



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

COURT (CHAMBER)

CASE OF MAUER v. AUSTRIA

(Application nos. 16566/90, 16898/90)

JUDGMENT

STRASBOURG

18 February 1997

In the case of Mauer v. Austria¹,

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 B², as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr A.N. LOIZOU,

Mr L. WILDHABER,

Mr B. REPIK,

Mr P. JAMBREK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 28 August, 24 October and 25 November 1996 and 20 January 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 15 September 1995, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in two applications (nos. 16566/90 and 16898/90) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) on 18 January and 14 May 1990 respectively, by an Austrian national, Mr Wolfgang Mauer.

The Commission's requests 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 requests was to obtain a decision as to whether the facts of the case disclosed a

¹ The case is numbered 79/1995/585/671 and 80/1995/586/672. The first number in each of these two sets is the position on the list of cases referred to the Court in the relevant year (second number). The last two numbers in each set indicate the 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 of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

breach by the respondent State of its obligations under Article 6 para. 1 of the Convention (art. 6-1).

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicant stated that he wished to take part in the proceedings and designated Mr H. Blum, a lawyer practising in Linz, to represent him (Rule 31).

3. On 29 September 1995 the President of the Court, Mr R. Ryssdal, decided, under Rule 21 para. 7 and in the interests of the proper administration of justice, that a single Chamber should be constituted to hear both cases.

4. 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. Bernhardt, the Vice-President of the Court (Rule 21 para. 4 (b)). On 29 September 1995, in the presence of the Registrar, Mr Ryssdal drew by lot the names of the other seven members, namely Mr I. Foighel, Mr R. Pekkanen, Mr A.N. Loizou, Mr L. Wildhaber, Mr D. Gotchev, Mr B. Repik and Mr P. Jambrek (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr L.-E. Pettiti and Mrs E. Palm, substitute judges, replaced Mr Pekkanen and Mr Gotchev, who were unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

5. On 23 November 1995 the Chamber ordered the joinder of the two cases (Rule 39 para. 3 in fine).

6. As President of the Chamber (Rule 21 para. 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 28 May 1996 and the applicant's memorial (in which the applicant's claims under Article 50 of the Convention (art. 50) were also set out) on 30 May. The Delegate filed written observations in reply on 3 July.

On 13 June 1996 the Commission produced various documents from the proceedings before it, as requested by the Registrar on the President's instructions.

7. On 28 August 1996 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 27 and 40).

8. Pursuant to the order made by the President on 29 August 1996, further documents were received from the Commission on 19 September 1996 and from the Government on 20 September.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

9. The applicant is an Austrian national born in 1953 and resident in Vienna. He has a taxi business.

A. The first set of proceedings (application no. 16566/90)

10. On 4 March 1988 a car identified as belonging to the applicant was seen to drive through a red traffic-light.

11. On 15 May 1988 the Federal Police Authority (Bundespolizeidirektion) in Vienna sent the applicant a letter ordering him to disclose the identity of the driver.

12. On 20 May 1988 the Vienna Federal Police Authority imposed a fine of 800 Austrian schillings (ATS) with forty-eight hours' imprisonment (Arrest) in default on the applicant by way of a provisional penal order (Strafverfügung) for having failed to comply with his obligation as registered owner (Zulassungsbesitzer) of a car to disclose the identity of the driver at a particular time, contrary to section 103 (2) of the Motor Vehicles Act (Kraftfahrgesetz) 1967 (see paragraph 22 below).

13. The applicant states that he tried to submit a written appeal at a police station, or in the alternative to declare his objections orally, but the officers at the police station refused to cooperate.

14. When the Federal Police Authority proceeded to the enforcement of the provisional order, the applicant referred to this refusal. The authority thereupon instituted ordinary penal administrative proceedings which - after a hearing of the applicant - led to a penal order (Straferkenntnis) on 21 April 1989 imposing a fine of ATS 800 (again with forty-eight hours' imprisonment in default) and ordering the applicant to pay costs to an amount of ATS 80.

15. The applicant appealed to the Vienna regional government (Amt der Landesregierung), which on 12 June 1989 quashed this penal order as being null and void on the ground that the applicant had not effectively raised objections against the initial provisional penal order. The latter order accordingly remained valid.

16. The applicant lodged a complaint regarding this decision with the Administrative Court (Verwaltungsgerichtshof), which on 18 October 1989 dismissed the appeal without a hearing (section 35 (1) of the Administrative Court Act) and confirmed the decision of the regional government. It found that the refusal of the police to accept his written appeal had not deprived the applicant of the possibility to lodge it; he could still have dropped it into the letter-box or sent it by post.

B. The second set of proceedings (application no. 16898/90)

17. On 6 August 1987 officers of the Vienna police found that a tyre on one of the applicant's taxis had too low a tread. They drew up a report and confiscated the car's number plates and logbook.

18. On 20 September 1988 the Vienna Federal Police Authority, having heard the applicant, fined him ATS 500 for failure to comply with his duties as the registered owner of a motor vehicle (see paragraph 21 below), with thirty hours' imprisonment in default.

19. The applicant appealed to the Vienna regional government, which confirmed the decision of the Federal Police Authority on 21 April 1989.

20. The applicant filed a further appeal to the Administrative Court on 9 June 1989, complaining, *inter alia*, that the regional government had refused to hear the evidence of witnesses whom he had sought to bring forward.

The Administrative Court dismissed this appeal on 13 December 1989 without a hearing and ordered the applicant to pay ATS 2,760 costs. Its reasoning reflected the finding that the further evidence which the applicant had wished to put forward was in any event irrelevant.

II. RELEVANT DOMESTIC LAW AND PRACTICE**A. Road traffic legislation**

21. Under section 103 (1), first sub-paragraph, of the Motor Vehicles Act 1967, the registered owner of a motor vehicle is responsible for maintaining the vehicle in such a way as to comply with the Act or delegated legislation.

Section 7 (1) of the Act requires motor vehicles to be equipped with appropriate tyres for the type of vehicle. Regulation 4 (4) of the Motor Vehicle (Implementation) Regulations (Kraftfahrzeuggesetz-Durchführungsverordnung) requires the tyres of the type of vehicle at issue in the present case to have a tread at least 1.6mm high over their entire surface.

22. Section 103 (2) of the Act entitles the competent authority, *inter alia*, to require the registered owner to communicate the name and address of the person who has used the vehicle at a specific time.

23. Under section 134 (1), first sub-paragraph, it is an administrative offence (Verwaltungsübertretung) not to comply with the above-mentioned provisions, punishable by a fine of up to ATS 30,000 or up to six weeks' imprisonment in default.

B. Procedure

24. For a description of the relevant domestic procedure, reference is made to the *Umlauft v. Austria* judgment of 23 October 1995 (Series A no. 328-B, pp. 34-36, paras. 14-23).

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Mauer applied to the Commission on 18 January 1990 (application no. 16566/90) and 14 May 1990 (application no. 16898/90).

In the first application the applicant relied on Article 6 paras. 1 and 3 (c) of the Convention (art. 6-1, art. 6-3-c). He complained that he had not had a fair and public hearing before a tribunal and that he had not been allowed to defend himself in person.

In the second application the applicant relied on Article 6 paras. 1 and 3 (d) (art. 6-1, art. 6-3-d). He complained that he had not had a fair hearing and that witnesses whom he had sought to bring forward had not been heard.

26. The Commission declared both applications admissible on 18 October 1994. In its reports of 27 June 1995 (Article 31) (art. 31), it expressed the following unanimous opinions:

(a) in the first case (application no. 16566/90), that there had been a violation of the applicant's right to a tribunal as guaranteed by Article 6 para. 1 (art. 6-1), but that the absence of a hearing before the Administrative Court raised no separate issue under that provision (art. 6-1);

(b) in the second case (application no. 16898/90), that there had been a violation of the applicant's right to a tribunal as guaranteed by Article 6 para. 1 (art. 6-1), but that neither the absence of a hearing before the Administrative Court nor the way in which the evidence was considered raised any separate issue under that provision (art. 6-1).

The full text of the Commission's opinions is reproduced as an annex to this judgment³.

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-I), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

27. The applicant, in his memorial, referred to a third set of proceedings which had been the object of an application to the Commission. He stated that the Commission had joined this application to application no. 16566/90 to be dealt with in a single set of proceedings.

The Delegate of the Commission, in his written observations of 3 July 1996, noted that this third set of proceedings formed no part of the Commission's decisions on admissibility in these cases. In his view, the Court could therefore not consider them.

28. The Court reiterates that according to its settled case-law the scope of the case before it is determined by the Commission's decision on admissibility (see, as a recent authority, the *Hussain v. the United Kingdom* judgment of 21 February 1996, Reports of Judgments and Decisions 1996-I, p. 266, para. 44).

As the Delegate pointed out, the third set of proceedings referred to by the applicant is not encompassed by either of the Commission's decisions on admissibility in the present case. It follows that the Court has no jurisdiction to consider the applicant's complaints in so far as they relate to these proceedings.

II. ALLEGED VIOLATION OF ARTICLE 6 PARAS. 1, 3 (c) AND (d) OF THE CONVENTION (art. 6-1, art. 6-3-c, art. 6-3-d)

29. With regard to the first set of proceedings, the applicant alleged that he had not had a fair and public hearing before a tribunal and had not been allowed to defend himself in person. He alleged a violation of Article 6 paras. 1 and 3 (c) of the Convention (art. 6-1, art. 6-3-c) in this respect.

With regard to the second set of proceedings, he claimed that contrary to Article 6 paras. 1 and 3 (d) (art. 6-1, art. 6-3-d) he had not had a fair hearing and that witnesses whom he had sought to bring forward had not been heard.

Article 6 of the Convention (art. 6), in so far as relevant, provides as follows:

"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:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(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 Commission considered that Article 6 (art. 6) had been violated. The Government did not contest this.

30. The Government acknowledged that the substantive issues under Article 6 of the Convention (art. 6) raised by the present cases were the same as in the cases of *Schmautzer, Umlauf, Grading, Pramstaller, Palaoro and Pfarrmeier v. Austria* (judgments of 23 October 1995, Series A nos. 328 A-C and 329 A-C) and should be decided in the same way for the reasons set out in those judgments.

31. In each of the six earlier cases, the Court found that there had been a violation of the applicant's right of "access to a tribunal" and, in view of that finding, considered it unnecessary to rule specifically on the applicant's other complaints under Article 6 (art. 6).

There is no reason to follow a different approach in the present case.

Accordingly, the Court finds that there has been a violation of Article 6 para. 1 (art. 6-1) in each set of proceedings and that it is not necessary to rule on the allegations of violation of Article 6 para. 3 (c) and (d) (art. 6-3-c, art. 6-3-d) respectively.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION (art. 50)

32. Article 50 of the Convention (art. 50) 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."

A. Damage

1. Non-pecuniary damage

33. The applicant claimed that he had suffered non-pecuniary damage as a result of inconvenience caused him, particularly due to the

Government's refusal to agree to a friendly settlement on his terms. He asked the Court to award him ATS 60,000 under this head in respect of each set of proceedings.

34. The Government denied that the applicant had suffered any non-pecuniary damage.

35. The Delegate of the Commission did not comment.

36. In the circumstances, the Court considers that the present judgment in itself constitutes sufficient reparation for any inconvenience which the applicant may have suffered.

2. Pecuniary damage

37. The applicant asked the Court to order the reimbursement of the sums which he had had to pay in fines and costs.

In addition, he claimed that his plans to expand his business had been blocked for at least five years by the impugned proceedings, which had occasioned him "a substantial loss considerably in excess of ATS 1 million". He nevertheless only asked the Court to award him ATS 40,000 for each set of proceedings.

38. The Government contended that the Court had no jurisdiction to quash convictions pronounced by national courts or to order repayment of fines. Moreover, it could not, in awarding reparation, speculate as to what the outcome of the proceedings would have been if the applicant had had access to a tribunal within the meaning of Article 6 para. 1 of the Convention (art. 6-1).

39. The Delegate of the Commission did not comment.

40. The Court agrees with the Government that it cannot speculate as to what the outcome of the proceedings in issue might have been if the violation of the Convention had not occurred (see, among many other authorities, the Umlauf judgment cited above, p. 40, para. 47).

As to the applicant's allegation that his plans for expanding his business were affected by the proceedings in issue, the applicant has neither shown the existence and extent of any such damage nor convinced the Court that there is any causal link between it and the violation found. No award can therefore be made under this head.

B. Costs and expenses

41. The applicant asked the Court to award him ATS 66,330 for lawyers' fees payable in respect of the proceedings before the domestic court and the Commission. He did not provide any further details.

He also submitted a claim for ATS 20,000 for travel and subsistence expenses incurred in the course of the Commission proceedings.

The applicant provided a breakdown of his costs in so far as they had been incurred in the proceedings before the Court. They came to

ATS 54,725.44 plus value-added tax, including certain sums intended to cover the costs connected with the oral hearing before the Court.

42. The Government stated that they were unable to comment on the applicant's claims for reimbursement of lawyers' fees payable in respect of the proceedings before the domestic court and the Commission, of which no detailed statement had been submitted.

Furthermore, they considered that it had not been necessary for the applicant to travel personally to Strasbourg to prepare and conduct the proceedings. Other applicants had been able to pursue their actions from Austria, and it would in their view not have been unreasonable to expect Mr Mauer to do likewise.

As to the proceedings before the Court, they pointed out that no hearing had in fact taken place.

They considered a total of ATS 70,000 to be reasonable.

43. The Delegate of the Commission did not comment.

44. The Court notes first of all that the applicant's claims concern all three sets of proceedings before the Austrian authorities, whereas - as has already been pointed out - its jurisdiction extends to only two of these (see paragraph 28 above). For this reason alone, the applicant's claims cannot be accepted in their entirety.

As to the applicant's travel expenses incurred in the course of the Commission proceedings, it should be noted that the applicant presented his own case there. Accordingly, in so far as these expenses are referable to the sets of proceedings covered by the Commission's decisions on admissibility it cannot be accepted that they were not necessarily incurred.

On the other hand, as was correctly noted by the Government, no hearing took place before the Court (see paragraph 7 above). In so far as they are not connected with the Court's hearing, the applicant's claims under this head total ATS 35,725.44 plus value-added tax.

45. The applicant provided no information specifying the costs referable to each of the two sets of domestic proceedings. Making an assessment on an equitable basis, the Court awards the applicant ATS 100,000 plus value-added tax.

C. Default interest

46. According to the information available to the Court, the statutory rate of interest applicable in Austria at the date of adoption of the present judgment is 4% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that it has jurisdiction only to consider the applicant's allegations of violation of the Convention in so far as they relate to the two sets of proceedings referred to in the Commission's decisions on the admissibility of applications nos. 16566/90 and 16898/90;
2. Holds that there has been a violation of Article 6 para. 1 of the Convention (art. 6-1) in both sets of proceedings;
3. Holds that it is not necessary to consider the applicant's allegations of violations of Article 6 para. 3 (c) and (d) of the Convention (art. 6-3-c, art. 6-3-d) respectively;
4. Holds that the present judgment in itself constitutes sufficient just satisfaction in respect of any non-pecuniary damage sustained;
5. Holds that the respondent State is to pay to the applicant, within three months, 100,000 (one hundred thousand) Austrian Schillings plus value-added tax, and that simple interest at an annual rate of 4% shall be payable from the expiry of the above-mentioned three months until settlement;
6. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 February 1997.

Rudolf BERNHARDT
President

Herbert PETZOLD
Registrar