

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

FOURTH SECTION

CASE OF BINDER v. AUSTRIA

(Application no. 50627/09)

JUDGMENT

STRASBOURG

2 February 2016

This judgment is final but it may be subject to editorial revision.



In the case of Binder v. Austria,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Vincent A. De Gaetano, *President,*
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 12 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 50627/09) 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, Mr Emil Binder ("the applicant"), on 14 September 2009.

2. The applicant was represented by Mr H. Pochieser, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. On 30 August 2012 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Vienna.

5. On 29 January 2004 the applicant applied for rent allowance (*Mietbeihilfe*) under the Vienna Social Welfare Act (*Wiener Sozialhilfegesetz*).

6. On 13 July 2004 the Vienna Municipal Authority (*Magistrat der Stadt Wien*) dismissed the applicant's request, holding that the applicant was not eligible for rent allowance as his income exceeded the statutory limit (*Richtsatzüberschreitung*).

7. The applicant appealed and complained that the Municipal Authority had failed to take into account his maintenance obligations towards his two sons.

8. On 10 August 2004 the Vienna Regional Government (*Amt der Wiener Landesregierung*) dismissed the appeal, holding that maintenance obligations were, according to the Administrative Court's case-law, not to be considered as income-reducing, as long as no enforcement proceedings were instituted against the applicant's income.

9. On 6 October 2004 the Constitutional Court granted the applicant's request for legal aid in order to file a complaint against the Regional Government's decision.

10. On 8 November 2004 the applicant filed a complaint with the Constitutional Court, claiming in essence that the Regional Government had wrongly interpreted the Administrative Court's case-law as regards the non-consideration of the applicant's maintenance obligations.

11. On 1 March 2005 the Constitutional Court declined to deal with the applicant's complaint, holding that it did not raise any questions of constitutional law and transferred the case to the Administrative Court.

12. On 11 May 2005 the applicant submitted his amended complaint to the Administrative Court.

13. On 23 February 2009 the Administrative Court dismissed the applicant's complaint as unfounded. Referring to its case-law, it held that the applicant had failed to argue that he was in a state of emergency due to enforcement proceedings being conducted in connection to his maintenance obligations. It was therefore not unlawful that the Regional Government had refrained from taking into account the applicant's maintenance payments when assessing his eligibility for rent allowance.

14. This decision was served on the applicant's counsel on 13 March 2009.

THE LAW

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

15. 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..."

16. The period to be taken into consideration began on 13 July 2004 and ended on 13 March 2009. It thus lasted four years and eight months, during which the case came before two administrative authorities and two levels of jurisdiction. The case was pending before the Administrative Court for about three years and ten months.

A. Admissibility

17. At the outset the Court considers that the proceedings on the applicants application for rent allowance involved a dispute on the determination of civil right of the applicant (see *mutatis mutandis Koua Poirrez v. France*, no. 40892/98, § 56, ECHR 2003-X) and this is not disputed by the Government.

18. The Government argued that the applicant had not suffered any "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention, because no financial damages resulted from the length of the proceedings. Further, the question of excessive procedural duration had already been extensively dealt with by the Court and the Administrative Court had duly examined the applicant's complaint. The Government therefore considered that the complaint must be rejected pursuant to Article 35 § 3 (b) of the Convention.

19. The applicant claimed that he had suffered significant disadvantages from the domestic decisions and the long duration of the proceedings. In 2006 he had been evicted from his apartment because he could no longer afford to pay rent. He had been living under very poor conditions ever since.

20. Article 35 § 3 (b) of the Convention reads as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (...)
>
> (b) the applicant has not suffered any significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

21. The Court reiterates that this admissibility criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court (see Korolev v. Russia (dec.), no. 25551/05, 1 July 2010). The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see Gagliano Giorgi v. Italy, no. 23563/07, § 55, ECHR 2012 (extracts)).

22. In the light of the criteria established in its case-law, the Court considers that, in ascertaining whether the violation of a right attains the minimum level of severity, the following factors, inter alia, should be taken into account: the nature of the right allegedly violated, the seriousness of the impact of the alleged violation on the exercise of a right and/or the possible effects of the violation on the applicant's personal situation (see Gagliano Giorgi v. Italy, cited above, § 56).

23. In the present case the Court reiterates that the proceedings lasted in total for about four years and eight months. During this period, the applicant remained in a state of uncertainty as regards his request for rent allowance, a

request that was of considerable significance for the applicant, having particular regard to his personal situation.

24. The Court further notes that the applicant did not benefit from the duration of the proceedings or that he was in any way compensated for it. Therefore, the damage normally entailed by the excessive length of civil proceedings was not reduced in the applicant's case (see, by contrast, Galović v. Croatia (dec.), no. 54388/09, § 74, 5 March 2013). The Court thus considers that it cannot be said that the applicant has not suffered any significant disadvantage in the present case.

25. Lastly, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The applicant argued that whilst the administrative authorities and the Constitutional Court decided quite swiftly, the period during which the case was pending before the Administrative Court was unreasonably long, having particular regard to what was at stake for him and that the proceedings were of no complexity at all.

27. The Government did not comment on the merits of this complaint.

28. 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).

29. The Court notes that the proceedings at hand were of no particular complexity. The Regional Government and the Constitutional Court decided expeditiously on the applicant's complaints. However, the proceedings were pending before the Administrative Court for approximately three years and ten months. The Government have not given any explanation for this delay.

30. 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, for example, *Alge v. Austria*, no. 38185/97, 22 January 2004; *Gierlinger v. Austria*, no. 38032/05, 29 November 2007).

31. 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant complained under Article 6 of the Convention that no oral hearing was held before a "tribunal" and that the Administrative Court had wrongly applied its own case-law. The applicant further complained under Articles 13 and 14 that neither the Constitutional Court nor the Administrative Court had effectively dealt with his complaints, which was common for complaints filed by social welfare recipients. Lastly, the applicant complained under Article 1 of Protocol No. 1 about the refusal to grant him rent allowance.

33. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

34. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed EUR 10,000 in non-pecuniary damage. He further claimed as pecuniary damage a monthly payment of EUR 291.10 corresponding to the rent he had had to pay before he was evicted so that he was able to rent a corresponding accommodation.

37. The Government contested these claims. Concerning the claim for monthly rental payments, they argued that there was no causal link between the procedural duration and the applicant's eviction. As regards the claim for non-pecuniary damage, the Government pointed out that the applicant had failed to make a connection to the procedural duration, but reasoned his claim solely by referring to the tragic consequences resulting from his eviction. The Government therefore argued that these claims must be rejected.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim for monthly payments. However, the Court considers that the applicant must have sustained non-pecuniary damage resulting from the unreasonable

duration of the proceedings. Ruling on an equitable basis, it awards the applicant EUR 2,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

39. The applicant also claimed EUR 8,000 for the costs and expenses incurred before the domestic authorities and the Court, of which EUR 2,722.18 were claimed for the Convention proceedings.

40. The Government contested these claims. The amounts claimed for the costs and expenses incurred before the domestic authorities were not recoverable because they had not incurred in an attempt to expedite the proceedings or challenge any delays. Concerning the costs incurred before the Court, the Government argued that since all other complaints apart from the one relating to the length of the proceedings were inadmissible, the sum should be reduced accordingly.

41. According to the Court's case-law, an applicant is entitled to reimbursement of his 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 documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings, as it has not been shown that they incurred in an attempt to prevent or redress the violation found.

42. Concerning the costs claimed for the Convention proceedings, the Court notes that only the complaint concerning the length of proceedings was declared admissible. It therefore considers it reasonable to award the sum of EUR 1,500 under this head.

C. Default interest

43. The Court considers it appropriate that the default interest rate 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 length of 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 applicant, within three months, the following amounts:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, 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 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 2 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Vincent A. De Gaetano
Deputy Registrar	President