



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

THIRD SECTION¹

CASE OF REINMÜLLER v. AUSTRIA

(Application no. 69169/01)

JUDGMENT
(Striking out)

STRASBOURG

18 November 2004

FINAL

18/02/2005

¹ In its composition before 1 November 2004.

In the case of Reinmüller v. Austria,

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr B. ZUPANČIČ,

Mrs M. TSATSA-NIKOLOVSKA,

Mrs H.S. GREVE,

Mr K. TRAJA,

Mrs E. STEINER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 26 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 69169/01) 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, Mr Florian Reinmüller (“the applicant”), on 2 March 2001.

2. The applicant was represented by Mrs I. Neyer, a lawyer practising in Feldkirch. The Austrian Government (“the Government”) were represented by Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant complained, *inter alia*, under Article 6 § 2 of the Convention that the reasoning of the courts which dismissed his compensation claim violated the presumption of innocence.

4. 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.

5. 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).

6. By a decision of 1 April 2004 the Court declared the application partly admissible.

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

THE FACTS

8. The applicant was born in 1964 and lives in Tamsweg, Austria.

9. On 3 July 2000 the Innsbruck Regional Court (*Landesgericht*), sitting as a court with two professional and two lay judges (*Schöffengericht*), acquitted the applicant of charges of drug trafficking on a large scale and other offences under the Drugs Act (*Suchtmittelgesetz*) on the basis of the principle *in dubio pro reo*. It dismissed the applicant's request to hear further witnesses, finding that there was no additional evidence necessary to prove the lack of credibility of the incriminating statement.

10. Immediately after the pronouncement of the acquittal, and at the same hearing, the Regional Court dismissed the applicant's request for compensation for his detention on remand from 2 May 1999 until 23 December 1999 and from 27 December 1999 to 22 May 2000.

It found that "pursuant to Section 2 (1)(b) of the Criminal Proceedings Compensation Act 1969 (*Strafrechtliches Entschädigungsgesetz 1969* - "the 1969 Act") compensation for detention on remand [might] be granted if the accused had been acquitted and the suspicion that he had committed the offence has been dispelled." Further, it found that "the requirements for granting compensation for detention on remand under Section 2 (1)(b) of the 1969 Act were not met as the applicant was only acquitted on the basis of the principle *in dubio pro reo*".

11. On 19 September 2000 the Innsbruck Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal. Referring to the case of *Sekanina v. Austria* (judgment of 25 August 1993, Series A no. 266-A, pp.15-16, § 30), it considered that only a decision which, following the accused's acquittal, expressed the view that the latter was guilty could violate the presumption of innocence, and that in the present case no such additional finding on the suspicion against the applicant had been made. Moreover, it found that, considering the incriminating statement of witness P.R., a suspicion against the applicant persisted.

12. On 11 August 2004 the Supreme Court (*Oberster Gerichtshof*), upon the Procurator General's plea of nullity for the preservation of law (*Nichtigkeitsbeschwerde zur Wahrung des Gesetzes*), quashed the decisions of the Regional Court and the Court of Appeal and remitted the case to the Regional Court. It found that the courts' failure to hold a public hearing in the compensation proceedings and to announce the decisions in public violated the applicant's rights under Article 6 § 1 of the Convention. It also noted that, in the subsequent proceedings, the Regional Court would have to decide on the applicant's compensation claim in the light of the case-law of the European Court of Human Rights in respect of the voicing of a suspicion following an acquittal, within the meaning of Article 6 § 2 of the Convention.

THE LAW

13. The Court observes that by a fax of 13 September 2004 the Government informed the Court that on 11 August 2004 the Supreme Court had set aside the decisions of the Innsbruck Regional Court of 3 July 2000 and the Innsbruck Court of Appeal of 19 September 2000 and had remitted the case to the Innsbruck Regional Court for deciding again on the applicant's compensation claim. On 30 September 2004 the applicant confirmed the Government's submissions but requested the Court to continue the examination of the case in respect of the costs incurred therefore.

14. The Court reiterates the terms of Article 37 § 1 of the Convention which, as far as material, reads as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that (...)

(b) the matter has been resolved; or

...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

15. In the present case, the Court considers that the matter has been resolved since the applicant's complaint relates to proceedings which have been quashed by the Supreme Court, *inter alia*, on the ground that the voicing of a suspicion following an acquittal had to be formulated in conformity with this Court's case-law under Article 6 § 2 of the Convention. New proceedings will now be conducted by the Regional Court. The Court further considers that respect for human rights as defined in the Convention does not require a continuation of the examination of the case. It therefore decides to strike the application out of its list of cases in accordance with Article 37 § 1 (b) of the Convention.

16. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 18 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President