



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

COURT (CHAMBER)

CASE OF RINGEISEN v. AUSTRIA (INTERPRETATION)

(Application n° 2614/65)

JUDGMENT

STRASBOURG

23 June 1973

In the Ringeisen case (interpretation of the judgment of 22 June 1972),

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, 22 and 53 § 4 of the Rules of Court, as a Chamber composed of the following Judges:

Sir Humphrey WALDOCK, *President*,

MM. R. CASSIN,

Å. E. V. HOLMBÄCK,

A. VERDROSS,

E. RODENBOURG,

M. ZEKIA,

A. FAVRE,

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

Having deliberated in private,

Gives the following judgment:

PROCEDURE

1. The European Commission of Human Rights (hereinafter called "the Commission") has submitted a request to the Court, under Rule 53 of the Rules of Court, for the interpretation of the judgment delivered on 22 June 1972 in the Ringeisen case which concerns the Republic of Austria. The request was filed on 21 December 1972, within the period of three years fixed by paragraph 1 of Rule 53, and was signed by Mr. Fawcett, President and Principal Delegate of the Commission.

2. Under the terms of paragraph 4 of this Rule, the request for interpretation has to be considered by the Chamber which gave the judgment, composed as far as possible of the same judges. By reason of the death of two of the judges, Mr. Wold (September 1972) and Mr. Rolin, President (April 1973), and of the fact that a third judge, Mr. Sigurjónsson, has been unable to take part (April 1973), substitute judges have been called upon to sit and one of them, Sir Humphrey Waldock, has replaced the late Mr. Rolin as President of the Chamber.

3. On 21 December 1972, the Registrar communicated the request to the Austrian Government (hereinafter called "the Government") and invited it to submit any written comments it wished to make within a period of six weeks fixed by the President of the Chamber (Rule 53 § 3).

The Government's written observations, signed by the Agent, Mr. Nettel, were received at the Registry on 21 March 1973; the Delegates of the Commission replied thereto on 6 April.

The Court decided to dispense with oral proceedings in this instance, noting that the Government and the Commission had informed the Registrar that oral hearings did not appear to them to be necessary.

4. On the instructions of the President of the Chamber, the Registrar requested the Agent of the Government, on 31 January and 28 February 1973, to produce certain documents which were filed with the Registry on 26 and 28 March and on 9 May.

THE REQUEST FOR INTERPRETATION

5. The Commission's request for interpretation is directed to the second of the two judgments which the Court has delivered in the Ringeisen case.

6. This case has its origin in an application against the Republic of Austria submitted to the Commission in 1965 by an Austrian national, Mr. Michael Ringeisen.

In 1970, the case was referred by the Commission to the Court which gave judgment on 16 July 1971. The Court held that there had been a breach of Article 5 § 3 (art. 5-3) of the Convention in that the detention of Ringeisen on remand had exceeded a "reasonable time"; it reserved for the applicant the right, should the occasion arise, to apply for just satisfaction on that issue.

On 27 September 1971, the Principal Delegate of the Commission transmitted to the Registrar a letter 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 ...".

7. The Court ruled on the question of just satisfaction in a second judgment, that of 22 June 1972.

Having dismissed an objection to admissibility raised by the Government and having found that the conditions for the application of Article 50 (art. 50) were fulfilled, the Court disallowed the applicant's claim for alleged financial loss and damage to his health.

On the other hand, the Court recalled that the detention at issue had "exceeded by more than twenty-two months ... the limits of a reasonable time referred to in Article 5 § 3 (art. 5-3)" and considered that in spite of certain circumstances which went "some way to compensate the damage" of which Ringeisen complained he had "certainly felt such excessive detention on remand to be a great injustice". The Court therefore considered that the applicant should be afforded just satisfaction (paragraph 26 of the judgment).

The operative provisions of the judgment of 22 June 1972 read as follows:

"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."

The reasons stated in that judgment conclude with paragraph 27 as follows:

"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 [on compensation for detention on remand] ... '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."

8. The request for interpretation is directed to the above-mentioned judgment. The Commission submits, with the precision required by Rule 53 § 2, two questions as follows:

"First, what was the intended effect of the order for payment of compensation in D. Marks, particularly in respect of the actual currency and place of payment?

And secondly, whether the term 'compensation' is to be understood as payment of a sum free of any lawful claims made against it under Austrian law, or subject to such claims?"

The Commission's request was presented in the following circumstances:

9. According to the information supplied to the Court by the Commission and the Government throughout the successive stages of the present case, it is common ground that Ringeisen is, and for some time has been, resident in the Federal Republic of Germany, his latest place of residence being at Heidelberg. On 4 July 1972, he wrote from there to an Austrian authority asking for payment of the 20,000 German marks which he had been awarded by the judgment of 22 June.

Several persons have, on the other hand, laid claim in Austria to that sum of money on the basis of debts alleged to be due to them by the applicant. One of them was Dr. Sterrer, advocate and former trustee in the bankruptcy adjudged in May 1965 and terminated in 1972 (Series B, No. 13, Ringeisen case, pp. 56 and 59).

10. On behalf of the Republic of Austria, the revenue department of the attorney general's office (Finanzprokuratur) applied on 4 August 1972 to the Vienna Central District Court (Bezirksgericht), under Article 1425 of the Civil Code, for acceptance of the payment into court of the 20,000 German marks in dispute to the credit of four beneficiaries amongst whom were Michael Ringeisen and Dr. Sterrer.

The application, amended on 11 August so as to request leave to pay into court 143,808 Schillings, the equivalent in Austrian currency of 20,000 German marks, recited paragraph 27 and the operative provisions of the judgment of 22 June 1972 and stated that there were several claimants and that it was not clear in law to whom the money was to be paid.

The sum of 143,808 Schillings was deposited on 16 August. By decision of 1 September, the District Court acknowledged receipt of the money, and declared that it would be paid out on application made in writing by the beneficiaries or pursuant to a final court order. On 12 and 21 September, the Permanent Representative of Austria to the Council of Europe notified that decision to the Committee of Ministers - responsible under Article 54 (art. 54) of the Convention for supervising the execution of the judgment of 22 June 1972 - and to the Registrar of the Court.

11. On 9 October 1972, the applicant sent a letter to the Commission with a request to transmit it to the Court. Laying stress on his poor state of health and his lack of means, the applicant charged the Government with seeking to avoid an obligation which, he alleged, resulted quite unambiguously from the operative provisions and reasons of the judgment of 22 June, that of making a payment in German marks not subject to any attachment. Ringeisen asked the Court to interpret the judgment as if the operative provisions read as follows:

"(a) The Republic of Austria is obliged to pay at once to the applicant ... the sum of 20,000 German marks, free of all seizure or attachment, at his address:

Michael Ringeisen, 6900 Heidelberg, Freiburgerstrasse 29/VII to the right;

(b) all costs and expenses should be reimbursed at once on proof, and any damage, particularly damage to health, which has been or will be suffered after 22 June or which has been aggravated by reason of lack of treatment due to want of means should be compensated;

(c) in the event of the death of the applicant ... the compensation should be paid at once and in full to his wife ... or in the event of her death to her heirs ...".

A copy of that letter was appended to the request for interpretation which the Commission filed with the Court on 21 December 1972.

AS TO THE LAW

12. In its written observations of March 1973, the Government contends that the Commission is not in fact requesting the Court to interpret the judgment of 22 June 1972 but is seeking to induce it "to supplement unlawfully" the "entirely clear" operative provisions and reasons thereof and even to encroach on the supervisory function which Article 54 (art. 54) of the Convention confers on the Committee of Ministers of the Council of Europe.

The Government also remarks, at the beginning of its written observations, that "the competence of the ... Court ... for interpretation of its judgments ... is based solely on the Rules of Court. Therefore, in the light of Article 52 (art. 52) of the ... Convention ..., the well-founded question may even be raised whether this legal institution is compatible at all with the Convention ...".

13. According to the terms of Article 52 (art. 52) of the Convention "the judgment of the Court shall be final". As the Court has already underlined, "the sole object" of this provision "is to make the Court's judgments not subject to any appeal to another authority" (Series A, No. 15, Ringeisen judgment of 22 June 1972, p. 7, § 17). A request for interpretation does not in any way constitute such an appeal for it is addressed to the Court itself. In considering the request, the Court is exercising inherent jurisdiction: it goes no further than to clarify the meaning and scope which it intended to give to a previous decision which issued from its own deliberations, specifying if need be what it thereby decided with binding force. Such competence is therefore in no wise irreconcilable with Article 52 (art. 52) or, moreover, with Article 54 (art. 54) which makes the Committee of Ministers responsible for supervising the execution of the Court's judgments.

Rule 53 is limited to recognising this inherent jurisdiction and to settling the way in which it is to be exercised. The rule was in any case brought to the notice of the Contracting States on its adoption in 1959; it has never given rise to the least question on their part and the Austrian Government envisaged availing itself of it before the Court in the Neumeister case (Series B, No. 7, Stögmüller case, p. 192).

The Court accordingly sees no reason why it should not entertain the present request for interpretation.

14. The first point of interpretation raised by the Commission is "what was the intended effect of the order for payment of compensation in D. Marks, particularly in respect of the actual currency and place of payment".

In affording just satisfaction to the applicant in a sum expressed in German marks, the Court intended that the compensation should be paid to him in that currency and in the Federal Republic of Germany and not otherwise. In so deciding, the Court took into account not only the uncontested fact that Ringeisen was resident in the Federal Republic of

Germany but also, *inter alia*, paragraph 2 of the final submissions presented by the Delegates of the Commission at the oral hearing on 27 May 1972 when they asked the Court "to rule ... whether any compensation due to Mr. Ringeisen for the mere fact of his detention beyond a reasonable time as provided in Article 5 § 3 (art. 5-3) of the Convention should not be paid to him without delay, in view of his state of health and his needy situation" (Series B, No. 13, Ringeisen case, p. 67).

15. The second question of interpretation raised by the Commission's request reads as follows: "whether the term 'compensation' is to be understood as payment of a sum free of any lawful claims made against it under Austrian law, or subject to such claims?"

By the term "compensation" the Court meant an award of a sum to be paid to Michael Ringeisen personally as compensation for non-material damage. In referring to the "discretion of the Austrian authorities" ("*la sagesse des autorités autrichiennes*"), the Court did not qualify its intention by a limitation. If mention was made of Section 2 of the Austrian Act of 18 August 1918 and of Section 4 of the Act of 8 July 1969, it was to indicate that it was all the more justifiable to order a direct payment to the beneficiary in that the principle whereby debts of this kind are free from attachment applied also in Austrian law in analogous cases. What was entrusted to the discretion of the Austrian authorities is the practical execution of the measures ordered by the Court in conformity with this principle.

FOR THESE REASONS, THE COURT,

As to the first point,

Holds by six votes to one that the judgment of 22 June 1972 means that the compensation in the sum of twenty thousand German marks afforded to the applicant should be paid to him in that currency and in the Federal Republic of Germany;

As to the second point,

Holds by five votes to two that the same judgment means that the aforementioned compensation is to be paid to Michael Ringeisen personally and free from attachment.

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

Sir Humphrey WALDOCK
President

Marc-André EISSEN
Registrar

The separate opinions of Judge Verdross and Judge Zekia are annexed to the present judgment in accordance with Article 51 § 2 (art. 51-2) of the Convention and Rule 50 § 2 of the Rules of Court.

H. W.
M.-A. E.

SEPARATE OPINION OF JUDGE VERDROSS

(Translation)

I agree with the Court that, for the reasons stated in the present judgment, it has jurisdiction to interpret its judgments.

On the contrary, as regards the substance I regret that for the following considerations I am unable to accept either the Court's decision or its reasoning.

Under Article 50 (art. 50) of the Convention, the Court has power to "afford just satisfaction to the injured party". It in no way follows from this provision that the Court has competence to restrict the rights of the creditors of the applicant entitled to such satisfaction, since the compensation due to Ringeisen by the Republic of Austria and interference with his creditors' rights are two entirely different matters. The first concerns a relationship between the applicant and the Republic, the second a relationship between the applicant and his creditors. To enable the Court to restrict the rights of the applicant's creditors, it would therefore be necessary to have a special provision in the Convention. In the absence of such a provision the Court has no power to order that the satisfaction afforded to the applicant shall be free from attachment by his creditors.

Since every juridical act must be interpreted in so far as possible consistently with the law as it stands, it may not be presumed that the Chamber which delivered the judgment of 22 June 1972 wished to exceed the jurisdiction conferred upon it by the Convention. It follows that the sentence in that judgment reading "the Court considers that it can leave this point" - payment to the applicant of compensation free from attachment by his creditors - "to the discretion of the Austrian authorities" - leaving it to them to apply in this case, by analogy, the provisions of two Austrian Acts mentioned in the same paragraph - must be interpreted according to the ordinary meaning of the words used and as it may be understood by any government acting in good faith. For if the Chamber had wished to oblige Austria, in a mandatory way, to act in the manner I have indicated, it could and should have said so clearly.

Faced with the judgment, the Austrian Government, being an administrative body, could not do anything other than deposit with the competent court the sum of money awarded against it, leaving it to the court to apply the above-mentioned Austrian laws in this given case before it. The reference made to Austrian law would be devoid of meaning if the Chamber was empowered to award, under Article 50 (art. 50) of the Convention, compensation free from all attachment, since Austria law is not identical to this purported rule in that maintenance allowances may be deducted from compensation.

This opinion is not upset by the fact that the operative provisions fixed the compensation in German marks, for the operative provisions of a judgment must always be interpreted having regard to the reasons. From the wording of the operative provisions ("twenty thousand German marks") one may deduce, first that the wording was chosen because the applicant is resident in the Federal Republic of Germany, secondly that the compensation is to be remitted to him in German marks without prejudice, however, to the principal question considered above.

I also dissent from the operative provisions of the present judgment even though, taken on their own, they could be interpreted in a manner compatible with my opinion; for operative provisions cannot be construed independently of the reasoning which accompanies them.

SEPARATE OPINION OF JUDGE ZEKIA

The points which fall for decision in this case are three in number.

Point 1 is the one taken up by the Austrian Government and it relates to the competence of the Court to entertain a request for the interpretation of its judgment; and in this connection it has been submitted that the procedure laid down by the Rules of Court, that is Rule 53 §§ 1 to 5, is *ultra vires* because no provision has been made in the Articles of the Convention for such a course to be taken. I have no doubt that interpretation of the judgment lies within the inherent jurisdiction of the Court which gives the judgment.

On this point I am content to associate myself with the decision of the majority of the Court.

Points 2 and 3 have been raised by the Commission: we have been asked to interpret the judgment of 22 June 1972 in the Ringeisen case, the operative part of which reads

"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."

Point 2

The interpretation sought is what did the Court mean by "the order for payment of compensation in D. marks" by the Republic of Austria.

Here, I am in agreement with the majority opinion that the Court, being informed at the time of the issue of the judgment that Ringeisen was resident in the Federal Republic of Germany, awarded compensation expressed in German currency, with the implication that the money was to reach Ringeisen in the Federal Republic of Germany. I have some doubts, however, in view of the absence of an express statement as to the place of payment in the judgment, whether payment of the sum mentioned in Austria or elsewhere would not have had the effect of discharging the respondent Government of its liability under the terms of the judgment. I am also not sure whether by way of implication the Court is entitled to add to or subtract from a judgment on the face of which no ambiguity exists.

Point 3

The second question raised by the Commission was whether the payment of compensation was to be "free of any lawful claims made against it under Austrian law, or subject to such claims".

Reading the judgment of the Court as a whole, I would say that the Court at the time of the issue of its judgment expected the Republic of Austria to make payment of the amount awarded without any incumbrances and free of claims and attachments. However, the Court - as it appears to me - refrained from taking a firm stand in the matter and did not go to the extent of imposing an obligation on the part of the Austrian Government to pay the

amount awarded to Ringeisen ignoring all other claims made or which might have been made by other persons on the amount awarded.

This is borne out, in my view, by the immediately preceding paragraph 27 of the judgment, which reads

"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 [on compensation for detention on remand] ... '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."

The Court in plain words left to the discretion of the Austrian authorities the question whether the money was to be paid directly to Ringeisen or possibly to the trustee in bankruptcy. In the exercise of its discretion, the Government lodged the sum of 143,808 Schillings, equivalent to 20,000 German marks, with the Vienna Central District Court asking for directions to be made by that court as to payment. The Vienna Central District Court declared that the money deposited would be paid out on application to the beneficiaries, one of whom is Ringeisen, or pursuant to a final court order to the person or persons who might be found to be entitled to it. It seems to me that the Austrian Government properly exercised the discretion entrusted to it by the Court, although in so doing it perhaps did not strictly adhere to the course indicated by our Court.

Furthermore, in the second sub-paragraph of paragraph 27 cited above, the passage beginning "The Court notes in this regard" down to "... Article 5 § 3 (art. 5-3) of the Convention" read together with the first part amounts, in my view, only to an expression of opinion in the nature of an obiter dictum not having binding effect on the party concerned.