



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

CASE OF MARTE AND ACHBERGER v. AUSTRIA

(64/1997/848/1055)

JUDGMENT

STRASBOURG

5 March 1998

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SUMMARY¹

Judgment delivered by a Chamber

Austria – criminal and subsequently administrative criminal proceedings for resisting police officers (Article 4 of Protocol No. 7)

RULE 51 §§ 2 AND 4 OF RULES OF COURT B

Friendly settlement reached between Austrian Government and applicants – no reason of public policy why case should not be struck out of list.

Conclusion: case ordered to be struck out of the list (unanimously).

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

In the case of Marte and Achberger 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. BERNHARDT, *President*,

Mr F. MATSCHER,

Mr B. WALSH,

Mr N. VALTICOS,

Mr I. FOIGHEL,

Mr J.M. MORENILLA,

Mr J. MAKARCZYK,

Mr B. REPIK,

Mr P. KÜRIS,

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

Having deliberated in private on 28 February 1998,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 9 July 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 22541/93) against the Republic of Austria lodged with the Commission under Article 25 by two Austrian nationals, Mr Bernhard Marte and Mr Walter Achberger, on 23 August 1993.

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 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 Article 6 of the Convention and Article 4 of Protocol No. 7.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicants designated the lawyer who would represent them (Rule 31).

Notes by the Registrar

1. The case is numbered 64/1997/848/1055. 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.

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. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 27 August 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr B. Walsh, Mr N. Valticos, Mr I. Foighel, Mr J.M. Morenilla, Mr J. Makarczyk, Mr B. Repik and Mr P. Kūris (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the applicants' lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40).

5. On 12 January 1998 the Government and the applicants' lawyer sent the registry the text of an agreement they had reached.

6. The Delegate of the Commission, who had been consulted about the agreement, considered that it called for no observations on his part.

AS TO THE FACTS

7. Mr Bernhard Marte and Mr Walter Achberger are Austrian citizens who were born in 1970 and live at Wolfurt and Lauterach respectively.

8. On 23 August 1990 they were convicted by the Feldkirch Regional Court (*Landesgericht*) of resisting police officers who on 3 July 1990 had been called in to make them leave the refreshment booth at a festival.

9. On 13 September 1990, in the course of administrative criminal proceedings, Mr Marte was ordered to pay a fine of 6,000 Austrian schillings (ATS), with nine days' imprisonment in default of payment, for (i) conduct likely to lead to a breach of the peace, contrary to section IX(1)(1) of the Introductory Act of the Administrative Proceedings Acts ("the Introductory Act"), (ii) offending public morals by insulting police officers, contrary to section 18(2) of the Public Morality Act, and (iii) offending public morals by insulting police officers in the presence of others, likewise contrary to section 18(2) of the Public Morality Act.

On the same day, Mr Achberger was fined ATS 11,000, with nine days' imprisonment in default, for (i) conduct likely to lead to a breach of the peace, contrary to section IX(1)(1) of the Introductory Act, (ii) offending public morals by insulting police officers, contrary to section 18(2) of the Public Morality Act, and (iii) assaulting a police officer in the presence of others, contrary to section IX(1)(1) of the Introductory Act.

10. The applicants appealed to the Vorarlberg Regional Public Security Authority (*Landessicherheitsdirektion*) against the sentences imposed under the Introductory Act and to the regional government (*Landesregierung*) against those imposed under the Public Morality Act.

11. On 13 and 11 June 1991 the regional government largely dismissed the appeals but slightly reduced the amount of the fines.

On 5 August 1991 the Public Security Authority dismissed the appeals lodged against the sentences imposed under the Introductory Act.

12. On 17 June 1992 the Constitutional Court (*Verfassungsgerichtshof*) declined to accept for adjudication appeals lodged by the applicants against the decisions of the regional government and the Public Security Authority on the ground that these did not have sufficient prospects of success. In reply to their complaints concerning Article 6 of the Convention, it referred to Austria's reservation in respect of Article 5 of the Convention. In connection with the complaint concerning Article 4 of Protocol No. 7, it referred to the declaration made by Austria when it ratified that Protocol.

13. On 25 January 1993 the Administrative Court (*Verwaltungsgerichtshof*) dismissed an appeal by Mr Achberger against the Public Security Authority's decision. It observed that although, under administrative law, no one could be prosecuted twice in administrative criminal proceedings, there was no legal bar to bringing a prosecution in respect of administrative offences when criminal proceedings had been instituted.

An appeal by Mr Marte against the Public Security Authority's decision was dismissed by the Administrative Court on 22 March 1993 in a judgment which referred to its decision of 25 January 1993.

14. On 22 February 1993 the Administrative Court also dismissed an appeal by Mr Achberger against the regional government's decision. It observed in particular that the conduct which constituted an offence under section 18 of the Public Morality Act was different from the conduct which constituted the offences defined in Articles 115 (insult, *Beleidigung*) and 267 (resisting State authority, *Widerstand gegen die Staatsgewalt*) of the Criminal Code (*Strafgesetzbuch*), so that the principle of the separation of powers had not been infringed.

On 22 March 1993 an appeal by Mr Marte to the Administrative Court was dismissed on the same grounds.

PROCEEDINGS BEFORE THE COMMISSION

15. Mr Marte and Mr Achberger applied to the Commission on 23 August 1993. They alleged breaches of Article 6 of the Convention and Article 4 of Protocol No. 7.

16. The Commission declared the application (no. 22541/93) admissible on 17 January 1996. In its report of 9 April 1997 (Article 31), it expressed the unanimous opinion that both provisions had been breached. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

AS TO THE LAW

17. On 12 January 1998 the Court received from the Ministry of Foreign Affairs of the Republic of Austria and from the applicants' counsel copies of the following text, which is signed by the Agent of the Government and the lawyer in question:

“ ...

1. The Government of the Republic of Austria will pay to the applicants a sum amounting altogether to ATS 136,000 (ATS 68,000 for each case) as compensation in respect of any possible claims relating to the present application.

This amount will be paid to the applicants' counsel, Dr Wilfried Ludwig Weh, ...

2. The applicants declare their application settled.

3. The applicants waive their right to any further claims before any national or international body against the Republic of Austria relating to the present application.

4. 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.

...”

18. The Delegate of the Commission was consulted about the agreement in accordance with Rule 51 § 2 of Rules of Court B and stated that it called for no observations on his part.

19. The Court takes formal note of the friendly settlement reached by the Government and the applicants. It discerns no reason of public policy why the case should not be struck out of its list (Rule 51 §§ 2 and 4 of Rules of Court B).

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* 1998), but a copy of the Commission's report is obtainable from the registry.

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 on 5 March 1998 pursuant to Rule 57 § 2, second sub-paragraph, of Rules of Court B.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar