

APPLICATION/REQUÊTE N° 10153/82

Z. and E. v/AUSTRIA

Z. et E. c/AUTRICHE

DECISION of 13 October 1986 on the admissibility of the application

DÉCISION du 13 octobre 1986 sur la recevabilité de la requête

Article 6, paragraph 1 of the Convention : *Civil proceedings. The Commission can ensure that the presentation of evidence was fair, but cannot review the interpretation and application of national law.*

The judge must hear the parties' arguments, but is not bound to discuss each of their submissions in detail.

Article 8, paragraph 1 of the Convention : *The right to respect for family life may involve for Contracting States positive obligations calculated to allow those concerned to lead a normal family life. This applies not only to legislation regulating family relationships, but also to legislation regulating the use of property for family purposes.*

Article 13 of the Convention : *This provision does not require that there should be several levels of jurisdiction.*

Article 25 of the Convention : *Death of one applicant and pursuance by her successor of the application, relating to alleged interferences with property rights, family life and the right to a fair procedure in a reasonable time. Despite the personal nature of these complaints the successor, herself an applicant who has raised similar complaints, may "claim to be a victim".*

In spite of a change of circumstances, applicants nonetheless recognised as victims in view of the importance to them of the past situation of which they complain.

Article 1, paragraph 1 of the First Protocol : *The Austrian legislation which limits the right of the owner to terminate the lease does not constitute a deprivation of property.*

Article 1, paragraph 2 of the First Protocol : *Legislation on the protection of tenants as a regulation of use of an apartment house. General interest and necessity of the regulation.*

Article 6, paragraphe 1, de la Convention : *Procès civil. La Commission peut s'assurer que l'administration des preuves a été équitable mais non revoir l'interprétation et l'application du droit national.*

Le juge doit entendre l'argumentation des parties mais n'est pas tenu de discuter en détail chacune de leurs thèses.

Article 8, paragraphe 1, de la Convention : *Le droit au respect de la vie familiale peut comporter pour les Etats contractants des obligations positives, de manière à permettre aux intéressés de mener une vie familiale normale. Cela vaut non seulement pour la législation qui régit les relations familiales, mais aussi pour celle qui régit l'usage des biens à des fins familiales.*

Article 13 de la Convention : *Cette disposition n'impose pas l'existence de plusieurs degrés de juridiction.*

Article 25 de la Convention : *Décès d'un des requérants et poursuite par son héritier de la requête portant sur une prétendue atteinte à la propriété, à la vie familiale et au droit à un procès équitable dans un délai raisonnable. Malgré le caractère personnel de ces derniers griefs l'héritier, lui-même requérant ayant soulevé des griefs analogues, peut « se prétendre victime ».*

En dépit d'une évolution des circonstances, requérants néanmoins reconnus comme victimes vu l'importance pour eux de la situation passée dont ils se plaignent.

Article 1, paragraphe 1, du Protocole additionnel : *Ne constitue pas une privation de propriété la législation autrichienne qui restreint le droit du bailleur de donner congé.*

Article 1, paragraphe 2, du Protocole additionnel : *Législation sur la protection des locataires en tant que réglementation de l'usage d'un bien immobilier. Intérêt général et nécessité de cette réglementation.*

THE FACTS

(français : voir p. 77)

The first and second applicants are Austrian citizens born in 1934 and 1938 respectively. They are a married couple who at the time of introducing the application each owned a third interest in a house in Vienna which they had acquired in 1974. The second applicant now owns two thirds because she has in the meantime inherited her mother's share. The latter, an Austrian citizen born in 1909, died on 25 January 1985. She had originally been the third applicant in the case and the first

and second applicants now state that they wish to maintain the application as her successors insofar as it is alleged that the third applicant's Convention rights were also interfered with.

The first and second applicants occupy a flat on the second floor of the above house. It has a surface of 65 m² and consists of three rooms, a kitchen and a corridor.

There are two flats on the first floor each with a surface of 42 m². One of these flats was occupied by the third applicant during her lifetime and has apparently not been relet after her death.

The second flat on the first floor was already occupied by certain tenants when the applicants acquired the house. They continue to occupy this flat despite repeated attempts by the applicants to terminate the lease.

Two further small flats on the ground floor, with surfaces of 32 and 20 m² respectively, are also let to tenants. In addition, the ground floor comprises two small rooms accessible through the same corridor as the 20 m² flat which are unoccupied.

On 29 February 1980, the first applicant's elderly parents were both critically injured in a car accident and as a result required care, allegedly for the rest of their lives. As they lived in a village some 30 km outside Vienna it was difficult for the applicants to look after them and they therefore decided to have them move to their home. For this purpose they wanted to lodge them in the flat on the first floor of their house which was occupied by tenants. They accordingly sought to terminate the lease of those tenants.

As the flat in question was subject to the rent protection legislation of the 1922 Rent Act (Mietengesetz, Fed. Law Gazette No. 872/1922, as amended) the notification had to be made in conformity with the particular provisions of this Act. These provisions may be summarized as follows:

Under Section 19 (1) of the Act, termination of a tenancy contract by the landlord is only possible for important reasons ("Der Vermieter kann nur aus wichtigen Gründen den Mietvertrag kündigen").

Section 19 (2) sets out detailed examples of what is to be considered as "important reasons", including sub-section (6) which reads as follows:

"If the landlord needs the tenancy property (residential rooms...) urgently for himself or his direct linear relation and if he puts at the disposal of the tenants... adequate alternative housing" ["der Vermieter den Mietgegenstand (Wohnräume...) für sich selbst oder für Verwandte in gerader Linie dringend benötigt und dem Mieter... einen entsprechenden Ersatz beschafft"].

As regards the procedure, Section 21 (1) provides that notification of termination can only be made through the courts. In doing so the landlord must briefly

indicate the reasons invoked by him, and he is barred from invoking other reasons at a later time. If the tenant raises objections, it is for the landlord to prove the existence of the reasons given by him.

On 7 March 1980 the applicants gave judicial notice to the tenants occupying the above apartment, invoking both the general clause in Section 19 (1) (important reasons) and Section 19 (2)(6) of the Act. As the tenants raised objections, the District Court of Vienna-Floridsdorf had to decide the matter in non-contentious proceedings.

After having carried out an inspection of the locality, and having obtained expert medical testimony on the state of health of the first applicant's parents, the Court decided on 15 November 1981 that the termination of the lease was of no legal effect, and therefore it rejected the applicants' claim to evict the tenants. The Court found that the term "urgent personal need" ("dringender Eigenbedarf") in Section 19 (2) (6) of the Act was to be strictly construed. This criterion was not met in the present case as the applicants could adapt the unoccupied rooms on the ground floor for lodging the first applicant's parents, if they should really need care. The rooms were appropriate for this purpose, and the parents could share the toilet with the tenant of the 20 m² apartment who under her lease had no exclusive right to its use. The Court further noted that the applicants had already earlier tried several times without success to terminate the lease in question, and therefore the impression arose that the applicants were only using the parents' accident as a pretext for getting rid of their tenants.

The applicants appealed, claiming that the District Court had made incorrect and insufficient findings of fact and law, in particular as regards the appropriateness of the rooms in question for housing purposes (they lacked heating and washing facilities), the impossibility of obtaining a building permit for the required adaptations (they would not be allowed under the applicable provisions of the Vienna Building Act, Prov. Law Gazette No. 18/1976, as the house was situated in a rural area and any changes strengthening its tenancy character would not be permitted), the encroachment on the rights of the tenant of the 20 m² apartment (who would have to share her toilet and corridor with the parents), and finally as regards the true state of health of the parents.

However, by a decision of 21 April 1982, the Regional Court of Vienna rejected the appeal as unfounded. It noted that the applicants no longer invoked Section 19 (1) of the Act. As regards Section 19 (2)(6), it found that the Court below had rightly applied a strict standard. All the applicants' submissions on appeal were irrelevant as the emergency situation required by this provision did not exist. In this regard, the Court found that it was not necessary to deal with the appropriateness of the empty rooms on the ground floor as the applicants could in any event be expected to care for their parents in their own apartment on the second floor. For the same reasons it was not necessary to make further investigations concerning the parents' state of health.

The Regional Court refused the applicants leave to appeal to the Supreme Court, and they therefore had no further remedy.

COMPLAINTS

1. The applicants now complain that the proceedings were not fair and thus contrary to Article 6 para. 1 of the Convention because the courts did not deal with the matter in the way in which they had presented the case. In particular, the courts limited themselves to findings under Section 19 (2)(6) of the Rent Act, but did not investigate whether there were in the special circumstances other, similar reasons for terminating the lease which could be based on the general clause in Section 19.(1). It is submitted that in particular the claim raised by the third applicant remained without any response on the part of the Court.

2. The applicants further complain that by the way in which the courts interpreted and applied the law they failed to secure the applicants' right to respect for private and family life, as guaranteed by Article 8 of the Convention. They are particularly aggrieved that the courts should have endeavoured to prescribe how the applicants should best structure and organise their private and family life in relation to their elderly parents who they felt needed constant care.

3. The applicants further complain that the restrictions imposed on them by the Rent Act, as interpreted by the courts in their case, amounted to an unjustified interference with their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. In this respect, they invoke, *inter alia*, the Commission's decision in Application No. 8003/77 (Dec. 3.10.79, D.R. 17 p. 80), claiming that the restrictions applied to them went beyond those considered in that case.

4. The applicants also consider that as landlords they have been discriminated against, contrary to Article 14 of the Convention, in relation to the tenants.

5. The applicants finally invoke Article 13 of the Convention, claiming that they did not have an effective remedy before a national authority in Austria before which they could have invoked their Convention rights in relation to the matter under consideration. In this respect, they complain in particular of the exclusion of an appeal to the Supreme Court.

THE LAW

1. The applicants, who own a two-storey house in a suburb of Vienna where they live themselves and parts of which are let to tenants, complain essentially that they were restricted in the possibility to terminate the lease of certain tenants whose flat

they wished to use for purposes of their own family, i.e. for lodging the first applicant's elderly parents who had suffered an accident and were in need of constant care. In this respect the applicants allege violations of their property rights as guaranteed by Article 1 of the Protocol and of their right to respect for their family life as guaranteed by Article 8 of the Convention. They also claim that they have been discriminated against, contrary to Article 14 of the Convention, in the exercise of their above Convention rights.

The applicants further complain of the civil court proceedings by which they sought to bring about the termination of the lease in question, alleging that procedural guarantees of Article 6 of the Convention were disregarded and that they were denied an effective remedy as required by Article 13 of the Convention.

2. The Commission must first examine whether the applicants can still claim to be victims of a violation of their Convention rights (Article 25 of the Convention) having regard to the fact that the circumstances have considerably changed since the introduction of the application: after the tenants' objection and the courts' refusal to terminate their lease, an alternative solution was found to care for the first applicant's parents in their home at some distance from Vienna. Eventually in 1984 his father was taken to an old people's home in view of his deteriorating state of health. He remained there until his death in November 1985. In the meantime the third applicant had also died in January 1985, leaving behind her flat on the first floor of the applicants' house which now could have been used for lodging the first applicant's parents. Apparently his mother was reluctant to make use of this possibility at that time.

Despite these developments, the applicants claim that they had been effectively restricted during a considerable period of time in using their property and shaping their family life as they liked. The Commission notes that in fact the accident of the first applicant's parents occurred in February 1980 and that they gave notice to their tenants in March 1980. The court proceedings were completed in April 1982 and insofar as the applicants complain of the conduct of those proceedings the applicants are clearly entitled to invoke the Convention notwithstanding the fact that in the meantime there have been new developments which were not in issue in these proceedings. The court proceedings determined the applicants' situation as regards the possibility to use their property both during the time when the proceedings were pending and in the subsequent period. In view of the particular circumstances of the case where an emergency situation was invoked a favourable decision would have been of the greatest importance for the applicants immediately after that situation had arisen, but even at a later date they still had a considerable interest in regularising their situation which essentially continued to exist until the third applicant's death in January 1985. Having regard to these considerations, the Commission accepts the applicants' argument and finds that they can reasonably claim to have been victims

of violations of their Convention rights both as regards the conduct of the proceedings and as regards the results of these proceedings which actually affected them during a considerable period.

3. At present, there remain only the first and second applicants. However, they claim that they must be entitled to maintain the application also insofar as the third applicant's Convention rights had been affected. The Commission notes that the second applicant is the legal successor to the third applicant's share of property and therefore she can indeed have a legitimate interest to pursue the third applicant's complaints at least insofar as she had alleged an unjustified interference with her property rights (cf. No. 8003/77, Dec. 3.10.79, D.R. 17 pp. 80-82). It may remain open whether the same applies to the third applicant's complaints of interferences with her family life and her procedural rights. Even if these latter complaints might be considered as being of a personal nature which, in principle, excludes their further pursuit by her legal successors, it must be noted that in any event the first and second applicants have raised similar complaints. The Commission therefore accepts that the second applicant may as legal successor pursue the complaints introduced by the third applicant.

4. As regards the substance of the applicants' complaints, the Commission considers it appropriate to examine first the procedural aspects. It is claimed that the conduct of the proceedings was not in line with Article 6 para. 1 of the Convention because their civil rights and obligations were not determined within a reasonable time and because they were treated unfairly. It is further alleged that the refusal to allow a further appeal to the Supreme Court violated Article 13 of the Convention.

a) As regards first the issue of the length of the proceedings, the Commission notes that the applicants' complaint in this respect has first been mentioned in their letter of 3 November 1985, i.e. more than six months after the final domestic decision which dates from 21 April 1982. This part of the application has therefore been lodged out of time and must accordingly be rejected under Article 27 para. 3 read in conjunction with Article 26 of the Convention.

b) As regards the allegation of unfairness of the proceedings, the applicants have submitted several arguments which fall essentially into two categories:

- First it is alleged that the administration of the evidence was unfair in that the courts required the applicants to disprove certain allegations of the defendant tenants according to which an emergency situation did not actually exist, and that the courts further required them to prove certain facts which the applicants consider as self-evident, namely that they could not be expected to lodge their parents in their own flat. The Commission does not consider that the courts' approach in this respect can be regarded as unfair. In particular it was not unfair that the plaintiffs who wished to bring about a change of a certain legal situation were required to prove all facts which were legally relevant to their claim, including facts which were disputed by

the defendant. This did not in itself amount to an unfair reversal of the burden of proof nor did it imply a requirement to discharge an impossible burden of proof. This part of the application is therefore manifestly ill-founded and must be rejected under Article 27 para. 2 of the Convention.

- The second group of arguments concerns the legal assessment of the applicants' claim by the courts. They allege that the Regional Court's final decision was based on a distortion of the submissions which they had actually made as regards the legal ground of termination invoked, and that this court failed to take into account certain essential legal aspects such as the restrictions resulting from the planning regulations, the nature of the house concerned as a family home, and the fact that the applicants had offered to provide alternative accommodation to the tenants. However, it is not the Commission's task to interfere with the legal assessment of a particular claim made by the competent courts under the domestic law. The application and interpretation of the domestic law is in principle a matter reserved to the jurisdiction of the national courts. In this respect they are free to qualify a claim according to the criteria which they consider as legally relevant. They cannot be bound by the legal argumentation of a particular party. Moreover, the Commission considers that a court's failure to discuss every detail of a party's pleadings is not in itself contrary to the requirements of a fair hearing. It is, however, essential that the party's right to be heard is not disregarded and that his pleadings are considered by the court even if this is not reflected in explicit terms in the eventual decision. On this basis, the Commission finds no indication in the present case that the various legal arguments presented by the applicants were not duly examined by the Austrian courts. The fact that the courts may have considered them as irrelevant or unfounded and implicitly rejected these arguments cannot amount to a breach of the Convention. This part of the application is therefore also manifestly ill-founded.

c) As regards finally the applicants' complaint under Article 13 of the Convention that they were deprived of an effective remedy because a further appeal to the Supreme Court was not admitted, the Commission observes that the proceedings in question come within the scope of Article 6 para. 1 of the Convention which requires that there should be access to an independent and impartial tribunal established by law. A right to an appeal to a higher court cannot be derived from this provision as the Commission has held in its constant case-law. Nor does a separate issue arise under Article 13 of the Convention in a case like the present one where a judicial remedy in conformity with Article 6 para. 1 has in fact been granted.

5. Insofar as the applicants claim that there has been an unjustified interference with their property rights as guaranteed by Article 1 of the Protocol, the Commission first notes that both parties seem to agree that there was no deprivation of possessions within the meaning of the second sentence of paragraph 1 of this Article. A restriction on the landlord's right to give notice to his tenant must in fact be considered as a regulation of the use of property within the meaning of the second paragraph

of Article 1. This has been confirmed by the Commission's decision on the admissibility of Application No. 8003/77 v. Austria (Dec. 3.10.79, D.R. 17 p. 80) which concerned the same legislation as that applied in the present case. In that decision, the Commission also found that the restrictions in question pursued a legitimate aim of social policy, i.e. the protection of the interests of tenants in a situation of a shortage of (cheap) housing, and that they were as such appropriate means to achieve this aim of social policy so that they could still be considered as necessary to control the use of property in accordance with the general interest.

Section 19 (1) of the Rent Act allows the landlord to terminate a lease for "important reasons", and Section 19 (2) enumerates many instances of such important reasons, including sub-paragraph (6), according to which the termination of the lease is admissible if the landlord himself or his direct linear relatives urgently need the object and if the landlord makes appropriate alternative accommodation available to the tenant. It is exclusively the latter provision which the Austrian courts considered as relevant to the present case, and the applicants seem to accept that this provision is as such in conformity with the Convention.

However, the applicants claim that in the specific circumstances of their case this provision was given a too restrictive interpretation and that this amounted to a disproportionate interference with their property rights. The final decision of the Regional Court in fact is limited to the examination of whether an "urgent need" within the meaning of the above provision existed. This question was denied on the basis of the constant case-law according to which the term "urgent need" must be strictly interpreted as referring to a genuine situation of emergency which cannot be remedied in any other way. The Court considered that the applicants had failed to prove why it would have been impossible for them to lodge the parents of the first applicant in their own flats. In the absence of an "urgent need" all other submissions of the applicants were considered as irrelevant.

The Commission recognises that this decision involved an important interference with the applicants' property rights and in particular the right to use their property for purposes of their own. However, on the other hand there were also important interests of the tenants at stake. As already mentioned, the restrictions on the landlord's right to use his property for the purpose of protecting a tenant's rights in a situation of a shortage of cheap housing may in principle be justified as being a measure in the general interest covered by Article 1 para. 2 of the Protocol (cf. No. 8003/77, Dec. 3.10.79, *loc. cit.*). The Commission considers that it can still be regarded as proportionate if a particularly strict standard is applied when the two conflicting interests of the landlord and tenant are weighed against each other. The Commission refers to the wide margin of appreciation which Article 1 para. 2 of the Protocol concedes to the Contracting States in this respect (cf. *mutatis mutandis* Eur. Court H.R., Handyside judgment of 7 December 1976, Series A no. 24, and James and others judgment of 21 February 1986, Series A no. 98). In the circumstances

of the present case the application of this strict standard led to a finding that the situation invoked by the applicants could be met in a different way than by terminating the lease of the applicants' tenants. The Commission finds that this conclusion was neither arbitrary nor unreasonable given the fact that the applicants had two flats in the house where there were in addition several unoccupied rooms. It follows that the interference can be justified under Article 1 para. 2 of the Protocol, and the applicants' complaint under this provision is therefore manifestly ill-founded.

6. The applicants further complain that the same restriction also interfered with their right to respect for their family life as guaranteed by Article 8 of the Convention. The Government object that Article 8 is not applicable because there was no direct interference with the applicants' family life, but only a remote repercussion on it. The Commission does not share this view. Article 8 guarantees "respect" for family life, and this may involve positive obligations for the Contracting States inherent in an effective "respect" for family life. In shaping the domestic law, the State must act in a manner calculated to allow those concerned to lead a normal family life (cf. Eur. Court H.R., *Marckx* judgment of 13 June 1979, Series A no. 31, para. 31). The Commission is of the opinion that this consideration applies not only to legislation regulating family relationships, but also to legislation regulating the use of property insofar as it interferes with the possibility to use this property for family purposes. Since in the present case the applicants were not able to use their property for family purposes as they wished, their family life could indeed be affected. However, the Commission considers that the manner in which the law was applied to the applicants did not fail to show respect for their family life as required by Article 8 of the Convention. In the relevant final decision of the Regional Court it was in fact pointed out in which way the applicants could be expected to shape their family life without interfering with their tenants' rights. It has already been stated above that this decision appears neither arbitrary nor unreasonable in the circumstances. This part of the application must accordingly also be rejected as being manifestly ill-founded.

7. The applicants finally invoke Article 14 of the Convention claiming that they were discriminated against in the exercise of their above Convention rights. In the original application, the applicants complained only of discrimination in comparison with their tenants. However, the Commission considers that the respective position of a landlord and a tenant is so different that it cannot be reasonably compared. There is accordingly no appearance of any discrimination in this respect. The applicants have later compared their situation to that of owners of family homes who let apartments after 1967 and were able to negotiate contractual conditions by which the restrictions on the right to give notice to the tenants could be avoided. However, this argument has not been substantiated. The applicant's complaint of discrimination is therefore again manifestly ill-founded.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.