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

FOURTH SECTION

CASE OF REINPRECHT v. AUSTRIA

(Application no. 67175/01)

JUDGMENT

STRASBOURG

15 November 2005

FINAL

12/04/2006

In the case of Reinprecht v. Austria,

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

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mrs E. STEINER,
Mr J. BORREGO BORREGO,
Mrs L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 18 October 2005,

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

PROCEDURE

1. The case originated in an application (no. 67175/01) 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 Karl Reinprecht (“the applicant”), on 25 August 2000.

2. The applicant, who had been granted legal aid, was represented by Mrs C. Lanschützer, a lawyer practising in Graz. The Austrian Government (“the Government”) were represented by their Agent, Mr H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant complained, in particular, that the hearings regarding the prolongation of his pre-trial detention were not held in public.

4. The application was allocated to the Fourth 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 8 April 2003 the Chamber decided to communicate the applicant's complaint about the lack of public hearings regarding his pre-trial detention to the Government (Rule 54 § 2 (b)) and declared the remainder of the application inadmissible.

6. By a decision of 12 October 2004, the Chamber declared the application admissible as regards the communicated complaint.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1). Written submissions were also received from the Helsinki Foundation for Human Rights, which had been granted leave by the President to intervene as a third party (Article 36 § 2 of the Convention and Rule 44 § 2).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1966 and lives in Graz.

10. On 6 May 2000 the Graz Regional Criminal Court (*Landesgericht für Strafsachen*) ordered the applicant's pre-trial detention on suspicion of attempted sexual coercion (*geschlechtliche Nötigung*). The court based the suspicion against the applicant on the statement of the victim, who had identified the applicant in an identity parade. Further, it considered that, given the applicant's criminal record, there was a risk that he might commit another offence similar to the one of which he was suspected (*Tatbegehungsgefahr*).

11. On 19 May 2000 the Graz Regional Court, after a hearing held in the presence of the public prosecutor, the applicant and his defence counsel, ordered that the applicant's pre-trial detention should continue. Referring to the testimony of the victim, it found that there was a reasonable suspicion against the applicant. Further, there was a risk that he might commit another offence similar to the one of which he was suspected. The court stated that the applicant had nine previous convictions, mainly for property-related offences, but recently also for violent crimes. The court found that, in the light of the applicant's recidivism and his character, the prolongation of his pre-trial detention was reasonable. The applicant appealed against this decision.

12. On 7 June 2000 the Graz Court of Appeal (*Oberlandesgericht*), sitting in private, dismissed the appeal and upheld the Regional Court's decision.

13. On 19 July 2000 the Graz Regional Court, after holding a hearing in the presence of the parties, dismissed an application for the applicant's release and ordered the continuation of his pre-trial detention. The applicant lodged an appeal against this decision.

14. On 20 July 2000 the applicant lodged another application for release. He stressed that there were no reasons to maintain his pre-trial detention.

15. On 26 July 2000 the public prosecutor's office (*Staatsanwaltschaft*) filed the bill of indictment. The applicant appealed against it.

16. On 2 August 2000 the Graz Regional Court, having held a hearing in the presence of the parties, ordered that the applicant's pre-trial detention should continue.

17. On 7 August 2000 the applicant appealed against this decision. He submitted that there was no reasonable suspicion against him as the testimony of the only witness for the prosecution had been contradictory.

18. On 17 August 2000 the Graz Court of Appeal, sitting in private, dismissed the applicant's appeal against the bill of indictment and the appeals against the Regional Court's decisions of 19 July 2000 and 2 August 2000. It found that there was no doubt about the credibility of the witness and that there was therefore a reasonable suspicion against the applicant. Further, it upheld the Regional Court's repeated finding that reasons for detention on remand (*Haftgründe*) existed.

19. On 18 September 2000 the applicant lodged a fundamental rights complaint (*Grundrechtsbeschwerde*) with the Supreme Court (*Oberster Gerichtshof*) against this decision. He submitted that there was no strong suspicion against him and that there were no reasons to maintain the detention on remand.

20. On 16 October 2000 the Supreme Court, sitting in private, dismissed the complaint. It found that there was no doubt about the credibility of the witness and that reasons for the applicant's detention on remand subsisted.

21. On 24 October 2000 the Regional Court, sitting with two professional and two lay judges, held a public hearing, convicted the applicant of attempted sexual coercion and sentenced him to two years' imprisonment.

22. On 8 March 2001 the Supreme Court rejected the applicant's plea of nullity.

23. On 8 May 2001 the Court of Appeal dismissed an appeal by the applicant, but allowed one lodged by the public prosecutor and increased the term of imprisonment to two years and six months.

II. RELEVANT DOMESTIC LAW

24. Article 181 of the Code of Criminal Procedure (*Strafprozeßordnung*) establishes a system of periodic hearings for the review of pre-trial detention, which are to be conducted *proprio motu*. The relevant part of Article 181 provides as follows:

> “1. Decisions ordering or continuing detention on remand and decisions of the court of second instance continuing detention on remand shall not be effective for longer than a certain period; the date of expiry shall be given in the decision. Prior to the expiry of the period of detention a hearing regarding the detention shall be held or the accused shall be released.
>
> 2. The period of detention shall,

(1) where detention on remand is ordered, be for fourteen days from the date on which the accused is arrested;

(2) where the first decision is taken to continue detention on remand, be for one month from the date of the decision;

(3) where a further decision is taken to continue detention on remand, be for two months from the date of the decision.

...”

An accused who is held in pre-trial detention has to be assisted by counsel (Article 41 of the Code of Criminal Procedure). Copies of all documents relevant for assessing the suspicion or the reasons for the detention must be served on the prosecution and the defence free of charge before the first hearing (Article 45a of the Code of Criminal Procedure).

25. The relevant part of Article 182 of the Code of Criminal Procedure provides:

“1. The investigating judge shall conduct the hearing regarding the detention; it is not open to the public. The accused, his counsel, the public prosecutor and the probation officer shall be informed of the date of the hearing.

2. The accused shall be brought before the judge at the hearing, unless this is impossible because of illness. He shall be represented by counsel.

...”

The court of appeal, when dealing with appeals against decisions of the investigating judge concerning pre-trial detention, takes its decision sitting in private pursuant to Article 114 of the Code of Criminal Procedure.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

26. The applicant complained that the hearings regarding the prolongation of his pre-trial detention were not public. The Court will first examine this complaint under Article 5 § 4 of the Convention. The relevant parts of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

> committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. The parties' submissions

27. The applicant asserted that there was no valid reason why hearings concerning the lawfulness of pre-trial detention should not be open to the public.

28. The Government observed that Article 5 § 4 of the Convention required proceedings concerning the review of the lawfulness of detention to be adversarial and to respect the principle of equality of arms. These requirements had been complied with in the present case. Adversarial hearings had been held in accordance with Article 182 of the Code of Criminal Procedure. Moreover, the Code of Criminal Procedure ensured equality of arms in that it required the detainee to be represented by counsel at such hearings. Furthermore, it provided that all relevant documents had to be served on the prosecution and the defence without delay.

29. However, proceedings under Article 5 § 4 did not have to be attended by all the guarantees required under Article 6 § 1. In particular Article 5 § 4 did not require hearings to be public. This was justified by the different aims pursued by each of these provisions. While the publicity requirement of Article 6 § 1 served to protect litigants against the administration of justice in secret and to maintain confidence in the courts, Article 5 § 4 was aimed in particular at protecting the individual against arbitrary deprivation of liberty by guaranteeing a speedy review of the lawfulness of his detention. A general requirement to give the public access to such hearings risked jeopardising the speediness of the review. In this context, the Government submitted that the Code of Criminal Procedure provided short time-limits within which the court had to review the lawfulness of pre-trial detention of its own motion until the indictment was preferred. In addition, the detainee could at any time request his release. In the present case, the applicant had been taken into pre-trial detention on 6 May 2000. Subsequently, the court held hearings on the prolongation of his detention on 19 May, 19 July and 2 August 2000.

30. The third party (the Helsinki Foundation for Human Rights) argued that Article 5 § 4 contained an implicit requirement that hearings concerning the lawfulness of pre-trial detention be held in public. Firstly, the term "court" in that provision designated a body independent of the executive and the parties to the case. Secondly, the purpose of the review under Article 5 § 4 was to ensure not only that detention complied with the

substantive and procedural requirements of domestic law, but also that it was compatible with the general aim of Article 5 to provide protection against arbitrary detention. Public scrutiny of hearings on pre-trial detention would help to verify the independence of the court and to ensure the absence of arbitrariness. Moreover, public hearings would be commensurate with the importance of the right to liberty which was at stake. Finally, the third party referred to the close link between Article 5 § 4 and Article 6 § 1.

B. The Court's assessment

31. The relevant principles which emerge from the Court's case-law on Article 5 § 4 are the following.

(a) Article 5 § 4 entitles an arrested or detained person to institute proceedings bearing on the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty (see, among many others, *Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).

(b) Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see, for instance, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3302, § 162, and *Włoch v. Poland,* no. 27785/95, § 125, ECHR 2000-XI, both with a reference to *Megyeri v. Germany*, judgment of 12 May 1992, Series A no. 237-A, p. 11, § 22).

(c) The proceedings must be adversarial and must always ensure "equality of arms" between the parties. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II, and *Assenov and Others*, cited above, p. 3302, § 162, with references to *Schiesser v. Switzerland*, judgment of 4 December 1979, Series A no. 34, p. 13, §§ 30-31, *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107, p. 19, § 51, and *Kampanis v. Greece*, judgment of 13 July 1995, Series A no. 318-B, p. 45, § 47).

(d) Furthermore, Article 5 § 4 requires that a person detained on remand be able to take proceedings at reasonable intervals to challenge the lawfulness of his detention (see *Assenov and Others,* cited above, p. 3302, § 162, with a reference to *Bezicheri v. Italy*, judgment of 25 October 1989, Series A no. 164, pp. 10-11, §§ 20-21).

32. Turning to the present case, the Court reiterates that its task is not to rule on legislation *in abstracto* and it does not therefore express a view as to the general compatibility of the relevant provisions of the Austrian Code of Criminal Procedure with the Convention (see *Nikolova*, cited above, § 60).

The Court must examine whether the proceedings in the applicant's case were in conformity with Article 5 § 4 of the Convention.

33. The Court observes that, as provided for by Austrian law, hearings reviewing the lawfulness of the applicant's pre-trial detention were held at short intervals, namely, on 19 May, 19 July and 2 August 2000. The applicant was assisted by counsel at those hearings. He did not contest that the proceedings were adversarial and respected the principle of equality of arms. However, the applicant alleged that they were not in conformity with Article 5 § 4, as the hearings were not held in public.

34. The Court observes that requirements described above, such as the adversarial nature of the proceedings and the principle of equality of arms, are considered to be "fundamental guarantees of procedure" applying in matters of deprivation of liberty (see *Sanchez-Reisse*, cited above, p. 19, § 51, and *Kampanis*, cited above, p. 45, § 47). However, there is no basis in the Court's case-law as it stands to support the applicant's claim that hearings on the lawfulness of pre-trial detention should be public.

35. The third party suggested that the terms of Article 5 § 4 read in the light of the object and purpose of the provision, namely to protect against arbitrariness, implicitly included such a requirement. Moreover, they referred to the close link between that provision and Article 6 § 1. The Government, for their part, maintained that the procedural guarantees contained in Article 5 § 4 differed from those contained in Article 6 § 1.

36. The Court agrees that there is a close link between Article 5 § 4 and Article 6 § 1 in the sphere of criminal proceedings (see *Lamy v. Belgium*, judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29, and *Lanz v. Austria*, no. 24430/94, § 41, 31 January 2002).

37. Thus, Article 6 has been found to have some application at the pre-trial stage (see, for instance, *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36, and *John Murray v. the United Kingdom*, judgment of 8 February 1996, *Reports* 1996-I, p. 54, § 62) during which the review of the lawfulness of pre-trial detention under Article 5 § 4 typically takes place. However, this application is limited to certain aspects. It flows from the autonomous meaning to be given to the notion of "criminal charge" and concerns, apart from the starting-point of the proceedings for the purpose of assessing their reasonable length, procedural guarantees which, if not observed at the pre-trial stage, would prejudice the fairness of the proceedings taken as a whole (see *Imbrioscia*, loc. cit.). This has been found to be the case, for example, when a detained person has been denied access to a lawyer during the initial police interrogation where the rights of the defence may be irretrievably prejudiced (see *John Murray*, cited above, p. 55, § 66). However, there is no indication that the non-public nature of the detention hearings at which the applicant was assisted by counsel could similarly prejudice the fairness of the proceedings as a whole.

38. Although some rights applicable in proceedings under Article 5 § 4, as for instance the right of access to the file or to the assistance of a lawyer, may overlap with the rights guaranteed by Article 6 (see *Lamy*, cited above, pp. 16-17, § 29), the Court cannot find that the link between the two provisions in criminal matters justifies the conclusion that Article 5 § 4 requires hearings on the lawfulness of pre-trial detention to be public.

39. Moreover, it must be borne in mind that Article 5 § 4 and Article 6, despite their connection, pursue different purposes. Article 5 § 4 is aimed at protecting against arbitrary detention by guaranteeing a speedy review of the lawfulness of any detention (see *Włoch*, cited above, § 133). In cases of pre-trial detention falling within the scope of Article 5 § 1 (c), the review has to establish, *inter alia,* whether there is reasonable suspicion against the detainee. Article 6 deals with the "determination of a criminal charge" and is aimed at guaranteeing that the merits of the case, that is, the question whether or not the accused is guilty of the charges brought against him, receive a "fair and public hearing".

40. This difference of aims explains why Article 5 § 4 contains more flexible procedural requirements than Article 6 while being much more stringent as regards speediness.

In addition, there is some force in the Government's argument that the requirement of public hearings could have negative effects on speediness. Hearings on the lawfulness of pre-trial detention will in practice often be held in remand prisons. Either granting the public effective access to hearings in prison or transferring detainees to court buildings for the purpose of public hearings may indeed require arrangements which run counter to the requirement of speediness. This is all the more so in a case like the present one, in which repeated reviews at short intervals are required.

41. In conclusion, the Court finds that Article 5 § 4, though requiring a hearing for the review of the lawfulness of pre-trial detention, does not as a general rule require such a hearing to be public. It would not exclude the possibility that a public hearing may be required in particular circumstances. However, no such circumstances were shown to exist in the present case. No other defects in the review of the lawfulness of the applicant's pre-trial detention have been established.

42. Consequently, there has been no violation of Article 5 § 4 of the Convention.

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

43. The applicant based his complaint about the lack of public hearings as regards the prolongation of his pre-trial detention on Article 6 § 1 of the Convention, which reads as follows:

> “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

A. The parties' submissions

44. The applicant contended that Article 6 § 1 applied to proceedings concerning the review of the lawfulness of pre-trial detention and maintained that hearings had to be public.

45. The Government contested the applicability of Article 6 § 1 to the proceedings in issue. They argued that the present case had to be distinguished from *Aerts v. Belgium* (judgment of 30 July 1998, *Reports* 1998-V) in that the present proceedings exclusively concerned the lawfulness of the applicant's detention and did not involve any claim for damages. Thus, Article 6 did not apply under its civil head.

It did not apply under its criminal head either. At that stage of the proceedings, all the courts had to assess was whether there was sufficient suspicion against the applicant and further reasons to justify his pre-trial detention, while the “criminal charge” against him was determined only at the trial, which complied with the publicity requirement.

46. The third party argued that Article 6 applied to proceedings concerning the lawfulness of pre-trial detention, both under its civil and under its criminal head. As to its civil head, they relied on the Court's finding in *Aerts* (cited above, p. 1964, § 59) that the right to liberty was a civil right. Even outside the context of a compensation claim linked to allegedly unlawful detention, a decision on the lawfulness of pre-trial detention had serious repercussions on other civil rights of the detainee, such as his reputation, family life or employment.

As to the criminal head of Article 6, the third party asserted that proceedings concerning detention on remand were an integral part of the criminal proceedings aimed at the determination of the charge. Consequently, the guarantees enshrined in Article 6 applied.

B. The Court's assessment

47. The Court had to examine the question whether Article 6 applied to proceedings concerning a request for release from pre-trial detention in one of its early cases, namely *Neumeister v. Austria* (judgment of 27 June 1968, Series A no. 8, pp. 43-44, §§ 23-24). There, it answered the question in the negative. Regarding the criminal head of Article 6, it found that, while

"remedies relating to detention on remand undoubtedly belong[ed] to the realm of criminal law[, Article 6] expressly limit[ed] the requirement of a fair hearing to the determination of [a] criminal charge, to which notion the remedies in question [were] obviously unrelated". The Court further indicated that applying Article 6 to such proceedings under its civil head would give the concept of "civil rights and obligations" an excessively wide scope.

48. As regards the criminal head of Article 6, the above approach has not been put into question by subsequent case-law. Indeed, applying Article 6 to the proceedings reviewing the lawfulness of pre-trial detention would be against its wording as their subject matter is not the "determination of a criminal charge". Moreover, as has already been pointed out above, the different purposes pursued by Article 5 § 4 and Article 6 justify the differences as regards procedural requirements (see paragraphs 39-40). Consequently, there is no basis for concluding that the criminal head of Article 6 applies to proceedings for the review of the lawfulness of detention falling within the scope of Article 5 § 4.

49. It remains to be examined whether the proceedings in issue fall under the civil head of Article 6. In *Aerts*, to which both the Government and the third party referred, the Court found that Article 6 § 1 applied under its civil head to proceedings concerning the lawfulness of deprivation of liberty, as "the right to liberty is a civil right" (see *Aerts*, cited above, p. 1964, § 59). Mr Aerts had been detained under Article 5 § 1 (e) as a person of unsound mind. Following his release, he had requested legal aid in order to challenge the courts' assessment of the lawfulness of his detention and seek compensation.

50. The Government proposed to distinguish the present case and to interpret *Aerts*, despite the general wording, as only meaning that the civil head of Article 6 applied to proceedings concerning compensation for allegedly unlawful detention.

The Court doubts whether such an interpretation is possible: in two subsequent cases which also concerned proceedings relating to the lawfulness of detention in psychiatric institutions, the Court found Article 6 to be applicable under its civil head with reference to *Aerts*. It explicitly dismissed the Government's objection of incompatibility *ratione materiae*, despite the fact that some of the proceedings in issue concerned only the lawfulness of the detention without involving any related pecuniary claims (see *Vermeersch v. France* (dec.), no. 39277/98, 30 January 2001, and *Laidin v. France (no. 2)*, no. 39282/98, §§ 73-76, 7 January 2003).

51. However, the Court agrees with the Government that *Aerts* and the subsequent cases must be read in their proper context. It notes, firstly, that these cases concerned proceedings relating to the lawfulness of detention of persons of unsound mind falling within the scope of Article 5 § 1 (e). Secondly, they concerned proceedings relating to the lawfulness of

detention conducted after the applicant's release, that is, when Article 5 § 4 no longer applies (see *W. v. Sweden*, no. 12778/87, Commission decision of 9 December 1988, Decisions and Reports 59, p. 158). Consequently, no potential conflict between the requirements of Articles 5 § 4 and 6 § 1 arose.

52. The present case concerns the realm of criminal proceedings, regarding which the Convention sets up a thorough protection system in Articles 5 and 6. Deprivation of liberty is acceptable under Article 5 in the context of criminal proceedings where it concerns lawful detention after conviction by a competent court (Article 5 § 1 (a)) or lawful pre-trial detention (Article 5 § 1 (c)). In the latter case it provides for the right to be brought promptly before a judge or other judicial officer and the right to a reasonable duration of pre-trial detention (Article 5 § 3) and, as for other types of detention, the right to a speedy review of its lawfulness (Article 5 § 4). Article 6 contains procedural guarantees for the determination of the merits of the case.

53. The Court is not called upon to examine the general question of whether applying Article 6 under its civil head to proceedings relating to deprivation of liberty in the context of criminal proceedings is compatible with this system.

54. It will confine itself to examining the relationship between Articles 5 § 4 and 6 which is at stake in the present case. A conflict arises, as the former does not generally require a hearing on the lawfulness of pre-trial detention to be public (see paragraph 41 above), while the latter requires public hearings in its own sphere of application. In this context, the Court reiterates that the Articles of the Convention have to be interpreted in harmony with each other (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 40, § 103). As regards the review of pre-trial detention, it would go against the principle of harmonious interpretation to derive from the civil head of Article 6 more stringent requirements than those imposed by the thorough protection system in relation to criminal proceedings set up under Article 5 § 4 and the criminal head of Article 6.

55. It follows from the foregoing considerations that Article 5 § 4 contains specific procedural guarantees for matters of deprivation of liberty that are distinct from the procedural guarantees of Article 6. Therefore, Article 5 § 4 is the *lex specialis* in relation to Article 6. Consequently, there is no separate issue under Article 6 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

2. *Holds* that there is no separate issue under Article 6 § 1 of the Convention.

Done in English, and notified in writing on 15 November 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President