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

FIFTH SECTION

DECISION

Application no. 20527/13
Alois and Edith DÖLLER
against Austria

The European Court of Human Rights (Fifth Section), sitting on 13 June 2017 as a Committee composed of:

Erik Møse, *President,*
Yonko Grozev,
Gabriele Kucsko-Stadlmayer, *judges,*

and Anne-Marie Dougin, *Acting Deputy Setion Registrar,*

Having regard to the above application lodged on 11 March 2013,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Alois Döller and Ms Edith Döller, are Austrian nationals, who were born in 1943 and 1954 respectively and live in Oberwölbling. They were represented before the Court by Mr R. Mutenthaler, a lawyer practising in Ybbs.

2. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for Europe, Integration and Foreign Affairs.

The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. The first round of the proceedings

4. The applicants own a piece of land in the municipality of Wölbling and run an agricultural enterprise, including liquid manure agriculture (*Güllewirtschaft*), in Herzogenburg.

5. On 25 April 2005 the Wölbling Municipal Board (*Gemeindevorstand*) decided that the sewage of all properties within the municipality should be disposed of in a public sewage.

6. On 13 June 2005 the applicants requested an exemption from the obligation to connect to the public sewage (*Anschlussverpflichtung*) for their piece of land in Wölbling because they wished to continue to dispose of their household sewage – together with their agricultural sewage – by using it as fertilizer on their agricultural land.

7. On 22 August 2005 the Mayor (*Bürgermeister*) of Wölbling instructed the applicants to submit additional documentation within two weeks. On 8 September 2005 the applicants requested an extension of this time-limit.

8. On 6 October 2005 the Mayor dismissed the request on the ground that the applicants had failed to submit the requested documentation. The applicants appealed this decision on 24 October 2005.

9. On 20 May 2008 the Municipal Board dismissed the applicants' appeal. On 3 June 2008 the applicants filed an objection (*Vorstellung*) against this decision with the Lower Austria Regional Government (*Niederösterreichische Landesregierung*).

10. On 29 January 2009 the applicants complained to the Administrative Court (*Verwaltungsgerichtshof*) about the Regional Government's failure to decide (*Säumnisbeschwerde*).

11. On 11 March 2009 the Regional Government lifted the Municipal Board's decision of 20 May 2008 and referred the case back to the lower instance. Consequently, on 27 May 2009 the Administrative Court closed the proceedings regarding the Regional Government's failure to decide and awarded costs to the applicants.

12. On 21 April 2009 the applicants complained to the Constitutional Court (*Verfassungsgerichtshof*) against the Regional Government's decision of 11 March 2009. On 15 June 2009 the Constitutional Court declined to examine the complaint and referred it to the Administrative Court, and on 20 October 2009 the Administrative Court dismissed the complaint.

13. On 25 March 2009 the Municipal Board lifted the Mayor's decision of 6 October 2005 and referred the case back to the lower instance.

2. The second round of the proceedings

14. On 27 July 2009 the Mayor dismissed the applicants' request of 13 June 2005 for an exemption from the obligation to connect to the public sewage. The applicants appealed against this decision on 13 August 2009.

15. On 18 February 2010 the Municipal Board lifted the Mayor's decision of 6 October 2005. On 5 March 2010 the applicants filed an objection with the Regional Government against this decision.

16. On 15 March 2010 the applicants filed an application for transfer of jurisdiction (*Devolutionsantrag*) with the Wölbling Municipal Council (*Gemeinderat*), claiming that the Municipal Board had failed to decide their appeal of 13 August 2009. Its decision of 18 February 2010 had lifted the Mayor's decision of 6 October 2005, which had already been lifted by the Municipal Board's decision of 25 March 2009 (see paragraph 13 above). The applicants' appeal, however, had concerned the Mayor's decision of 27 July 2009 (see paragraph 14 above).

17. On 28 May 2010 the Regional Government lifted the Municipal Board's decision of 18 February 2010.

18. On 27 September 2010 the applicants complained to the Administrative Court about the Municipal Council's failure to decide their appeal of 13 August 2009 (see paragraph 14 above) in accordance with their application for transfer of jurisdiction of 15 March 2010 (see paragraph 16 above).

19. On 29 September 2010 the Municipal Council dismissed the applicants' appeal of 13 August 2009 against the Mayor's decision of 27 July 2009 but adapted the wording of that decision's verdict. Consequently, on 29 December 2010 the Administrative Court closed the proceedings regarding the Municipal Council's failure to decide (see paragraph 18 above) and awarded costs to the applicants. By decision of 15 February 2011 the Administrative Court increased the amount of costs awarded to the applicants.

20. On 27 October 2010 the applicants filed an objection with the Regional Government against the Municipal Council's decision of 29 September 2010.

21. On 19 April 2011 the Regional Government dismissed the objection. The applicants complained against this decision to the Constitutional Court and to the Administrative Court on 31 May 2011.

22. On 20 September 2011 the Constitutional Court declined to examine the complaint, and on 23 August 2012 the Administrative Court dismissed the complaint. The Administrative Court's decision was served on the applicants' counsel on 11 September 2012.

THE LAW

23. The applicants' complaint relates to the length of the proceedings, which began on 6 October 2005, when the Mayor dismissed the applicants' request for an exemption from the obligation to connect to the public

sewage (see paragraph 8 above; see *Hall v. Austria*, no. 5455/06, § 42, 6 March 2012, with further references), and ended on 11 September 2012, when the final decision of the Administrative Court was served on the applicants' counsel (see paragraph 22 above). They therefore lasted more than six years and eleven months, during which the case came before three levels of administrative authorities (namely the Mayor, the Municipal Board/Municipal Council and the Regional Government) and two levels of jurisdiction (namely the Constitutional Court and the Administrative Court), including several remittals.

24. According to the applicants, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

25. The Government did not submit observations.

26. The Court considers that Article 6, under its civil limb, is applicable to the proceedings at issue (see *Speil v. Austria* (dec.), no. 42057/98).

27. 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).

28. The Court notes that there are no indications that the proceedings at issue were particularly complex or that the subject matter – concerning, in substance, the disposal of household sewage – was of particular importance for the applicants. Moreover, the Court observes that the overall duration of the proceedings, which involved three levels of administrative authorities and two levels of jurisdiction, was less than seven years, and that the proceedings were, for the most part, conducted at reasonable speed and – with one exception – without any significant delays.

29. The only significant delay occurred during the first round of the proceedings, when the case was pending before the Municipal Board for almost two years and seven months, namely from 24 October 2005 until 20 May 2008 (see paragraphs 8 and 9 above). However, from the documents at hand as submitted by the applicants, the Court is not in a position to determine whether this delay could be attributed to the authorities, or whether it resulted from the applicants' conduct, as they appear to have failed to lodge an application for transfer of jurisdiction under section 73 of the General Administrative Procedure Act (*Devolutionsantrag*) with the Municipal Council. Such an application constitutes, in principle, an effective remedy which has to be used in respect of complaints about the length of administrative proceedings (see *Hall*, cited above, § 38, with further references), which the applicants had made use of during the second round of the proceedings (see paragraph 16 above), and which could potentially have accelerated this stage of the proceedings.

30. Having examined all the material submitted to it, the Court therefore considers that there is no appearance of a violation of the reasonable time requirement under Article 6 § 1 of the Convention.

31. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 July 2017.

Anne-Marie Dougin	Erik Møse
Acting Deputy Registrar	President