CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 35019/97
by Helmut LUDESCHER
against Austria

The European Court of Human Rights (Third Section) sitting on 7 September 1999 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, *Judges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 16 January 1997 by Helmut Ludescher against Austria and registered on 21 February 1997 under file no. 35019/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is an Austrian national living in Weiler.

He is represented before the Court by Mr W.L. Weh, a lawyer practising in Bregenz.

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

On 19 March 1991 the Feldkirch District Authority (*Bezirkshauptmannschaft*), referring to the relevant provisions of the Forestry Act (*Forstgesetz*), ordered the applicant to reforest a plot of land owned by him. The authority noted that on 5 December 1989 it had issued a "penal decision" (*Straferkenntnis*) against the applicant for the administrative offence of "clearing woodland" ("*Rodungsverbot*"), contrary to the Forestry Act, in respect of this plot of land, and that appeal proceedings had remained unsuccessful. The authority, referring to section 172(6) of the Forestry Act, found that, if owners of woodland or other persons disregarded the Forestry Act in dealing with woodland, it had to take all measures necessary to restore a lawful situation, including reforestation. In its decision, the authority specified that the applicant should plant 270 larches. In its reasoning, it noted that until October 1986 the northern part of the plot of land had been fully covered with larches and robinias and that the previous stock of trees was shown by the still existing stumps. Following the unlawful felling of the woods, the applicant had used the land as a sheep-run.

On 4 July 1991 Vorarlberg Regional Government (*Landeshauptmann*) dismissed the applicant's appeal. The Regional Government, taking into account the applicant's appeal submissions according to which the reforestation order was based on a penal decision which was the subject of appeal proceedings before the Administrative Court (*Verwaltungsgerichtshof*), noted that in the course of these proceedings an expert opinion by K, a forestry expert of the Feldkirch district authority, had been prepared. According to the expert, the northern part of the plot of land had been fully covered with trees. The Regional Government noted that the applicant had not denied the existence of tree stumps which could also be seen on the photographs in the file. The district authority's findings in this respect were conclusive. A second expert opinion on this issue was not necessary as there were no reasons to doubt the impartiality of the expert.

In these and the following proceedings, the applicant was represented by counsel.

On 18 September 1991 the Administrative Court, upon the applicant's appeal dated 26 August 1991, opened proceedings and requested the Vorarlberg Regional Government to file observations within a period of eight weeks. These observations were received at the Administrative Court on 25 October 1991.

On 24 June 1996 the Administrative Court dismissed the applicant's appeal.

At the outset of its decision, the Administrative Court summarised the proceedings under the Forestry Act: a first set of administrative criminal proceedings for unlawfully felling trees on the plot of land concerned which had been discontinued in November 1987, the second set of proceedings regarding the penal decision of 5 December 1989, which had been quashed by the Administrative Court in June 1993 for procedural reasons (failure of the Provincial Government to take a decision in due time), and the third set of proceedings concerning the reforestation order.

As regards the applicant's objections to the expert K, the Administrative Court found that, while some of the expressions used by the expert in his opinion anticipated the legal assessment, the complete and conclusive opinion was relevant evidence. The objections as to the impartiality of the expert K were unfounded.

The Administrative Court further considered that the administrative authorities had carefully examined whether the plot of land in question had been woodland within the meaning of the Forestry Act and their assessment of evidence was logical. The authorities' legal assessment that the plot of land had been woodland was not unlawful. Moreover, the authorities' finding that the use as a sheep-run did not serve forestry purposes was lawful.

The decision was served on 17 July 1996.

COMPLAINTS

1. The applicant complains under Article 6 of the Convention about the alleged unfairness of the proceedings. He complains that the expert K was not impartial as he was a forestry expert employed by the District Authority and had been involved in other proceedings against him. He also submits that the administrative authorities did not duly investigate the relevant facts and that, accordingly, the Administrative Court should not have solely relied on their factual findings.

2. The applicant further complains under Article 6 of the Convention about the length of the appeal proceedings before the Administrative Court.

THE LAW

1. The applicant complains under Article 6 of the Convention about the alleged unfairness of the proceedings regarding the reforestation order of 19 March 1991.

The Court observes that the applicant did not file an appeal with the Constitutional Court, arguing that given an established case-law, such an appeal would have had no prospect of success. The question arises whether the said appeal was a remedy within the meaning of Article 35 § 1 of the Convention which the applicant ought to have exhausted before bringing his complaints about the unfairness of the administrative proceedings before the Court. However, the Court is not required to answer this question, as the applicant's complaints are in any event manifestly ill-founded.

The Court recalls that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many other authorities, the Pérez de Rada Cavanilles v. Spain judgment of 25 September 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3255, § 43). Moreover, as a general rule, the assessment of the facts is within the province of the national courts (see the Van de Hurk v. the Netherlands judgment of 19 April 1994, Series A no. 288, pp. 19-20, § 60). Article 6 § 1 places the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision (see the above-mentioned Van de Hurk judgment, p. 19, § 59).

The Court further reiterates that under Article 6 § 1 of the Convention it is necessary that, in the determination of "civil rights and obligations", decisions taken by administrative authorities which do not themselves satisfy the requirements of that Article - as is the case in this instance with the district authority and the regional government - be subject to subsequent control by a "judicial body that has full jurisdiction" (see the Albert and Le Compte v. Belgium judgment of 10 February 1983, Series A no. 58, p. 16, § 29; the Ortenberg v. Austria judgment of 25 November 1994, Series A no. 295-B, pp. 49-50, § 31; and the Fischer v. Austria judgment of 26 April 1995, Series A no. 312, p. 17, § 28).

In the present case, the Court finds in particular that the applicant, represented by counsel, could duly present his arguments. The Court is also satisfied that the impugned administrative decisions were based on objective criteria which left no room for discretion. Moreover, the Administrative Court considered all the applicant's submissions on their merits and, with due regard to the appeal statements, also confirmed the conclusiveness of the assessment of evidence. Its reasoning rejecting the applicant's objections against the expert K does not disclose any arbitrariness, nor did the reference to his expert findings in preceding proceedings render the present proceedings unfair. Its review of the contested administrative decisions therefore fulfilled the requirements of Article 6 § 1 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant further complains under Article 6 of the Convention about the length of the appeal proceedings before the Administrative Court.

The Court considers that it cannot, on the basis of the file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this complaint to the respondent Government.

For these reasons, the Court, unanimously,

DECIDES TO ADJOURN the examination of the applicant's complaint that the appeal proceedings before the Administrative Court regarding the reforestation order exceeded a reasonable time;

DECLARES INADMISSIBLE the remainder of the application.

S. Dollé
Registrar

N. Bratza
President