



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

COURT (CHAMBER)

CASE OF UNTERPERTINGER v. AUSTRIA

(Application no. 9120/80)

JUDGMENT

STRASBOURG

24 November 1986

In the Unterpertinger case*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. W. GANSHOF VAN DER MEERSCH,
Mr. F. MATSCHER,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. R. MACDONALD,
Mr. C. RUSSO,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 19 February and 22 October 1986,
Delivers the following judgment, which was adopted on the latter date:

PROCEDURE

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Government of the Republic of Austria ("the Government") on 14 March and 30 April 1985 respectively, within the three-month period laid down by Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 9120/80) against the Republic of Austria, lodged with the Commission under Article 25 (art. 25) on 1 September 1980 by an Austrian citizen, Mr. Alois Unterpertinger.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Article 48 (art. 48). Both sought a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 §§ 1 and 3 (d) (art. 6-1, art. 6-3-d).

2. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the

* Note by the Registrar: The case is numbered 1/1985/87/134. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and of originating applications (to the Commission) referred to the Court since its creation.

proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).

3. The Chamber of seven judges to be constituted included, as ex officio members, Mr. F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 § 3 (b)). On 27 March 1985, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mrs. D. Bindschedler-Robert, Mr. J. Pinheiro Farinha, Mr. E. García de Enterría, Mr. B. Walsh and Sir Vincent Evans (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43). Subsequently, Mr. García de Enterría, Mr. Pinheiro Farinha and Mrs. Bindschedler-Robert, who were unable to take part in the proceedings, were replaced by Mr. W. Ganshof van der Meersch, Mr. C. Russo and Mr. R. Macdonald, substitute judges (Rule 24 § 1).

4. Having assumed the office of President of the Chamber (Rule 21 § 5), Mr. Wiarda ascertained, through the Deputy Registrar, the views of the Agent of the Government, the Delegate of the Commission and Mr. Unterpertinger's representative on the need for a written procedure (Rule 37 § 1). On 24 April, he directed that the applicant's representative should have until 6 June 1985 to submit a memorial and that the Delegate should be entitled to file a reply within two months of the transmission of that memorial to him by the Registrar. On 12 April, the President had granted the applicant's lawyer leave to use the German language (Rule 27 § 3).

5. The Registrar received the applicant's memorial on 10 June.

On 11 July, the Secretary to the Commission notified the Registrar that the Delegate would submit his observations orally at the hearing.

At the Delegate's request, the President directed on 3 December 1985 that one paragraph in the applicant's memorial should not be published or otherwise made accessible to the public (Rule 55).

6. Earlier, on 23 October, after consulting - through the Deputy Registrar - the Agent of the Government, the Delegate of the Commission and the applicant's representative, the President had directed that the oral proceedings should open on 17 February 1986 (Rule 38).

On 3 February 1986, the Commission supplied to the Registrar certain documents which he had requested on the President's instructions.

7. The hearings were held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. H. TÜRK, Legal Adviser,

Ministry of Foreign Affairs,

Mr. M. MATZKA, Federal Chancellery,

Mr. H. EPP, Federal Ministry of Justice,

- for the Commission

Agent,

Advisers;

Mr. Gaukur JÖRUNÐSSON,
- for the applicant

Delegate;

Mr. F. KRALL, Rechtsanwalt,

Counsel.

The Court heard their addresses as well as their replies to its questions.
The Government and the applicant produced documents at the hearings.

THE FACTS

8. Mr. Unterpertinger, who is an Austrian national born in 1938, lives in Wörgl.

He complains of criminal proceedings brought against him for causing actual bodily harm to his step-daughter on 14 August 1979 and to his wife on the following 9 September.

1. Police proceedings

9. The incident on 14 August 1979 was reported to the Wörgl police (Gendarmeriepostenkommando) that day, first by a neighbour at the applicant's request and then by the applicant himself. According to him, his wife and step-daughter - who had that morning called him a "convict" (Zuchthäusler) - attacked him at about midday during a quarrel. In particular, he claimed that his wife had inflicted several head wounds with a paper-knife and gashed his forehead close to his eyebrow. He had needed treatment by a doctor.

He admitted that he had pushed his wife at the time and had tried unsuccessfully to slap his step-daughter in the face.

10. On 22 August 1979, the police questioned the applicant's wife as a "suspect" (Verdächtige) and his step-daughter, Miss Tappeiner, as a "person involved" (Beteiligte).

Mrs. Unterpertinger stated that she had been slapped in the face and beaten by her husband, who had grabbed her daughter by the hair to stop her running away; both of them had then fought back. She had been holding a paper-knife and had, she said, probably struck him with it, but neither she nor her daughter had deliberately caused him any wounds to the head or face.

Miss Tappeiner admitted having called her step-father a "convict" that morning, and said that he had responded by slapping her in the face, but without injuring her. During the quarrel at midday, he had hit her mother several times, once in the face. When she herself had tried to escape, he had grabbed her by the hair and scratched her just below the right eye. He had also grabbed her mother by the hair and by the scruff of the neck. The two women had therefore fought back, and she had pulled her step-father's hair but had not hit him; she had not seen her mother strike him with the paper-

knife. Her step-father's forehead was bleeding, but she had not seen a wound on the back of his head. She added that a doctor she had consulted had issued a certificate in respect of her own injury.

11. On 28 August 1979, the Wörgl police sent the Kufstein District Court (Bezirksgericht) a report (Strafanzeige) "concerning Alois Unterpertinger and Rosi Unterpertinger, suspected of causing actual bodily harm (Körperverschwendung)".

According to the police, Mrs. Unterpertinger and her daughter had attacked the applicant in the course of a quarrel, during which the former had probably (vermutlich) struck him several times with a paper-knife, causing a laceration on the back of his head and again close to his eyebrow. He himself had allegedly (angeblich) hit his step-daughter in the face and scratched her slightly just below the right eye.

Under the heading "Evidence", the report referred to the statement by the above-mentioned neighbour of the Unterpertingers to the effect that the applicant, whose face was covered in blood, had asked her to alert the police. The applicant had appeared in person at the police station ten minutes later holding a paper-knife; he had explained that his wife had struck him on the head with it several times. Since Mr. Unterpertinger seemed to need first aid, the officer on duty had suggested that he should see a doctor.

The police went on to say that they had already had to intervene in several quarrels in the household. They added that the three protagonists had given conflicting accounts of the incident on 14 August. Miss Tappeiner, who had been questioned as an informant (Auskunftsperson), had clearly taken her mother's side.

The report indicated that the applicant's injuries had been described as "slight" by the doctor.

Under the heading "Information given by the suspects", the police summarised Mr. and Mrs. Unterpertinger's statements.

The report was accompanied by several documents, including the statements made by the applicant, his wife and his step-daughter and the certificate issued by the doctor who had examined Miss Tappeiner.

12. The second incident, which took place on 9 September 1979, was reported to the Wörgl police on 14 September by Mrs. Unterpertinger. She stated that her husband, who was slightly drunk, had kicked her right arm during a quarrel, causing her acute pain. An X-ray at the hospital next day had shown that her right thumb was broken, and this had left her unfit for work for a period of four weeks. She added that she had started divorce proceedings against her husband.

On 11 September, the hospital in Wörgl had sent the police a report stating that the injury, inflicted by the complainant's "own husband", should be regarded as serious.

13. The police took a statement from Mr. Unterpertinger on 17 October. He denied injuring his wife on 9 September, saying that her hand had already been bandaged when he had come home. She had actually attempted to hit him on the head with a hairbrush, but had missed and collided with the stair-rail instead. This might have aggravated the thumb injury, but the accusation she had made against him was a complete fabrication.

The applicant confirmed that divorce proceedings had been pending for some time.

14. On 20 October, the Wörgl police sent the Kufstein District Court a report "concerning Alois Unterpertinger, suspected of causing grievous bodily harm". This stated that the couple had had a quarrel on 9 September, during which Mr. Unterpertinger had kicked his wife's right arm. It went on to summarise Mrs. Unterpertinger's and her husband's statements, which were appended.

2. The investigation (Vorerhebungen)

15. On an application from the Innsbruck Public Prosecutor's Department, the Kufstein District Court decided on 9 November 1979 to open an investigation against the applicant in respect of the two incidents. After separating the proceedings against Mrs. Unterpertinger in respect of the first incident (see paragraph 11 above), the District Court acquitted her on 28 January 1980.

16. On 3 December 1979, Mrs. Unterpertinger appeared before a judge at Kufstein, who told her that, as the wife of the accused (Beschuldigter), she was entitled to refuse to give evidence. In fact, Article 152(1)(1) of the Code of Criminal Procedure provides: "members of the accused's family ... shall not be required to give evidence".

She replied that she nonetheless wished to do so, and gave an account of the facts in dispute, summarising what she had already told the police and disputing her husband's version of the incident on 9 September.

Suspected of causing actual bodily harm contrary to Articles 83 et seq. of the Criminal Code, the applicant was questioned on 12 December by a judge of the Innsbruck District Court. He admitted slapping his wife in the face on 14 August. According to him, he had pulled Miss Tappeiner's hair in order to escape the two women's attacks and might in so doing have injured her close to her eye; he had also struck her in the face. As regards the second incident, he repeated what he had already said (see paragraph 13 above); he also stated that he had not seen his wife come into contact with the stair-rail and added that he was not sufficiently agile to have been able to kick her thumb.

3. The proceedings at first instance

17. The case was heard on 10 March 1980 by a judge of the Innsbruck Regional Court (Landesgericht), sitting alone.

18. According to the record of the hearing, the applicant pleaded not guilty. He admitted that he had hit his step-daughter on the head, but not that he had injured her. Nor had he broken his wife's thumb by kicking it; he had no idea where she had broken it.

19. The Regional Court then called Mrs. Unterpertinger and Miss Tappeiner. On being told by the court of their right to refuse to give evidence (see paragraph 16 above), they replied that they wished to avail themselves of that right. The court was consequently unable to examine them or to read out the record of Mrs. Unterpertinger's interview with the judge at Kufstein (Article 252(1) of the Code of Criminal Procedure).

At the request of the Public Prosecutor's Department, however, the documents it had mentioned in its application for leave to prosecute (Strafantrag), including the police reports, the accused's criminal record and two files relating to previous convictions of his, were read out. These documents thus included the various statements made to the police: in Austrian judicial practice these had to be regarded as documents for the purposes of Article 252(2) of the Code of Criminal Procedure (see in particular judgment of 14 November 1974 of the Supreme Court (Oberster Gerichtshof, Österreichische Juristenzeitung 1975, p. 304); this meant that they had to be read out, unless the parties agreed that they should not be.

20. At the end of the hearing, the Regional Court found the applicant guilty of having committed, on 14 August 1979, the offence (Vergehen) of causing actual bodily harm (Article 83(1) of the Criminal Code) to his step-daughter and, on 9 September 1979, the offence of causing grievous bodily harm (schwere Körperverletzung, Articles 83(1) and 84(1) of the Criminal Code) to his wife. He was sentenced to six months' imprisonment.

Referring to the "inquiries made" and to the defence (Verantwortung) put forward by Mr. Unterpertinger, the court held that the following facts had been established.

During the quarrel on 14 August 1979, the applicant had hit his wife several times and had struck his step-daughter in the face, bruising her between the eye and nose and scratching her close to her right eye. His account could not be believed: he had admitted to the judge at Kufstein that he had struck Miss Tappeiner in the face and he had not ruled out the possibility that this might have caused the scratch. The injuries were slight, but his conduct showed that his actions had been deliberate.

On 9 September, Mr. Unterpertinger had broken his wife's right thumb by kicking her. Again, his defence did not stand up to examination. In addition, his record showed that he was quite capable of behaving in this way. He and his wife had had frequent quarrels, often ending in assault.

The court pointed out that Mrs. Unterpertinger - who in the meantime had divorced her husband - and her daughter had refused to give evidence at the trial. It nonetheless found their statements to the police "sufficiently clear and specific to support a conviction"; "there [could be] no doubt as to the truth of these statements". In this instance too, the applicant had acted deliberately.

The court found no mitigating circumstances; on the contrary, it saw the applicant's criminal record as an aggravating circumstance.

4. The appeal proceedings

21. Mr. Unterpertinger appealed on 9 April 1980.

He argued that the judgment of 10 March was null and void (Article 281(1)(3) of the Code of Criminal Procedure): in spite of Article 152 of the Code of Criminal Procedure, his former wife and step-daughter, whose statements to the police had formed the sole basis of his conviction, had not been informed at the outset that they were entitled to refuse to give evidence, and had thus been unable to avail themselves of this right.

Furthermore, the Regional Court had not taken sufficient account of certain circumstances which made the credibility of Mrs. Unterpertinger and her daughter doubtful. In this connection, the applicant requested that evidence should be taken from several witnesses, including two doctors, a police officer, a neighbour and his own mother, step-daughter and former wife.

Finally, he emphasised that in the past he had always admitted the offences with which he had been charged - as was clear from the files on the earlier proceedings. In this instance, however, he had acted in self-defence during the first incident and with no intention of injuring his step-daughter - if indeed he really had injured her. The Regional Court had disregarded his version of the events of 14 August 1979. As for the incident of 9 September 1979, he repeated that his former wife had been having trouble with her right thumb even before that date, as he had mentioned when he was first questioned. He further claimed that he himself had been suffering from a knee injury which would have prevented him from kicking hard enough to break his wife's thumb. He requested that these points should be investigated further and, in particular, that evidence should be taken from a number of people and an expert opinion (Sachbefund) obtained.

In conclusion, Mr. Unterpertinger asked the Innsbruck Court of Appeal (Oberlandesgericht) to quash the conviction of 10 March and acquit him. Failing this, he asked it to review his sentence in the light of the degree of his guilt.

22. The Court of Appeal sat on 4 June 1980.

Counsel for the applicant submitted the grounds of appeal and requested, *inter alia*, that additional witnesses be called by the court. He added that the fact that his client was not allowed to put questions concerning the

statements made to the police by the prosecution witnesses contravened the European Convention on Human Rights. The prosecution sought to have the appeal dismissed.

Thereupon, the court decided to re-examine the evidence submitted to the court of first instance and to supplement it (*Wiederholung und Ergänzung*) by having the file on the divorce proceedings read out and hearing testimony from the wife of Mr. Unterpertinger's brother. She was unable to say whether the applicant's former wife had had a bandage on her hand in the autumn or summer of 1979. The applicant waived his right to cross-examine her.

The court had the documents in the file on the case read out and put several questions to Mr. Unterpertinger, in particular about his knee injury. According to him, he was asked to walk up and down so that the judges could form an idea of his condition.

The court refused to admit the remaining evidence proffered, as to part, on the ground that the circumstances to which it related were of no importance and, as to the rest, because the applicant had not specified the matters he wished to be investigated further.

23. The Court of Appeal dismissed the applicant's appeal immediately after the hearing on 4 June 1980.

With regard to the ground of nullity on which he had relied (see paragraph 21 above), it noted, on the basis of the Supreme Court's case-law, that a lawful refusal to give evidence did not prevent the court from having read out witnesses' statements which had been made to the police (*Sicherheitsbehörden*) and not during the judicial proceedings proper. It added that the Supreme Court had ruled that the courts were indeed obliged to have such statements read out and to weigh them as evidence.

Otherwise, the Court of Appeal was of the opinion that the evidence it had heard confirmed the findings of the Regional Court. The victims' statements to the police were plausible and credible; their account of the incident was logically coherent. The applicant's previous convictions showed that conduct like that of which he was accused was by no means alien to his nature. Moreover, he had given the police and the investigating judge conflicting versions of what had happened on 9 September 1979. His sister-in-law, who had been called as a witness, had been unable to give any information in this regard. As for his claim that he was not sufficiently agile to have been able to break his wife's thumb with a kick, this did not stand up to examination either.

Except for his sister-in-law, it was unnecessary to hear the witnesses the applicant had sought to have called, since he had referred to them in connection with matters that were either of no importance or else extremely vague.

Consequently, Mr. Unterpertinger's conviction on the two counts against him was justified; he had not been acting in self-defence on 14 August

1979. The sentence imposed was consistent with the degree of his guilt (schuldangemessen).

24. The applicant served his sentence from 22 September 1980 to 22 March 1981.

PROCEEDINGS BEFORE THE COMMISSION

25. Before the Commission, to which he applied on 1 September 1980 (application no. 9120/80), Mr. Unterpertinger complained of the proceedings which had led to his conviction and alleged that they had violated Article 6 §§ 1 and 3 (d) (art. 6-1, art. 6-3-d) of the Convention.

26. The Commission declared the application admissible on 8 July 1983.

In its report of 11 October 1984 (Article 31) (art. 31), the Commission expressed the opinion that there had been no breach of paragraph 3 (d) of Article 6 (art. 6-3-d) (five votes to five, with the President's casting vote, Rule 18 § 3 of the Rules of Procedure) or of paragraph 1 (art. 6-1) (five votes to four, with one abstention). The full text of the Commission's opinion and of the separate opinions contained in the report is reproduced as an annex to the present judgment.

FINAL SUBMISSIONS BY THOSE APPEARING BEFORE THE COURT

27. At the hearing on 17 February 1986, the Court was requested

- by the Government, "to hold that in the present case the provisions of Article 6 §§ 3 (d) and 1 (art. 6-3-d, art. 6-1) of the European Convention on Human Rights have not been violated and that therefore the facts underlying the dispute do not reveal any breach by the Republic of Austria of its obligations under the Convention";

- by the Delegate of the Commission, "to find, in accordance with the majority of the Commission, no violation of Article 6 (art. 6)";

- by the applicant, "to find that the Republic of Austria violated several provisions of the Convention in these criminal proceedings" and "to require the Republic of Austria to pay appropriate compensation".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 (art. 6)

28. The applicant claimed that he had been convicted exclusively on the basis of the statements made to the police by his former wife and step-daughter, which statements had been read out at the hearing. He asserted that because the two women had refused, as close relatives, to give evidence at the trial, he had not had an opportunity to examine them or to have them examined at any stage of the proceedings. Nor, he maintained, had the Court of Appeal given him any chance to put their credibility in doubt, since it had not agreed to hear on this point the persons he had sought to have called as witnesses. He alleged a breach of Article 6 §§ 1 and 3 (d) (art. 6-1, art. 6-3-d) of the Convention, which provide:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by <a> ... tribunal

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...."

The Government disputed this claim, which was not accepted by the Commission either.

29. Those appearing before the Court made their submissions firstly in relation to paragraph 3 (d) of Article 6 (art. 6-3-d), and then in relation to paragraph 1 (art. 6-1). The Court recalls that the guarantees contained in paragraph 3 (art. 6-3) are specific aspects of the general concept of a fair trial set forth in paragraph 1 (art. 6-1) (see, as the most recent authority, the *Bönisch* judgment of 6 May 1985, Series A no. 92, pp. 14-15, § 29). In the circumstances of the instant case, it will consider the applicant's complaints from the angle of paragraph 1 (art. 6-1) taken together with the principles inherent in paragraph 3 (d) (art. 6-3-d).

30. When called by the Innsbruck Regional Court, Mrs. Unterpertinger and Miss Tappeiner refused to give evidence, as they were entitled to do by virtue of Article 152(1)(1) of the Austrian Code of Criminal Procedure (see paragraphs 16 and 19 above). This accordingly prevented the trial judge from hearing them as witnesses and prevented the defence - and the

prosecution - from examining them during the oral proceedings. As such, the provision manifestly is not incompatible with Article 6 §§ 1 and 3 (d) (art. 6-1, art. 6-3-d) of the Convention: it makes allowance for the special problems that may be entailed by a confrontation between someone "charged with a criminal offence" and a witness from his own family and is calculated to protect such a witness by avoiding his being put in a moral dilemma; furthermore, there are comparable provisions in the domestic law of several member States of the Council of Europe.

31. While the trial court and then the Court of Appeal were thus unable to hear evidence from Mrs. Unterpertinger and Miss Tappeiner - or to acquaint themselves with the statements made by the former to the judge at Kufstein -, they had, on the other hand, been obliged to have the women's statements to the police read out when the prosecution so requested (see paragraph 19 above).

In itself, the reading out of statements in this way cannot be regarded as being inconsistent with Article 6 §§ 1 and 3 (d) (art. 6-1, art. 6-3-d) of the Convention, but the use made of them as evidence must nevertheless comply with the rights of the defence, which it is the object and purpose of Article 6 (art. 6) to protect. This is especially so where the person "charged with a criminal offence", who has the right under Article 6 § 3 (d) (art. 6-3-d) to "examine or have examined" witnesses against him, has not had an opportunity at any stage in the earlier proceedings to question the persons whose statements are read out at the hearing.

32. In the instant case the police had taken statements from Mrs. Unterpertinger as a "suspect" in relation to the incident on 14 August 1979 and then as a complainant in relation to the incident on 9 September 1979; from Miss Tappeiner they had taken a statement as a "person involved" in connection with the first incident (see paragraphs 10 and 12 above). By refusing to give evidence in court, they prevented the applicant from examining them or having them examined on their statements. Admittedly, he was able to submit his comments freely during the hearing, but the Court of Appeal refused to admit the evidence he sought to adduce in order to put his former wife's and step-daughter's credibility in doubt (see paragraph 21 above).

33. It is true that the statements made by Mrs. Unterpertinger and Miss Tappeiner were not the only evidence before the courts. They also had before them, *inter alia*, the police reports, the medical reports appended thereto and the file on the couple's divorce proceedings (see paragraphs 19 and 22 above); in addition, the Court of Appeal had heard a sister-in-law of Mr. Unterpertinger as a witness.

However, it is clear from the judgment of 4 June 1980 that the Court of Appeal based the applicant's conviction mainly on the statements made by Mrs. Unterpertinger and Miss Tappeiner to the police. It did not treat these simply as items of information but as proof of the truth of the accusations

made by the women at the time. Admittedly, it was for the Court of Appeal to assess the material before it as well as the relevance of the evidence which the accused sought to adduce; but Mr. Unterpertinger was nevertheless convicted on the basis of "testimony" in respect of which his defence rights were appreciably restricted.

That being so, the applicant did not have a fair trial and there was a breach of paragraph 1 of Article 6 (art. 6-1) of the Convention, taken together with the principles inherent in paragraph 3 (d) (art. 6-3-d).

II. APPLICATION OF ARTICLE 50 (art. 50)

34. Article 50 (art. 50) of the Convention provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

In his memorial, Mr. Unterpertinger claimed 150,000 Austrian schillings (ATS) as compensation for loss of liberty and 28,000 ATS in respect of loss of earnings. He also claimed 33,578.15 ATS for costs and expenses referable to the proceedings before the Convention institutions. In respect of all these claims, he sought a total of 210,000 ATS less 5,470.50 French francs (FF) which the Council of Europe had paid to him by way of legal aid for the proceedings before the Court.

The Government responded to these claims during the hearings. If the Court were to find that there had been a breach of the Convention, they would agree to meet the costs and expenses on the basis of the schedule submitted. The amount claimed for loss of earnings seemed to them reasonable enough; however, the same was not true of the 150,000 ATS sought in respect of detention, for which the Government could not agree to pay more than 50,000 ATS. In short, they envisaged compensation under all heads of an amount not exceeding some 100,000 ATS.

35. As regards the loss of earnings and the compensation for detention, the Court recalls that the applicant was convicted as a result of the establishment of guilt in a manner which did not comply with the requirements of Article 6 (art. 6). As a consequence he spent six months in custody, and this caused him to lose earnings of 28,000 ATS. He also suffered non-pecuniary damage on account of his imprisonment, and under this head the Court, deciding the matter on an equitable basis as is required by Article 50 (art. 50), awards him compensation of 100,000 ATS.

36. As to the costs and expenses referable to the proceedings before the Convention institutions, the Government did not contest that they were both actually and necessarily incurred and that they were reasonable as to

quantum; nor did they dispute that the applicant had incurred liability for lawyer's costs additional to those covered by his legal aid (cf., inter alia, the Airey judgment of 6 February 1981, Series A no. 41, p. 9, § 13). The Court therefore allows the claim in full, amounting to 33,578.15 ATS less 5,470.50 FF.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 (art. 6) of the Convention;
2. Holds that the respondent State is to pay to the applicant, as just satisfaction, one hundred and sixty-one thousand five hundred and seventy-eight Austrian schillings and fifteen groschen (161,578.15 ATS) less five thousand four hundred and seventy French francs and fifty centimes (5,470.50 FF).

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 November 1986.

Gérard WIARDA
President

Marc-André EISSEN
Registrar