



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

THIRD SECTION

CASE OF GEYER v. AUSTRIA

(Application no. 69162/01)

JUDGMENT

STRASBOURG

7 July 2005

FINAL

07/10/2005

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 Geyer v. Austria,

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

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having deliberated in private on 16 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 69162/01) 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 Michael Geyer (“the applicant”), on 9 April 2001.

2. The applicant was represented by Mr Manfred Ainedter, a lawyer practising in Vienna. 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 23 May 2003 the Court decided to communicate the complaints concerning the length of the proceedings. 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 1951 and lives in Vienna. He is a tax accountant by profession.

5. In December 1989 the applicant, in the course of an inspection of his tax accountant office by tax inspectors (*Betriebsprüfung*) filed reports (*Selbstanzeige*) in which he incriminated himself. He informed the Vienna Tax Authority for the 3rd and 11th District that he had made false statements in his income tax forms when he declared losses resulting from participation in the W. and G. company.

6. On 11 May 1994 the Salzburg-Land Tax Office (*Finanzamt*) instituted administrative criminal proceedings on suspicion of tax evasion against the applicant. The applicant's objection was of no avail.

7. Having held hearings on 2 June, 3 November and 4 December 1995, the Trial Board (*Spruchsenat*) at the Salzburg-Land Tax Office convicted the applicant on the latter date under Section 34 § 1 of the Tax Offences Act (*Finanzstrafgesetz*) of negligent tax evasion and sentenced him to a fine of ATS 700,000 (approximately 50,900 euros). It further ordered him to pay the costs of the proceedings. The applicant and the Public Prosecutor (*Amtsbeauftragter*) filed an appeal.

8. On 27 June 1996 the Appeals Board (*Berufungssenat*) at the Salzburg Regional Directorate of Finance (*Finanzlandesdirektion*), having held a hearing on the same day, granted the Public Prosecutor's appeal and convicted the applicant of intentional tax evasion under Section 33 § 1 of the Tax Offences Act. The sentence remained unchanged.

9. Subsequently, on 20 September 1996, the applicant filed a complaint with the Administrative Court and requested an oral hearing. He complained *inter alia* that the Salzburg-Land Tax Office's had lacked jurisdiction in the proceedings at issue and that in the hearing before the Appeal's Board he had not been questioned.

10. The Salzburg Regional Directorate of Finance filed comments on the applicant's complaint on 12 November 1996.

11. On 10 December 1996 the Administrative Court granted suspensive effect to the applicant's complaint.

12. On 22 September 2000 the Administrative Court, without having held a hearing, dismissed the applicant's complaint and ordered him to pay the costs of the proceedings before it. Referring to its case-law, it stated that the Salzburg-Land Tax Office had been competent to conduct the proceedings at issue. Regarding the applicant's complaint that he had not been questioned in the hearing before the Appeal's Board, it noted *inter alia* that the applicant had not submitted that he had been prevented from presenting his arguments on his own motion in the hearing before the Appeal's Board.

The judgment was served on the applicant's counsel on 20 October 2000.

THE LAW

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

13. The applicant complained under Article 6 § 1 of the Convention about the lack of an oral hearing before the Administrative Court. He further

complained that the Administrative Court did not give sufficient reasons for its decision. The applicant finally complained that the length of the proceedings had been incompatible with the “reasonable time” requirement, provided in Article 6 § 1, 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...”

A. Admissibility

14. 1. The applicant complained about the lack of an oral hearing before the Administrative Court.

15. 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 (see for instance; *Baischer v. Austria*, no. 32381/96, § 29, 20 December 2001, and also *Schmautzer v. Austria*, judgment of 23 October 1995, Series A no. 328-A, p. 15, § 36). However, the authorities dealing with the applicant's case at first and second instance, namely the Trial Board of the Salzburg Tax Office and the Appeals Board of the Salzburg Regional Directorate of Finance, qualify as tribunals within the meaning of Article 6 of the Convention (see *Rozsa v. Austria* (dec.), no.67950/01, 6 April 2004). These authorities held oral hearings in the presence of the applicant and his counsel.

16. It follows that the applicant's complaint about the lack of an oral hearing before the Administrative Court is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

17. The applicant further complained that the Administrative Court did not given sufficient reasons for its decision, in particular it did not sufficiently take into account all his arguments concerning the Salzburg-Land Tax Office's alleged lack of jurisdiction.

18. The Court recalls that, although Article 6 § 1 of the Convention obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). In the present case, the Administrative Court, referring to its own case-law, stated that the Salzburg Tax Office had been competent to conduct the proceedings at issue, and, therefore, adequately dealt with the applicant's complaint.

19. 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.

20. The applicant finally complained about the length of the proceedings.

21. As to the period to be taken into consideration, the Government argued that the proceedings started when the Tax Office, on 11 May 1994,

instituted administrative criminal proceedings against the applicant. Referring to the Commission's findings in the case *Höfler v. Austria*, (Commission's report of 18 October 1995, §§ 36 and 37) they argued that the applicant's self-incriminating reports in 1989 did not result in proceedings being instituted at that time. The applicant did not express an opinion on this matter.

22. The Court notes that in criminal matters, the “reasonable time” referred to in Article 6 § 1 begins to run as soon as a person is “charged”; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. Furthermore, “charge”, for the purposes of Article 6 § 1, may be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence”, a definition that also corresponds to the test whether the situation of the suspect has been substantially affected (see *Hozee v. the Netherlands*, judgment of 22 May 1998, Reports of Judgments and Decisions 1998-III).

23. Applying these principles to the facts before it, the Court finds that the relevant time in the present case began to run on 11 May 1994, when criminal proceedings were instituted against the applicant, as it was at this time that the applicant was “charged” for committing tax offences. The proceedings ended on 20 October 2000 when the Administrative Court's judgment was served on the applicant's counsel. They thus lasted for six years and some five months before three levels of jurisdiction.

24. The Court finds 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

25. The Government argued that the length of the proceedings may still be regarded as reasonable. The applicant contested the Government's view.

26. 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).

27. The Court finds that the proceedings were not particularly complex. The applicant did not cause any delay. As regards the conduct of the authorities, there was a significant period of inactivity, namely three years and some ten months between 10 December 1996, when the Administrative

Court granted suspensive effect to the applicant's complaint and 22 September 2000, when the Administrative Court decided on the complaint.

28. Having furthermore regard to the overall duration of the proceedings, 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

29. 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

30. The applicant claimed 51,566.09 euros (EUR) in respect of pecuniary damage out of which EUR 50,870.98 related to the fine he was sentenced to and EUR 695.11 for the costs of the domestic proceedings he was ordered to pay. The applicant further claimed EUR 14, 534.57 for non-pecuniary damage.

31. The Government contested these claims.

32. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 4,500 under that head.

B. Costs and expenses

33. The applicant also claimed a total of EUR 18,395.94, including VAT, for the lawyer's fees incurred before the domestic courts and before the Court.

34. The Government maintained that the claim was excessive.

35. 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.

36. 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.

C. Default interest

37. 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,
 - (i) EUR 4,500 (four thousand and five hundred euros) in respect of non-pecuniary damage,
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses,
 - (iii) plus any tax that may be chargeable on the above amounts;
 - (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 7 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President