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

T : +33 (0)3 88 41 20 18
F : +33 (0)3 88 41 27 30
www.echr.coe.int

Herrn
Rechtsanwalt
Dr. Adrian HOLLAENDER
Wehrgasse 28
A - 1050 WIEN

**FOURTH SECTION**

ECHR-LE11.1R
SW/SD/ssc

2 March 2017

**Application no. 36871/11**
**GH Immobilienmakler GmbH v. Austria**

Dear Sir,

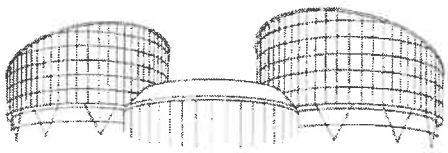
I write to inform you that the European Court of Human Rights decided on 7 February 2017, after having deliberated, that the above application was inadmissible. A copy of the decision is enclosed. The decision is also available on the Court's Internet site (hudoc.echr.coe.int/sites/eng).

This decision is drawn up in one of the official languages of the Court (English or French). It is **final and not subject to any appeal to either the Court or any other body**. You will therefore appreciate that the Registry will be unable to provide any further details about the Committee's deliberations or to conduct further correspondence relating to its decision in this case. A translation of the decision into another language is not available.

Yours faithfully,

Andrea Tamietti
Deputy Section Registrar

Enc: Decision



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

# FOURTH SECTION

# DECISION

Application no. 36871/11
GH IMMOBILIENMAKLER GMBH
against Austria

The European Court of Human Rights (Fourth Section), sitting on 7 February 2017 as a Committee composed of:

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

Having regard to the above application lodged on 16 June 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant company,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant company is a real estate agency with its registered office in Vienna. It was represented before the Court by Mr A. Hollaender, a lawyer practising in Vienna.

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.

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

4. The applicant company owns an allotment with two houses on it in Vienna.

5. On 29 November 2002 the Vienna Municipality instructed the applicant company to demolish the unauthorised buildings on the allotment

within twelve months, because their position deviated from the originally granted building permit. The Administrative Court (*Verwaltungsgerichtshof*) dismissed an appeal by the applicant company with final effect on 27 April 2004.

6. On 28 April 2006 the applicant company applied for retroactive building permits for the houses built on the allotment.

7. On 1 September 2006 the Vienna Municipality prohibited the construction of the buildings, because undue alterations to the land had been made and both the cubic contents of the buildings and the areas for their construction were too large.

8. On 21 September 2006 the applicant company appealed against those decisions to the Vienna Appellate Building Authority (*Bauoberbehörde* – hereinafter "the Appellate Authority").

9. On 3 December 2007 the Appellate Authority, after a series of procedural measures (which *inter alia* included a thorough examination of the admissibility and of an expert opinion the applicant had submitted on 11 June 2007), dismissed the appeal and upheld the decisions.

10. On 23 January 2008 the applicant company lodged a complaint with the Administrative Court, arguing, *inter alia*, that the alterations to the land had been carried out in 1999 and, at that time, had not been subject to substantive restrictions. The applicant company submitted that no permission or notification to the building authorities had been necessary, because the requirement of permission for such alterations had only been introduced by an amendment to the Vienna Allotment Garden Act (*Wiener Kleingartengesetz*) in 2006, and was therefore not applicable.

11. On 17 March 2008 the Administrative Court granted suspensive effect in respect of the complaint.

12. On 15 April 2008 the Appellate Authority submitted observations.

13. On 26 April, 3 June 2008 and 4 June 2009 the applicant company submitted written submissions, and on 15 and 29 November 2010 it submitted legal expert opinions regarding the Vienna Allotment Garden Act.

14. By a decision of 15 March 2011, served on the applicant company's counsel on 7 April 2011, the Administrative Court dismissed the complaint.

## THE LAW

15. The applicant company's complaint relates to the length of the proceedings, which began on 1 September 2006, when the Vienna Municipality prohibited the construction of the buildings (see paragraph 7 above; and see *Hall v. Austria*, no. 5455/06, § 42, 6 March 2012, with further references), and ended on 7 April 2011, when the final decision of

the Administrative Court was served on the applicant company's counsel (see paragraph 14 above). It thus lasted more than four years and seven months and spanned three levels of jurisdiction.

16. According to the applicant company, the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which, in so far as relevant, 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..."

17. The applicant company claimed that the proceedings were not complex at all. In particular, the Administrative Court had only examined the question of whether what was built was enumerated in the law. The applicant company further claimed that it did not contribute to the length of the proceedings, because the Administrative Court did not take into account in its judgment the legal expert opinions and statements the applicant company submitted. Furthermore, the applicant company emphasised the high importance of the matter, reiterating that the proceedings concerned houses for which building permits had already been obtained in 1999.

18. The Government submitted that the proceedings at issue were highly complex because they required comprehensive investigations into the facts and clarification of questions of law, in particular the question – resulting from a change in legislation – as to whether and to what extent the land alterations which had been made during the construction of the buildings at issue should be taken into account when assessing their lawfulness. Furthermore, the Government argued that, to a considerable extent, the applicant company itself had contributed to the procedural delays, and that the proceedings at issue were conducted as a result of the applicant company's unlawful construction of two houses. The applications for retroactive building permits were lodged to prevent the enforcement of the demolition order, which had already become final. The Government also pointed out that the applicant company could not have obtained a better procedural result by an earlier decision, because the Administrative Court has granted suspensive effect in respect of the complaint on 17 March 2008 (see paragraph 11 above). As a consequence, the demolition order could not be enforced while proceedings were ongoing before the Administrative Court.

19. 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).

20. The Court considers that the instant case was of a certain complexity, as the domestic authorities and courts had to examine the

lawfulness of the buildings under different legal regimes, namely those in force at the time of their construction and those in force when the applicant company applied for retroactive building permits.

21. When it comes to the parties' conduct, the Court notes that, in the proceedings before the Vienna Municipality and the Appellate Authority, the administrative authorities proceeded without any substantial delays. Only the period during which the case was before the Administrative Court (see paragraphs 10-14 above), which lasted little more than three years and two months, might raise an issue under Article 6 § 1 of the Convention. However, the Court considers that the applicant company contributed significantly to the length of this part of the proceedings, as it had submitted several statements and expert opinions (see paragraph 13 above) which each had to be taken into consideration by the Administrative Court before it delivered its final decision. Furthermore, the overall duration of the proceedings in question was only four years and seven months, which can still be considered reasonable for three levels of jurisdiction.

22. As regards what was at stake for the applicant company, the Court considers that the significance of the matter at stake was considerably reduced by the Administrative Court's decision of 17 March 2008, granting suspensive effect in respect of the applicant company's complaint (see paragraph 11 above). It remained undisputed between the parties that that decision prevented the enforcement of the already final demolition order for the duration of the proceedings (see paragraphs 11 and 18 above). As a result of that decision, the applicant company could keep the unlawfully constructed buildings until the Administrative Court's final decision was served on its counsel on 7 April 2011.

23. Having regard to the above considerations and its case-law on the subject (see, *mutatis mutandis*, *Birnleitner v. Austria (No. 2)*, no. 22601/09, § 17, 13 November 2014, and *Gassner v. Austria*, no. 38314/06, § 38, 11 December 2012), the Court is satisfied that in the particular circumstances of the case the reasonable time requirement under Article 6 § 1 of the Convention has been complied with.

24. 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 2 March 2017.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President