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Communication from Germany concerning the case of Werra Naturstein GmbH & Co KG v. Germany (Application No. 32377/12)

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Réunion : 1514e réunion (décembre 2024) (DH)

Référence du point : Bilan d'action (09/10/2024)

Communication de l'Allemagne concernant l'affaire Werra Naturstein GmbH & Co KG c. Allemagne (requête n° 32377/12) ***(anglais uniquement)***

Bundesministerium
der Justiz

Berlin, 9 October 2024

Application W. N. GmbH und Co KG v. Germany (No. 32377/12)

Updated Action Report on the execution of the judgments of the European Court of Human Rights delivered on 19 January 2017, final 19 April 2017 (merits), and on 19 April 2018, final on 19 July 2018 (Just satisfaction – striking out)

A. Case description

1 The applicant is a German company. The case concerned the company's complaint about inadequate compensation when it had to stop quarrying limestone due to the construction of a motorway.

2 In 1994 the applicant company was granted a 25-year mining licence to quarry limestone. The planning of the motorway was already under way, but the exact route had not been finalised. In November 2000, the route chosen being across the quarry, the mining authority declined to approve the applicant company's operation plan for the next two years. As a consequence, the applicant company had to stop quarrying limestone and transferred its activity to another mining site in 2001, leaving 67% of the original volume of limestone still in the ground. It had to bear the costs of relocating the plant.

3 Administrative proceedings brought by the applicant company requesting the annulment of the planning decision for the construction of the motorway were discontinued in 2004, the local authorities and the applicant company having declared the matter resolved. In 2005 the Government seized the land on which the quarry was situated after a settlement had been reached with the applicant company. The part of the applicant company's land on which the motorway had been built was expropriated in 2008 and compensation was set at EUR 865,000, which included compensation for the land value as farmland and some of the costs of relocation. This amount was later reduced to EUR 22,800 in judicial review proceedings. The effective loss of the applicant company's mining licence and the consequences for its remaining quarrying operation were also assessed in those proceedings by the domestic courts between 2009 and 2011, but were not compensated at all.

4 Relying on Article 1 of Protocol No. 1 (protection of property), the applicant company alleged that, although the chosen route across the quarry might have saved costs for the general public, an excessive financial burden had been imposed on it.

5 In its judgment of 19 January 2017 (merits) the Court held, unanimously, that there had been a violation of Article 1 of Protocol No. 1 of the Convention (protection of property). In reasoning its judgment, the Court stated that the applicant company had not received any compensation at all for the fact that the construction of a motorway had resulted in it losing the possibility of using a mining licence it had been granted. In addition to the (already compensated) expropriation of its land, the

Court held that this had constituted a disadvantage in the form of a loss of value of the licence and its operating assets, which gave rise to an obligation to pay compensation. The Court further concluded that the significance of the construction project for the economic development of the *Land* of Thuringia in the wake of German reunification had not been sufficient justification to refuse to pay the applicant company any compensation for the loss of value of the licence and its operating assets.

6 The Court held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision and reserved it for examination at a later date. The Court invited the Government and the applicant company to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 (2) of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach.

7 The settlement negotiations conducted by the Federal Government with the Applicant did not result in an agreement on the amount of compensation. After the negotiations failed on 4 August 2017, the Federal Government therefore submitted a unilateral declaration to the Court acknowledging a violation of the Applicant's rights under Article 1 of Protocol No. 1 to the Convention and offering compensation payment in the amount of EUR 1,000,000 on condition that the Application be struck out of the Court's list of cases.

8 In its judgment of 19 April 2018 (Just satisfaction – striking out), the Court unanimously (1) took note of the terms of the Federal Government’s declaration and of the modalities for ensuring compliance with the undertakings referred to therein, and directed in consequence that the German Federal Government is to pay the applicant company EUR 1,000,000 (one million euros), within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, in respect of pecuniary and non-pecuniary damage as well as costs and expenses and (2) decided to strike the application, as regards the reserved Article 41 procedure, out of its list of cases.

B. Individual measures

1. Payment of compensation

9 The abovementioned compensation of EUR 1,000,000 was transferred to the applicant company on 24 September 2018. A photocopy of the relevant transfer receipt is attached.

2. Possibility to request a reopening of the proceedings

10 According to Section 580 no. 8 of the Code of Civil Procedure, an action for retrial of the case may be brought where the European Court of Human Rights has established that the European Convention for the Protection of Human Rights and Fundamental Freedoms or its protocols have been violated, and where the judgment is based on this violation.

11 The applicant company did not exercise its right to bring an action aiming to retry the case within the one-month time limit prescribed by section 586 of the said Code.

12 In the Federal Government’s view, no additional individual measures are necessary to implement the judgment.

C. General measures

1. Publication and dissemination of the judgment

13 The courts and authorities that were involved in the proceedings, whose decisions formed the basis of the Application, have been notified of the judgment. Furthermore, a German translation of the judgment has been sent to all the ministries of justice of the *Länder* for notification within their remit.

14 In addition to this, a German translation of the judgment was published in anonymous form in the Court's database (https://hudoc.echr.coe.int/eng?i=001-175856). Furthermore, the translation has been sent to several important publishing houses that bring out legal periodicals.

15 Moreover, the judgment was included in the report drawn up by the Federal Ministry of Justice and Consumer Protection, entitled "*Bericht über die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte und die Umsetzung seiner Urteile in Verfahren gegen die Bundesrepublik Deutschland im Jahr 2017*" ("Report on the Case-Law of the European Court of Human Rights and on the Execution of its Judgments in Cases against the Federal Republic of Germany in 2017"). The judgment of 19 April 2018, relating to the just satisfaction and the striking out of the list of the Court's cases, was included in the corresponding Ministry's report concerning the 2018 case law. Both reports were widely disseminated and published on the Federal Ministry of Justice and Consumer Protection website at www.bmjv.de.

2. Decision in one specific case

16 From the point of view of the Federal Government, it is not necessary to take further general measures, especially legislative measures, in order to implement the judgment.

17 The text of the applicable domestic statutes allows an interpretation by the courts that is compatible with the Convention and the Court's case law, in particular its decision in this case.

18 The relevant federal statute provides that when seizing land for the construction of a federal motorway, the Government and the person to be compensated should reach an agreement on the amount of compensation. If they do not, the amount of compensation will be determined according to the laws and procedure of the competent *Land* (§ 19a *Bundesfernstraßengesetz*). The laws of the *Land* of Thuringia provide that compensation will be granted for loss of rights arising from expropriation and for any other financial losses incurred as a result of expropriation (section 8 of the Expropriation Act of the *Land* of Thuringia). As regards any other financial losses incurred as a result of expropriation, the law provides that compensation must be determined by striking a fair balance between the interests of the general public and those of the parties concerned (section 10 of the Expropriation Act of the *Land* of Thuringia). Since German courts take into account the Convention and the case law of the Court when adjudicating cases, the Federal Government expects that in the event of a similar case occurring again, domestic authorities would interpret the above mentioned and other applicable legal provisions in a way that would ensure that the effective loss of a mining licence and the consequences for remaining quarrying operation will be compensated adequately and in line with the Court's finding in the present case.

19 In particular, Sec. 124 para. 4 of the Federal Mining Act (see § 22 of the Court's judgment) can – and in fact should (given the constitutional obligation to interpret German law in a convention-compliant manner taking into account the Court's case law) – be interpreted differently, resulting in this provision not precluding any further compensation claims under other relevant provisions of German law in the future. In fact, the narrow interpretation of this provision underlying the national

courts' decisions in the case at hand was criticized by a notable size of legal commentators; these argue that the licence under Sec. 8 of the Federal Mining Act falls under the scope of the protected property under Article 14 of the German Grundgesetz[1] and that the result of this narrow interpretation of Sec. 124 para. 4 of the Federal Mining Act creates constitutionally problematic loopholes[2]. As Sec. 124 para. 4 of the Federal Mining Act does not expressly preclude further compensation claims, this provision is open to an interpretation taking into account the Court's findings and the aforementioned constitutional reasoning. As regards the necessary basis for compensation claims, Sec. 74 para. 2 sentence 3 of the Federal Administrative Procedure Act (VwVfG) should apply in cases of transport infrastructures that require a planning decision, as was the case here.

20 To the Federal Government's best knowledge, no further relevant lower courts case-law have been rendered since the Court's decision that would run counter to the Court's finding and the aforementioned position of the Federal Government. This further proves the point that this case represents, in the opinion of the Federal Government, a very complex and rare constellation regarding the applicability of compensation claims as a consequence of the loss of value of the licence and operating assets under the Federal Mining Act.

21 Hence, publication and dissemination of the judgment is sufficient to prevent future violations of the Convention. This is confirmed by the fact that, to the Federal Government's best knowledge, no new and similar applications are pending before the European Court. From the Federal Government's point of view, it is not necessary to take any further general measures – legislative measures in particular – in order to implement the judgment.

D. Conclusion

22 The Federal Government considers that no individual measure is required, apart from the payment of the just satisfaction, and that the general measures adopted will prevent similar violations and that Germany has thus complied with its obligations under Article 46, paragraph 1 of the Convention.

[1] See Kühne, in: Neue Zeitschrift für Verwaltungsrecht 2014, 214; see also OVG Bautzen, Judgment of 30 May 2018, 1 A 200/17 and 1 A 264/17, para. 44, which – citing the Court's judgment in the case at hand – mentions this opinion in passing.
[2] See von Weschpfennig: Strukturen des Bergrechts, 2022, p. 161; Schulte, in: Piens/Schulte/Graf Vitzthum, BBergG, § 124 Rn. 39a.