CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 55193/00
by Richard SCHELLING
against Austria

The European Court of Human Rights (First Section), sitting on 29 April 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged on 11 February 2000,
Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Richard Schelling, is an Austrian national, who lives in Rotenberg (Austria). He is represented before the Court by Mr W.L. Weh, a lawyer practising in Bregenz (Austria).

A. The circumstances of the case

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

On 16 August 1988 the applicant requested permissions under the Water Act (*Wasserrechtsgesetz*) and the Landscape Protection Act (*Landschaftsschutzgesetz*) which were necessary for putting a culvert through a drain on agricultural land owned by him.

On 14 September 1988 the Bregenz District Administrative Authority (*Bezirkshauptmannschaft*) conducted an oral hearing on the applicant's requests and inspected his land.

On 21 June 1990 the District Administrative Authority refused the requested permissions.

On 5 July 1990 the applicant appealed.

On 12 December 1990 the Vorarlberg Regional Governor (*Landeshauptmann*) granted the requested permission under the Water Act.

On 2 April 1991 the Vorarlberg Regional Government (*Landesregierung*) dismissed the applicant's appeal insofar it concerned the request for a permission under the Landscape Protection Act.

On 28 May 1991 the applicant introduced a complaint with the Administrative Court (*Verwaltungsgerichtshof*) against the Regional Government's decision. On 12 June 1991 the Administrative Court transmitted the applicant's complaint to the Regional Government for observations.

On 9 July 1991 the Regional Government commented on the applicant's complaint.

On 6 May 1996 the Administrative Court quashed the Regional Government's decision on the ground of procedural deficiencies and remitted the case to the latter. It found that the authorities failed to obtain detailed information concerning nature conservancy issues which are raised by the applicant's project.

On 16 January 1997 the Regional Government invited the applicant to comment on the additional expert opinion on nature conservancy issues of the expert A. On 31 January 1997 the applicant submitted his comment.

On 5 May 1997 the expert opinion of A was amended.

On 26 May 1997 the applicant lodged an application with the Administrative Court against the administrative authorities' failure to decide (*Säumnisbeschwerde*).

On 10 July 1997 the Administrative Court ordered the Regional Government to issue a decision within three months.

Subsequently, the Regional Government appointed another expert who delivered his opinion on 22 August 1997.

In the meantime, on 25 September 1995 the applicant had lodged with the European Commission of Human Rights (the Commission) an application under former Article 25 of the Convention in which he complained under Article 6 of the Convention of the length of the proceedings. The application was declared admissible on 27 February 1997. By letters of 1 September 1997 and 9 December 1997 respectively, the parties submitted the following agreement reached between them:

> "Statements of the parties with a view to a friendly settlement
>
> With reference to Article 28 § 1 (b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the parties in the proceedings concerning Application No. 28838/95, lodged by Mr Richard Schelling, declare with a view to a friendly settlement, reached with the assistance of the European Commission of Human Rights, as follows:
>
> 1. The Government of the Republic of Austria will pay to the applicant a sum of altogether AS 35,000 as compensation in respect of any possible claims relating to the present application. This sum includes AS 15,000 in respect of counsel's fees and expenses incurred in the proceedings before the Commission.
>
> This amount will be paid to the applicant's representative Mr Wilfried Ludwig Weh in Bregenz.
>
> 2. The applicant declares his application settled.
>
> 3. The applicant waives any further claims against the Republic of Austria relating to the facts underlying the present application."

At its session on 21 January 1998, the Commission noted that the parties had reached an agreement regarding the terms of a settlement. It further observed, having regard to the former Article 28 § 1 (b) of the Convention, that the friendly settlement of the case had been secured on the basis of respect for Human Rights as defined in the Convention and, therefore, adopted its report under former Article 30 of the Convention.

In the national proceedings the Regional Government failed to decide on the applicant's appeal within the three months-time limit set by the Administrative Court on 10 July 1997, for which reason the latter had to decide on the merits. On 4 November 1998 the Administrative Court ordered an additional expert opinion.

On 12 January 1999 expert A delivered the additional opinion.

On 24 February 1999 the applicant commented on this opinion and requested an oral hearing. He also requested that the experts be summoned to the hearing and that the land be inspected by the court. He stressed that

the project would improve the productivity of the agricultural land and that, therefore, public interest existed in the realisation of his project as required under the applicable law. He also challenged the expert A for bias as he already had delivered an opinion upon a request by the Regional Government and that his independence was doubtful as he was a civil servant bound by instructions.

On 6 July 1999 the Administrative Court dismissed the applicant's appeal against the District Authority's decision of 2 April 1991 concerning the request for a permission under the Landscape Protection Act. It found that the competence to decide on the merits had passed over to it as the Regional Government had failed to decide within the three months time-limit set. Further it found, in view of the expert opinions, that the applicant's project interfered with the objects of the Landscape Protection Act as it would spoil the character of the landscape and that there existed no public interest which would justify the measure. The court stated that the applicant had not disproved the expert's conclusion. As regards the alleged bias of A, it found that the mere fact, that the expert had already delivered an opinion at a prior stage of the proceedings and that an expert was an civil servant was not in itself sufficient to raise doubts as to the independence and impartiality of the expert and that the applicant had failed to put forward any specific argument to cast doubt upon A's independence and impartiality. Finally, the Administrative Court held that it could abstain from an oral hearing and an inspection of the applicant's land since the proceedings had been carried out correctly and in the main the facts were undisputed. This decision was served on the applicant on 12 August 1999.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the fairness of the proceedings. In particular he refers to the fact that he was denied a public hearing before the Administrative Court and that, therefore, he had no possibility to an adversarial questioning of the experts and that the Administrative Court's decision was only based on written evidence. He also complains of the fact that the Administrative Court failed to inspect the property concerned and that expert A had been biased. He submits that the Administrative Court failed to appoint a new expert as A had been a civil servant bound by instructions, who already has had delivered an opinion upon a request by the Regional Government.

2. Finally, the applicant complains under Article 6 § 1 of the Convention about the length of the proceedings.

THE LAW

The applicant raises complaints under Article 6 § 1 of the Convention which, so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

1. The applicant complains about the unfairness of the administrative civil proceedings. 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 § 2 (b) of the Rules of Court, to give notice of it to the respondent Government.

2. The applicant also complains that the administrative civil proceedings were not concluded within a reasonable time, as required by Article 6 § 1 of the Convention.

As to the period to be taken into consideration for the present application, the Court observes that it began to run on 22 January 1998, the day after the Commission adopted its report noting that the settlement had been agreed (*Pailot v. France* judgment of 22 April 1998, *Reports of Judgments and Decisions* 1998-II, p. 802, § 57) as, under Article 35 § 2 (b), the Court shall not deal with any application that is substantially the same as a matter that has already been examined. The proceedings ended on 12 August 1999, when the Administrative Court's decision was served on the applicant. Thus, the period to be taken into account is one year six months and 21 days.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see for instance *Humen v. Poland* [GC], no. 26614/95, 15.10.99, § 60). The Court, further, reiterates that in cases where it can only examine part of the proceedings, it may take into account, in order to assess their length, the stage reached in the proceedings at the beginning of the period under consideration (see *mutatis mutandis Humen v. Poland*, no. 26614/95, 15.10.1999, § 91; *Sobczyk v. Poland*, nos. 25693/94 and 27387/95, 26.10.2000, § 54).

The Court finds that the proceedings were not particularly complex. As regards the conduct of the parties, it holds that no delays can be attributed to the applicant. As regards the conduct of the authorities the Court notes that that during the period at issue the proceedings were pending before the Administrative Court, which had to decide on the merits on the applicant's appealas the Regional Government had failed to decide within the statutory

time-limit. Further it notes that the Administrative Court obtained a further expert opinion and the latter took its decision shortly after the applicant had submitted his comments on the expert opinion. The Court, thus, concludes that there is no unacceptable period of inactivity. In the light of these circumstances, the Court finds that the overall duration of the proceedings at issue does not exceed what may be considered reasonable within the meaning of Article 6 § 1 of the Convention.

It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the fairness of the proceedings;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President