



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

1959 · 50 · 2009

FIRST SECTION

CASE OF OTTO v. AUSTRIA

(Application no. 12702/08)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

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 Otto 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 1 October 2009,

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

PROCEDURE

1. The case originated in an application (no. 12702/08) 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, Ms Anneliese Margarethe Otto (“the applicant”), on 4 March 2008.

2. The applicant was represented by Mr W.D. Arnold, 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 for European and International Affairs.

3. On 2 May 2008 the President of the Chamber decided that the application should be granted priority under Rule 41 of the Rules of Court. On 9 June 2008 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**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1928 and lives in Vienna.

5. The applicant's husband was a civil engineer, and affiliated compulsorily to the Federal Chamber of Architects and Engineer

Consultants (*Bundeskammer der Architekten und Ingenieurkonsulenten*) and its pension fund (*Versorgungsfonds*).

6. The applicant's husband, who had moved out of the marital home in 1985 and lived with another partner, died in 1992.

7. The applicant applied orally for payment of a survivor's pension in 1992, and was informed that she did not have a claim to a pension since her husband had been living with another woman. Only the latter was entitled to claim a survivor's pension.

8. At first, the applicant did not follow up on her application, but by application dated 22 March 2001 she requested pension payments.

9. On 25 June 2001 the Committee of the Welfare Institutions (*Kuratorium der Wohlfahrtseinrichtungen*) declined payment of a survivor's pension since the applicant and her husband had ceased to live in a common household. Due to changes to the Statutes of the Welfare Institutions (*Statut der Wohlfahrtseinrichtungen*) and the wording of the statutes at the time of the applicant's husband's death, the partner had the same right to a survivor's pension as the widow. Since the applicant's husband had lived in a common household with another partner, the latter was entitled to a survivor's pension.

10. The applicant appealed and the Board of Directors of the Federal Chamber of Architects and Engineer Consultants (*Vorstand der Bundeskammer der Architekten und Ingenieurkonsulenten*) decided on 11 October 2001 to uphold the decision of the Committee of the Welfare Institutions.

11. The applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*) on 22 November 2001, which decided to examine the relevant provisions of the Chamber of Engineers Act (*Ingenieurkammergesetz*) and the Statutes of the Welfare Institutions. On 23 June 2003, it set aside several provisions of the Chamber of Engineers Act as unconstitutional. Furthermore it set aside the Statutes of the Welfare Institutions as unlawful and on the same day decided to refuse to deal with the applicant's complaint, as the matter was not excluded from the Administrative Court's jurisdiction.

12. Upon the applicant's request of 18 August 2003 her case was transferred to the Administrative Court (*Verwaltungsgerichtshof*). In her request the applicant had mentioned her old age and the duration of the proceedings. In the proceedings before the Administrative Court, the Board of Directors of the Federal Chamber of Architects and Engineer Consultants submitted their observations on 5 November 2003, to which the applicant replied on 24 November 2003.

13. The applicant applied again for a survivor's pension on 29 July 2004. The request was dismissed on 6 December 2004 by the Committee of the Welfare Institutions as the case was still pending before the Administrative Court. An appeal was rejected by the Board of Directors on 7 February

2005. The applicant complained to the Administrative Court on 21 March 2005. On an unknown date the Administrative Court decided to join both complaints.

14. On 27 November 2007 the Administrative Court set aside the contested decision, since it was based on a statute the Constitutional Court had set aside as being unconstitutional.

15. By a decision of 15 April 2008, which was served on the applicant's counsel on 18 April 2008, the Board of Directors of the Federal Chamber of Architects and Engineer Consultants awarded the applicant a survivor's pension from 1 March 2001 onwards. The pension was fixed at a gross amount of 1,077.03 euros (EUR) per month for 2001. The applicant was paid all pension arrears in June 2008. The amounts due for the years 2002 to 2008 were adjusted, apparently to reflect the increase in prices. In all, the applicant received a net amount of EUR 104,748.10.

THE LAW

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

16. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement laid down in Article 6 § 1 of the Convention, 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 ...”

17. The Government contested that argument.

18. The period to be taken into consideration began on 22 March 2001 and ended on 18 April 2008. It thus lasted a little more than seven years at three levels of jurisdiction.

A. Admissibility

19. 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

20. The applicant maintained that the duration of the proceedings was excessive. She asserted in particular that the proceedings before the Administrative Court took more than four years.

21. For their part, the Government argued that the case was of some complexity as it required a review of the lawfulness of the relevant provisions of the Chamber of Engineers Act and of the Statute of the Welfare Institutions by the Constitutional Court. The duration of the proceedings before the Constitutional Court of one year and seven months had to be regarded as admissible. The duration of the proceedings before the Administrative Court was explained by the excessive workload faced by that Court which had already in its Activity Report 2002 drawn attention to its workload problem, which it considered to be “notorious and structural”. In that connection the Government also provided a statistical overview of the Administrative Court's workload for the relevant period from 2003 to 2007. In sum, the overall duration of the proceedings was still to be regarded as reasonable.

22. 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). The Court observes that the present case concerned the applicant's request for a survivor's pension and therefore, as a matter of principle, called for a swift termination of the proceedings (see *Lyszczna v. Germany* (dec.), no. 34863/04, 4 January 2008).

23. The Court accepts that the case was of some complexity. On the one hand it does not discern any particular delays which would be attributable to the applicant. On the other hand it notes that after the Constitutional Court had set aside the Statutes of the Welfare Institutions on which the contested decision had been based, the case was pending before the Administrative Court from 18 August 2003 to 27 November 2007, thus for more than four years and three months.

24. In reply to the Government's argument relating to the Administrative Court's excessive workload, the Court reiterates its well established case-law that it is for the Contracting States to organise their judicial systems in such a way that their courts are able to guarantee everyone the right to obtain a final decision on disputes concerning civil rights and obligations within a reasonable time (see, for instance, *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV). Since the Administrative Court had addressed the issue of its excessive workload already in its Activity

Report 2002, and had considered it to be a “notorious and structural” one, it would have been for the State to adopt efficient remedial measures.

25. 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.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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

27. The applicant claimed 26,693.45 euros (EUR) in respect of pecuniary damage, namely EUR 9,641.12 for the financial loss caused by inflation, EUR 17,052.33 for loss of interest and EUR 5,000 in respect of non-pecuniary damage.

28. The Government contested these claims, arguing that the pension payments the applicant finally received had already been adjusted and that the applicant could not therefore claim to have suffered any losses due to inflation. There was no basis for claiming any loss of interest either. As regards the claims in respect of non-pecuniary damage, the Government argued that they were excessive.

29. The Court observes that the applicant, when she was granted the pension, received the pension payments retroactively since the time when she had first had applied for them in writing. The pension arrears paid to the applicant included compensation in respect of inflation (see paragraph 15 above). The Court does not find that the applicant suffered any pecuniary damage and therefore rejects this claim. As regards the claim for non-pecuniary damage, the Court considers that it should award the sum claimed in full, that is EUR 5,000 plus any tax that may be chargeable to the applicant on that amount.

B. Costs and expenses

30. The applicant also claimed EUR 4,410.48, inclusive of value-added tax (VAT) for the costs and expenses incurred before the domestic courts and EUR 4,017, inclusive of VAT, for those incurred before the Court.

31. The Government contested these claims, stating that the costs of the domestic proceedings were not incurred in order to prevent or redress the length of the proceedings. The costs claimed in respect of the Convention proceedings were excessive.

32. 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 are reasonable as to quantum. 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 and considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

33. 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;
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 5,000 (five thousand euros) for non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant on these amounts;
 - (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 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President