



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

THIRD SECTION

CASE OF RÖSSLHUBER v. AUSTRIA

(Application no. 32869/96)

JUDGMENT

STRASBOURG

28 November 2000

FINAL

04/04/2001

In the case of RÖSSLHUBER v. Austria,

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 12 October 1999, 11 July and 7 November 2000.

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

PROCEDURE

1. The case originated in an application (no. 32869/96) 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 Dietrich Rösslhuber ("the applicant"), on 10 May 1996.

2. The applicant was represented by Mr H. Asenbauer, a lawyer practising in Vienna (Austria). The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant alleged that the criminal proceedings against him lasted unreasonably long.

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 as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 12 October 1999 the Chamber declared the application admissible and requested the parties to submit further observations.

7. Thereupon the applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a certified accountant and tax consultant, residing in Salzburg.

9. On 29 June 1989 the Salzburg Regional Court (*Landesgericht*) started preliminary investigations against the applicant and thirty-four other suspects on suspicion of large-scale fraud and breach of trust in the context of investments in a real estate fund. They were suspected of having sold so called “partial house ownership certificates” to several thousand investors with the assurance that their value was secured by real property, but in fact they had sold the real property in 1986 and misappropriated the proceeds of the sale.

10. On 31 January 1990 the Review Chamber (*Ratskammer*) of the Salzburg Regional Court dismissed the applicant’s appeal against the opening of preliminary proceedings. On 14 March 1990 the Linz Court of Appeal (*Oberlandesgericht*) rejected the applicant’s further appeal.

11. As of the beginning of 1990 the investigating judge was relieved of all other business and two junior judges completing their training period (*Richteramtsanwärter*) were assigned to assist him. In May 1990 one of them took over as the new investigating judge.

12. During the preliminary investigations, which concerned a network of more than 300 firms, about 1,800 bank accounts were examined and about 8,000 volumes of documents were seized and studied. A special computer programme was designed in order to cope with the large volume of data. Most of the time was consumed by the preparation of an expert opinion, whereby the team of accounting experts first had to clear the balance sheets of the companies, most of which were intertwined. A change in the team of experts became necessary in 1990 due to the potential bias of some of its members. According to the applicant, the team was restructured again in 1993. In April 1995 the experts delivered their opinion.

13. On 4 August 1995 the Salzburg Public Prosecutor’s Office (*Staatsanwaltschaft*) preferred the indictment (*Anklageschrift*) of 441 pages against the applicant and eight of his co-accused. On 7 November 1995 the Linz Court of Appeal dismissed the applicant’s objection to the indictment. At that time the file comprised 166 volumes with about 83,000 pages.

14. Both professional judges who were to deal with the case were relieved from all other business as of December 1995. In preparation for the trial, the court room at the Salzburg Regional Court was adapted with the installation of computer desks, in order to give the judges, the prosecution and the defence access to the data-base.

15. On 30 July 1996 the applicant filed a motion challenging the accounting experts for bias. This motion was dismissed on 26 August 1996. His further request to postpone the beginning of the trial was dismissed on 12 September 1996.

16. On 16 September 1996 the trial started before the Salzburg Regional Court sitting with two professional and two lay judges. A motion brought by the applicant and his co-accused challenging the two professional judges for bias was dismissed, as was their further motion challenging the experts for bias. The applicant challenged single members of the expert team on three further occasions, namely on 11 December 1996, 13 January 1997 and 3 May 1999. Further motions challenging the two professional judges for bias were brought by his co-accused.

17. The hearings lasted 186 days, at a rhythm of two or three days per week. 46 days were dedicated to hearing the accounting experts. According to the applicant, he put questions to the experts on twenty occasions, sometimes only a few and sometimes many. According to the Government, the applicant made excessive use of his right to question the experts, submitting ever changing calculations which necessitated time-consuming replies by the experts. According to the applicant, he only made one request for the taking of evidence, while the Government state that he made seven such requests. According to both parties, a large number of witnesses were heard. On 19 January 1998 a hearing had to be held in a hospital in Vienna due to the applicant's illness.

18. On 14 June 1999 the Salzburg Regional Court gave its judgment orally. It convicted the applicant of breach of trust and sentenced him to six years' imprisonment. The applicant announced that he would file a plea of nullity and an appeal (*Nichtigkeitsbeschwerde und Berufung*).

19. On 16 June 2000 the written version of the judgment, comprising about 1,100 pages, was served on the applicant.

20. Meanwhile, on 16 March 2000, the Constitutional Court (*Verfassungsgerichtshof*) had, upon a motion filed by two of the applicant's co-accused, given a judgment to the effect that the four-weeks time-limit provided for in the Code of Criminal Procedure for lodging a plea of nullity and an appeal which - though being sufficient in the vast majority of cases - could not be extended in cases of an extraordinary scope such as the present, was contrary to Article 6 § 3 (b) of the European Convention on Human Rights. This time-limit was, therefore, not to be applied in the present case.

21. On 14 July 2000 the applicant lodged an appeal. The last information received by the Court concerning the applicant was that he was preparing

his plea of nullity, to be filed by 16 November 2000, a time-limit set by the Salzburg Regional Court.

THE LAW

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

22. The applicant complained about the length of the criminal proceedings against him. He relied on Article 6 § 1, which so far as relevant, reads as follows:

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

23. The applicant contended that the duration of the proceedings was not caused by their complexity but rather by the conduct of the authorities. He alleged in particular that the case had important political implications and that the preliminary investigations were delayed deliberately. He pointed out that for most of the six years of preliminary investigation a young judge, who had been appointed immediately after her training period, served as the investigating judge but left the conduct of the proceedings entirely to the team of experts. The applicant further contended that the trial was not conducted with reasonable diligence and that the trial court took a year to hand down the written version of its judgment. As to his own conduct, the applicant submits that he did not cause any particular delays.

24. The Government asserted that the proceedings were of unprecedented complexity. This was the biggest criminal case ever to be dealt with by the Austrian courts. As to the duration of the preliminary investigation, they pointed in particular to the large number of suspects, the volume of documents seized, the numerous bank accounts to be examined and the difficulties encountered by the team of experts in clearing the balance sheets of the large number of companies involved. Moreover, the Government contended that the investigating judge was relieved from all other duties and two junior lawyers were appointed to assist in the preparation of the case. At the trial stage too, the professional judges were relieved from all other duties. The Government maintained that, despite their complexity, the main reason for the duration of the proceedings lay in the delaying tactics of the applicant and his co-accused, who filed a multitude of motions for bias and requests for the taking of evidence. They asserted in particular that, at the trial, the applicant made excessive use of his right to question the experts, submitting ever new calculations to which the experts had to reply in a time consuming exercise.

25. The Court notes that the proceedings started on 29 June 1989, when the preliminary investigations were opened against the applicant. The first instance judgment was served on 16 June 2000, that is almost eleven years later. To date, the proceedings are still pending at second instance.

26. The Court recalls that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

27. The Court considers that the proceedings at issue were of an exceptional complexity, which is demonstrated by the number of suspects and companies involved, the volume of the file, the need to create a special computer programme and, not least, by the Constitutional Court's decision that the usual time-limit for appealing against the judgment was insufficient in the circumstances of the case (see paragraph 20 above). However, the complexity of the proceedings does not in itself suffice to justify such a substantial duration.

28. As to the conduct of the authorities, the Court notes in particular that there is no satisfactory explanation for the six year duration of the preliminary investigation, even if some allowance is made for the difficulties encountered by the team of experts in untangling the balance sheets of the companies involved. Unlike the preliminary investigation, the trial, which took 186 hearing days, was conducted with reasonable diligence. However, the delay of one year between the oral pronouncement of the judgment and the service of the written version is considerable, even if allowances are made for of its volume (1,100 pages).

29. As to the conduct of the applicant, the Court notes that he did not file any motions during the preliminary proceedings. At the trial stage he filed a number of motions challenging the professional judges and the experts for bias. There is disagreement between the parties as to the number of the applicant's requests for the taking of evidence and the extent to which he made use of his right to put questions to the experts. However, given that the trial was on the whole conducted with reasonable speed, it cannot be said that the applicant contributed substantially to the length of the proceedings.

30. The Court is aware of the difficulties States may encounter in conducting criminal proceedings relating to white-collar crime with reasonable diligence, as such cases often involve very complex facts and a large number of suspects. However, for the reasons set out above, the Court finds that the duration of the present proceedings, which have so far lasted eleven years and four months and are still pending at second instance, cannot be regarded as reasonable for the purposes of Article 6 § 1.

There has, thus, been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. Under the head of pecuniary damage, the applicant requested 10 million Austrian schillings (ATS) for loss of earnings suffered as a result of a loss of clientele due to the criminal proceedings against him. Further, he claimed ATS 10 million in non-pecuniary damage for anxiety suffered on account of the duration of the proceedings.

33. The Government asserted that there was no causal link between the length of the proceedings and the alleged pecuniary damage. As to non-pecuniary damage, the finding of a violation would be sufficient just satisfaction.

34. As to the applicant’s claim for pecuniary damage, the Court, like the Government, finds that there is no causal link between the duration of the proceedings and the damage allegedly suffered by the applicant. Therefore, it makes no award under this head.

35. As to non-pecuniary damage, the Court considers that the applicant has lived and is still living in uncertainty and anxiety due to the duration of the proceedings, which cannot be compensated by the finding of a violation. Having regard to the circumstances of the case and making an assessment on an equitable basis, it awards ATS 100,000 under this head.

B. Costs and expenses

36. The applicant claimed a total amount of 20 million ATS for costs and expenses incurred in the domestic proceedings. He did not make a claim as regards the Convention proceedings. The Government observed that the applicant has not provided any proof of his claim, such as counsel’s bill of fees or documentation of any payments made.

37. The Court considers that the costs of the domestic proceedings were not incurred in order to redress the violation found. It therefore makes no award under this head.

C. Default interest

38. 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*
 - (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, 100,000 (one hundred thousand) Austrian schillings in respect of non-pecuniary damage;
 - (b) that simple interest at an annual rate of 4% shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 28 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President