

In the case of Friedl v. Austria (1),

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 Rules of Court A (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,  
Mr F. Matscher,  
Mr B. Walsh,  
Mr C. Russo,  
Mr A. Spielmann,  
Mr J. De Meyer,  
Mr R. Pekkanen,  
Mr A.B. Baka,  
Mr L. Wildhaber,

and also of Mr H. Petzold, Registrar,

Having deliberated in private on 26 January 1995,

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

---

Notes by the Registrar

1. The case is numbered 28/1994/475/556. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times sub-sequently.

---

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 September 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 15225/89) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by an Austrian national, Mr Ludwig Friedl, on 5 June 1989.

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 object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 8 and 13 (art. 8, art. 13) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio

Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr B. Walsh, Mr C. Russo, Mr A. Spielmann, Mr J. De Meyer, Mr R. Pekkanen, Mr A.B. Baka and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the applicant and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38).

5. On 23 December 1994 the Government communicated to the Registrar the text of an agreement concluded with the applicant on 21 December 1994. On 11 and 16 January 1995 the applicant's lawyer confirmed this agreement.

The Delegate of the Commission was consulted and gave his opinion on 18 January 1995.

#### AS TO THE FACTS

##### I. Circumstances of the case

6. Mr Ludwig Friedl, who lives in Vienna, was one of the participants in a demonstration that he had organised with other persons with a view to drawing public attention to the plight of the homeless. The demonstration began on 12 February 1988 in an underground passage for pedestrians, the Karlsplatz-Opera passage in Vienna. A round-the-clock sit-in of some fifty persons was organised to coincide with the demonstration, which was supposed to last until 24 February.

On 16 February another sit-in began at the same place, organised by the Kurdistan-Komitee; it was due to continue until 27 February.

During these demonstrations the authorities received numerous complaints from pedestrians concerning the nuisance caused by the demonstrators, who slept and did their cooking on the spot.

7. On 19 February 1988, at around 1 a.m., officers of the Vienna-centre police station (Bezirkspolizeikommissariat), accompanied by municipal officials, instructed the homeless persons to leave. They informed the persons concerned that their demonstration required an authorisation under section 82 (1) of the Road Traffic Act (Straßenverkehrsordnung), which prohibited any obstruction to pedestrian traffic. As the demonstrators did not immediately comply, the identities of fifty-seven of them were taken down. The demonstrators finally agreed to leave.

8. In the course of this operation, which ended at about 2.45 a.m., the police took photographs for use in the event of prosecution. The whole proceedings were also recorded on video-cassette.

The applicant claims that he was photographed individually. According to the Government, however, the police did not seek to establish the identities of the demonstrators who had been photographed. Moreover, the

personal information recorded and the photographs were not entered into a data-processing system. The administrative files concerning the demonstration were, according to the normal practice, to be destroyed, together with the photographs, in the year 2001, ten years after they were consulted for the last time.

9. On 21 March 1988 Mr Friedl complained to the Constitutional Court (Verfassungsgerichtshof) that, in breach of his rights under in particular Articles 8 and 11 (art. 8, art. 11) of the Convention, police officers had, on 17 and 19 February 1988, photographed him, established his identity using coercion, taken down his particulars and broken up the meeting.

10. On 13 December 1988 the Constitutional Court ruled that it lacked jurisdiction to entertain the applicant's complaints concerning the photographs, the verification of his identity and the taking down of his particulars. It noted that in this instance the police had not had recourse to physical force or coercion. According to its settled case-law concerning Article 144 para. 1 of the Constitution (Bundesverfassungsgesetz, see paragraph 11 below), its power of review extended only to police action which constituted an order (Befehl mit unverzüglichem Befolgungsanspruch) or which entailed the use of physical force (Anwendung physischen Zwangs), and which could accordingly be regarded as the exercise by an administrative authority of a direct power to give orders to and to use coercion against a particular individual (Ausübung unmittelbarer verwaltungsbehördlicher Befehls- und Zwangsgewalt gegen eine bestimmte Person). Even if there had been an interference with the exercise of a right guaranteed under Article 8 (art. 8) of the Convention, no question arose under Article 13 (art. 13) of the Convention, as that provision could not extend the scope of the jurisdiction of the Constitutional Court.

Mr Friedl's other complaints were dismissed on the ground that there was nothing to suggest that they disclosed a violation of constitutional rights.

## II. Relevant domestic law

11. Article 144 para. 1 of the Federal Constitution provides that the Constitutional Court has jurisdiction to hear complaints alleging the violation of constitutional rights and directed against formal decisions of administrative authorities or against the exercise by the authorities of a direct power to give orders to and use coercion against a particular individual.

12. On 1 May 1993 the Security Services Act (Sicherheitspolizeigesetz) entered into force. It contains provisions dealing, inter alia, with the interrogation, arrest and detention of persons, the use of direct official coercion and the gathering, use and storing of personal data, including photographs and recordings.

By virtue of section 88 (1) of that Act, independent administrative tribunals (Unabhängige Verwaltungssenate) have jurisdiction to hear complaints from persons alleging a violation of their rights resulting from the exercise by a security service of a direct power to give orders and to use coercion (Ausübung unmittelbarer sicherheitsbehördlicher Befehls- und Zwangsgewalt). Section 88 (2) of the Act extends the jurisdiction of the independent administrative tribunals to all the other measures taken by such authorities, except

decisions (Bescheide).

Section 88 (4) provides that a member of the competent administrative tribunal is to examine complaints lodged under section 88 (2), applying in particular section 67 (c) of the 1991 General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz). Pursuant to the latter provision, if the tribunal does not dismiss the complaint, it must declare the impugned measure unlawful. If that measure is still in force, the competent authority must without delay take steps to bring the legal position into line with the tribunal's decision.

#### PROCEEDINGS BEFORE THE COMMISSION

13. Mr Friedl applied to the Commission on 5 June 1989. Relying on Article 8 (art. 8) of the Convention, he complained that, during the demonstration, the police had photographed him, checked his identity and taken down his particulars. He maintained in addition that no effective remedy had been available to him in this connection, as should have been the case under Article 13 (art. 13). Finally he claimed that the breaking up of the demonstration by the police had been contrary to Article 11 (art. 11).

14. On 30 November 1992 the Commission declared the application (no. 15225/89) admissible as regards the complaints under Articles 8 and 13 (art. 8, art. 13) and inadmissible for the rest. In its report of 19 May 1994 (Article 31) (art. 31), the Commission expressed the opinion that there had been no breach of Article 8 (art. 8) (unanimously). It further took the view that there had been a breach of Article 13 (art. 13) as regards a remedy in respect of the gathering and taking down of personal data (nineteen votes to four), but not as regards a remedy in respect of the taking of photographs and their storing (fourteen votes to nine). The full text of the Commission's opinion and of the two separate opinions contained in the report is reproduced as an annex to this judgment (1).

1. Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 305-B of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

---

#### AS TO THE LAW

15. On 23 December 1994 the Court received from the Agent of the Government a copy of the following text, signed on 21 December by himself and the applicant's lawyer.

"...

1. The Federal Government of the Republic of Austria will pay to the applicant a sum amounting to altogether AS 148,787.60 inclusive of all taxes as compensation in respect of any possible claims relating to the present application. This sum includes AS 98,787.60 in respect of the counsel's fees and expenses incurred in the domestic proceedings and before the Strasbourg organs.

This amount will be paid to the applicant's counsel, Mr Thomas Prader in Vienna ...

2. All the photographs in question including the

negatives will be destroyed by the Austrian Government.

3. The applicant declares his application settled.

4. The applicant waives any further claims against the Federal Republic of Austria relating to the present application.

5. The Austrian Federal Government will take the necessary steps to implement the terms of the friendly settlement within one month after the Court has decided to strike the case out of its list."

In the same letter the Agent of the Government requested the Court to strike the case out of its list. He drew attention to the fact that, since the entry into force of the Security Services Act (see paragraph 12 above), the independent administrative tribunals have had jurisdiction to hear complaints such as those raised in this instance by Mr Friedl before the Constitutional Court.

By letters of 2 and 9 January 1995 to the Registrar, the applicant's lawyer confirmed the agreement concluded and requested the Court to strike the case out of the list.

16. The Delegate of the Commission was consulted in accordance with Rule 49 para. 2 of Rules of Court A and expressed the view that the settlement was consistent with the human rights defined in the Convention.

17. The Court takes formal note of the friendly settlement reached between the Government and Mr Friedl. It discerns no reason of public policy militating against striking the case out of the list (Rule 49 paras. 2 and 4).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of Rules of Court A on 31 January 1995.

Signed: Rolv RYSSDAL  
President

Signed: Herbert PETZOLD  
Registrar