



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

FIRST SECTION

CASE OF ROYER v. AUSTRIA

(Application no. 42484/98)

JUDGMENT

STRASBOURG

12 June 2003

FINAL

12/09/2003

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 Royer v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mrs N. VAJIĆ,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 22 May 2003,

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

PROCEDURE

1. The case originated in an application (no. 42484/98) 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 Gerhart Royer (“the applicant”), on 16 July 1998.

2. The applicant was represented by Mr G. Buder, a lawyer practising in Linz. 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 criminal proceedings against him had not been concluded within a reasonable time as required under Article 6 § 1 of the Convention.

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).

6. 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 (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 18 April 2002 the Court declared the application admissible.

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 1932 and lives in Wels.

1. First set of proceedings

10. On 4 April 1984 the Wels Regional Court (*Kreisgericht*) served an arrest warrant on the applicant for suspicion of continued aggravated fraud (*gewerbsmäßiger schwerer Betrug*) committed since 1 January 1979. The same day the applicant was arrested.

11. On 5 April 1984 the Wels Regional Court ordered the applicant's detention on remand.

12. On 13 and 17 April 1984 and 7 June 1984 supplementary charges led to the extension of the preliminary investigations against the applicant.

13. On 4 May 1984 the appointed accountancy expert was sworn in.

14. On 28 September 1984 the applicant was released from detention.

15. During the pre-trial phase in 1985 and 1986 more than 60 witnesses were heard, some of them under letters rogatory. On 14 February 1986 the expert submitted a comprehensive opinion, as a result of which further witnesses were heard.

16. On 22 April 1987 the preliminary investigations were closed and the file, which comprised 15 volumes consisting of more than 500 documents, was transferred to the Wels Public Prosecutor's Office (*Staatsanwaltschaft*).

17. On 6 July 1987 the Public Prosecutor's Office preferred the indictment charging the applicant and three co-accused with continued aggravated fraud, and with negligent and fraudulent bankruptcy (*fahrlässige und betrügerische Krida*). The bill of indictment, which arrived at the Regional Court on 29 July 1987, comprised 143 pages and consisted of 29 counts of aggravated fraud, out of which 10 concerned the applicant; 5 counts of fraudulent bankruptcy, out of which one concerned the applicant; and 4 counts of negligent bankruptcy all concerning the applicant.

The major part of the charges as well as further charges relating to various other offences concerned one co-accused, Mr H., a former judge at the Wels Regional Court. The applicant's and Mr H.'s objections against the indictment were dismissed by the Linz Court of Appeal (*Oberlandesgericht*).

18. On 30 May 1988 the Public Prosecutor's Office requested the Supreme Court (*Oberster Gerichtshof*) that jurisdiction over the case be transferred to the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*) on the ground that H. had moved to Vienna and that numerous witnesses were residing there. On 9 August 1988 the Supreme Court allowed the transfer. The file arrived at the Vienna Regional Court on 16 September 1988, which set trial hearings for the period between September and November 1989.

19. On 25 September 1989 the Vienna Public Prosecutor's Office filed a request for transfer of jurisdiction to the Linz Regional Court since it had turned out that H. had not moved to Vienna. The Linz Regional Court was proposed by the Public Prosecutor's Office on the ground that it was feared that all the judges of the Wels Regional Court could declare themselves biased as the case concerned their former colleague H. In his statement of 13 October 1989 the applicant indicated that he had no objections against this transfer. On 18 December 1989 the Supreme Court allowed the transfer. On 29 December 1989 the Linz Public Prosecutor's Office requested that a trial hearing be fixed.

20. Subsequently the Linz Regional Court, sitting with two professional and two lay judges, suggested *ex officio* the re-transfer of the case to the Wels Regional Court, which was refused by the Linz Court of Appeal on 13 June 1990. On 22 June 1990 a first trial hearing was set for 18 December 1990.

21. Between 18 December 1990 and 5 September 1991, the Linz Regional Court, sitting with two professional and two lay judges, held 55 trial hearings involving the applicant and the co-accused, Mr H. Numerous witnesses as well as the appointed expert were heard. On the latter date the Regional Court convicted the applicant of continued aggravated fraud and negligent bankruptcy and sentenced him to 18 months' imprisonment, 14 of which were suspended on probation. The written version of the judgment, comprising 692 pages, was served on 11 December 1991. The applicant did not appeal.

22. On 7 January 1992 the Public Prosecutor's Office filed a plea of nullity and an appeal against the sentence with the Supreme Court. The co-accused H. also filed a plea of nullity and an appeal.

23. On 26 November 1992 the Supreme Court, upon H.'s plea of nullity, found that there were legitimate doubts as to the expert's impartiality and partly set aside the Linz Regional Court's judgment. Due to the principle of "*beneficium cohaesionis*", pursuant to Section 290 § 1 of the Code of

Criminal Procedure (*Strafprozessordnung*), the applicant's conviction was also set aside. The case was referred back to the Regional Court. This judgment was served on the applicant's counsel on 3 December 1992.

2. *Second set of proceedings*

24. On 14 April 1993 the Supreme Court allowed the co-accused H.'s request for transfer of jurisdiction to the Wels Regional Court because the concerns about possible bias did no longer exist. On 16 September 1993 the Regional Court remitted the file to the investigating judge for obtaining a new opinion by an expert in accountancy and for further investigations, including the seizure of further accounting documents. On 14 December 1994 the expert requested the submission of these documents, which he inspected on 6 March 1995. On 7 July 1995 the applicant's bankruptcy and tax records were submitted to the expert. On 7 November 1996 the first part of the expert opinion arrived at the court and the remainder on 16 April 1997.

25. On 9 August 1997 the file was transferred to the trial court, which, on 1 December 1997, fixed a hearing for 20 January 1998.

26. The Wels Regional Court held hearings on 20, 27 and 29 January 1998 and on 3, 5 and 10 February 1998, following which it decided to separate from the rest of the case the proceedings against the applicant. At the close of the hearing on 10 February 1998 the Regional Court convicted the applicant of negligent bankruptcy and sentenced him to one year's imprisonment suspended on probation. Both, the applicant and the Public Prosecutor waived their right to appeal. Thus, the judgment became final on 10 February 1998. On 8 March 2001 the written version of the judgment was served on the applicant's counsel, contrary to Section 270 § 1 of the Code of Criminal Procedure, which provides for the service of the written version within four weeks after the oral judgment.

THE LAW

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

27. The applicant complained that the criminal proceedings against him lasted unreasonably long in breach of Article 6 § 1, which, as far as material, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

28. The Government asserted that the case was very complex, exemplified by the need to conduct a second set of proceedings and to obtain a new expert opinion. Furthermore they maintained that the delays were mainly attributable to the applicant's conduct. The applicant disagreed with these points of view.

29. The Court recalls that the reasonableness of the length of proceedings must 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, and the importance of what was at stake for the applicant in the litigation (see for instance *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 60).

30. The proceedings started on 4 April 1984, when the Wels Regional Court served an arrest warrant on the applicant, and ended on 8 March 2001, when the written version of the judgment was served on the applicant's counsel. Therefore the overall duration of the proceedings was almost seventeen years, during which time the case was examined twice, once by three levels of jurisdiction and subsequently by the Wels Regional Court.

31. In the Court's view, the proceedings were of some complexity. As regards the conduct of the applicant, the Court finds that any delays caused by the applicant are negligible compared to the overall duration of the proceedings. As regards the conduct of the authorities, however, the Court finds that the overall duration of almost seventeen years was extraordinary. The Court also observes that several delays occurred, for instance, in the first set of the proceedings, between 18 December 1989 and 18 December 1990 due to the Linz Regional Court's unsuccessful attempt of re-transferring jurisdiction. In the second set of proceedings, a period of four years and almost four months elapsed between 14 April 1993 and 9 August 1997, when the case was pending before the investigating judge and an expert opinion was obtained. Finally, the Court takes note that, contrary to Section 270 § 1 of the Code of Criminal Procedure, three years and almost one month elapsed until the Wels Regional Court served the written version of the judgment on 8 March 2001.

32. Having regard to the circumstances of the case, the Court finds that the overall duration of the proceedings exceeded a "reasonable time". There has, thus, been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 83,781.60 euros (EUR) as compensation for pecuniary damage, consisting of EUR 73,281.60 for diminished pension and EUR 10,500 for loss of earnings. The applicant further submitted that an amount of EUR 70,000 would be appropriate as regards non-pecuniary damage for distress caused by the duration of the proceedings.

35. The Government contended that there was no causal link between the length of the proceedings and the pecuniary damage claimed by the applicant. They further submitted that the finding of a violation would be sufficient to redress any non-pecuniary damage suffered by the applicant.

36. The Court agrees with the Government that there is no causal link between the pecuniary damage claimed and the violation found. In particular it is not for the Court to speculate what the outcome of the proceedings would be if they had been in conformity with the requirements of Article 6 § 1 (see *Werner v. Austria*, judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2514, § 72).

37. As to non-pecuniary damage, the Court, having regard to its case-law and taking into account the importance of the proceedings at issue for the applicant, makes an assessment on an equitable basis and awards the applicant EUR 12,000.

B. Costs and expenses

38. The applicant requested EUR 6,102 for reimbursement of costs and expenses incurred in the Convention proceedings.

39. The Government contended that the requested amount was too high, only a maximum amount of EUR 5,095 could possibly be claimed.

40. The Court observes that the applicant had made no claim for reimbursement of costs incurred in the domestic proceedings. Therefore no award can be made under this head. As to the costs of the Convention proceedings, the Court notes that the applicant, who was represented by counsel, did not have the benefit of legal aid. Making an assessment on an

equitable basis and having regard to the sums awarded in similar cases, the Court awards the applicant EUR 2,000 under this head.

C. Default interest

41. 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 (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/97, § 124, ECHR 2002-).

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, EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage, and EUR 2,000 (two 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 12 June 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President