



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

FIRST SECTION

CASE OF BETTINA MALEK v. AUSTRIA

(Application no. 16174/02)

JUDGMENT

STRASBOURG

21 October 2004

FINAL

21/01/2005

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 Bettina Malek v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mr P. LORENZEN,

Mr G. BONELLO,

Mrs F. TULKENS,

Mrs N. VAJIĆ,

Mrs E. STEINER,

Mr K. HAJIYEV, *judges*,

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

Having deliberated in private on 30 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 16174/02) 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, Mrs Bettina Malek (“the applicant”), on 3 April 2002.

2. The applicant was represented by her husband, Mr H. Malek, a lawyer practising in Krems. 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. On 21 October 2003 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

4. The applicant was born in 1963 and lives in Krems-Egelsee.

5. On 30 January 1996 the Krems Municipal Council (*Magistrat*) asked the applicant to comment on the charge against her as she was suspected of illegal parking.

6. On 22 February 1996 the applicant, who was assisted by counsel, submitted her comments.

7. On 8 November 1996 the applicant filed a request to consult *inter alia* the ordinance upon which the charge was based.

8. On 20 February 1997 the applicant submitted further comments.

9. On 5 March 1997 the Municipal Council issued a penal order (*Straferkenntnis*) against the applicant finding her guilty of illegal parking and imposing a fine of 1,000 Austrian schillings (approximately 70 euros) with sixty hours' imprisonment in default on her.

10. On 2 April 1997 the applicant appealed against this decision. On 7 May 1998 the applicant filed further comments.

11. On 16 June 1998 the Lower Austria Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) dismissed the applicant's appeal.

12. On 2 July 1998 the applicant filed a complaint with the Constitutional Court.

13. On 29 September 1998 the Constitutional Court declined to deal with the applicant's complaint for lack of prospects of success.

14. On 12 January 1999 the Constitutional Court, upon the applicant's request of 22 December 1998, remitted the case to the Administrative Court. On 10 February 1999 the applicant supplemented her complaint with the Administrative Court. On 19 April 1999 the Independent Administrative Panel submitted its comments.

15. On 25 January 2002 the Administrative Court dismissed the applicant's complaint as being unfounded. This decision was served on the applicant's counsel on 20 February 2002.

THE LAW

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

16. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which 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..."

17. The Government contested that argument.

18. The period to be taken into consideration began on 30 January 1996, when the applicant was invited to file comments on the charge of illegal parking against her, and ended with the Administrative Court's decision of 25 January 2002 which was served on 20 February 2002. It, thus, lasted six years and one month.

A. Admissibility

19. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

20. 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 following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

21. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case. It notes in particular that a period of inactivity of two years and nine months occurred before the Administrative Court between 19 April 1999, i.e. the date on which the Independent Administrative Panel submitted its comments, and 25 January 2002, the date when the court gave its decision.

22. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

25. The Government contested the claim.

26. The Court considers that, in the circumstances of the case, the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage the applicant may have sustained. Consequently, it rejects the claim.

B. Costs and expenses

27. The applicant also claimed EUR 4,500.40 for costs and expenses incurred before the domestic courts. This claim was made on 29 January 2004. On 16 March 2004 the applicant also claimed EUR 900 in respect of the Convention proceedings.

28. The Government contested the applicant's claim of 29 January 2004. They did not comment on her claim of 16 March 2004.

29. As to the costs of the domestic proceedings, the Court notes that, insofar as the length of proceedings is concerned, only the costs incurred in an attempt to accelerate the proceedings can be regarded as having been necessary to prevent the violation found. The bill of fees submitted by the applicant does not contain any claim in this respect.

30. As to the costs of the Convention proceedings, the Court notes that the claim was raised after 25 February 2004, i.e. the time-limit set for this purpose in the Court's letter of 23 January 2004. The applicant has not given any explanation and has not made a request for these belated submissions to be taken to the file. Consequently, the Court rejects this claim.

31. The Court, therefore, rejects the applicant's entire claim for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for non-pecuniary damage;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President