



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

THIRD SECTION

CASE OF LÖFFLER v. AUSTRIA (No. 2)

(Application no. 72159/01)

FINAL

04/06/2004

JUDGMENT

This version was rectified on 2 December 2004
under Rule 81 of the Rules of the Court

STRASBOURG

4 March 2004

In the case of Löffler v. Austria (no. 2),

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

Mr G. RESS, *President*,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs H.S. GREVE,

Mr K. TRAJA,

Mrs E. STEINER, *judges*,

and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 12 February 2004,

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

PROCEDURE

1. The case originated in an application (no. 72159/01) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Hans-Peter Löffler ("the applicant"), on 29 May 2001.

2. The applicant was represented by Mr R. Gabl, 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. On 5 May 2003 the Court decided to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

4. The applicant was born in 1944 and lives in Linz.

5. On 10 April 1986 the Linz Regional Court instituted preliminary investigations on the suspicion of murder against the applicant and remanded him in custody. On 31 March 1987 a Court of Assizes (*Geschworenengericht*) at the Linz Regional Court (*Landesgericht*) convicted the applicant of murder and sentenced him to eighteen years' imprisonment. On 15 September 1987 the Supreme Court (*Oberster Gerichtshof*) dismissed the applicant's plea of nullity and appeal against sentence.

6. On 6 September 1990 the applicant requested the re-opening of the criminal proceedings against him. On an unspecified date the Linz Regional Court dismissed this request. On 15 June 1992 the Linz Court of Appeal (*Oberlandesgericht*) granted the applicant's appeal and reopened the criminal proceedings against him. On 23 June 1992 the applicant was released. New preliminary investigations were instituted against him.

7. On 10 May 1993¹ the applicant instituted official liability proceedings (*Amtshaftung*) against the Republic of Austria. He claimed compensation for damages caused by his conviction, which had been annulled, and his detention which lasted approximately six years and two months. He further filed a request for legal aid.

8. On 6 June 1993 the case was transferred to the Steyr Regional Court. The Republic of Austria subsequently filed an appeal against the decision ordering the delegation. On 12 July 1993 the Republic of Austria withdrew their appeal.

9. On 19 August 1993 the Republic of Austria filed a statement of defence.

10. On 6 September 1993 the Presiding Judge (*Vorsitzender*) of the Steyr Regional Court dismissed the applicant's request for legal aid.

11. Upon the applicant's appeal, the Linz Court of Appeal quashed this decision.

12. On 12 October 1993 the Steyr Regional Court granted the applicant's request for legal aid.

13. In the meantime, on 27 September 1993, the Regional Court had rejected submissions filed by the applicant. The applicant's appeal was to no avail.

14. A hearing scheduled for 13 December 1993 had to be cancelled due to illness of the Presiding Judge.

15. On 15 March 1994 the Steyr Regional Court held a hearing and suspended the official liability proceedings, as the criminal proceedings against the applicant were still pending. The applicant appealed against this decision. On 10 August 1994 the Court of Appeal dismissed this appeal.

16. On 29 August 1996 the Assize Court acquitted the applicant of the charge of murder, but dismissed his application for compensation for detention (*Haftentschädigung*) under the Criminal Proceedings Compensation Act (*Strafrechtliches Entschädigungsgesetz*).

17. On 6 November 1996 the Court of Appeal allowed the applicant's appeal and stated that the applicant was entitled to a compensation under Section 2 § 1(b) and 1(c) of the Criminal Proceedings Compensation Act.

18. On 4 September 1996 the Steyr Regional Court decided to continue the official liability proceedings.

¹ Rectified on 2 December 2004: The date read 10 March 1993 in the former version of the judgment.

19. In the meantime, on 11 March 1996² the applicant instituted further official liability proceedings. On 28 June 1996 the Linz Court of Appeal transferred the case to the Steyr Regional Court. On 3 October 1996 the Supreme Court dismissed the Republic of Austria's appeal.

20. On 7 December 1996 the Steyr Regional Court decided to join the official liability proceedings.

21. On 11 March 1997 the Steyr Regional Court found that the competent presiding judge was biased and allocated the case to another judge.

22. On 25 June, 8 October 1997 and 15 October 1998 the Steyr Regional Civil Court held hearings. At the hearing of 25 June 1997 the applicant submitted that his claim was also based on the Criminal Proceedings Compensation Act.

23. On 14 September 1998 the applicant extended his claim.

24. On 11 March 1999 the Steyr Regional Court partly allowed the applicant's claim and granted him compensation of ATS 42,912. The applicant and the Republic of Austria appealed against this decision.

25. On 9 July 1999 the Supreme Court delegated the case to the Vienna Court of Appeal.

26. On 18 October 1999 the Vienna Court of Appeal allowed the applicant's appeal for procedural deficiencies and remitted the case to the court of first instance.

27. On 18 November 1999 the Supreme Court transferred the case to the Vienna Regional Court.

28. On 28 February 2000 the applicant requested the Supreme Court to transfer the case back to the Steyr Regional Court. On 10 March 2000 the Supreme Court dismissed the applicant's request.

29. On 24 May 2000 the Vienna Regional Court held a hearing and decided to appoint an expert in order to assess the applicant's loss of earnings. It further ordered the applicant to submit the relevant documents concerning his loss of earnings. The applicant submitted the documents on 15 June 2000.

30. On 1 October 2000 the Vienna Regional Court appointed an expert to assess the applicant's loss of earnings and ordered her to submit the expert opinion within three months.

31. On 22 February 2001 the expert requested the Regional Court for an extension of the time-limit. The Regional Court granted the request on the same day.

32. On 25 May 2001 the applicant filed a request under Section 91 of the Court Act (*Gerichtsorganisationsgesetz*) for a time-limit to be fixed for the delivery of the expert opinion and a hearing to be held.

² Rectified on 2 December 2004: The date read 11 March 1994 in the former version of the judgement.

33. On 29 May 2001 the expert submitted her opinion.

34. On 25 June 2001 the Vienna Court of Appeal dismissed the applicant's request under Section 91 of the Court Act.

35. On 11 December 2001 the Regional Court held a hearing. Upon the applicant's request it ordered the expert to supplement the expert opinion within three months.

36. On 20 March 2002 the applicant filed again a request under Section 91 of the Court Act for a time-limit to be fixed for the delivery of the expert opinion.

37. On 29 March and on 4 April 2002 the Regional Court requested the expert to submit her opinion. On 10 April 2002 the expert filed her opinion.

38. On 5 June 2002 the Vienna Court of Appeal dismissed the applicant's application under Section 91 of the Court Act.

39. Upon the applicant's request the Regional Court, on 10 July 2002, appointed another expert to assess the applicant's loss of earnings within three months. On 10 December 2002 the new expert submitted her opinion.

40. On 10 March 2003 the Regional Court held a hearing.

41. On 29 July 2003 the Regional Court gave a partial decision (*Teilurteil*) and granted the applicant compensation in the amount of approximately 236 000 € as well as a monthly annuity. On an unspecified date it decided upon the applicant's further claims.

42. Appeal proceedings before the Vienna Court of Appeal are still pending.

THE LAW

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

43. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” principle, provided in Article 6 § 1 of the Convention, which reads as follows:

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

44. The Government contested that argument.

45. The period to be taken into consideration began on 10 May 1993³, when the applicant instituted official liability proceedings claiming compensation for damage resulting from his conviction and detention. The case was once referred back to the first instance. The proceedings are still

³ Rectified on 2 December 2004: The date read 10 March 1993 in the former version of the judgement.

pending before the second instance court. They have, therefore, lasted until now for approximately ten years and nine months⁴.

46. The applicant further complained that the proceedings were unfair in that they had been partly conducted by courts not competent according to the internal organisation of the courts.

A. Admissibility

47. The Government requested the Court to declare the application inadmissible as being manifestly ill-founded.

48. The Court finds that the complaint concerning the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

49. The applicant further complains about the unfairness of the proceedings. The Court recalls that the question of whether court proceedings have been fair, as required by Article 6 § 1, can only be answered by examining the proceedings as a whole, i.e., only once they have been concluded (see *H. v. France*, judgment of 24 October 1989, Series A no. 162 A, p. 23, § 61).

50. The Court finds that, as the applicant's case is still pending before the Court of Appeal, his complaints under Article 6 § 1 about the alleged unfairness are premature and must be rejected under 35 §§ 1 and 4 of the Convention.

B. Merits

51. The Government contended that the length of the proceedings could still be regarded as reasonable. They argued that proceedings had been suspended from 15 March 1994 until 4 September 1996 in order to wait for the outcome of the criminal proceedings still pending against the applicant. They further argued that the proceedings were complex as they concerned two official liability proceedings which had been joined. The proceedings necessitated the extensive taking of evidence, in particular obtaining several expert opinions. Moreover, the case had to be transferred several times to another court in order to avoid bias. As regards the conduct of the applicant they submitted that he extended his claims repeatedly and requested that the expert opinion be supplemented. Therefore, he himself contributed considerably to the length of the proceedings.

⁴ Rectified on 2 December 2004: The delay read ten years and eleven months in the former version of the judgement.

52. The applicant submitted that the Austrian courts had not dealt with the case expeditiously. Accordingly, the exceptional length of the proceedings has to be attributed to them.

53. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

54. The Court notes that the proceedings at issue have lasted until now for approximately ten years and nine months⁵ (see § 45).

55. The Government argued that a period of two years and six months should not be taken into account because during that period proceedings had been suspended. The Court is not persuaded by this argument all the more as the applicant had in the meantime instituted further official liability proceedings which had not been suspended.

56. The Court considers that the proceedings were not particularly complex. As to the applicant's conduct, the Court finds that he did not cause any significant delays. As regards the conduct of the domestic authorities, however, the Court considers that there were substantial periods of inactivity: It took one year before the Regional Court held the first oral hearing after the applicant had instituted official liability proceedings. As regards the additional official liability proceedings, it took more than one year⁶ until the Regional Court held the first hearing. The Court further notes a period of inactivity of one year between the hearing of 8 October 1997 and the next hearing on 15 October 1998.

57. The Court observes that some of these delays were caused by a change of the competent judge and by the fact that the case had been transferred several times to another court. However, Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet the obligation to decide cases within a reasonable time (see, among other authorities, *Duclos v. France* judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2180–81, § 55 *in fine*).

58. The delay in the proceedings must therefore be mainly attributed to the national authorities.

59. The Court therefore finds that the overall length of the proceedings cannot be regarded as “reasonable”. It follows that there has been a breach of Article 6 § 1 of the Convention.

⁵ Rectified on 2 December 2004: The delay read ten years and eleven months in the former version of the judgement.

⁶ Rectified on 2 December 2004 : The delay read three years in the former version of the judgement.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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.”

61. The applicant did not seek compensation for pecuniary damage. Under the head of non-pecuniary damage, the applicant claimed a sum of 36,336 euros (EUR).

62. The Government did not comment on the applicant's claim.

63. The Court accepts that the applicant has suffered non-pecuniary damage. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,600 under this head.

A. Costs and expenses

64. The applicant also claimed EUR 5,194 for the costs incurred in the Strasbourg proceedings.

65. The Government did not comment.

66. 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.

B. Default interest

67. 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. *Declares* the complaint concerning the length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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 6,600 (six thousand and six

hundred euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 4 March 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Georg RESS
President