



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

FIRST SECTION

CASE OF VOSTIC v. AUSTRIA

(Application no. 38549/97)

JUDGMENT

STRASBOURG

17 October 2002

FINAL

17/01/2003

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 Vostic 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 P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 26 September 2002,

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

PROCEDURE

1. The case originated in an application (no. 38549/97) 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, Snjezana Vostic (“the applicant”), on 22 September 1997.

2. The applicant was represented by Mr C. Schwab, a lawyer practising in Wels. 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 court decisions in compensation proceedings for detention on remand 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.

6. By a decision of 19 June 2001 the Court 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 First Section.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1966 and lives in Austria.

10. On 10 April 1996 the applicant was arrested and on 12 April the Wels Regional Court (*Landesgericht*) remanded her in custody on suspicion of murder. Her repeated requests for release remained unsuccessful.

11. On 13 December 1996 the Wels Regional Court, sitting as an assize court, composed of three professional judges and an eight member jury, acquitted the applicant. The jury answered the main question as to murder with six votes “no” and two votes “yes”. In the record of its deliberations, the jury gave the following reasons for its decision: “The evidence produced at the trial is not sufficient to convict the accused. As the incriminating witnesses were partially not credible – acquittal *in dubio*”. Upon the pronouncement of the acquittal, the applicant was released.

12. Immediately after the pronouncement of the acquittal, at the same hearing, the applicant requested compensation for her detention on remand. The Wels Regional Court, with the same composition as above, dismissed the applicant’s claim. It found that, apart from the fact that the jury’s verdict had not been unanimous, the suspicion against the applicant had not been dispelled. Thus the requirements of section 2 (1)(b) of the Compensation (Criminal Proceedings) Act 1969 (*Strafrechtliches Entschädigungsgesetz 1969* – “the 1969 Act”) were not met. In particular, the statement of the applicant’s parents that she had spent the night of the murder at their home was not credible. In addition, she had owned a weapon which could have been the one used for the murder and her defence that she had no contact with the victim shortly before the commission of the crime had been disproved by the statements of a number of witnesses. The decision was served on the applicant after her acquittal had become final on 17 December 1996.

13. The applicant lodged an appeal with the Linz Court of Appeal (*Oberlandesgericht*). She argued that section 2 (1)(b) of the 1969 Act was incompatible with Article 6 § 2 of the Convention. Furthermore, the main suspicion against her had been dispelled during the trial.

14. On 20 June 1997 the Linz Court of Appeal dismissed the applicant’s appeal. Referring to the case of *Sekanina v. Austria* (judgment of 25 August 1993, Series A no. 266-A), it considered that only a decision which, following the accused’s acquittal, expressed the view that he or she was guilty could violate the presumption of innocence, whereas the

Regional Court had only found that there was a remaining suspicion against the applicant. Further, referring to the Constitutional Court's (*Verfassungsgerichtshof*) judgment of 29 September 1994, it found that section 2 (1)(b) of the 1969 Act was not in itself incompatible with Article 6 § 2 of the Convention. The Court of Appeal continued as follows:

“Nor does the principle of the presumption of innocence prevent the prosecuting authorities from *suspecting* someone of having committed an offence. By section 2(1)(b) of the [1969 Act], refusal of a claim [for compensation] (on the ground that suspicion has not been dispelled) depends not on proven guilt but on the possibility that the person concerned may have committed the offence and therefore on a (persisting) *suspicion*... In the instant case it was precisely such a suspicion concerning Snjezana Vostic that had not been wholly dispelled, particularly in view of the fact that it was still possible that Snjezana Vostic's gun had been the murder weapon; furthermore, inconsistencies remain unresolved. The trial court thus rightly held that the testimony given by the parents of the appellant, whose alibi related to the night of 31 March to 1 April 1996, was not credible; and Snjezana Vostic's own testimony to the effect that she had last seen Sejdo Nadarevic in mid-February 1996 was in the end disproved by the witnesses who gave evidence at the trial.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant provisions of the Compensation (Criminal Proceedings) Act 1969 read as follows:

Section 2

“(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 for 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 judgment was based on the verdict of a jury, the bench shall decide together with the jury. ...

(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”

16. In its judgment of 29 September 1994 (*VfSlg 13879*) the Constitutional Court ruled on the constitutionality of section 2 (1)(b) of the 1969 Act. It found that this provision in itself 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* judgment (cited above), 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

17. The applicant complained that the courts did not respect the presumption of innocence when deciding on her compensation claim following her acquittal. She invoked Article 6 § 2 of the Convention which reads as follows:

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

She maintained that both, the Wels Regional Court and the Linz Court of Appeal, dismissed her compensation claim on the ground that the suspicion against her had not been dissipated, which was inadmissible once her acquittal had become final.

18. The Government contended that the present case had to be distinguished from the above-cited *Sekanina v. Austria* case. What was decisive in that case was that the courts, deciding on the compensation claim assessed the question whether the suspicion against the accused had been dissipated on the basis of the file, thereby replacing the jury's evaluation of the evidence. In the present case, however, the same assize court which had pronounced the applicant's acquittal decided on the compensation claim and did no more than repeat the verdict of the jury – i.e. the acquittal *in dubio pro reo* – and the reasons given in the record of the jury's deliberations, without making statements about the applicant's guilt.

19. The Court recalls that, in the case of *Rushiti v. Austria* (no. 28389/95, 21.03.2000, § 31) it refuted the Government's identical argument, finding 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.”

This line of reasoning was followed in two other recent cases raising the same legal issue (*Lamanna v. Austria*, no. 28923/95, 10.07.2001, § 36 and *Weixelbraun v. Austria*, no. 33730/96, 20.12.2001, § 25).

20. The Court sees nothing to distinguish the present application from the above-mentioned cases. What is decisive is that both, the Wels Regional Court and the Linz Court of Appeal, made statements in the compensation proceedings following the applicant’s final acquittal, expressing the view that there was a continuing suspicion against her, thus, casting doubt on her innocence.

21. Accordingly, there has been a violation of Article 6 § 2 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. The applicant claimed 179,662.67 Austrian schillings (ATS), i.e. 13,056 euros (EUR) as compensation for pecuniary damage, namely the loss of earnings suffered as a result of her detention on remand.

24. The Government asserted that there was no causal link between the pecuniary damage claimed and the breach of the Convention at issue.

25. The Court agrees with the Government and, therefore, makes no award under this head.

B. Costs and expenses

26. The applicant claimed EUR 14,894.66 for costs and expenses incurred in the domestic proceedings and in the Convention proceedings.

27. The Government pointed out that, in so far as the domestic proceedings are concerned, only costs related to the compensation proceedings but not those related to the criminal proceedings may be reimbursed. However, they did not specify any amount. As to the costs of the Convention proceedings, the Government commented that they were excessive.

28. The Court, having regard to the amounts awarded in comparable cases (*Rushiti*, cited above, §§ 37-38, *Lamanna*, cited above, § 46 and *Weixelbraun*, cited above, § 35) and making an assessment on an equitable basis, awards a total amount of EUR 5,000 for costs and expenses.

C. Default interest

29. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank to which should be added three percentage points.

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, EUR 5,000 (five-thousand euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 October 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos L. ROZAKIS
President