



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

FIRST SECTION

CASE OF HAUSER-SPORN v. AUSTRIA

(Application no. 37301/03)

JUDGMENT

STRASBOURG

7 December 2006

FINAL

23/05/2007

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 Hauser-Sporn 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 16 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 37301/03) 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 Alois Hauser-Sporn (“the applicant”), on 19 November 2003.

2. The applicant was represented by Mr J. Postlmayr, a lawyer practising in Mattighofen. The Austrian Government (“the Government”) were represented by their Agent, Mr F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. On 19 September 2005 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time. In this respect, the Court decided to reject the Government's request to discontinue the application of Article 29 § 3 of the Convention.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1973 and lives in Ameisberg.

5. On 21 November 1994, while driving his car in reverse gear, he knocked a pedestrian over and drove off.

6. On 8 March 1995 the Salzburg District Court (*Bezirksgericht*) issued a provisional penal order (*Strafverfügung*), following which the applicant was found guilty under Article 88 of the Criminal Code (*Strafgesetzbuch*) of having negligently caused bodily harm and under Article 94 of the Criminal Code of having abandoned the victim. The applicant was ordered to pay a fine of 12,800 Austrian schillings (ATS) (approximately 930 euros (EUR)). The applicant objected and the District Court opened ordinary criminal proceedings.

7. On 11 July 1995 the court held a hearing in which it examined several witnesses, the applicant and an expert who submitted that the applicant had not necessarily noticed the accident. Subsequently, on 1 August 1995, the court convicted the applicant of having negligently caused bodily harm and acquitted him of having abandoned the victim. It sentenced him to a fine of ATS 3,200 (approximately EUR 230), suspended on probation. The applicant did not appeal.

8. Meanwhile, having interviewed the applicant in February 1995, the Salzburg Federal Police Authority (*Bundespolizeidirektion*) issued a penal order on 17 May 1995 whereby the applicant was found guilty under section 4(2) in conjunction with section 99(2)(a) of the Road Traffic Act (*Straßenverkehrsordnung*) of having failed to inform the next police station about the accident. The applicant was ordered to pay a fine of ATS 4,000 (approximately EUR 290). He appealed on 6 June 1995.

9. On 19 February 1996 the Salzburg Independent Administrative Panel ("the IAP" – *Unabhängiger Verwaltungssenat*), having held a public hearing on 12 February 1996 in which it heard evidence from several witnesses in the presence of the applicant's counsel, dismissed the applicant's appeal. It found that the applicant should have looked behind him when he reversed his car and, therefore, was to be blamed for carelessly failing to notice the accident. It further dismissed the applicant's argument that he had been tried twice in respect of the same offence in breach of Article 4 of Protocol No. 7, as it found that the administrative offence in issue did not relate to the same conduct as the criminal offences.

10. On 9 April 1996 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*). On 4 September 1996 he amended his complaint.

11. During the period in question the Constitutional Court was in the process of reviewing the lawfulness of specific provisions of the Road Traffic Act. This review was concluded on 9 October 1997, when the Constitutional Court declared part of these provisions unconstitutional.

12. Subsequently, on 10 October 1997, the Constitutional Court quashed the IAP's decision of 19 February 1996. This decision was served on the applicant's counsel on 5 November 1997.

13. Thereafter, on 17 November 1997, the IAP allowed the applicant's appeal of 6 June 1995 in part and reduced the fine to ATS 2,500

(approximately EUR 180). It further ordered him to pay the costs of the proceedings. The IAP stressed that there was no breach of Article 4 of Protocol no. 7 to the Convention. In particular, the offence of abandoning a victim under the Criminal Code presupposed intent while the offence under the Road Traffic Act also included negligent behaviour. The offences for which the applicant had been tried in the proceedings before the District Court had not exhausted the scope of unlawfulness (*Unrechtsgehalt*) of the applicant's conduct. On 2 January 1998 the applicant lodged a complaint with the Constitutional Court. On 27 August 1998 he filed further comments.

14. On 17 June 2000 the Constitutional Court, referring to its previous case-law, refused to deal with the applicant's complaint.

15. On 25 July 2000 the applicant filed a request for reopening of the proceedings before the Constitutional Court and argued that the Constitutional Court had meanwhile repealed another provision of the Code of Administrative Offences upon which the IAP had based its findings. On 25 September 2000 the Constitutional Court rejected this request but granted the request to transfer the case to the Administrative Court (*Verwaltungsgerichtshof*).

16. On 20 December 2000 the applicant amended the complaint transferred to the Administrative Court. The IAP submitted its observations in reply on 9 April 2001.

17. On 16 October 2003 the Administrative Court refused, under section 33(a) of the Administrative Court Act (*Verwaltungsgerichtshofgesetz*) to deal with the applicant's complaint since the fine did not exceed EUR 726 and no important legal question was at stake. This decision was served on the applicant's counsel on 6 November 2003.

II. RELEVANT DOMESTIC LAW

1. Criminal Code

18. Under Article 83 of the Criminal Code (*Strafgesetzbuch*), it is an offence, punishable by up to one year's imprisonment or a fine of up to 360 day-rates, to cause physical harm to another person. Under Article 88 § 1 of the Criminal Code, it is an offence, punishable by up to three months' imprisonment or a fine of up to 180 day-rates, to cause physical harm by negligence.

19. Article 94 § 1 of the Criminal Code provides that “anyone who fails to assist another person (*Imstichlassen eines Verletzten*) to whom he has caused bodily injury (Article 83), albeit unlawfully, shall be liable to up to one year's imprisonment or up to 360 day-rates. ”

2. Road Traffic Act

20. Section 4 of the Road Traffic Act (*Straßenverkehrsordnung*) provides:

“(1) All persons whose conduct at the scene of a traffic accident was causally related to the accident shall

(a) if they are driving a vehicle, stop immediately;

...

(2) If anyone has been injured in a traffic accident, the persons referred to in subsection one above shall provide assistance; if they are not capable of doing so, they shall arrange for assistance without delay. They shall further inform the nearest police station immediately...”

21. Under section 99(2)(a) of the Road Traffic Act, in the version at force at the material time, it was an administrative offence (*Verwaltungsübertretung*), punishable by a fine of not less than ATS 500 and not exceeding ATS 30,000 or, in default of payment, by one day to six weeks' imprisonment, for any driver having caused a traffic accident occasioning bodily injury to act contrary to section 4(1) and (2).

22. Section 99(6)(c) of the Road Traffic Act provides that proceedings shall not be instituted in respect of an administrative offence that is based on facts that constitute an offence falling within the jurisdiction of the ordinary courts.

3. Administrative Court Act

23. The procedure before the Administrative Court is governed by the Administrative Court Act (*Verwaltungsgerichtshofgesetz*). Pursuant to section 42(1), the Administrative Court must in principle either dismiss a complaint as ill-founded or quash the impugned decision. It shall quash the impugned decision if it is unlawful by reason of its content; or because the respondent authority lacked jurisdiction; or on account of a breach of procedural rules. A breach of procedural rules is relevant insofar as the respondent authority has made findings of fact which are in an important respect contradicted by the case file, require further investigation on an important point, or when compliance with the relevant rules could have led to a different decision by the respondent authority (section 42 (2)).

24. Under section 33(a) of the Administrative Court Act, the Administrative Court may decline to deal with a complaint against a decision of an Independent Administrative in an administrative criminal case if a fine not exceeding EUR 726 has been imposed and the

Administrative Court's decision would not involve the determination of a legal question of fundamental importance.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

25. The applicant complained that the length of the administrative criminal proceedings was incompatible with the “reasonable time” requirement, laid down 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...”

26. The Government contested that argument.

27. The period to be taken into consideration began in February 1995, when the applicant was first interviewed by the Federal Police Authority, and ended on 6 November 2003 when the Administrative Court's final decision was served on the applicant's counsel. It thus lasted eight years and some nine months for four levels of jurisdiction (once remitted back).

A. Admissibility

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

B. Merits

29. The Government argued that the proceedings before the Federal Police Authority and the IAP had been conducted without significant delay. The length of the proceedings before the Constitutional Court had been proportionate to the complexity of the case, which had resulted from a global consideration of many similar proceedings pending before it at the same time. These proceedings had been connected to each other in factual and legal respects. In addition, the applicant's complaint raised complex legal questions concerning, firstly, the issue of double punishment and secondly, in the second set of proceedings, a request for review of the legislation governing the allocation of cases at the IAP. Furthermore, the

applicant had attempted to reopen the proceedings in the Constitutional Court. Finally, the Government pointed out that the proceedings had concerned only a small fine.

30. The applicant contested these arguments. He maintained that the proceedings had not been complex and had been unreasonably long.

31. 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)

32. In the present case, the applicant did not contribute to the duration of the proceedings. Furthermore, the Court cannot find that the proceedings were particularly complex. As to the Government's argument that the case raised complex legal questions before the Constitutional Court, the Court notes that in the Constitutional Court proceedings which commenced on 2 January 1998 that court, referring to its previous case-law, declined to deal with the applicant's complaint for lack of prospects of success. However, it took the Constitutional Court two years and some six months, namely until 17 June 2000, to take this decision. Another two years and some six months elapsed in the proceedings in the Administrative Court, which, having received the parties' comments in April 2001, declined to deal with the applicant's complaint in October 2003. The case had thus remained pending before the highest courts for more than five years. Having regard to this delay and the overall duration of the proceedings, the Court finds that the applicant's case was not determined within a reasonable time.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

34. The applicant further complained under Article 13 of the Convention about the lack of a remedy in respect of his complaint about the length of the proceedings.

Article 13 of the Convention provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

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

B. Merits

36. The Government contested that there had been a violation of Article 13 of the Convention. They stressed that the Constitutional Court examined complaints about the length of proceedings before the lower courts. According to the Constitutional Court's case-law, excessive length was also a mitigating circumstance which might lead to a reduction of sentence. As far as the proceedings before the Constitutional Court and the Administrative Court itself were concerned, the Government contended that under the Convention there was no obligation for a State to provide for additional levels of appeal and a further legal remedy by which to challenge decisions of last-instance courts. Such a requirement would affect basic issues of the Austrian Federal Constitution and most likely also the legislation of most Contracting States and their freedom to organise their judicial system. Having regard to the average duration of proceedings before the Constitutional Court and the Administrative Court: eight and a half months and twenty-two months respectively, the Austrian legislator had found no need to also provide a remedy in respect of the length of proceedings before those courts.

37. The applicant argued that, given the absence of any remedy for the excessive length of administrative criminal proceedings and the excessive length of proceedings before the Administrative Court, there had been a violation of his right under Article 13 of the Convention. He referred to the judgment *Jancikova v. Austria* (no. 56483/00, 7 April 2005).

38. The Court reiterates that the correct interpretation of Article 13 of the Convention is that this provision guarantees an effective remedy before a national authority for an alleged violation of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). As established in its case-law, it reiterates that the remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are “effective”, within the meaning of Article 13 of the Convention if they “[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred” (see *Kudla*, cited above, § 158). Article 13 therefore offers an alternative: a remedy is “effective” if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already

occurred (see *Kudla*, cited above, § 159; see also *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 186-87, ECHR 2006-...).

39. Furthermore, the Court is not called upon to examine the relevant law and practice *in abstracto*, but to determine whether, in the light of the *Kudla* judgment (cited above), there had been a remedy compatible with Article 13 of the Convention available to grant the applicant appropriate relief as regards his complaint about the length of proceedings.

40. The present proceedings exceeded the reasonable-time requirement under Article 6 of the Convention as delay occurred while the case was pending before the Constitutional Court and the Administrative Court (see paragraph 32 above). Since the Government have not shown that any form of relief – either preventive or compensatory – was available for the delays caused by these authorities, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a hearing within a reasonable time as guaranteed by Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

Admissibility

41. The applicant complained under Article 4 of Protocol No. 7 that he was convicted by the administrative authorities under section 4(2) of the Road Traffic Act of failure to stop and inform the police of a road traffic accident in which a person was injured whereas he had already been convicted of the offence of negligently causing bodily harm under Article 88 § 1 of the Criminal Code and acquitted of the offence under Article 94 § 1 of the Criminal Code of abandoning the victim. Relying on the Court's *Gradingner v. Austria* judgment (judgment of 23 October 1995, Series A no. 328-C), he alleged that the conviction under the Road Traffic Act was based on the same conduct, namely having negligently caused and not noticed an accident and therefore driven away, as that constituting the offences under the Criminal Code which had been considered by the ordinary court.

42. The Court reiterates its findings in the *Franz Fischer v. Austria* judgment (no. 37950/97, § 35, 29 May 2001). In that case, after having analysed its previous judgments in the cases of *Gradingner* (cited above) and *Oliveira v. Switzerland* (judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V), the Court found that the mere fact that one act constitutes more than one offence is not contrary to Article 4 of Protocol No. 7. However, where different offences based on one act are prosecuted

consecutively, one after the final decision of the other, the Court has to examine whether or not such offences have the same essential elements.

43. The Court notes in the first place that the offence under the Criminal Code of negligently causing bodily harm clearly does not relate to the same act or omission as the administrative criminal offence under the Road Traffic Act of subsequent failure to inform the police about such an accident. No issue under Article 4 of Protocol No. 7 arises in this regard.

44. The Court further finds that the criminal offence of abandoning the victim under Article 94 § 1 of the Criminal Code and the administrative criminal offence of failure to inform the police about such an accident under section 4(2), second sentence, of the Road Traffic Act also concern different acts and omissions.

45. The Court considers that the two offences differ in their essential elements (see paragraph 44). This finding is supported by the fact that failure to provide assistance to a person injured in an accident constitutes an offence of its own under section 4(2), first sentence, of the Road Traffic Act, for which the applicant was not prosecuted after his acquittal under Article 94 § 1 of the Criminal Code. Moreover, the offences differ in that Article 94 § 1 of the Criminal Code requires an omission committed with intent, while the offence under section 4(2) of the Road Traffic Act may also be committed by negligence.

46. Thus, having regard to the differences in the offences' essential elements, the Court does not find that the applicant was "tried ... again...for an offence of which he had already been finally acquitted" within the meaning of Article 4 of Protocol No. 7. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

Admissibility

47. The applicant complained under Article 6 § 1 about the lack of an oral hearing in the second set of proceedings before the IAP and the Administrative Court.

48. The Court reiterates in the first place that the IAP is the only body deciding in administrative criminal proceedings which qualifies as a tribunal and has a full scope of review. The applicant was therefore in principle entitled to a hearing before the IAP (see *Baischer v. Austria*, no. 32381/96, §§ 25-30, 20 December 2001).

49. The Court notes that the IAP held a hearing in the first set of proceedings and that, in the second set, the sole new question to be

considered was a question of law which did not raise complex issues. Furthermore, taking into account the national authorities' demands of efficiency and economy, the Court finds that the IAP could abstain from holding a further oral hearing in the second set of proceedings (see *Faugel v. Austria*, (dec.) nos. 58647/00 and 58649/00, 20 November 2003). It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

50. The applicant also complained, under Article 6 § 2 of the Convention, about the IAP's findings as regards his negligence in failing to notice the accident. The Court observes that the IAP based its findings of fact on the applicant's defence that he had not actually noticed the accident. As regards the legal assessment, the Panel, giving detailed reasons, concluded that the applicant had acted negligently as he could have noticed the accident had he applied the necessary diligence. In these circumstances the Court considers that the applicant's complaint does not disclose any appearance of a violation of the presumption of innocence (see, *a contrario*, *Telfner v. Austria*, no. 33501/96, § 15, 20 March 2001). It follows that this complaint must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 7 TO THE CONVENTION

Admissibility

51. The applicant complained under Article 2 of Protocol No.7 that he did not have a review by a higher tribunal. He submitted that the Administrative Court's review was insufficient as it could not be regarded as a judicial body with full jurisdiction regarding facts and law, and that, in the present case, the Administrative Court, in any event, refused to deal with his complaint. He further invoked Article 13 in this respect.

52. The Court reiterates that the Contracting States may limit the scope of the review by a higher tribunal by virtue of the reference in paragraph 1 of this Article to national law. In several Member States of the Council of Europe such a review is limited to questions of law or may require the person wishing to appeal to apply for leave to do so (see *Pesti and Frodl v. Austria* (dec.), nos. 27618/95 and 27619/95, ECHR 2000-I (extracts)). There is no indication that, in the present case, the scope of review of the Administrative Court under the relevant Austrian legislation (see the relevant domestic law above) was insufficient for the purposes of Article 2 of Protocol No. 7. The Administrative Court's decision under section 33(a) of the Administrative Court Act not to deal with the applicant's complaint may be equated to a decision given on an application for leave to appeal

(see *Weh and Weh v. Austria* (dec), no. 38544/97, 4 July 2002, with further references). Thus, there is no appearance of a violation of Article 2 of Protocol No. 7 nor of Article 13 of the Convention. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed EUR 199.85 in respect of pecuniary damage for the fine and the costs of the proceedings he was ordered to pay. He further claimed EUR 1,000 in respect of non-pecuniary damage.

55. The Government contested these claims.

56. 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 and finds it appropriate to award the full sum claimed.

B. Costs and expenses

57. The applicant also claimed EUR 3,823.81 for the costs and expenses incurred before the domestic courts and EUR 3,000 for those incurred before the Court.

58. The Government contested the claim concerning the costs of the domestic proceedings and further submitted that they assumed these claims already included VAT.

59. 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. Accordingly, no award can be made under this head.

60. As regards the costs of the Convention proceedings, 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. This sum includes VAT.

C. Default interest

61. 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 complaints concerning the excessive length of the proceedings and the lack of an effective remedy therefor 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* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President