BGE 20020305_41202_98 vom 5. März 2002

Bundesgericht (BGE), 2002-03-05, FR

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Volltext

Bundesgericht (BGE) EGMR 05.03.2002 20020305_41202_98 (J.M. gegen Schweiz)
Tribunal fédéral (ATF) CEDH 05.03.2002 20020305_41202_98 (J.M. gegen Schweiz)
Tribunale federale (DTF) CEDU 05.03.2002 20020305_41202_98 (J.M. gegen Schweiz)

Urteilskopf 41202/98 J.M. gegen Schweiz Zulassungsentscheid no. 41202/98, 05 mars 2002 Sachverhalt The European Court of Human Rights, sitting on 5 March 2002 as a Chamber composed of Mr J.-P. Costa, President , Mr L. Wildhaber, Mr L. Loucaides, Mr C. Bîrsan, Mr K. Jungwiert, Mr V. Butkevych, Mrs W.Thomassen, judges , and Mrs S. Dollé, Section Registrar , Having regard to the above application lodged with the European Commission of Human Rights on 2 April 1998 and registered on 14 May 1998, Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court, Having regard to the partial decision of 12 April 2001, Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant, Having deliberated, decides as follows: THE FACTS The applicant, J.M., is a Swiss citizen born in 1924. A businessman by profession, he resides in Zurich in Switzerland. The facts of the case, as submitted by the parties, may be summarised as follows. In 1957 and 1959 the applicant acquired three adjacent properties, used for farming purposes, in Niederhasli in the vicinity of Zurich airport. In 1966 these properties were attributed to the residential zone, and in 1984 to the commercial zone. Meanwhile, in 1983, the area of these properties was designated as pertaining to Security Zone I of Zurich airport and therefore the construction height of any new buildings was to be limited to between 21 and 38 meters. On 8 July 1983 the applicant applied to the President of the Federal Assessment Commission (Eidgenössische Schätzungskommission), requesting the institution of compensation proceedings on account of an alleged de facto expropriation (materielle Expropriation) . The request was refused by the Commission in 1984 and, upon appeal, by the Federal Court (Bundesgericht) on 29 May 1986. On 7 March 1986 the applicant filed a new request for compensation which was declared inadmissible by the Commission "for the time being" (zur Zeit) on 4 February 1987 although, following the designation of new noise protection zones, the Commission decided to resume proceedings in 1988. Against both decisions the applicant filed administrative law appeals which were dismissed by the Federal Court in 1989. Meanwhile the applicant requested compensation from the Niederhasli municipality for the change in zone of his properties. The case was transmitted successively to the Federal Assessment Commission, the Dielsdorf District Council and the Government of the Canton of Zurich, which in 1990 ordered the Niederhasli municipality to institute compensation proceedings. Against this last decision the applicant filed an appeal with the Administrative Court of the Canton of Zurich, which in 1992 found that it was up to the Cantonal Assessment Commission rather than the Niederhasli municipality to conduct the compensation proceedings. These proceedings were then instituted before the Cantonal

Assessment Commission though on 30 June 1995 the Federal Assessment Commission decided to suspend the proceedings until the Federal Court had given its judgment. Meanwhile, the Federal Assessment Commission dismissed on 26 October 1990 the applicant's request for compensation of 7 March 1986 as, inter alia , there were still adequate possibilities for the applicant to use his properties. On 6 February 1991 the applicant filed an administrative law appeal (Verwaltungsgerichtsbeschwede) with the Federal Court against this decision, requesting compensation for the depreciation in value of his properties on account of the extension and operations of Zurich airport. He also challenged all the Federal Court judges as they had previously sat in other proceedings concerning himself. By decision of 5 June 1991, the Federal Court dismissed the applicant's challenge. The Federal Court then brought the applicant's administrative appeal to the attention of the Government of the Canton of Zurich, which in its observations requested the court to dismiss the appeal. The Federal Assessment Commission refrained from filing observations. On 19 August 1993 a delegation of the Federal Court visited the applicant's properties. On that occasion he was informed that other cases concerning noise protection zones at Geneva airport raised similar problems as the applicant's case, and that they all had to be dealt with together. On 14 March 1995 the applicant went bankrupt. The proceedings before the Federal Court were suspended and the bankruptcy office of the Küsnacht municipality was requested to inform the court whether the bankruptcy estate, or individual creditors, wished to continue the proceedings. Following an extension of the time-limit, the Küsnacht bankruptcy office filed its reply on 29 January 1997 whereupon the Federal Court resumed proceedings. On 11 March 1997 the applicant informed the court that he wished to continue the proceedings. On 4 June 1997, upon the Federal Court's request, the Federal Agency for Examining Materials and Research(Eidgenössische Materialprüfungs- und Forschungsanstalt) submitted a report on the noise nuisance affecting the applicant's properties. By letter dated 11 June 1997, the applicant expressed his disagreement with the report, whereas the Government of the Canton of Zurich accepted it on 26 June 1997. On 17 September 1997 the Federal Court conducted a hearing at which the applicant took the floor, complaining, inter alia, of the duration of the proceedings. The court then deliberated in public, whereby the Rapporteur (Referent) explained the legal considerations of his report and proposed to dismiss the applicant's appeal. In the further discussion, it transpired that the other four judges shared the Rapporteur's opinion. The presiding judge then read out the operative part of the judgment. The judgment, numbering 30 pages, was served on the applicant on 9 October 1997. The Federal Court concluded that the situation of the applicant's properties did not warrant compensation. COMPLAINTS The applicant complains under Article 6 § 1 of the Convention of the length of the proceedings. Erwägungen THE LAW The applicant complains under Article 6 § 1 of the Convention of the length of the proceedings. This provision states, insofar as relevant: "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..." The Government submit that the proceedings at issue did not exceed the notion of a reasonable time within the meaning of Article 6 § 1 of the Convention and that the application is manifestly ill-founded. The period to be considered commenced on 7 March 1986 when the applicant filed a request for compensation with the Federal Assessment Commission and ended on 17 September 1997 when the Federal Court read out its judgment in public. The Government contend that the proceedings before the Federal Assessment Commission (1986-1991) and the Federal Court (1991-1997) were not excessively long. The Commission could not be blamed for having

originally suspended the proceedings, as long as the plans concerning the noise protection zones had not entered into legal force. When the Commission eventually resumed the proceedings, the applicant, surprisingly, contested the decision before the Federal Court. In respect of the proceedings before the latter, the Government submit that the applicant, upon filing his administrative law appeal, contributed to their length by immediately challenging all the Federal Court judges. Furthermore, he did not react when on 19 August 1993 he was informed that the Federal Court would group similar cases concerning another airport. In any event, in the light of the Court's case-law (see the Süssmann v. Germany judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1174, § 58 et seq.), the Federal Court could justifiably decide to proceed in this manner. When the applicant went bankrupt in 1995, the Federal Court suspended the proceedings, though during the bankruptcy proceedings he again employed all legal means at his disposal, thereby further prolonging the proceedings. In the Government's opinion, the case was extraordinarily complex since it concerned novel and fundamental issues of compensation for expropriation on account of noise nuisance. On the one hand, statutory law was incomplete at that time, and the Federal Court was called upon to act as legislator and had carefully to examine the various pertinent factual and legal aspects. On the other hand, little was at stake for the applicant, as the proceedings only concerned compensation for alleged restrictions on the use of his agricultural property. The applicant replies that in fact the proceedings have lasted over 40 years. He also complains of other proceedings, their outcome and the discrimination he allegedly suffered thereby. He requests the Court to take note of all the concomitant documents. He further submits that he cannot be held responsible for the delays experienced by the Federal Court in dealing with his case, for instance by having to group it with cases concerning Geneva airport. Indeed, the Federal noise protection and security zoning plans had been completed by 1987, and the Federal Court unnecessarily attempted to fill gaps in the relevant legislation. The applicant also points out that the use of his properties was limited in that the noise protection zoning plans were linked to an absolute building prohibition. The Court considers, in the light of the parties' submissions, that the application raises serious issues of law and fact under the Convention, the determination of which should depend on an examination of its merits. The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. Entscheid For these reasons, the Court unanimously Declares the remainder of the application admissible, without prejudging the merits of the case. S. Dollé Registrar J.-P. Costa President