



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

CASE OF SZÜCS v. AUSTRIA

(135/1996/754/953)

JUDGMENT

STRASBOURG

24 November 1997

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SUMMARY¹

Judgment delivered by a Chamber

Austria – no public delivery of judgments of a court of appeal in two sets of proceedings to claim compensation for detention (Compensation (Criminal Proceedings) Act 1969 and Article 82 of the Code of Criminal Procedure)

I. ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Recapitulation of case-law.

Applicant had had right to be compensated for his detention pending trial, provided that the statutory requirements had been satisfied – there had therefore been a *contestation* (dispute) over a right – outcome of proceedings in relevant criminal courts directly decisive for his right – applicant's right to compensation a civil one.

Conclusion: Article 6 § 1 applicable (unanimously).

B. Compliance*1. Austria's reservation*

Issue not raised in Government's memorial to the Court – there was therefore an estoppel – unnecessary for Court to consider question of its own motion.

2. Merits of complaint

Recapitulation of case-law.

The leave that could be given to third parties to obtain copies of judgments if they showed a legitimate interest did not amount to making the full texts of the judgments available to everyone – in Austria the possibility of obtaining those full texts existed only in respect of judgments of the Supreme Court, the Administrative Court and the Constitutional Court – furthermore, no need for relevant courts to make statements which would breach principle of presumption of innocence.

Conclusion: violation (unanimously).

II. ARTICLE 50 OF THE CONVENTION

A. Pecuniary damage: no causal link between breaches complained of and pecuniary damage.

1. This summary by the registry does not bind the Court.

B. Non-pecuniary damage: sufficiently compensated by finding of violation.

C. Costs and expenses: reimbursement assessed on equitable basis.

Conclusion: respondent State to pay applicant specified sum for costs and expenses (unanimously).

COURT'S CASE-LAW REFERRED TO

8.12.1983, Pretto and Others v. Italy; 8.12.1983, Axen v. Germany; 22.2.1984, Sutter v. Switzerland; 26.3.1992, Editions Périscope v. France; 26.9.1995, Diennet v. France; 28.9.1995, Masson and Van Zon v. the Netherlands; 18.2.1997, Nideröst-Huber v. Switzerland; 29.5.1997, Georgiadis v. Greece; 24.11.1997, Werner v. Austria, 24 November 1997, Reports of Judgments and Decisions 1997-VII

In the case of Szücs v. Austria¹,

The European Court of Human Rights, sitting, in accordance with Article 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. RYSSDAL, *President*,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr A. SPIELMANN,

Mr N. VALTICOS,

Mrs E. PALM,

Mr L. WILDHABER,

Mr B. REPIK,

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

Having deliberated in private on 27 June and 20 October 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 28 October 1996 and by the Government of the Republic of Austria (“the Government”) on 25 November 1996, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 20602/92) against Austria lodged with the Commission under Article 25 by a Hungarian national, Mr Zoltan Szücs, on 24 August 1992.

The Commission’s request referred to Articles 44 and 48 and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46); the Government’s application referred to Article 48. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 135/1996/754/953. 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 of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. The applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 31 of Rules of Court B). The lawyer was given leave by the President to use the German language (Rule 28 § 3). The Hungarian Government, having been informed by the Registrar of their right to intervene (Article 48 (b) of the Convention and Rule 35 § 3 (b)), did not indicate any intention of so doing.

3. The Chamber to be constituted included *ex officio* Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 29 October 1996 the President decided that in the interests of the proper administration of justice this case and the case of Werner v. Austria should be heard by the same Chamber (Rule 21 § 7). On the same day, in the presence of the Registrar, he drew by lot the names of the other seven members, namely Mr F. Gölcüklü, Mr L.-E. Pettiti, Mr A. Spielmann, Mr N. Valticos, Mrs E. Palm, Mr L. Wildhaber and Mr B. Repik (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 2 April and the applicant's memorial on 7 May 1997.

On 24 January 1997 the Commission had produced various documents on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing in this case and in the Werner case took place in public in the Human Rights Building, Strasbourg, on 25 June 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*

Mr F. CEDE, Ambassador, Federal Ministry of Foreign Affairs,	<i>Agent,</i>
Mrs I. GARTNER, public prosecutor, Department of Criminal Affairs and Pardons, Federal Ministry of Justice,	
Mrs I. SIESS, Constitutional Service, Federal Chancellery,	<i>Advisers;</i>

(b) *for the Commission*

Mr A. WEITZEL,	<i>Delegate;</i>
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(c) *for the applicant*

Mr T. SCHREINER, of the Eisenstadt Bar,

Counsel;

(d) *for Mr Werner*

Mr G. BÜRSTMAYR, of the Munich Bar,

Counsel.

The Court heard addresses by Mr Weitzel, Mr Bürstmayr, Mr Schreiner, Mr Cede and Mrs Gartner.

AS TO THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. Mr Zoltan Szücs, a Hungarian national born in 1971, lives at Halaszetelek (Hungary).

A. Detention pending trial

7. On 8 October 1990 the investigating judge at the Wiener Neustadt Regional Court (*Kreisgericht*) began a preliminary investigation and issued a warrant for the arrest of the applicant and three other persons suspected of having made fraudulent use of another person's credit card when making purchases in various shops in Austria to the value of about 200,000 Austrian schillings (ATS).

8. On 25 February 1991 the police arrested the applicant at the border between Austria and Hungary as he was preparing to enter Austria.

9. On 26 February 1991 the investigating judge at the Eisenstadt Regional Court interviewed Mr Szücs and detained him pending trial.

10. On 4 April 1991 he again interviewed the applicant.

B. Discontinuance of the proceedings

11. On 11 May 1991, at the request of the public prosecutor's office, the investigating judge decided to discontinue the proceedings in the light of a graphologist's finding that it was unlikely that the signatures on the payment slips for the purchases made with the stolen credit card were in the applicant's hand.

12. The applicant was released on the same day.

C. The claims for compensation for detention

1. *The compensation claim under section 2 (1) (b) of the Compensation (Criminal Proceedings) Act 1969*

13. On 6 May 1991 the applicant sought compensation from the State for the pecuniary damage sustained on account of his detention.

14. On 8 May 1991 the Review Division (*Ratskammer*) of the Wiener Neustadt Regional Court refused his compensation claim on the ground that, contrary to the requirements of section 2 (1) (b) of the Compensation (Criminal Proceedings) Act 1969 (*Strafrechtliches Entschädigungsgesetz*, “the 1969 Act” – see paragraph 20 below), the suspicion concerning him had not been dispelled.

15. On 27 May 1991 the applicant appealed against that decision to the Vienna Court of Appeal (*Oberlandesgericht*).

16. On 9 January 1992 the Court of Appeal, sitting in private, dismissed the appeal. It ruled as follows:

“The Court accepts the appellant’s submission that in its decision the Review Division of the Wiener Neustadt Regional Court confined itself essentially to mentioning the applicable provisions and setting out the facts and did not make use of certain concrete information apparent from the file. The appellant, who has in the meantime been convicted in Austria of handling under Article 164 §§ 1 (2) and 2 of the Criminal Code and imprisoned, is in fact suspected of having participated in obtaining goods fraudulently by using an unlawfully obtained credit card made out in the name of another person. It cannot be ruled out that he signed payment slips using a card made out in the name of a woman by wearing a wig. This attempt to investigate was necessary as it had not been possible to bring the other offenders before the court below. Against the conjecture that the signatures were written by the appellant there stands only his assertion that he did not sign any payment slips and that he does not look like a girl either. In so far as he sought to have admitted as genuine proof of his innocence the expert’s statement that the signatures on the payment slips were probably not written by the appellant, regard must be had to the scale of probability drawn up by the expert, which does not at all exclude that the appellant wrote the signatures, and it must be observed that this submission by the appellant does not refute the argument that he took part in the fraudulent acts by providing the necessary transport to the various places where the offences were committed and conveying the proceeds from them, knowing that the other persons involved were committing offences. On the contrary, the large number of fraudulent purchases made both in Austria and in Italy supports the view that the appellant was fully aware of the criminal nature of the operations and that it was in full knowledge of this that he assisted the offenders in their criminal acts by continuing to provide transport (Article 12 of the Criminal Code).

Contrary to what the appellant maintained, compensation under section 2 (1) (b) of the Compensation (Criminal Proceedings) Act is payable only on condition that the innocence of the detained person can be regarded as proved; that is to say, it must be

proved that the detained person is not punishable, and cannot be prosecuted, on account of the act in respect of which his detention was ordered. Where that remains only doubtful, suspicion is not dispelled and the condition on which compensation may be paid is not satisfied (see Mayerhofer-Rieder, second ed., E.11a and 12a, on section 2 of the Compensation (Criminal Proceedings) Act). In the instant case it cannot be said that suspicion has been dispelled, and the appeal, being unfounded, must therefore fail.”

2. The compensation claim under section 2 (1) (a) of the Compensation (Criminal Proceedings) Act 1969

17. In his pleadings of 27 May 1991 (see paragraph 15 above) Mr Szücs also complained of the excessive length of the detention pending trial and sought compensation for unlawful detention under section 2 (1) (a) of the 1969 Act (see paragraph 20 below).

18. On 9 January 1992, in a separate decision, the Court of Appeal, sitting in private as a court of first instance, dismissed the applicant’s claim on the ground that neither his arrest nor the order for his detention pending trial or the continuation of that detention had been unlawful.

The Court of Appeal also referred to the reasoning in its other judgment of the same day (see paragraph 16 above).

II. RELEVANT DOMESTIC LAW

A. Public oral hearings

19. Article 90 § 1 of the Federal Constitution provides:

“Hearings by trial courts in civil and criminal cases shall be oral and public. Exceptions may be prescribed by law.”

B. Compensation for detention pending trial

20. The relevant provisions of the 1969 Act read as follows:

Section 2 (1) (a) and (b)

“(1) A right to compensation arises:

(a) where the detention of the injured party has been unlawfully ordered or extended by a national court ...;

(b) where the injured party has been placed in detention or remanded in custody by a domestic court on suspicion of having committed an offence making him liable to criminal prosecution in Austria ... and is subsequently acquitted of the alleged offence

or otherwise freed from prosecution and the suspicion that he committed the offence has been dispelled or prosecution is excluded on other grounds, in so far as these grounds existed when he was arrested;

...”

Section 6

“(1) ...

(2) A court which acquits a person or otherwise frees him from prosecution ... (section 2 (1) (b) or (c)) must decide either of its own motion or at the request of the individual in question or the public prosecutor’s office whether the conditions of compensation under section 2 (1) (b) or (c), (2) and (3) have been satisfied or whether there is a ground for refusal under section 3 ... If the investigating judge decides to discontinue the proceedings, the Review Division concerned shall rule.

(3) Before ruling, the court shall hear the detained or convicted person and gather the evidence necessary for its decision where this has not already been adduced in the criminal proceedings ...

(4) Once the judgment rendered in the criminal proceedings has become final, the decision, which need not be made public, must, as part of the proceedings provided for in paragraph 2, be served on the detained or convicted person personally and on the public prosecutor ...

(5) The detained or convicted person and the public prosecutor may appeal against the decision to a higher court within two weeks.

(6) The court with jurisdiction to rule on the appeal shall order the criminal court of first instance to carry out further investigations if that is necessary for a decision. If the court which has to rule is the court of first instance, the investigations shall be carried out by the investigating judge.

(7) Once the decision has become final, it is binding on the courts in subsequent proceedings.”

21. If the courts consider that the conditions in sections 2 and 3 have been satisfied, the applicant must apply to the Auditor-General’s Department (*Finanzprokuratur*) for his claim to be allowed. If no decision has been taken on his claim within six months or if it has been refused in whole or in part, the claimant may bring a civil action against the Republic of Austria (sections 7 and 8 of the Act).

22. As a general rule, there is no public hearing before the Review Division of the Regional Court or in the Court of Appeal in appeal proceedings (*Beschwerden*) against a decision of the Review Division. The two courts rule after sitting in private and after hearing the representative of the public prosecutor’s office and the principal public prosecutor’s office respectively (Articles 32 § 1 and 35 § 2 of the Code of Criminal Procedure – *Strafprozeßordnung*).

C. Access to the file in criminal cases

23. Article 82 of the Code of Criminal Procedure provides:

“The courts shall have discretion to decide whether a party or his duly appointed representative may, in cases other than those expressly provided for in the Code of Criminal Procedure, be given leave to inspect documents in the file or whether copies may be given to them, provided that the persons concerned can convincingly show that they need such copies in order to be able to claim compensation or to support an application for a retrial or for some other reason.”

D. Public access to judgments of Austria’s highest courts

24. It is the practice of the registries of the Austrian Constitutional Court and Administrative Court to make their respective court’s judgments available on request. The courts also publish a selection of their decisions each year. Since an amendment to the Supreme Court Act in 1991, the judgments of the Supreme Court (*Oberster Gerichtshof*) have likewise been available to the public on request. The Supreme Court also publishes a selection of its judgments each year.

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Szücs applied to the Commission on 24 August 1992. Relying on Article 5 §§ 3 and 5, he complained of the length of his detention pending trial and the Austrian courts’ refusal to award him compensation for his detention. Relying on Article 6 §§ 1, 2 and 3 (d) of the Convention, he also complained that the Austrian courts had not pronounced judgment publicly and that he had been unable to have any witnesses examined. Lastly, he complained that the principle of presumption of innocence had been infringed.

26. On 29 June 1994 and 23 October 1995 the Commission declared the application (no. 20602/92) admissible as regards the complaint concerning the Vienna Court of Appeal’s failure to pronounce judgment publicly and inadmissible as to the remainder. In its report of 3 September 1996 (Article 31) it expressed the opinion that there had been a violation of Article 6 § 1 (twenty-seven votes to two). The full text of the Commission’s opinion and of the separate opinion contained in the report is reproduced as an annex to this judgment¹.

1. *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), but a copy of the Commission’s report is available from the registry.

FINAL SUBMISSIONS TO THE COURT

27. In their single memorial in this case and the case of *Werner v. Austria* (judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII) the Government asked the Court:

“1. to declare the present applications inadmissible under Article 27 § 2 of the Convention because they are manifestly ill-founded in the absence of the violations of the Convention alleged by the applicants, in so far as they are not to be rejected for non-exhaustion of domestic remedies under Article 27 § 3 of the Convention;

or

2. to hold that there was no violation of the Convention in the proceedings under the Compensation (Criminal Proceedings) Act.”

28. The applicant requested the Court to find

“a breach of his right, protected by Article 6 § 1 of the Convention, to public delivery of the decisions given by the courts before which his claim for compensation came”.

He also asked the Court to order Austria to pay him the costs and expenses incurred, together with just satisfaction under Article 50 of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

29. Mr Szücs maintained that he was the victim of a breach of Article 6 § 1 of the Convention, which provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by [a] ... tribunal ... Judgment shall be pronounced publicly ...”

He complained that, when ruling on his claim under section 2 (1) (b) of the Compensation (Criminal Proceedings) Act (see paragraph 20 above) for compensation for his detention, the Wiener Neustadt Regional Court and the Vienna Court of Appeal had not pronounced their judgments publicly.

He also complained that the Vienna Court of Appeal sitting as a court of first instance to consider his compensation claim under section 2 (1) (a) of the Compensation (Criminal Proceedings) Act (see paragraph 20 above) had likewise not pronounced judgment publicly.

A. Applicability of Article 6 § 1

30. In the applicant's submission, the impugned proceedings related to his civil rights. He had sought compensation for economic loss resulting from his detention pending trial and there had been a serious dispute over his right to be compensated. As the second stage of the proceedings had taken place in the civil courts, it would be incomprehensible to hold that Article 6 § 1 was not applicable to the earlier but essential stage in the criminal courts. Lastly, the decision of the latter courts had been directly decisive for his right to compensation.

31. The Government, on the other hand, considered that in particular the proceedings relating to his compensation claim under section 2 (1) (b) of the Compensation (Criminal Proceedings) Act (see paragraphs 13–16 above) were not covered by Article 6, on the ground that, as in the case of *Masson and Van Zon v. the Netherlands* (judgment of 28 September 1995, Series A no. 327-A), the applicant had not had a “right” in domestic law. According to the Compensation (Criminal Proceedings) Act, the mere fact of acquitting somebody who had been held in detention or discontinuing the proceedings against him did not mean that the person concerned automatically had a right to compensation. That right existed only where all suspicion had been dispelled, a question which the relevant courts determined in the exercise of their discretion, so that it was not possible to say that a “right” existed. Furthermore, the criminal courts' decision was not directly decisive for the right in question, as the aggrieved person subsequently had to submit his compensation claim to the civil courts.

32. The Court reiterates that Article 6 § 1 applies to *contestations* (disputes) over rights which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among other authorities, the *Masson and Van Zon* judgment cited above, p. 17, § 44, and the *Georgiadis v. Greece* judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, pp. 958–59, § 30).

33. The Court notes that in the instant case section 2 (1) of the Compensation (Criminal Proceedings) Act (see paragraph 20 above) provides that a person is entitled to compensation if his detention pending

trial has been unlawfully ordered or extended (section 2 (1) (a)) or if he has been acquitted or freed from prosecution after his detention and “the suspicion that he committed the offence has been dispelled” (section 2 (1) (b)).

In the case of Masson and Van Zon, the award of such compensation was left entirely to the discretion of the court even where the legal conditions were met (see the judgment, cited above, p. 19, § 51), and that led the Court to hold that there had been no right under domestic law. In the present case, on the contrary, the applicant had a right to be compensated for his detention pending trial, provided that the statutory requirements were satisfied. This case is therefore more akin to the Georgiadis case, in which a similar provision of the Greek Code of Criminal Procedure created a right to compensation for a person who had been acquitted after being held in detention (see the judgment, cited above, p. 959, § 32).

Like the Commission, the Court therefore considers that a “right” existed.

34. Mr Szücs also maintained that he had had a right to compensation under the Compensation (Criminal Proceedings) Act, although the relevant criminal courts had held that the requirements set out in that Act had not been satisfied. There had therefore been a “*contestation*” (dispute) over a right within the meaning of Article 6 § 1.

35. The Court notes that section 6 (7) of the Compensation (Criminal Proceedings) Act provides: “Once the decision [on the award of such compensation] has become final, it is binding on the courts in subsequent proceedings” (see paragraph 20 above). Irrespective of the fact that other procedural stages might prove necessary (see paragraph 21 above), the outcome of the proceedings in the relevant criminal courts was therefore directly decisive for the applicant’s right to compensation.

36. As to whether the right was a “civil” one, the Court reiterates that the concept of “civil rights and obligations” is not to be interpreted solely by reference to the respondent State’s domestic law and that Article 6 § 1 applies irrespective of the status of the parties, as of the character of the legislation which governs how the dispute is to be determined and the character of the authority which is invested with jurisdiction in the matter (see the Georgiadis judgment cited above, p. 959, § 34). For a right to be a civil one, it is sufficient that the subject matter of the action should be pecuniary and that the action should be founded on an alleged infringement of rights which are likewise pecuniary rights (see the Editions Périscope v. France judgment of 26 March 1992, Series A no. 234-B, p. 66, § 40).

37. In the Georgiadis case the Court held that the right to compensation after the acquittal of a person who had been held in detention was a civil one (see the judgment, cited above, p. 959, § 35). It sees no reason to depart from that assessment in the instant case, in which the applicant’s right to compensation concerned compensation sought for detention undergone after

proceedings had been discontinued by the investigating judge (see paragraph 11 above).

38. Accordingly, like the Commission, the Court concludes that Article 6 § 1 was applicable to the proceedings in issue.

B. Compliance with Article 6 § 1

1. Austria's reservation in respect of Article 6

39. At the hearing before the Court, the Government asserted that the Court could not entertain the complaint based on the fact that there was no public hearing and no public delivery of the judgments in the proceedings for compensation in relation to a criminal case, since those proceedings were covered by Austria's reservation in respect of Article 6 of the Convention, worded as follows:

"The provisions of Article 6 of the Convention shall be so applied that there shall be no prejudice to the principles governing public court hearings laid down in Article 90 of the 1929 version of the Federal Constitution Law."

40. The Court notes that the Government did not raise the issue of the reservation in their memorial to the Court. It accordingly considers that it must apply Rule 50 § 1 of Rules of Court B, which provides:

"A party wishing to raise a preliminary objection must file a statement setting out the objection and the grounds therefor not later ... than the expiry of the time-limit laid down under Rule 39 § 1 for the filing of its first memorial."

The Government are therefore estopped from raising the question whether the complaint (see paragraph 39 above) is covered by the relevant reservation and it is unnecessary for the Court to consider it of its own motion.

2. Merits of the complaint

41. In the Government's submission, the requirement of Article 6 § 1 concerning the public pronouncement of judgments had been satisfied in the instant case, since under Article 82 of the Code of Criminal Procedure (see paragraph 23 above), third parties were able to have access to the files and obtain copies if they could show a legitimate interest. Furthermore, the limited jurisdiction of the courts, which had to rule only on whether the suspicion concerning the applicant had been dispelled, justified not delivering the decisions in public, as in the *Pretto and Others v. Italy* case (see the judgment of 8 December 1983, Series A no. 71). Lastly, a private sitting had also been justified in the interests of the applicant, because it was likely to be stated in the decisions in question that the suspicion concerning him still remained, and that would infringe the principle of presumption of innocence. Furthermore, as regards the compensation claim under section 2

(1) (a) of the Compensation (Criminal Proceedings) Act, the applicant had failed to appeal to the Supreme Court against the judgment of the Court of Appeal sitting as a court of first instance (see paragraph 18 above).

42. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6. This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, for example, the *Diennet v. France* judgment of 26 September 1995, Series A no. 325-A, pp. 14–15, § 33).

43. The Court has several times had occasion to rule on the Article 6 § 1 requirement that judgments must be pronounced publicly, holding that “in each case the form of publicity to be given to the ‘judgment’ under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1” (see the *Pretto and Others* judgment cited above, p. 12, § 26 *in fine*). Thus in that case (see p. 13, § 27, of the judgment) it held, having regard to the Court of Cassation’s limited jurisdiction, that depositing the judgment in the court registry, which made the full text of the judgment available to everyone, was sufficient to satisfy the requirement. In the *Axen v. Germany* case (see the judgment of 8 December 1983, Series A no. 72, p. 14, § 32), it held that public delivery of a decision of a supreme court was unnecessary given that the judgments of the lower courts had been pronounced publicly. Lastly, in the *Sutter v. Switzerland* case (see the judgment of 22 February 1984, Series A no. 74, pp. 14–15, § 34) it held that public delivery of a decision of the Military Court of Cassation was unnecessary, as public access to that decision was ensured by other means, namely the possibility of seeking a copy of the judgment from the court registry and its subsequent publication in an official collection of case-law.

44. The Court notes that in the proceedings relating to the compensation claim made by the applicant under section 2 (1) (b) of the Compensation (Criminal Proceedings) Act (see paragraphs 13–16 above) neither the Wiener Neustadt Regional Court nor the Vienna Court of Appeal pronounced judgment publicly. Similarly, in the proceedings relating to the compensation claim under section 2 (1) (a) of the same Act (see paragraphs 17–18 above) the Vienna Court of Appeal, sitting as a court of first instance, did not deliver its judgment at a public sitting.

Since it is expressly provided in section 6 (4) of the Compensation (Criminal Proceedings) Act (see paragraph 20 above) that in such proceedings the courts need not deliver decisions publicly, the applicant cannot be blamed for not having appealed to the Supreme Court against the judgment of the Court of Appeal, sitting as a court of first instance, on this point.

45. Admittedly, as the Government maintained, a third party can be given leave, under Article 82 of the Code of Criminal Procedure (see paragraph 23 above), to inspect the files and obtain copies of the judgments they contain if he shows a legitimate interest. Such leave is, however, granted only at the discretion of the relevant courts, so that the full texts of the judgments are not made available to everyone.

46. In Austria the possibility of obtaining the full texts of judgments from the court registry in fact exists only in respect of judgments of the Supreme Court, the Administrative Court and the Constitutional Court (see paragraph 24 above) and not in respect of the judgments and decisions of courts of appeal or first instance.

47. The Government's argument as to maintaining the presumption of the applicant's innocence cannot succeed. On the one hand, the Court, like the Commission, does not see why it should be necessary for the relevant courts, in the course of proceedings brought under the Compensation (Criminal Proceedings) Act, to make statements which would breach the principle of presumption of innocence laid down in Article 6 § 2. On the other hand, it may be of importance to the person concerned that the fact that suspicion concerning him has been dispelled should be brought to the knowledge of the public.

48. That being so, in view of the fact that no judicial decision in the two sets of proceedings complained of was pronounced publicly and that publicity was not sufficiently ensured by other means, the Court, like the Commission, concludes that there has been a breach of Article 6 § 1 in this respect.

II. APPLICATION OF ARTICLE 50 OF THE CONVENTION

49. Article 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.”

A. Damage

50. Mr Szücs claimed 20,400 Austrian schillings (ATS) in respect of pecuniary damage, in particular on account of loss of earnings during his detention. He also sought ATS 30,000 in respect of non-pecuniary damage.

51. Like the Commission and the Government, the Court notes that there is no causal link between the breaches complained of and the alleged pecuniary damage; it is not possible to speculate as to what would have been the outcome of the proceedings if they had satisfied the requirements of Article 6 § 1.

As to possible non-pecuniary damage, the Court considers it sufficiently compensated by the finding of a breach of Article 6 § 1.

B. Costs and expenses

52. The applicant also claimed ATS 8,501.50 for costs and expenses entailed by his appeal to the Vienna Court of Appeal against the Wiener Neustadt Regional Court's decision and ATS 147,950 in respect of the proceedings before the Convention institutions.

53. The Government accepted the amount of the costs claimed for the appeal to the Vienna Court of Appeal. As to the proceedings at Strasbourg, having regard to the complaints declared admissible by the Commission, they considered it reasonable to award the applicant the sum of ATS 70,000.

54. The Delegate of the Commission was in favour of reimbursing the costs and expenses incurred before the Convention institutions.

55. The Court reiterates that according to its case-law, to be entitled to an award of costs and expenses, the injured party must have incurred them in order to seek prevention or rectification of a violation, to have the same established by the Commission and later by the Court and to obtain redress therefor. It must also be shown that the costs and expenses were actually and necessarily incurred and that they are reasonable as to quantum (see, among other authorities, the *Nideröst-Huber v. Switzerland* judgment of 18 February 1997, Reports 1997-I, p. 110, § 40).

56. As the Government pointed out, only the costs relating to the proceedings in the Vienna Court of Appeal were incurred in order to seek rectification of violations relating to the Wiener Neustadt Regional Court's failure to deliver judgment publicly. The Court therefore awards the sum sought under this head.

As to the costs entailed by Mr Szücs's representation at Strasbourg, the Court, making its assessment on an equitable basis and with reference to the relevant criteria, decides to award the sum of ATS 90,000.

C. Default interest

57. 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 Article 6 § 1 of the Convention applies to the proceedings in issue;
2. *Holds* that there has been a breach of Article 6 § 1 of the Convention on account of the failure to pronounce the judgments in those proceedings publicly;
3. *Holds* that the present judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;
4. *Holds*
 - (a) that the respondent State is to pay to the applicant, within three months, 98,501 (ninety-eight thousand five hundred and one) Austrian schillings and 50 (fifty) groschen in respect of costs and expenses;
 - (b) that simple interest at an annual rate of 4% shall be payable on that sum from the expiry of the above-mentioned three months until settlement;
5. *Dismisses* the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 November 1997.

For the President

Signed: Feyyaz GÖLCÜKLÜ
Judge

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the concurring opinion of Mr Matscher is annexed to this judgment.

Initialled: F. G.
Initialled: H. P.

CONCURRING OPINION OF JUDGE MATSCHER

(Translation)

As regards the breach of the principle that proceedings must be public, I refer to the first paragraph of my separate opinion in the case of *Werner v. Austria* (judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII).