FINAL

24/05/2009

This judgment has become final under Article 44 § 2 of the Convention.

In the case of L'Erablière A.S.B.L. v. Belgium,

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

Ireneu Cabral Barreto, *President*,

Françoise Tulkens,

Vladimiro Zagrebelsky,

Danutė Jočienė,

András Sajó,

Nona Tsotsoria,

Işıl Karakaş, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 3 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 49230/07) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by L'Erablière A.B.S.L., a non-profit-making association with its registered office in Bande (“the applicant association”), on 5 November 2007.

2. The applicant association was represented by Mr A. Lebrun, a lawyer practising in Grivegnée. The Belgian Government (“the Government”) were represented by their Agent, Mr D. Flore, Director-General, Federal Justice Department.

3. The applicant association complained of a violation of its right of access to a court (Article 6 § 1 of the Convention).

4. On 16 May 2008 the Vice-President of the Second Section decided to communicate the application to the Government. It was decided that the Chamber would rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a non-profit-making association whose aim, as stated in its articles of association, is “to protect the environment in the region of Marche-Nassogne. That region essentially covers the municipalities of

Nassogne, La Roche-en-Ardenne, Marche-en-Famenne, Rendeux and Tenneville. Environment means the quality and diversity of ecosystems and natural or semi-natural spaces, land use and town planning, the value of landscape, water, air and other elements vital to human beings, and the tranquillity of spaces. It may take any action relating directly or indirectly to its aim ...”.

6. Members of the applicant association include its founding members and any person admitted by a simple majority of the general meeting or by a two-thirds majority of the administrative board. The published list of the applicant association’s founding members and administrators shows that they all reside in the above-mentioned municipalities.

7. On 26 September 2002 Idelux, a cooperative society, applied to the delegated official of the province of Luxembourg for planning permission to expand the class 2 and 3 technical landfill site at “Al Pisserotte”. An increase of more than one-fifth of the site’s original capacity was sought. The preamble to the planning permission set out all the circumstances leading to its approval.

8. On 5 January 2004 the municipality of Tenneville wrote to the applicant association informing it that Idelux had been granted planning permission on 23 December 2003 and that the applicant association could apply to the *Conseil d’Etat* for judicial review.

9. On 5 March 2004 the applicant association lodged an application for judicial review of the decision of the delegated official and requested that it be stayed. The applicant association based its arguments primarily on instruments such as Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the decree of 11 September 1985 on environmental impact assessment in the Walloon Region and the Nature Conservation Act of 12 July 1973.

10. In that application, which was seventeen pages long, the applicant association stated as follows under the heading “The facts”:

“The statement of facts is set out in sufficient detail in the reasons for the impugned decision. The impugned decision was notified to the applicant in a letter of 5 January 2004, which was received on 7 January.”

11. The impugned decision was attached to the application for judicial review as exhibit no. 1.

12. Relying on Article 2 § 1 (2) of the Regent’s decree of 23 August 1948 laying down the rules of procedure in the Administrative Division of the *Conseil d’Etat*, the opposing party argued that the application for judicial review should be declared inadmissible because it did not include a statement of the facts.

13. By an order of 8 September 2004, the *Conseil d’Etat* dismissed the request for the impugned decision to be stayed. It pointed out that the

statement of the facts should have been sufficiently thorough and accurate for the factual circumstances of the dispute to be understood merely from reading that document. It concluded that the documents attached to the request for the decision to be stayed could not be deemed to equate to a statement of the facts.

14. In its pleadings in reply, and in its final pleadings, the applicant association argued that in the context of an application for judicial review, the statement of the facts did not constitute an admissibility criterion, unlike the statement of the facts in the request for the decision to be stayed. It added that the very short statement of the facts did not compromise the conduct of the proceedings since the opposing party was well aware of the facts, had not misunderstood the scope of the submissions and was familiar with the facts constituting the basis thereof.

15. By a judgment of 26 April 2007, the *Conseil d'Etat* declared the applicant association's application for judicial review inadmissible. It considered that because the application did not contain a statement of the facts, it simply referred back to the impugned decision and contained a clarification as to the date of its notification. The statement of the facts, as submitted by the applicant association, was non-existent rather than incomplete. The fact that the opposing party might have been familiar with the background to the case was irrelevant in assessing whether or not the application for judicial review, which was supposed to provide the *Conseil d'Etat* and the legal adviser (*auditeur*) responsible for investigating the case with sufficient information, contained a statement of the facts satisfying the official requirements. Lastly, the *Conseil d'Etat* noted that no new or additional applications and no procedural documents had subsequently been filed within the statutory time-limits to rectify the omissions in the application for judicial review.

16. The *Conseil d'Etat* had dealt with an earlier application for planning permission concerning the same subject in a judgment of 1 June 2001 on an urgent application and in a judgment of 18 January 2005 on the merits, delivered by the same judges who had delivered the judgment of 26 April 2007. The legal adviser in all three cases had been the same.

...

THE LAW

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

20. The applicant association complained about the *Conseil d'Etat's* decision to rule that its application for judicial review of planning

permission was inadmissible on the ground that the application did not contain a statement of the facts. It alleged that its right of access to a court, as guaranteed by Article 6 § 1 of the Convention, had been violated. The relevant part of that provision reads as follows:

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

A. Applicability of Article 6 § 1

21. The Government submitted firstly that this complaint was incompatible *ratione materiae* with Article 6 of the Convention. They argued that the applicant association had failed to demonstrate the “economic nature” of the dispute which it had brought before the *Conseil d’Etat*, with the result that the dispute could not be classified as “civil” for the purposes of Article 6 of the Convention. The applicant association had not alleged that it had suffered any economic damage in support of its application for judicial review. Its interest in bringing an action before the *Conseil d’Etat* had been justified only on the basis of defending its stated aim. The applicant association did not describe itself as an association of local people defending the rights and interests of its members. Having regard to its stated aim, it was in fact an environmental-protection association whose task, in a specific geographical context, was to defend the “general” interest against any threat that could harm the environment.

22. The Government drew a parallel between the instant case and the case of *Association des Amis de Saint-Raphaël et de Fréjus and Others v. France* ((dec.), no. 45053/98, 29 February 2000), in which the Court had found that the action of the applicant association before the administrative courts, concerning the lawfulness of planning permission granted to third parties, had been directly linked to its stated aim – protection of the surroundings, quality of life and appearance of the municipalities of Saint-Raphaël and Fréjus – and had thus concerned the protection of the general interest and not the protection of any “civil rights” to which that association could claim to be entitled on its own behalf.

23. The applicant association submitted in reply that in Belgian law, an application to the *Conseil d’Etat* could not concern either an *actio popularis* or the defence of a general interest. However, the collective interest defended by the applicant association had been acknowledged on numerous occasions by the *Conseil d’Etat*, which had considered it to be sufficiently specific in space and in substance. In its application for judicial review, the applicant association had stated that two interlocutory judgments and a judgment on the merits had already acknowledged that it had the required interest arising out of its stated aim, namely environmental protection in the Marche-Nassogne region.

24. The Court reiterates that for Article 6 § 1 to be applicable in its “civil” limb there must be a dispute (*contestation*) over a “right” that can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question: mere tenuous connections or remote consequences are not sufficient to bring Article 6 § 1 into play (see, for example, *Balmer-Schafroth and Others v. Switzerland*, 26 August 1997, § 32, *Reports of Judgments and Decisions* 1997-IV; *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV; and *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 43, ECHR 2004-III).

25. The Court also points out that the supervisory mechanism under the Convention excludes *actio popularis* (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). Under Article 6 of the Convention, the Court has thus had occasion to state that a dispute relating to defence of the public interest did not concern a civil right (see *Gorraiz Lizarraga and Others*, cited above, § 46). However, in that case, the Court concluded that Article 6 § 1 was applicable to an action brought by an association of owners to oppose the construction of a dam – in proceedings to which only the association was party – on the ground that in addition to defence of the public interest, the association was also defending certain specific interests of its members, whose economic rights in particular were at issue.

26. A new step was taken by the Court in the case of *Collectif national d’information et d’opposition à l’usine Melox – Collectif Stop Melox et Mox v. France* ((dec.), no. 75218/01, 28 March 2006), in which it affirmed that Article 6 § 1 was applicable to proceedings brought by an environmental-protection association not describing itself as an association of local people aiming specifically to defend the rights and interests of its members. The Court concluded that, while the purpose of the impugned proceedings had fundamentally been to protect the general interest, the “dispute” raised by the applicant association also had a sufficient link with a “right” to which it could claim to be entitled as a legal entity for Article 6 § 1 not to be found to be automatically inapplicable. In fact, the issue of the public’s right to be informed and to participate in the decision-making process where an activity involving a risk to health or the environment was concerned lay at the heart of the applicant association’s claims.

27. Undoubtedly, a distinction must be drawn between the present case and the case of *Collectif Stop Melox et Mox* (cited above). In the present case, the purpose of the applicant association’s application to the *Conseil d’Etat* was to seek judicial review of planning permission granted to a company for the expansion of a landfill site. The reasons given were based primarily on instruments such as Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects

on the environment, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the decree of 11 September 1985 on environmental impact assessment in the Walloon Region and the Nature Conservation Act of 12 July 1973. No comparison may be made in this regard with the arguments submitted before the French *Conseil d'Etat* by *Collectif Stop Melox et Mox* (cited above).

28. However, the Court notes that the applicant association's articles of association showed that its aim is limited in space and in substance, consisting in protecting the environment in the Marche-Nassogne region, a region essentially covering five small municipalities in a limited area. Moreover, all the founding members and administrators of the applicant association reside in the municipalities concerned, and can therefore be regarded as local residents directly affected by the plans to expand the landfill site. Increasing the capacity of the landfill site by more than one-fifth of its initial capacity was likely to have a considerable impact on their private life, because of the nuisance it would generate for their everyday quality of life and, in turn, on the market value of their properties in the municipalities concerned, which would be at risk of depreciation as a result.

29. The reason why the Convention does not allow an *actio popularis* is to avoid cases being brought before the Court by individuals complaining of the mere existence of a law applicable to any citizen of a country, or of a judicial decision to which they are not party (see *Ada Rossi and Others v. Italy* (dec.), nos. 55185/08, 55483/08, 55516/08, 55519/08, 56010/08, 56278/08, 58420/08 and 58424/08, 16 December 2008). The Court considers, however, in view of the circumstances of the present case, and in particular the nature of the impugned measure, the status of the applicant association and its founders and the fact that the aim it pursued was limited in space and in substance, that the general interest defended by the applicant association in its application for judicial review cannot be regarded as an *actio popularis*.

30. The Court concludes that the "dispute" raised by the applicant association had a sufficient link to a "right" to which it could claim to be entitled as a legal entity for Article 6 of the Convention to be applicable.

...

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;

...

Done in French, and notified in writing on 24 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Ireneu Cabral Barreto
President