



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

COURT (CHAMBER)

CASE OF RINGEISEN v. AUSTRIA (ARTICLE 50)

(Application n° 2614/65)

JUDGMENT

STRASBOURG

22 June 1972

In the Ringeisen case,

The European Court of Human Rights, sitting in accordance with the provisions of Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") and Rules 21 and 22 of the Rules of Court, as a Chamber set up on 22 August 1970 and composed of the following Judges:

MM. H. ROLIN, *President*,
Å. E. V. HOLMBÄCK,
A. VERDROSS,
T. WOLD,
M. ZEKIA,
A. FAVRE,
S. SIGURJÓNSSON,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. J.F. SMYTH, *Deputy Registrar*,

Decides as follows on the question of the application of Article 50 (art. 50) of the Convention in the present case:

PROCEDURE

1. The Ringeisen case was referred to the Court on 24 July 1970 by the European Commission of Human Rights (hereinafter referred to as "the Commission"). The case has its origin in an application against the Republic of Austria submitted to the Commission by an Austrian national, Mr. Michael Ringeisen, in 1965. The applicant complained, *inter alia*, of the length of his detention while on remand.

2. By judgment of 16 July 1971 the Court, while rejecting two of the applicant's complaints, held that there had been a breach of Article 5 § 3 (art. 5-3) of the Convention in that the detention of Ringeisen had been continued longer than a reasonable time (points 5 and 6 of the operative part of the judgment and paragraphs 100 to 109 of the reasoning). The Court further reserved for the applicant the right, should the occasion arise, to apply for just satisfaction on this issue (point 7 of the operative part of the judgment).

3. On 27 September 1971, the Principal Delegate of the Commission, making reference to point 7 of the operative part of the judgment, transmitted to the Registrar a letter dated 18 August 1971 in which the applicant asked the Commission "to apply to the ... Court ... on (his) behalf and to have a decision taken in accordance with Article 50 (art. 50) of the Convention ...".

4. After consultation with the Judges, the President of the Court directed that the examination of this aspect of the case should be conducted by the Chamber which had given judgment on 16 July 1971.

5. On the instructions of the President of the Chamber, the Registrar requested the Agent of the Austrian Government (hereinafter called "the Government") to present his written observations on the question of the application of Article 50 (art. 50) in this case. The Registrar received these observations on 24 February and 23 May 1972.

6. The Delegates of the Commission informed the Court, on 16 December 1971, of the contents of two letters which they had received from Mr. and Mrs. Ringeisen concerning the applicant's claim for compensation. They wrote subsequently to the Registrar that they had decided not to reply at the present stage to the Government's observations but would do so in due course either in writing or at the oral hearings as might seem appropriate to the Court. At the same time they sent to the Court two further letters from the applicant.

7. By Order of 21 March 1972, the President of the Chamber decided that the oral hearings should open on Friday, 26 May.

8. The public hearings took place on 26 and 27 May in the Human Rights Building at Strasbourg.

There appeared before the Court:

- for the Commission:

Mr. J. E. S. FAWCETT,

Principal Delegate,

Mr. F. ERMACORA and Mr. G. SPERDUTI,

Delegates;

- for the Government:

Mr. E. NETTEL, Envoy Extraordinary and Minister Plenipotentiary,

Agent;

Mr. W. PAHR, Head of the International Department of

the Constitutional Service of the Federal Chancellery;

Mr. C. MAYERHOFER, Ministerialsekretär

at the Federal Ministry of Justice;

Mr. G. SAILER, Oberprokuratsrat

at the Finanzprokuratur,

Counsel.

The Court heard the addresses and submissions of these representatives as well as their replies to questions put by Judges. In the course of these proceedings the Government produced several documents.

The hearings were declared provisionally closed on 27 May 1972.

9. After having made final the closure of the hearings and deliberated in private, the Court gives the present judgment.

AS TO THE FACTS

10. The Court is called upon to rule only on the question of the application of Article 50 (art. 50) in the present case. Thus, as regards the facts the Court will confine itself here to giving a brief outline and for the rest it refers to paragraphs 12 to 80 of its judgment of 16 July 1971.

11. That judgment concerned, *inter alia*, the detention of Ringeisen while on remand from 5 August to 23 December 1963, that is four months and eighteen days, and from 15 March 1965 to 20 March 1967, that is two years and five days.

12. Ringeisen's lawyer wrote, on 23 July 1971, to the Austrian Federal Minister of Justice requesting him, with reference to the judgment of 16 July and to Articles 5 § 5 and 50 (art. 5-5, art. 50) of the Convention, to make proposals for the reparation of the damage allegedly sustained by the applicant. It was claimed that the applicant had, "as a result of his unjustified detention", suffered over and above the loss of his fortune irremediable damage to his health which reduced his life expectancy and made constant medical care necessary. The applicant's lawyer therefore requested the Minister to advance on account the sum of 50,000 German marks (DM). In a reminder dated 2 August, he insisted that the matter should be dealt with promptly, having regard, in particular, to Ringeisen's state of health.

On 10 September 1971, the Minister replied that in view of his Ministry's competence under the Constitution it was not in a position to deal with the matter.

13. Meanwhile, Ringeisen had addressed his request to the Commission on 18 August 1971. He laid emphasis on the fact that he was still in very difficult circumstances due to his poor state of health and he asked the Commission "to apply to the ... Court ... on (his) behalf and to have a decision taken in accordance with Article 50 (art. 50) of the Convention ...".

The applicant has set out more particulars of his claims in letters which he and his wife sent to the Commission on 24 November 1971, 10 December 1971, 21 January 1972 and 8 February 1972. He alleges that he has sustained considerable material damage resulting, *inter alia*, from interference with the conduct of his business and from loss of property and rents in Austria and for this he claims some 100 million Schillings. Furthermore, he states that he is entitled to compensation, in an amount which he leaves the Court to assess: for personal injury, for damage to his reputation and "for detention".

AS TO THE LAW

I. ON THE ADMISSIBILITY OF THE APPLICANT'S CLAIM

14. In its written observations of February and May 1972 and also at the oral hearings, the Government contended that the Court was not duly seised of the matter of the award of compensation to Ringeisen for any damage which he had suffered by reason of the violation of the Convention found in the judgment of 16 July 1971. That judgment had, in the Government's view, finally closed the proceedings instituted by the Commission following Ringeisen's petition of 3 July 1965; and therefore the Court could entertain the claim for compensation only after it had been the subject of a fresh petition lodged under Article 25 (art. 25) of the Convention, investigated by the Commission and referred to the Court in accordance with the conditions laid down in Articles 47 and 48 (art. 47, art. 48). The Government also relied on Article 52 (art. 52) which provides that "the judgment of the Court shall be final".

15. The Court cannot accept this line of argument.

In the first place, the Court notes that if it accepted this submission it would follow that even after the new proceedings, which the Government considers to be necessary, the Court could not deal in its present composition with any question of the application of Article 50 (art. 50) since each new case requires, under Article 43 (art. 43), the setting up of a new Chamber.

It is clearly to be preferred, however, in the interests of the proper administration of justice, that consideration of the reparation of damage flowing from a violation of the Convention should be entrusted to the judicial body which has found the violation in question.

16. This link between the two matters is, moreover, fundamental to Article 50 (art. 50), the purpose of which is to enable the Court to afford without further delay just satisfaction to the person who is a victim of a violation.

17. As to Article 52 (art. 52), its sole object is to make the Court's judgments not subject to any appeal to another authority.

18. It would be a formalistic attitude alien to international law to maintain that the Court may not apply Article 50 (art. 50) save on condition that it either rules on the matter by the same judgment which found a violation or that this judgment has expressly kept the case open.

The practice adopted so far by the Court in this matter has been clearly inspired by a desire to take account as far as possible of the wishes of respondent States: they may be reluctant to argue the consequences of a violation the existence of which they dispute; and they may wish, in the event of a finding of a violation, to maintain the possibility of settling the

issue of reparation directly with the injured party without the Court being further concerned.

19. Moreover, in the present case the Court's judgment of 16 July 1971 expressly reserved "for the applicant the right, should the occasion arise, to apply for just satisfaction as regards these violations" (point 7 of the operative part). The wording of this reservation shows clearly that its purpose was to draw the applicant's attention to the fact that there was a means of obtaining from the Court, if need be, the award of just satisfaction under Article 50 (art. 50).

It was therefore normal that the applicant, having no *locus standi* before the Court, should present his claims to the Commission. As the Court was duly seised of the Ringeisen case, the Commission acted within the scope of its functions in bringing Ringeisen's claim to the notice of the Court and thus the Court is also duly called upon to ascertain whether it is necessary to apply Article 50 (art. 50).

II. AS TO THE FULFILMENT OF THE CONDITIONS FOR THE APPLICATION OF ARTICLE 50 (art. 50)

20. The Government submits that the conditions for the application of Article 50 (art. 50) are not fulfilled

(1) since it was possible to make full reparation in internal law for the consequences of the violation of Article 5 § 3 (art. 5-3) and this was in fact done by the decision of the Linz Regional Court on 24 April 1968 to reckon the entire time spent in detention on remand as part of the prison sentence;

(2) since, even assuming that that decision did not make *restitutio in integrum* to Ringeisen and the violation of Article 5 § 3 (art. 5-3) had caused him other damage, he could exercise several remedies.

21. The Court is unable to accept the first submission. The fact of deducting the time spent in detention on remand from the prison sentence imposed on a person must no doubt be taken into consideration in assessing the extent of the damage flowing from the excessive duration of that detention; but it does not in any way thus acquire the character of *restitutio in integrum*, for no freedom is given in place of the freedom unlawfully taken away.

The consequence of the Government's reasoning would be to deprive Article 5 § 3 (art. 5-3) of much of its effectiveness, at least in cases where the person detained on remand for more than a reasonable time is found guilty afterwards: in such cases it would suffice, in order to avoid the application of Article 50 (art. 50), that the time spent in detention on remand should be less than the term of the prison sentence pronounced later and should be deducted from it.

Furthermore, in the present case it appears that if Ringeisen's detention on remand had ended at the time of the adjudication in bankruptcy, that is

14 May 1965, and if he had been arrested after judgment to serve what remained of his sentence, he would have stood a good chance of being released on probation for one-third of the prison term ordered, which would have reduced the duration of his deprivation of liberty to twenty-two months while his detention on remand lasted almost twenty-nine months.

22. In its second submission, the Government maintains that even if Ringeisen was entitled to claim other reparation for damage caused by his excessive detention on remand, Austrian law provided him with various means of obtaining it but he confined himself to writing to the Minister of Justice who had no competence to deal with the claim.

The Court refers on this point to paragraphs 15 and 16 of its judgment of 10 March 1972 on the question of the application of Article 50 (art. 50) in the De Wilde, Ooms and Versyp cases. It is true that the Government has declared that it is not seeking to rely on Article 26 (art. 26) nor insisting on the exhaustion of domestic remedies prior to any consideration by the Court of a request for just satisfaction. Partial exercise of domestic remedies would, however, serve no purpose and would lead to the same result of preventing the Court from speedily affording reparation for the damage caused by the violation it found.

There can be no doubt that for the Court to be able to give application to Article 50 (art. 50), there should be a need to do so (French: "il y ait lieu"; or, in the English text, "if necessary"); but this necessity exists once a respondent government refuses the applicant reparation to which he considers he is entitled. This is what happened in the present case.

The reason why the applicant wrote to the Minister of Justice rather than to any other authority is apparently because Section 4 of the Act of 18 August 1918 on compensation for detention on remand indicated this course for claims based upon that Act.

III. AS TO THE QUESTION OF AFFORDING JUST SATISFACTION

23. Ringeisen requested that the Court should award him full reparation for material and non-material damage allegedly suffered by reason of the excessive length of his detention on remand. The Commission, after transmitting that request, asked the Court to say "whether, to what extent, and in this case by what means, just satisfaction should be afforded to Mr. Michael Ringeisen for the violation of Article 5 § 3 (art. 5-3) of the Convention, of which he has been the victim, already found by the Court in its judgment of 16 July 1971".

24. In a letter of 10 December 1971 addressed to the Commission, the applicant submitted a series of claims relating to financial loss which he considered to be due to his detention. He has not, however, furnished any proof of this alleged damage; in any case, it does not appear that any of it is consequent upon his detention on remand.

25. Ringeisen also complains of a serious deterioration in his health brought about by his detention. Yet a report of 1 February 1967 from the medical service at Linz Prison where Ringeisen was being detained states: "... his general condition is good. During his detention so far there has been no discernible decline in his state of health". Ringeisen was released the following month, on 20 March 1967. He has not furnished any expert opinion or other evidence to show that his detention caused a deterioration in his state of health. The Court furthermore recalls that as early as the proceedings before the Commission he claimed that during his detention he had not received the medical care he needed, and that by a partial decision of 2 June 1967 (appendix II to the report) the Commission declared this complaint to be inadmissible as manifestly ill-founded.

26. There remains the fact that Ringeisen's detention on remand exceeded by more than twenty-two months, as found by the Court in its judgment of 16 July 1971, the limits of a reasonable time referred to in Article 5 § 3 (art. 5-3).

The Court does not overlook that Ringeisen was found guilty and sentenced to a term of imprisonment longer than the time he had spent in detention on remand, that his time in detention was reckoned in full to his advantage as part of the sentence, and that he was subject in detention to a regime less severe than that which the prison sentence would have entailed.

These circumstances go some way to compensate the damage of which he complains.

However, the applicant protested his innocence and certainly felt such excessive detention on remand to be a great injustice. The detention must have been all the more hard to bear in that it inevitably made it much more difficult for him to conclude a composition for the termination of his bankruptcy.

Assessing these various factors, the Court considers that Ringeisen should be afforded just satisfaction and fixes at twenty thousand German marks (20,000 DM) the overall sum to be paid to him in this regard.

27. At the hearings before the Court the question was argued as to where the sum awarded to Ringeisen would go: could it be paid to him directly or could it be claimed by the trustee, on recommencement of the bankruptcy, for the purpose of making an additional payment to the creditors.

The Court considers that it can leave this point to the discretion of the Austrian authorities. The Court notes in this regard that under the terms of Section 2 of the Act of 18 August 1918 referred to above "no attachment or seizure may be made against a right to compensation except to secure payment of maintenance as provided for by law" and that a similar provision appears in Section 4 of the Federal Act of 8 July 1969 on compensation for detention and conviction by the criminal courts. It would seem to be a matter of course that the same exemption from seizure must be allowed in the case of compensation due under a decision of the Court to a

person whose detention on remand has been prolonged beyond the reasonable time laid down in Article 5 § 3 (art. 5-3) of the Convention.

FOR THESE REASONS, THE COURT

Unanimously affords to the applicant Michael Ringeisen compensation in the sum of twenty thousand German marks to be paid by the Republic of Austria.

Done in French and in English, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-second day of June, one thousand nine hundred and seventy-two.

Henri ROLIN
President

Marc-André EISSEN
Registrar

Judge Holmbäck and Judge Wold make the following joint declaration:

As to the jurisdiction of the Court in this case, we refer to our joint separate opinion annexed to the judgment of 10 March 1972 in the De Wilde, Ooms and Versyp cases, but feel obliged to defer to the opinion of the majority of the Court on this point.

Judge Holmbäck makes the following declaration:

In a separate opinion annexed to the Court's judgment of 16 July 1971 in this case, I made it clear that in my opinion the Republic of Austria had not violated Article 5 § 3 (art. 5-3) of the Convention.

Since my opinion was overruled in that judgment, I feel bound to accept the finding of the majority of the Court and in these circumstances I agree with the amount of compensation awarded on the basis of a violation of Article 5 § 3 (art. 5-3).

Judge Verdross makes the following declaration (translation):

In my separate opinion annexed to the Ringeisen judgment of 16 July 1971, I stated the reasons which prevented me from wholly agreeing with the way in which the Chamber calculated the unreasonable time of detention on remand.

Similarly, in my separate opinion annexed to the De Wilde, Ooms and Versyp judgment of 10 March 1972, I explained why I could not subscribe to the construction put by the plenary Court on Article 50 (art. 50) of the Convention.

Nevertheless, since under Rule 48 of our Rules of Court a Chamber may not, of its own will, decline to follow an interpretation of the Convention given by the plenary Court or a Chamber, I am obliged to take the two judgments referred to above as a basis for the present judgment.

Judge Zekia makes the following declaration:

Notwithstanding my dissenting opinion as to any breach of Article 5 § 3 (art. 5-3) of the Convention (annexed to the judgment of 16 July 1971), I feel bound to accept the finding of the Court that there was a contravention under the aforesaid Article (art. 5-3) of the Convention in that the unreasonable period of detention lasted more than twenty-two months, and in the circumstances I agree that the amount awarded is an appropriate one.

H. R.
M.-A. E.