



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

FIRST SECTION

CASE OF RAMBAUSKE v. AUSTRIA

(Application no. 45369/07)

JUDGMENT

STRASBOURG

28 January 2010

FINAL

28/04/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Rambauske 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 André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 7 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 45369/07) 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 Wolfgang Rambauske and Mrs Martina Rambauske (“the applicants”), on 15 October 2007.

2. The applicants were represented by Mr P.-L. Kirste, a lawyer practising in Salzburg. 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 11 February 2009 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 applicants are the joint owners of a house in Salzburg which they had acquired in 1996. In spring 1997 they discovered that the distance between an annex to their house and the neighbouring plot of land did not correspond to the minimum distance required by the building permit.

5. On 24 November 1997 the applicants applied to the Salzburg Municipal Authority (*Magistrat*) for a retrospective building permit including, among other points, the authorisation to go below the minimum distance between the annex to their house and the neighbouring plot.

6. The Salzburg Municipal Authority fixed a date for a hearing on the property in question, but cancelled that date on the applicants' request. Subsequently, the applicants and their neighbours filed comprehensive submissions and the applicants submitted substitute plans which were then examined by a court-appointed expert, A.

7. A hearing on the applicants' property was held on 4 November 1998. On the applicants' request the time-limit for commenting on the results of the hearing was extended from 4 to 31 December 1998. Having announced to submit a private expert opinion by the end of January 1999 the applicants did so on 2 June 1999. On 1 August 1999 the applicant's neighbours filed comments. The Salzburg Municipal Authority granted the applicants' request on 7 December 1999.

8. On 23 December 1999 the applicants' neighbours appealed against the authorisation to reduce the minimum distance between their property and the applicants' house.

9. Until August 2000 the Appeals Commission (*Bauberufungskommission*) tried to achieve a settlement between the applicants and their neighbours. As these efforts failed, it took further evidence, asking expert A. to supplement his opinion. The parties were asked to comment by 21 February 2001. That time-limit was extended several times on the applicants' request until 30 March 2001. The Appeals Commission held an on-site hearing on 6 July 2001.

10. On 17 October 2001, after a further attempt to achieve a friendly settlement had failed, the Appeals Commission requested the applicants for further comments by 6 November. On their request the time-limit was extended until 28 November 2001. Following a change in the designation of the applicants' property, the Appeals Commission asked them to comment by 13 February 2002. On that date the applicants submitted comments and amended their request which was subsequently submitted to expert A. The latter submitted his opinion, after the applicants had made further necessary amendments of the plan, on 24 September 2002. On the applicants' request, the time-limit for filing comments was extended from 12 November until 9 December 2002. The time-limit for replying to their neighbours' comments was extended from 2 January until 28 January 2003.

11. On 18 March 2003 the Appeals Commission confirmed the Municipal Authority's decision.

12. On 2 May 2003 the applicants' neighbours lodged a complaint to the Administrative Court. The Appeals Commission submitted its observations on 3 July and the applicants submitted their observations in reply on 24 July 2003.

13. On 27 March 2007 the Administrative Court (*Verwaltungsgerichtshof*) dismissed the neighbours' complaint as being unfounded. The judgment was served on the applicants' counsel on 19 April 2007.

THE LAW

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

14. The applicants 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 ..."

15. The Government contested that argument.

16. The period to be taken into consideration began on 23 December 1999 when the applicants' neighbours appealed against the building permit as it was then that a "dispute" within the meaning of Article 6 § 1 arose, the administrative authority's decision being a necessary preliminary for bringing the dispute before a tribunal (see *Morscher v. Austria*, no. 54039/00, § 38, 5 February 2004, and *König v. Germany*, 28 June 1978, § 98, Series A no. 27). It ended on 19 April 2007 when the Administrative Court's judgment was served on the applicants. It has thus lasted seven years and almost four months for two levels of jurisdiction.

A. Admissibility

17. 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

18. The applicants maintained that the duration of the proceedings before the Administrative Court was excessive, while accepting that no unjustified delays occurred in the proceedings before the lower instances.

19. The Government argued that the case was factually and legally complex. No periods of inactivity occurred before the building authorities. The complexity of the proceedings and the Administrative Court's

excessive workload, which was due to structural reasons, explained the duration of the proceedings before that instance. The applicants contributed to the duration of the proceedings as, on the one hand, the documents submitted by them showed deficiencies and inconsistencies and, on the other hand, they repeatedly filed requests for the extension of time-limits. In sum, the duration of the proceedings was not excessive.

20. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

21. The Court accepts that the case was of some complexity. While the applicants caused some delays, albeit of a minor nature, by requesting extensions of time-limits, the Court notes that the case was pending before the Administrative Court from 2 May 2003 until 27 March 2007 that is for three years and almost eleven months. In reply to the Government's argument relating to the Administrative Court's excessive workload which was due to structural reasons, 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, *Otto v. Austria*, no. 12702/08, § 24, 22 October 2009, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 24, ECHR 2000-IV).

22. 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 *Gierlinger v. Austria*, no. 38032/05, § 18, 29 November 2007, and *Richter v. Austria*, no. 4490/06, § 29, 18 December 2000, both with further references).

23. 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.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicants further complained that there was no remedy at their disposal to complain of the excessive length of proceedings before the Administrative Court. They relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

25. 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

26. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

27. The Court has repeatedly found that no effective remedy was available against delays occurring before the Administrative Court (see, for instance, *Vitzthum v. Austria*, no. 8140/04, § 31, 26 July 2007, and *Schutte v. Austria*, no. 18015/03, § 38, 26 July 2007). The Government have not made comments on this point, except for referring to their observations relating to the duration of the proceedings. There is nothing in the present case which would require the Court to deviate from the above finding.

28. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicants could have obtained a ruling upholding their right to have their case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

31. The Government contested the claim.

32. The Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards them EUR 6,000 under that head.

B. Costs and expenses

33. The applicants also claimed EUR 9,641.60, inclusive of value-added tax, for the costs and expenses incurred before the Court.

34. The Government asserted that the claim was excessive.

35. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court 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 this amount.

C. Default interest

36. 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* that there has been a violation of Article 13 of the Convention;
4. *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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) for costs and expenses plus any tax that may be chargeable to the applicants;
 - (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President