



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

THIRD SECTION

CASE OF EDELMAYER v. AUSTRIA

(Application no. 33979/96)

JUDGMENT
(Striking out)

STRASBOURG

19 December 2000

In the case of EDELMAYER 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 K. JUNGWIERT,
Sir Nicolas BRATZA,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 21 March, 19 September and 5 December 2000,

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

PROCEDURE

1. The case originated in an application (no. 33979/96) 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 Erwin Edelmayer (“the applicant”), on 16 July 1996.

2. The applicant was represented by Mr F. Müller, a lawyer practising in Kirchberg am Wagram (Austria). The Austrian Government (“the Government”) were represented by their Agent, Mr H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant complained that his conviction by the administrative authorities for drunken driving and his subsequent conviction by the criminal courts, for causing injury by negligence whilst under the influence of drink, violated his right not to be tried or punished twice under Article 4 of Protocol No. 7.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 21 March 2000, having obtained the parties’ observations, the Court declared the application admissible.

5. On 19 September 2000, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 3 October and 20 October 2000 the applicant and the Agent

of the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. On 16 September 1995 the applicant caused a road traffic accident in which one of his passengers was injured.

7. On 10 October 1995 the Tulln District Authority (*Bezirkshauptmannschaft*) ordered the applicant to pay a fine for driving under the influence of drink, contrary to section 5 of the Road Traffic Act 1960 (*Straßenverkehrsordnung*), which provides that it is an offence for a person to drive a vehicle if the proportion of alcohol in his blood or breath is equal to or higher than 0,8 grams per litre or 0,4 milligrams per litre respectively.

8. On 25 October 1995 the Kirchberg am Wagram District Court (*Bezirksgericht*) convicted the applicant under Article 88 §§ 1 and 3 of the Criminal Code (*Strafgesetzbuch*) of causing injury by negligence “after allowing himself ... to become intoxicated ... through the consumption of alcohol, but not to an extent which exclude[d] his responsibility ...”, contrary to Article 81 § 2 of the Criminal Code. By virtue of an irrebuttable presumption applied by the criminal courts, a driver with a blood alcohol level of 0,8 grams per litre or higher is deemed to be “intoxicated” for the purposes of Article 81 § 2 of the Criminal Code. Where the special circumstances of this provision apply, the maximum possible sentence is higher than in the case of the same offence without the element of intoxication. The court imposed a fine on the applicant which was partly suspended on probation.

9. The applicant did not appeal against the conviction of 25 October 1995, but the Public Prosecutor’s Office (*Staatsanwaltschaft*) filed an appeal against sentence (*Strafberufung*). In his reply to the prosecution’s appeal, the applicant claimed *inter alia* that his conviction violated Article 4 of Protocol No. 7.

10. By judgment of 26 March 1996 the Krems Regional Court (*Landesgericht*) accepted the prosecution’s appeal against sentence in part by removing the suspension of payment of part of the fine. It dismissed the applicant’s argument under Article 4 of Protocol No. 7.

THE LAW

11. On 3 October and 20 October 2000, respectively, the Court received the following declaration from the applicant’s representative and from the Agent of the Government:

“With reference to Article 38 § 1 (b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the parties in the proceedings concerning application no. 33979/96, lodged by Mr Erwin Edelmayer, declare with a view to a friendly settlement reached with the assistance of the European Court of Human Rights, as follows:

1. The Government of the Republic of Austria will pay the applicant a sum of altogether 54,000 Austrian schillings as compensation in respect of any possible claims relating to the present application.

This sum will be payable to the applicant’s representative, Dr. Franz Müller in Kirchberg am Wagram, immediately after the notification of the judgment delivered by the Court pursuant to Article 39 of the Convention.

2. The applicant declares his application settled.

3. The applicant waives any further claims against the Republic of Austria relating to the facts underlying the present application.

4. The parties undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court’s judgment.”

12. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

13. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties’ undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 19 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President