



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

THIRD SECTION

**CASE OF MAUER v. AUSTRIA (No. 2)**

(Application no. 35401/97)

JUDGMENT

STRASBOURG

20 June 2000

**FINAL**

*20/09/2000*

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It is subject to editorial revision before its reproduction in final form in the official reports of selected judgments and decisions of the Court.



**In the case of Mauer v. Austria (no. 2),**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr L. LOUCAIDES,

Mr P. KÜRIS,

Sir Nicolas BRATZA,

Mrs H.S. GREVE,

Mr K. TRAJA, *Judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 17 November 1998 and on 30 May 2000,

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

## PROCEDURE

1. The case originated in an application (no. 35401/97) against the Republic of Austria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Wolfgang Mauer (“the applicant”), on 23 April 1990.

2. The applicant was represented by Mr Helmut Blum, a lawyer practising in Linz (Austria). The Austrian Government (“the Government”) were represented by their Agent, Mr Franz Cede, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant alleged that in criminal administrative proceedings against him he did not have a determination of his case by an independent tribunal.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted in accordance with Rule 26 § 1 of the Rules of Court.

6. By a decision of 17 November 1998 the Chamber declared the application admissible.

7. The Chamber decided, after having consulted the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. On 23 March 1988, the applicant was instructed to inform the police who had parked a car belonging to the applicant in the Schlossgasse in Vienna on 18 March 1988 at 5.30pm. He failed to provide the information, and on 11 October 1988 was fined 2,000 Austrian schillings (ATS) for the failure, pursuant to sections 134 (1) and 103 (2) of the Motor Vehicles Act 1967 (*Kraftfahrgesetz*). The penal notice (*Straferkenntnis*) was confirmed by the Vienna Regional Government (*Amt der Wiener Landesregierung*) on 18 May 1989. On 24 November 1989 a minor error in the penal order was corrected.

9. The applicant's administrative complaint to the Administrative Court (*Verwaltungsgerichtshof*) was ultimately dismissed on 24 January 1990. The Administrative Court found that the correct provisions of the Motor Vehicles Act had been applied, and further confirmed that the reasons given by the applicant for not having supplied the required information were inadequate.

### II. RELEVANT DOMESTIC LAW

#### A. Road Traffic Legislation

10. Section 103 (2) of the Motor Vehicles Act 1967 entitles the competent authority, *inter alia*, to require the registered owner of a motor vehicle to communicate the name and address of a person who has used the vehicle at a specific time.

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

#### B. Procedure

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

## THE LAW

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

13. The applicant, referring to the Court's judgment of 18 February 1997, in two earlier cases brought by him (*Mauer v. Austria, Reports of Judgments and Decisions 1997-I*) contended that his case had not been determined by an independent tribunal as required by Article 6 § 1 of the Convention which, in so far as relevant, provides as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing ... by [a] ... tribunal ...”

14. The Government did not make any submissions on the merits.

15. The Court considers that the issue under Article 6 § 1 of the Convention raised by the present case is the same as in the above-mentioned case of *Mauer v. Austria*, as well as in the cases of *Schmautzer, Umlauf, Grading, Pramstaller, Palaoro and Pfarmeier v. Austria* (Series A nos. 328 A-C and 329 A-C).

16. In all these cases the Court found that there had been a violation of the applicant's right of “access to a tribunal”, given the limited review by the Administrative Court of the decisions of the administrative authorities. 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 § 1 of the Convention.

### II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

17. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

#### A. Damage

18. The applicant generally asked the Court to grant him adequate just satisfaction for the violation of his Convention rights. In particular he requested reimbursement of ATS 2,000, i.e. the sum he had to pay as a fine. The Government did not comment on this point.

19. As regards any non-pecuniary damage the applicant might have sustained, the Court considers that the present judgment in itself constitutes sufficient just satisfaction.

20. As regards the pecuniary damage claimed by the applicant, the Court recalls 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, § 47). Thus, the Court makes no award under this head.

### **B. Costs and expenses**

21. The applicant asked the Court to award him costs of ATS 28,000 for the domestic proceedings, including ATS 13,000 for the proceedings before the Administrative Court, and ATS 52,627.20 for the Convention proceedings.

22. The Government asserted that a much lower amount than in the applicant's previous case (a global sum of ATS 100,000 plus value-added tax) would be appropriate, as the present case raised similar legal issues to the applicants' first case in which he had been represented by the same lawyer. They suggested that an overall amount of ATS 35,000 would be sufficient.

23. The Court notes that while the above-mentioned Mauer judgment concerned two sets of domestic proceedings and originated in two applications before the Commission, the present case only concerns one set of proceedings. For that reason alone, the amount payable in costs and expenses should be lower than in the applicant's previous case. Moreover, the Court agrees with the Government that in follow-up cases, concerning the same legal issue as a previous Court judgment, the amounts payable for legal costs may be lower than in the original case, all the more so if the applicant was represented by the same lawyer as before.

24. Making an assessment on an equitable basis, the Court awards the applicant ATS 40,000 for costs and expenses.

### **C. Default interest**

25. 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 there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 40,000 (forty thousand) Austrian shillings for costs and expenses;

(b) that simple interest at an annual rate of 4% shall be payable from the expiry of the above-mentioned three months until settlement;

4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 20 June 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ  
Registrar

J.-P. COSTA  
President