CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF BLUM v. AUSTRIA

(Application no. 31655/02)

JUDGMENT

STRASBOURG

3 February 2005

FINAL

03/05/2005

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 Blum v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 13 January 2005,

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

PROCEDURE

1. The case originated in an application (no. 31655/02) 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, Heinrich Blum ("the applicant"), on 20 August 2002.

2. The applicant was represented by Mr W.L. Weh, a lawyer practising in Bregenz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Departement 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 1959 and lives in Höchst. He is a farmer.

5. On 18 July 1996 H., an officer of the Bregenz Works Inspection (*Arbeitsinspektorat*) inspected the applicant's farm and found two persons of presumable Polish nationality who were working there. When asked for their passports both absconded. Upon request the applicant admitted that they were living at his farm.

6. On 21 July 1996 J.Z., one of the two workers declared before H. that he had "helped" at the applicant's farm for five days and had received a sleeping opportunity and food in return. He confirmed this statement in writing.

7. On 20 August 1996 the Works Inspectorate submitted a report to the Bregenz District Administrative Authority (*Bezirkshauptmannschaft*) in which it stated that the applicant had illegally employed a foreigner at his farm.

8. Thereupon, the District Administrative Authority opened administrative criminal proceedings against the applicant under the Aliens' Employment Act (*Ausländerbeschäftigungsgesetz*) and, on 16 September 1996, invited the applicant to comment on the charge against him (*Aufforderung zur Stellungnahme*). On 3 October 1996 the applicant submitted his comments.

9. On 23 June 1997 the District Administrative Authority convicted the applicant of an offence under the Aliens' Employment Act and sentenced him to pay a fine of ATS 15,000 (approximately 1090 €) and the costs of the proceedings. It found that the applicant had employed a foreigner who had no working permit.

10. On 27 June 1997 the applicant appealed against this decision with the Vorarlberg Independent Administrative Panel (*Unabhängiger Verwaltungssenat*).

11. On 20 November 1997 the Independent Administrative Panel held a public hearing and heard H. Upon the applicant's request it further decided to hear J.Z. by way of letters rogatory (*im Rechtshilfeweg*). In the subsequent proceedings it turned out, however, that it was not possible to hear J. Z, who was residing in Poland, by letters rogatory as there existed no legal assistance treaties with Poland concerning administrative criminal proceedings. On 31 August 1998 the Independent Administrative Panel wrote a letter to J.Z. at his address in Poland and requested him to answer several questions relating to the proceedings pending against the applicant. J.Z. did not reply. On 3 November 1998 the Independent Administrative Panel informed the applicant that it had not been possible to hear J. Z. and that the applicant had now the opportunity to produce further evidence to disprove the charges of the Works Inspectorate.

12. On 11 January 1999 the Independent Administrative Panel dismissed the applicant's appeal. It based its decision upon the evidence given by H. It further noted that this evidence was corroborated by J. Z.'s written statement of 21 July 1996, the fact that J. Z. had absconded and the applicant's first statement before the Works Inspectorate in which the applicant had even denied that there was a Polish person on his farm.

13. On 2 March 1999 the applicant filed a complaint with the Constitutional Court against this decision. On 14 June 1999 the Constitutional Court refused to deal with the complaint for lack of prospects of success and, on 21 August 1999, upon the applicant's request, transferred the case to the Administrative Court.

14. On 29 October 1999 the applicant supplemented his observations with the Administrative Court and requested an oral hearing. On

25 November 1999 the IAP submitted its comments on the applicant's complaint.

15. On 22 January 2002 the Administrative Court dismissed the applicant's complaint. 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 CONCERNING THE LENGTH OF THE PROCEEDINGS

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.

Article 6, as far as relevant, provides as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

A. Admissibility

17. The Court notes that the complaint about the length of the proceedings 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

18. The proceedings at issue started on 16 September 1996 when the District Administrative Authority invited the applicant to comment on the charge, and terminated on 20 February 2002 when the final decision of the Administrative Court was served. Thus, the proceedings lasted for five years and five months.

19. The Government argued that, in particular in the light what was at stake for the applicant in the dispute, the length of the proceedings may still be regarded as reasonable.

20. The applicant contested this argument and submitted that the proceedings were of importance for him, *inter alia* because a conviction under administrative criminal law excluded him from applying for any public subsidy.

21. 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 and *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

22. The Court notes, that the proceedings lasted for five years and five months before four instances.

23. The Court considers that the case was not particularly difficult to determine. As regards the applicant's conduct, the Court finds that the applicant did not contribute to the prolongation of the trial. As regards the conduct of the authorities, the Court recalls that there was a substantial delay of two years and two months in the proceedings before the Administrative Court, i.e. from 25 November 1999 until 22 January 2002, which remained unexplained.

24. In sum, 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. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

25. The applicant complained that the presumption of innocence as guaranteed by Article 6 § 2 of the Convention had been violated and submits that the Independent Administrative Panel had applied a reversal of the burden of proof. The applicant further complained about the Austrian authorities' failure to hear J. Z. in the proceedings before the Independent Administrative Panel as a witness. The applicant complained that no prosecuting authority participated in the proceedings before the Independent Administrative Panel and that therefore the member of the Independent Administrative Panel acted both as judge and prosecutor. He submits that, therefore, he did not have a fair hearing by a tribunal within the meaning of Article 6 of the Convention. Finally, the applicant complained about the lack of an oral hearing before the Administrative Court.

Admissibility

26. The applicant complained that the presumption of innocence as guaranteed by Article 6 § 2 of the Convention had been violated and submits that the Independent Administrative Panel had applied a reversal of the burden of proof. He refers in this regard to the fact that the Independent

Administrative Panel invited him to produce further evidence to disprove the charges of the Works Inspectorate as it had not been possible to hear J.Z.

27. The Court recalls, however, that presumptions of fact or of law operate in every legal system. Clearly, the Convention does not prohibit such presumptions in principle. It does, however, require the Contracting States to remain within certain limits in this respect as regards criminal law (see for instance the *Salabiaku v. France* judgment of 7 October 1988, Series A no. 141-A, pp. 15-16, § 28).

28. In the present case the Works Inspectorate submitted in the proceedings that its officer had met a foreigner, who had no employment permit, working on the applicant's farm. In such circumstances, the Court does not consider it unreasonable that the Independent Administrative Panel concluded that the Works Inspectorate had established a prima facie case against the applicant which called for an explanation by him (see *mutatis mutandis* the John Murray v. the United Kingdom judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 52, § 47).

29. The Court, accordingly, finds that the Austrian authorities exercised their power of assessment on the basis of the evidence adduced by the parties before them and that they remained in doing so within the limits set out by Article 6 § 2.

30. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

31. The applicant further complained about the Austrian authorities' failure to hear J. Z. in the proceedings before the Independent Administrative Panel as a witness.

32. The Court notes that Independent Administrative Panel, on 20 November 1997, granted the applicant's request to hear J. Z. In the subsequent proceedings, however, it turned out that it was not possible to hear J. Z., who was residing in Poland, by way of letters rogatory. The Independent Administrative Panel then wrote a letter to J. Z. at his address in Poland which J. Z. did, however, not answer.

33. The Court cannot find that the Austrian authorities had been negligent in their efforts to hear J. Z. As it was impossible to hear J. Z again, it was open to the Independent Administrative Panel to have regard to the evidence given by the Works Inspector who had heard J. Z, in particular in view of the fact that the Independent Administrative Panel could consider these statements to be corroborated by other evidence before it (see § 12 above).

34. Accordingly, the fact that it was impossible to hear J.Z before the Independent Administrative Panel, did not, in the circumstances of the case, infringe the rights of the defence to such an extent that it constituted a breach of §§ 1 and 3 of Article 6 of the Convention (see *mutatis mutandis*

Artner v. Austria, judgment of 28 August 1992, Series A no. 242-A, p. 10, §§ 20-24).

35. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

36. The applicant further complained that no prosecuting authority participated in the proceedings before the Independent Administrative Panel and that therefore the member of the Independent Administrative Panel acted both as judge and prosecutor.

37. The Court recalls that the Independent Administrative Panel qualifies as tribunal within the meaning of Article 6 (*Baischer v. Austria*, no 32381/96, 20 December 2001, § 25). The mere absence of a representative of the District Authority, i.e. the prosecuting side, at the hearing before the Independent Administrative Panel does not give rise to objectively justified fears as regards this body's impartiality. (*Weh and Weh v. Austria* (dec.), no. 38544/97, 4 July 2002).

38. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

39. The applicant further complained about the lack of an oral hearing before the Administrative Court.

40. The Court recalls, that, as far as administrative criminal proceedings are concerned, the Administrative Court does not qualify as a tribunal within the meaning of Article 6 of the Convention as it does not have the required scope of review (see for instance *Schmautzer v. Austria,* judgment of 23 October 1995, Series A no.328-A, p.15, §§ 34-36).

41. The Court notes, however, that in the present case the Independent Administrative Panel which qualifies as a tribunal within the meaning of Article 6 §1 (see *Baischer v. Austria,* cited above) held a public hearing.

42. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. Under the head of pecuniary damage the applicant claimed a total of EUR 11,559.17 for costs and expenses incurred in the proceedings before the domestic courts and the Court, and EUR 1,199.09 for the fine he was sentenced to pay. He submitted in the latter regard that the Austrian authorities should have reduced his sentence because of the excessive length of the proceedings.

45. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. It will, however, examine the applicant's claims, as far as relevant, under the head of costs and expenses.

B. Costs and expenses

46. The applicant claimed EUR 7390.37, including VAT, for the costs and expenses incurred before the domestic courts and EUR 4168.8, including VAT, for those incurred before the Court.

47. The Government contested these claims.

48. The Court reiterates that, according to its case-law, it has to consider whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 80, ECHR 1999-III).

49. As regards the costs of the domestic proceedings 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.

50. As regards the costs before the Court, 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 plus any tax that may be chargeable on that amount.

C. Default interest

51. 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 excessive 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 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable on that amount;
   (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;

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

Done in English, and notified in writing on 3 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President