



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

THIRD SECTION

CASE OF WEIXELBRAUN v. AUSTRIA

(Application no. 33730/96)

JUDGMENT

STRASBOURG

20 December 2001

FINAL

20/03/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Weixelbraun v. Austria,

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

Mr G. RESS, *President*,
Mr L. CAFLISCH,
Mr R. TÜRMEYER,
Mr B. ZUPANČIČ,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr E. STEINER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 December 2001,

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

PROCEDURE

1. The case originated in an application (no. 33730/96) 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, Franz Johann Weixelbraun (“the applicant”), on 4 September 1996.

2. The applicant was represented before the Court by Mr H. Fuchs, a lawyer practising in Innsbruck (Austria). The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. The applicant alleged that the reasoning of the Austrian courts dismissing his claim for compensation for detention on remand on the ground that the suspicion against him had not been dissipated, violated the presumption of innocence.

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 9 January 2001 the Chamber declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

8. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 4 February 1989 the Austrian police were informed via Interpol that on 30 January 1989 in Poquoson (Virginia, USA) E.P., a German citizen, and H.S., an Austrian citizen, had been killed and that the applicant, who at that time lived in Virginia, was suspected of having killed and robbed them. A warrant of arrest was issued against the applicant in the United States.

10. On 5 February 1989 the applicant, who in the meantime had returned to Austria, was arrested and on 7 February 1989 was remanded in custody. The applicant remained on remand until 17 June 1992. This period was interrupted from 17 May to 6 June 1989 and from 6 February 1998 to 17 May 1989 whilst the applicant served prison sentences imposed in respect of previous convictions.

11. Meanwhile the trial against the applicant took place before the Assizes of the Innsbruck Regional Court sitting with a jury. On 16 October 1991 the jury acquitted the applicant, but the bench of the Assize Court set aside the jury's verdict as erroneous. A new trial against the applicant and one co-accused was held before another Assize Court of the Innsbruck Regional Court.

12. On 17 June 1992 the Court of Assizes again acquitted the applicant. The jury answered the question as to murder and the question as to aggravated robbery with six votes of "no" and two votes of "yes". According to the record of the jury's deliberations, the majority of its members found the applicant not guilty as there had been discrepancies between the statements of the witnesses (*"Widersprüche in den Zeugenaussagen"*).

13. On 1 October 1993 the Innsbruck Regional Court sitting with a single judge heard the applicant in private on his claim for compensation in respect of his detention on remand. The applicant, assisted by counsel, argued that the proceedings under the Criminal Proceedings Compensation Act (*Strafrechtliches Entschädigungsgesetz*) infringed the presumption of innocence guaranteed by Article 6 § 2 of the Convention. He referred to the

Sekanina v. Austria judgment of the European Court of Human Rights (25 August 1993, Series A no.266-A). The applicant also presented fresh evidence which, in his opinion, could entirely dissipate the suspicion still subsisting against him.

14. On 24 January 1996 a chamber of the Innsbruck Regional Court, composed of three judges, dismissed the applicant's compensation claim. The Regional Court found that a right to compensation in the applicant's case would require that the suspicion against him had been entirely dissipated. According to the records of the jury's deliberations, a majority of the members had found the applicant not guilty on the grounds that there had been discrepancies between the statements of witnesses. The applicant was not acquitted because his innocence had been proven, but because he had been given the benefit of the doubt. Thus, the suspicion against the applicant had not been dissipated. As regards the applicant's request for the taking of evidence, the Regional Court found that it was prevented from examining further evidence. It referred in this respect to the Constitutional Court's case-law following the Sekanina judgement, according to which a fresh examination of the question of guilt in compensation proceedings following a final acquittal would be in breach of Article 6 § 2 of the Convention.

15. On 12 February 1996 the applicant appealed against this decision. He submitted, *inter alia*, that the Regional Court had re-examined the Assize Court's acquittal. However, it was no longer acceptable to rely on suspicions once an acquittal had become final.

16. On 27 February 1996 the Innsbruck Court of Appeal, sitting in camera, dismissed the applicant's appeal. It found that a suspicion of having committed a criminal offence is only dissipated if either the claimant's innocence has been proven, or if all arguments supporting the suspicion against him have been refuted. The right to compensation demands that innocence be established. However, this requirement was not met in the applicant's case. Referring to the Regional Court's decision, the Court of Appeal found that the records of the jury's deliberations clearly expressed the opinion of the members of the jury. In their mind various circumstances spoke against the applicant, but it had not been possible to convict him because of discrepancies between the statements of witnesses.

17. The Court of Appeal concluded that, according to the Sekanina judgment of the European Court of Human Rights, a fresh examination of the question of guilt in the compensation proceedings following a final acquittal would have been in breach of Article 6 § 2 of the Convention, but not the refusal of compensation itself. The Regional Court had not re-examined the question of the applicant's guilt, rather it had referred to the reasons for which the majority of the jury had voted "not guilty", and had concluded that the suspicion against the applicant had not been dissipated.

II. RELEVANT DOMESTIC LAW

18. The relevant provisions of the Criminal Proceedings Compensation Act (*Strafrechtliches Entschädigungsgesetz*) read as follows:

Section 2 (1)(b)

“(1) A right to compensation arises:...

(b) where the injured party has been placed in detention or remanded in custody by a domestic court on suspicion of having committed an offence making him liable to criminal prosecution in Austria ... and is subsequently acquitted of the alleged offence or otherwise freed from prosecution and the suspicion that he committed the offence has been dispelled or prosecution is excluded on other grounds, in so far as these grounds existed when he was arrested; ...”

Section 6

“... (2) A court which acquits a person or otherwise frees him from prosecution ... (section 2 (1) (b) or (c)) must decide either of its own motion or at the request of the individual in question or the public prosecutor’s office whether the conditions of compensation under section 2 (1) (b) or (c), (2) and (3) have been satisfied or whether there is a ground for refusal under section 3 ... If the investigating judge decides to discontinue the proceedings, the Review Division concerned shall rule.

(3) Before ruling, the court shall hear the detained or convicted person and gather the evidence necessary for its decision where this has not already been adduced in the criminal proceedings ...

(4) Once the judgment rendered in the criminal proceedings has become final, the decision, which need not be made public, must, as part of the proceedings provided for in paragraph 2, be served on the detained or convicted person personally and on the public prosecutor ...

(5) The detained or convicted person and the public prosecutor may appeal against the decision to a higher court within two weeks.

(6) The court with jurisdiction to rule on the appeal shall order the criminal court of first instance to carry out further investigations if that is necessary for a decision. If the court which has to rule is the court of first instance, the investigations shall be carried out by the investigating judge.

(7) Once the decision has become final, it is binding on the courts in subsequent proceedings.”

19. As a general rule, there is no public hearing in the Court of Appeal. The Court of Appeal rules after sitting in private.

20. In its judgment of 29 September 1994 (*VfSlg 13879*) the Constitutional Court dismissed the application filed by the Graz Court of Appeal to have section 2 (1) (b) of the 1969 Act annulled as being unconstitutional. It found that section 2 (1) (b) as such did not violate Article 6 § 2 of the Convention which, under Austrian law, has the force of constitutional law. In the light of the *Sekanina v. Austria* case (judgment of 25 August 1993, Series A no. 266-A), it held that it was not the refusal of a

claim for compensation which was contrary to the Convention, but the re-examination of the question of guilt after a final acquittal. In the Constitutional Court's view only the separate re-assessment of evidence on the basis of the contents of the whole court file was likely to infringe the presumption of innocence. Nevertheless, the Constitutional Court observed that it would be desirable to amend section 2 (1) (b) of the 1969 Act in order to clarify the law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

21. The applicant complains under Article 6 § 2 of the Convention that the Austrian courts did not respect the presumption of innocence when dealing with his compensation claim.

Article 6 § 2 of the Convention reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

22. The applicant submits that the drawing of a distinction between a full acquittal and an acquittal *in dubio pro reo* is contrary to the presumption of innocence as it is incompatible with this principle to have two classes of acquittal. Such a distinction is also not in line with the Court's case-law (*Sekanina v. Austria* judgment of 25 August 1993, Series A no. 266-A; *Asan Rushiti v. Austria*, no. 28389/95, 21.3.2000). Thus, the reasoning of the Innsbruck Regional Court and the Innsbruck Court of Appeal violated the principle of the presumption of innocence as they disregarded the final acquittal in the criminal proceedings.

23. The Government submit that the applicant's acquittal was an acquittal *in dubio*, a verdict which is pronounced despite the fact that suspicions against the accused persist after all the evidence has been heard, where the results of the evidentiary proceedings are not clear enough to establish with near-certainty that the accused committed the offence and was guilty. They point out that the present case is not comparable to the *Sekanina* judgment, as the essential ground for the Court finding a violation was that the reasoning of the Linz Court of Appeal did not have a sound basis either in the acquittal judgment or in the minutes of the jury. In the present case the Regional Court did nothing else than rely on the jury's verdict. Thus, there was no re-assessment of guilt in the present case.

24. The Court recalls that the applicant can rely on Article 6 § 2 of the Convention irrespective of the fact that the contested decision was given after his acquittal had become final, as Austrian legislation and practice link

the two questions - the criminal responsibility of the accused and the right to compensation - to such a degree that the decisions on the latter issue can be regarded as a consequence and, to some extent, the concomitant of the decision on the former (see the Sekanina judgment, p. 13, § 22).

25. As regards the merits of the complaint the Court recalls that in the case of *Rushiti v. Austria* (no. 28389/95, § 31, 21.3.2000) it has found as follows:

“In any case, the Court is not convinced by the Government’s principal argument, namely that a voicing of suspicions is acceptable under Article 6 § 2 if those suspicions have already been expressed in the reasons for the acquittal. The Court finds that this is an artificial interpretation of the Sekanina judgment, which would moreover not be in line with the general aim of the presumption of innocence which is to protect the accused against any judicial decision or other statements by State officials amounting to an assessment of the applicant’s guilt without him having previously been proved guilty according to law (see the *Allenet de Ribemont v. France* judgment of 10 February 1995, Series A no. 308, p. 16, § 35, with further references). The Court cannot but affirm the general rule stated in the Sekanina judgment that, following a final acquittal, even the voicing of suspicions regarding an accused’s innocence is no longer admissible. The Court, thus, considers that once an acquittal has become final - be it an acquittal giving the accused the benefit of the doubt in accordance with Article 6 § 2 - the voicing of any suspicions of guilt, including those expressed in the reasons for the acquittal, is incompatible with the presumption of innocence.”

26. The Government argue further that when examining whether or not there has been a breach of the presumption of innocence in the present case, the Court should not have regard to its judgment in the *Rushiti v. Austria* case, because, at the time the Austrian courts decided on the applicant’s compensation claim in 1996, that judgment had not yet been given.

27. The Court is not persuaded by this argument. The question the Court has to deal with when it exercises its jurisdiction is not whether a Contracting State has complied with the courts’ case-law existing on a specific issue but, under Article 19 of the Convention, whether a Contracting Party has complied with its obligation under Article 1 of the Convention, namely “to secure to everyone within [its] jurisdiction the rights and freedoms defined in Section I of this Convention”. Such an examination the Court has carried out in *Rushiti v. Austria*, mentioned by the parties, and the Court, in order to explain the reasons for its judgment in the present case, will also conduct such an examination.

28. The Government also argue that it cannot be generally assumed that the public authorities are prohibited from reviewing the guilt of an accused after his acquittal as the vast majority of the Member States provide for a procedure of reopening criminal proceedings after a final acquittal and there is nothing to support the argument that such reopening proceedings would be generally forbidden under Article 6 § 2.

29. However, the Court finds that for the purposes relevant in the case at issue the reopening of proceedings is substantially different from

proceedings for compensation under the Austrian Criminal Proceedings Compensation Act. While the sole purpose of reopening proceedings is to enable the competent court to determine (again) a criminal charge, proceedings under the Criminal Proceedings Compensation Act are conducted before a court which solely has to determine a person's civil rights. and, consequently, do not serve the purpose of enabling a competent court to determine, in proper proceedings, whether a person is guilty of an offence. Therefore, any inferences drawn from reopening proceedings have no bearing on the issues to be determined in the case at hand.

30. In the present case the Regional Court and the Court of Appeal, when deciding the applicant's compensation claim, had regard to the reasons which the jury had given for its verdict acquitting the applicant. The Austrian courts found that, according to the record of the jury's deliberations, the majority of the members of the jury had found the applicant not guilty as there had been discrepancies between the statements of witnesses.

31. Having regard to these circumstances, the Court finds that there is nothing to distinguish the present case from the *Sekanina and Rushiti* judgments. It, therefore, concludes that in the proceedings complained of there has been a violation of Article 6 § 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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. Costs and expenses

33. The applicant claimed for costs and expenses incurred in the proceedings before the Convention organs the amount of 98,000 Austrian schillings (ATS). The Government did not comment on this claim.

34. In the Court's view the applicant's claim is excessive. In this respect, it would point out that as basis for the calculation of the lawyer's fees as value in dispute an amount of ATS 1,000,000 is taken, which is far more than the basis of calculation in comparable cases before the Court.

35. On the basis of the evidence in its possession, the observations of the participants in the proceedings, and its own relevant case-law, the Court considers it equitable to award ATS 60,000.

B. Default interest

36. 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 § 2 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, for costs and expenses, ATS 60,000 (sixty-thousand Austrian schillings);
 - (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 20 December 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President