



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

THIRD SECTION

CASE OF BEER v. AUSTRIA

(Application no. 30428/96)

JUDGMENT

STRASBOURG

6 February 2001

In the case of Beer 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 P. KÜRIS,
Mr K. JUNGWIERT
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 16 January 2001,

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

PROCEDURE

1. The case was referred to the Court by Mrs Gertrude Beer (“the applicant”), an Austrian national, on 17 June 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It originated in an application (no. 30428/96) against the Republic of Austria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 by the applicant. The Government of Austria are represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

2. The applicant’s request to the Court referred to Article 48 as amended by Protocol No. 9, which Austria had ratified. The object 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.

3. On 7 July 1999 the Panel of the Grand Chamber decided, pursuant to Article 5 § 4 of Protocol No. 11 to the Convention and Rules 100 § 1 and 24 § 6 of the Rules of Court, that the application would be examined by one of the Sections. It was, thereupon, assigned to the Third Section. Within that Section, the Chamber was constituted in accordance with Rule 26 § 1 of the Rules of Court.

4. In accordance with Rule 59 § 3 of the Rules of Court, the President of the Chamber invited the parties to submit a memorial on the issues of the case. The applicant submitted such a memorial on 2 September 1999, the Government on 29 October 1999.

5. After consulting the Agent of the Government and the applicant, the Chamber decided not to hold a hearing in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On 2 December 1994 the applicant filed an action with the Vienna Labour and Social Court (*Arbeits- und Sozialgericht*) against her employer, the General Accident Insurance Company (*Allgemeine Unfallversicherungsanstalt*). She requested the Court to order her employer to annul her transfer from one department of the hospital where she was working as a nurse to another department.

7. On 15 May 1995 the Social and Labour Court granted the applicant's action by a judgment in default (*Versäumnungsurteil*) and ordered the defendant to reimburse the applicant's costs, i.e. 33,658 Austrian Schillings (ATS).

8. On 31 May 1995 the General Accident Insurance Company filed an appeal against the costs order (*Kostenrekurs*). It submitted that the costs had not been calculated correctly under the Act on Lawyers' Fees (*Rechtsanwaltstarifgesetz*) and requested their reduction. This appeal was not transmitted to the applicant.

9. On 19 July 1995 the Vienna Court of Appeal (*Oberlandesgericht*), sitting in camera, granted the appeal, recalculated the costs to be reimbursed and reduced them to ATS 14,754.

THE LAW

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

10. The applicant complains that in the proceedings on the defendant's appeal against the costs order she had not been informed of the appeal and had not been given the possibility to react thereto. She relies on Article 6 § 1 which, insofar as relevant, reads as follows:

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

A. Applicability of Article 6 § 1 of the Convention

11. The Government argue that Article 6 § 1 does not apply to the proceedings at issue because a claim for the reimbursement of the cost of proceedings, being based on the Code of Civil Procedure, was a public law claim.

12. This is disputed by the applicant and was not accepted by the Commission. The Commission found that Article 6 § 1 was applicable to costs proceedings, provided that the legal costs which form the subject matter of the proceedings were incurred during the resolution of a dispute which involved the determination of civil rights and obligations. Since the costs order in the present case had been issued in proceedings concerning a labour law dispute, involving the determination of civil rights and obligations within the meaning of Article 6 § 1 of the Convention, this provision was applicable to the costs proceedings at issue.

13. The Court sees no reason to disagree with the conclusion reached by the Commission which, moreover, coincides with the Court's own findings in the case of *Robins v. the United Kingdom* (judgment of 23 September 1997, *Reports of Judgments and Decisions* 1997-V, p. 1809, § 28). Accordingly, like the Commission, the Court finds that Article 6 § 1 was applicable to the proceedings in issue.

B. Compliance with Article 6 § 1 of the Convention

14. The applicant submits that the failure to serve on her the opposing party's appeal against the costs order, which prevented her from reacting thereto, violated the principle of equality of arms under Article 6 § 1 of the Convention.

15. This is disputed by the Government. In their memorial to the Court they submit that Contracting States enjoy a wide margin of discretion as regards the fixing of the modalities of proceedings for the review of court decisions. Thus, they may take into account reasons of expediency and impose restrictions on the parties participating in such proceedings, in particular as regards ancillary issues such as the fixing of procedural costs. In the proceedings at issue the Vienna Labour and Social Court determined the applicant's claim for the reimbursement of costs solely on the basis of the statement submitted by her, whereas the Vienna Court of Appeal, applying the law in force on the calculation of lawyers' fees, merely corrected the costs award. In a unilateral appeal against a costs order, questions of fact cannot be raised again. The fact that appeal proceedings are unilateral does not constitute, therefore, a violation of Article 6 § 1 of the Convention where mere procedural matters are concerned, unrelated to the main issues.

16. The Commission found that the fact that the appeal of the opposing party had not been communicated to the applicant, and that she was not given the opportunity of replying thereto, constituted an infringement of the principle of equality of arms, as guaranteed by Article 6 § 1 of the Convention.

17. The Court agrees with the Commission. It recalls that the principle of equality of arms requires that each party should be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (*Dombo Beheer B.V. v. the Netherlands* judgment of 27 October 1993, Series A no. 274, p. 19, § 33; *Ankerl v. Switzerland* judgment of 23 October 1996, *Reports* 1996-V, pp. 1567-68, § 38). Each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party (*Ruiz Mateos v. Spain* judgment of 24 June 1993, Series A no. 262, p. 25, § 63; *Nideröst-Huber v. Switzerland* judgment of 18 February 1997, *Reports* 1997-I, p. 108, § 24; *Werner v. Austria* judgment of 24 November 1997, *Reports* 1997-VII, p. 2513, § 65).

18. The Court finds that it is understandable that in ancillary matters, such as the determination of the cost of proceedings, the national authorities should have regard to the demands of efficiency and economy. As its case-law bears out, the Court attaches great importance to that objective, but it does not, however, justify disregarding the fundamental principle of adversarial proceedings. In fact, Article 6 § 1 is intended above all to secure the interests of the parties and those of the proper administration of justice (*Acquaviva v. France* judgment of 21 November 1995, Series A no. 333-A, p. 17, § 66; *Nideröst-Huber v. Switzerland* judgment, *op. cit.* p. 109, § 30). Even if, as the Government argue, in appeal proceedings on a costs order the possibility to present legal and factual arguments may be limited, it is for the parties to say whether or not a document calls for their comment. What is at stake is the litigants' confidence in the workings of justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file (*Nideröst-Huber v. Switzerland* judgment, *op. cit.*, p. 108, § 29).

19. In the present case the defendant party, on 31 May 1995, filed an appeal against the costs order included in the judgment in default of 15 May 1995, which appeal was not served on the applicant. Nor was the applicant informed of this appeal by other means. Thus she had no possibility to react thereto.

20. The Court therefore considers that this non-communication of the appeal and the absence of any opportunity to reply constituted an infringement of the principle of equality of arms as guaranteed by Article 6 § 1 of the Convention.

21. Accordingly there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. Under the head of material damage, the applicant claims ATS 21,340.09. She submits that this amount was the difference between the costs awarded to her by the Vienna Social and Labour Court and the costs awarded by the Vienna Court of Appeal. The Government did not comment on this claim.

24. However, the Court finds that there is no causal link between the breach of which complaint is made and the alleged pecuniary damage; it is impossible to speculate as to what the outcome of the proceedings would have been if they had satisfied the requirements of Article 6 § 1 (see, for example, the *Werner v. Austria* judgment of 24 November 1997, *Reports* 1997-VII, p. 2514, § 72). Therefore, the Court makes no award under this head.

25. Under the head of non-material damage, the applicant claims ATS 10,000. The Court finds, however, that in the circumstances of the case the finding of a violation in itself constitutes sufficient just satisfaction (see the *Stallinger and Kuso v. Austria* judgment of 23 April 1997, *Reports* 1997-II pp. 680-81, § 57; *Lughofer v. Austria*, no. 22811/93, § 22, 30 November 1999, unpublished).

B. Costs and expenses

26. The applicant claimed ATS 150,000 for costs and expenses incurred in the Convention proceedings. The Government did not comment on this claim.

27. Having regard to awards under this head in similar cases, the Court finds the sums claimed by the applicant excessive. Making an assessment on an equitable basis, it awards the applicant ATS 80,000 for costs and expenses.

C. Default interest

28. 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, 80,000 (eighty thousand) Austrian schillings 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 claim for just satisfaction.

Done in English, and notified in writing on 6 February 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President