



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

FIRST SECTION

CASE OF TUMA v. AUSTRIA

(Application no. 22833/07)

JUDGMENT

STRASBOURG

18 October 2011

FINAL

18/01/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tuma v. Austria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 September 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22833/07) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Herbert Tuma (“the applicant”), on 22 May 2007.

2. The applicant was represented by Mr K. Bernhauser, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. On 24 March 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1947 and lives in Hirtenberg.

5. The applicant was arrested on 11 October 2001 on suspicion of fraud. He was in pre-trial detention until 18 October 2001.

6. In the course of the preliminary investigations, the investigating judge requested the Economic Crime Department (*Wirtschaftspolizei*) of the

Vienna Federal Police Directorate (*Bundespolizeidirektion*) to carry out certain investigations.

7. On 14 October and 21 November 2001 the applicant was questioned by the investigating judge. Further questioning scheduled for 18 December 2001 and 14 January 2002 was cancelled as the applicant informed the investigating judge that he was sick. The applicant was questioned again on 5 March 2002.

8. During the summer of 2002 further interrogations of the applicant took place through the Vienna Public Prosecutor's Office.

9. On 22 January 2003 the Public Prosecutor requested the investigating judge to close the investigations.

10. It appears that the investigating judge chose to continue the investigations. The applicant was questioned again on 15 December 2003 and in March 2004 several witnesses were questioned, following which the public prosecutor repeatedly urged the investigating judge to obtain the investigation results from the Economic Crimes Department of the Vienna Federal Police Directorate and to conclude the preliminary investigations.

11. On 29 June 2005 the investigating judge decided nevertheless to obtain an expert opinion on various transactions in respect of which the applicant was suspected of embezzlement. The expert's opinion was submitted on 14 November 2005 and transmitted to the Public Prosecutor's Office and the applicant on 6 February 2006.

12. On 15 March 2006 the Vienna Public Prosecutor issued the bill of indictment charging the applicant with embezzlement.

13. The applicant lodged objections against the indictment on 12 April 2006. By decision of 11 May 2006 the Court of Appeal rejected the objections and upheld the indictment.

14. The trial was scheduled to commence on 10 August 2006. As the applicant was in hospital, the trial had to be postponed.

15. The Vienna Regional Criminal Court, sitting with two professional and two lay judges, then held the first hearing on 2 November 2006. During this hearing the expert was ordered to supplement his opinion, taking into consideration further documents. The applicant's son transmitted further documents to the expert on 14 February 2007.

16. The court held another hearing on 26 April 2007. On that date it acquitted the applicant. The judgment was served on the applicant's counsel on 28 June 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

17. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which, as far as relevant, reads as follows:

“In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

18. The Government contested that argument.

A. Admissibility

19. The Government argued that the applicant failed to exhaust domestic remedies, as he had never lodged an application to set a time-limit under Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*). Such an application was an effective remedy against delays by judicial organs, and the applicant was thus bound to make use of it. If a delay were caused by a public prosecutor, the applicant could have lodged a supervisory complaint against the public prosecutor.

20. The applicant argued that he could not be expected to lodge a supervisory complaint against the public prosecutor, as it is the state’s duty to ensure investigations are made within a reasonable time. Furthermore, complaining against the public prosecutor might have lead to negative consequences for the applicant.

21. The Court reiterates that it held in numerous cases that an application under Section 91 of the Courts Act is in principle an effective remedy against court delays, both in the context of civil proceedings (see *Holzinger v. Austria* (no. 1), no. 23459/94, § 25, ECHR 2001-I) as well as in the context of criminal proceedings (see *Talirz v. Austria* (dec.), no. 37323/97, 11 September 2001). However, the Court also held that the effectiveness of a remedy to accelerate proceedings may depend on whether it has a significant effect on the length of the proceedings as a whole (see *Holzinger*, cited above, § 22). Thus, where proceedings include a substantial period during which there is no remedy to accelerate proceedings, a request under Section 91 cannot be considered an effective remedy (see *mutatis mutandis*, *Holzinger* (no. 2) v. Austria, no. 28898/95, §§ 21-22).

22. The Court has also held that a supervisory complaint does not provide an effective remedy against delays attributable to the public prosecutor (see *Lagler v. Austria*, no. 16942/90, Commission decision of 13 April 1994, and *Meischberger v. Austria* (dec.), no. 51941/99, 15 September 2003). In any case, the Government have not pointed to any

particular period of inactivity caused by the Public Prosecutor, which could and should have given rise to a supervisory complaint.

23. The Court notes that there have not been any significant periods of inactivity of judicial organs or of the public prosecutor, but the file went back and forth between the public prosecutor and the investigating judge. The Court also notes that the Government did not substantiate during which period the applicant could have made effective use of an application to set a time-limit under Section 91 of the Courts Act. Furthermore, the Government stated that the public prosecutor urged the investigating judge several times to conclude the establishment of the facts, a task that was carried out by the Economic Crimes Department of the Vienna Federal Police Directorate. However, the applicant did not have any remedy at his disposal in respect of delays caused by the Vienna Federal Police Directorate.

24. This leads the Court to conclude that there were no particular delays caused by judicial authorities against which an application to set a time-limit under Section 91 of the Courts Act would have constituted an effective remedy. It thus rejects the argument that the applicant failed to exhaust domestic remedies.

25. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The Government argued that the case was very complex and contained a lot of different transactions that had to be investigated. These further facts only arose in the course of the preliminary investigations, and were taken to the same file, as dealing with them separately was not feasible. These new facts, however, necessitated further interrogations of the applicant and of witnesses, and necessitated obtaining an expert's opinion. The judicial organs dealt with the case expeditiously, yet the subject matter of the proceedings and the fact that the applicant only submitted further documents later on, lead to the long duration of the proceedings.

27. 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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II; *Rösslhuber v. Austria* (no. 32869/96, § 27, 28 November 2000 and *Hennig v. Austria*, no. 41444/98, § 33 and 34, 2 October 2003).

28. The period to be taken into consideration began on 11 October 2001 and ended on 28 June 2007. It thus lasted five years and eight and a half months for one level of jurisdiction.

29. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above).

30. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that although the case was of some complexity, the overall length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

31. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

33. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 18 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President