



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

FIRST SECTION

CASE OF LUKSCH v. AUSTRIA

(Application no. 37075/97)

JUDGMENT

STRASBOURG

13 December 2001

FINAL

13/03/2002

This judgment may be subject to editorial revision.

In the case of Luksch v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mr G. BONELLO,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 22 November 2001,

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

PROCEDURE

1. The case originated in an application (no. 37075/97) 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 Heinz Luksch (“the applicant”), on 28 May 1997.

2. The applicant was represented before the Court by Mrs S. Schubert, a lawyer practising in Vienna. 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 in particular, that disciplinary 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 21 November 2000 the Court declared the application partly admissible.

7. As of 1 November 2001 the application was allocated to the First Section of the Court. Within that Section, the Chamber that would consider the case was constituted as provided in Rule 26 § 1 of the Rules of Court.

THE FACTS

8. The applicant was an accountant by profession. He retired in 1998. On 2 April 1986 the Chamber of Accountants instituted disciplinary proceedings against the applicant. Subsequently, the proceedings were adjourned having regard to criminal proceedings pending against the applicant.

9. On 14 April 1986 the applicant was convicted of aggravated fraud by the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*), which conviction was confirmed by the Supreme Court (*Oberster Gerichtshof*) on 3 October 1988. By the end of 1990 the file relating to the criminal proceedings reached the Disciplinary Court and on 8 November 1991 the hearing date was set down for 8 May 1992.

10. On 8 May 1992 the Disciplinary Court of the Chamber of Accountants, having regard to the applicant's conviction, found that he had infringed the profession's reputation and ordered the suspension of the applicant's right to practise for one year.

11. On 19 October 1992 the applicant appealed this decision. On 7 May 1993 the Appeals Board dismissed the appeal stating that the suspension should last for one year. This decision was served on 30 January 1995.

12. On 15 March 1995 the Constitutional Court (*Verfassungsgerichtshof*) refused to deal with the applicant's complaint and transferred the case to the Administrative Court (*Verwaltungsgerichtshof*).

13. On 30 March 1995 the Chamber of Accountants declared the suspension to be effective from 31 January 1995 to 30 January 1996.

14. On 17 May 1995 the Administrative Court granted the applicant's complaint suspensive effect. On 28 February 1997 it dismissed the complaint. The decision was served on 22 March 1997.

THE LAW

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

15. The applicant complained about the length of the disciplinary proceedings against him. He relied on Article 6 § 1 of the Convention which, so far as relevant, provides as follows:

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

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

17. The Court recalls its finding in its admissibility decision of 21 November 2000 that the civil head of Article 6 § 1 applied to the disciplinary proceedings at issue. The Court further recalls that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities (see for instance *Humen v. Poland* [GC], no. 26614/95, 15.10.99, § 60).

18. The proceedings at issue in the present case started on 2 April 1986 and were terminated on 22 March 1997. Thus, they lasted for a little less than eleven years. They were not particularly complex and there are no delays attributable to the applicant. On the other hand, considerable periods of inactivity are imputable to the competent authorities. In particular, there is no explanation as to why almost three and a half years elapsed between the termination of related criminal proceedings on 3 October 1988 and the hearing of the applicant's disciplinary case on 8 March 1992. Nor is there an explanation for the lapse of one year and more than eight months between the decision of the Appeals Board of 7 May 1993 and the service of this decision on 30 January 1995. The duration of the proceedings before the Administrative Court of two years between 15 March 1995, when the case was transferred to it, and 22 March 1997 when its judgment was served on the applicant is also substantial.

19. The Court therefore finds that the length of the proceedings exceeded a "reasonable time". It follows that there has been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed 6 million Austrian schillings (ATS) for loss of earnings and related pension claims as well as for loss of reputation and distress.

22. The Government expressed doubt as to whether the applicant actually suffered a loss of earnings and contended that, in any case, there was no causal link between the duration of the proceedings and the alleged damage.

23. As to pecuniary damage, the Court agrees with the Government that there is no causal link between the breach of the Convention found and the alleged loss of earnings and pension claims. Consequently, it makes no award under this head.

24. Insofar as the applicant can be understood to claim compensation for non-pecuniary damage, the Court, having regard to its case-law and making an assessment on an equitable basis, awards the applicant ATS 130,000¹.

B. Costs and expenses

25. The applicant claimed reimbursement of costs incurred in the domestic proceedings of altogether ATS 818,218. He did not claim reimbursement of costs incurred in the Strasbourg proceedings.

26. The Government commented that the applicant's claim was excessive and that, in any case, the costs were not incurred in relation to remedies aimed at expediting the proceedings.

27. The Court agrees with the Government that the costs of the domestic proceedings cannot be considered as having been incurred in an attempt to prevent or redress the violation found. However, considering that unreasonable delays in proceedings involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, 7.12.99, § 33), the Court awards the applicant ATS 10,000 under this head.

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*
 - (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, the following amounts: 130,000 (one-hundred and thirty-thousand) Austrian schillings in respect of non-pecuniary damage and 10,000 (ten-thousand) Austrian schillings for costs and expenses;

¹ approximately 65,000 FF

(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 claim for just satisfaction.

Done in English, and notified in writing on 13 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos L. ROZAKIS
President