



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

FIRST SECTION

CASE OF SCHNEIDER v. AUSTRIA

(Application no. 25166/05)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

31/10/2008

This judgment may be subject to editorial revision

In the case of Schneider v. Austria,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 25166/05) 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 a German national, Mr Jürgen Schneider (“the applicant”), on 29 June 2005.

2. The applicant was represented by Mr J. Postlmayr, a lawyer practising in Mattighofen. The Austrian Government (“the Government”) were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry of Foreign Affairs. The German Government did not make use of their right to intervene under Article 36 § 1 of the Convention.

3. On 7 November 2006 the Court decided to give notice of the application 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.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1944 and lives in Stephanskirchen.

5. On 25 March 2000 the applicant, driving on the A1 motorway in the direction of Linz, was stopped by a traffic patrol. The officers noted that he had been driving at 200 km/h, thus exceeding the speed limit of 130 km/h

by 70 km/h, and that he had kept driving in the left-hand lane, in breach of the Road Traffic Act. Furthermore, they observed that, despite the good visibility, the applicant had switched on his fog-lights, and that he had failed to present his driving licence when they had requested him to do so.

6. Subsequently, on 27 April 2000 the Amstetten District Authority (*Bezirkshauptmannschaft*) requested the applicant to comment on the above charges.

7. On 15 May 2000 the applicant filed his defence. He stated that he had been in a rush, since his passenger was sick and he wanted to take him home as fast as possible. Furthermore, he claimed that he had been driving at a maximum of 160 km/h. In addition, he submitted that he had been constantly overtaking cars, which was why he had been driving in the left-hand lane. The applicant contended that he had not used any fog-lights.

8. In a decision of 5 October 2000 the Amstetten District Authority convicted the applicant of four traffic offences, namely speeding, breaching the requirement to drive in the right-hand lane, unjustified use of fog-lights and failure to carry his driving licence with him, and imposed fines amounting in total to 7,000 Austrian schillings (508.71 euros) on him, with 236 hours' imprisonment in default. Moreover, it ordered him to pay procedural costs.

9. Repeating his defence, the applicant, on 2 November 2000, lodged an appeal as regards the first three offences with the Lower Austria Independent Administrative Panel (*Unabhängiger Verwaltungssenat*). He did not appeal against his conviction for failure to carry a driving licence with him. He did not request a hearing.

10. On 28 May 2001 the Independent Administrative Panel, sitting in camera, dismissed the appeal. It stated that two police officers had been following the applicant over a stretch of more than 1,000 metres and had made consistent statements on the event.

11. On 24 July 2001 the applicant lodged a complaint with the Administrative Court (*Verwaltungsgerichtshof*). He alleged in particular that the Independent Administrative Panel had failed to hold a hearing. This would have allowed it to examine his passenger and the police officers and, if need be, to obtain an expert opinion. Furthermore he repeated his defence as regards the charges of speeding and driving in the left-hand lane. As to the alleged use of fog-lights, the applicant presumed that they had possibly been mixed up with his xenon lamps.

12. At the Administrative Court's request, the applicant submitted a second copy of his complaint on 14 August 2001.

13. On 20 November 2001 the Independent Administrative Panel filed its observations on the case. It stated that the applicant had failed to request a hearing. Nor had he applied for the examination of a witness or the production of an expert opinion.

14. On 16 January 2002, the applicant supplemented his complaint. He asserted, in particular, that an oral hearing had to be held even if he had not expressly requested one.

15. In an order of 29 January 2002 the Independent Administrative Panel was requested to submit the file. On 27 February 2002 it informed the Administrative Court that the file was missing. At the same time it submitted a statement in reply. The applicant made further submissions on 19 March 2002.

16. On 23 July 2004 the Administrative Court partly quashed the Independent Administrative Panel's decision. It

(a) upheld the conviction as regards speeding but quashed the sentence relating to this offence;

(b) quashed the conviction and sentence as to the unjustified use of broad-beam lamps; and

(c) refused to deal with the complaint relating to the conviction for breaching the requirement to drive in the right-hand lane pursuant to section 33a of the Administrative Court Act.

In respect of the first two offences the Administrative Court remitted the case to the Independent Administrative Panel, holding that the latter was obliged to hold a hearing, since none of the exceptions set out in section 51e of the Administrative Offences Act (*Verwaltungsstrafgesetz*), which regulates the question of oral hearings, had been present. The Administrative Court's judgment was served on the applicant's counsel on 24 August 2004.

17. On 7 September 2004 the Independent Administrative Panel issued a summons for a hearing on 30 September 2004.

18. On that date the Independent Administrative Panel heard the two police officers as witnesses. The applicant had asked to be excused.

19. On 3 November 2004, following a further excuse by the applicant's counsel, the Independent Administrative Panel scheduled another hearing for 29 November 2004.

20. In a letter of 26 November 2004 counsel notified the Independent Administrative Panel that, since he was unable to contact the applicant, neither he nor his client would attend the hearing. The hearing was held on 29 November 2004 in the absence of the defence.

21. On 13 December 2004 the Independent Administrative Panel dismissed the applicant's appeal. The decision was served on the applicant's counsel on 30 December 2004.

22. The applicant did not lodge a complaint with the Administrative Court or the Constitutional Court.

THE LAW

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

23. The applicant complained that the length of the proceedings had been 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 ...”

24. The Government contested that argument.

A. Admissibility

25. The Government submitted that the applicant’s conviction had become final with the Administrative Court’s judgment of 23 July 2004, as far as the offences of speeding and breaching the requirement to drive in the right-hand lane were concerned. In that respect he had failed to lodge his complaint about the length of the proceedings within the six-month time-limit laid down in Article 35 § 1 of the Convention. The applicant contested this view.

26. The Court notes that the proceedings before the Administrative Court concerned three offences. In respect of the offence of breaching the requirement to drive in the right-hand lane, the proceedings were terminated by the Administrative Court’s decision of 23 July 2004. In respect of the remaining offences of speeding and unlawful use of broad-beam lamps, the Administrative Court referred the case back to the Independent Administrative Panel. However, as far as the applicant’s complaint about the length of the proceedings is concerned, the proceedings have to be considered as a whole. Consequently, they were only terminated by the Independent Administrative Panel’s decision of 13 December 2004, which was served on the applicant’s counsel on 30 December 2004. His application was lodged on 29 June 2005 and therefore complied with the six-month time-limit.

27. Furthermore, the Government argued that the applicant had failed to exhaust domestic remedies as he had not lodged a complaint against the Independent Administrative Panel’s decision of 13 December 2004 with the Administrative Court or the Constitutional Court. They submitted in particular that according to the Administrative Court’s case-law, the excessive length of proceedings was taken into account as a “mitigating circumstance”.

28. The Court notes that the Government have not specified any decision of the Administrative Court which would enable it to assess whether the

case-law referred to actually extends to delays at all stages of the proceedings, including delays caused by the Administrative Court itself, and is capable of providing effective redress for the excessive length of the proceedings. The Court therefore dismisses the Government's objection that the applicant has failed to exhaust domestic remedies.

29. In conclusion, the Court notes that this complaint 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

30. The period to be taken into consideration in the present case began on 27 April 2000, when the Amstetten District Authority requested the applicant to comment on the charges against him, and ended on 30 December 2004, when the decision of the Independent Administrative Panel was served on his counsel. It thus lasted four years and eight months for three levels of jurisdiction.

31. The applicant maintained that the proceedings had not been complex and that their duration was mainly due to the fact that they had been pending before the Administrative Court for more than three years.

32. The Government asserted that the proceedings had been conducted speedily before the first and second levels of jurisdiction. They admitted that the case had been pending before the Administrative Court for over three years but pointed out that the period of inactivity had lasted only two years and four months, namely from 19 March 2002 to 23 July 2004.

33. 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).

34. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, in particular, *Vitzthum v. Austria*, no. 8140/04, §§ 21-23, 26 July 2007, concerning administrative criminal proceedings for a traffic offence which lasted four years and two months before three levels of jurisdiction, with a period of inactivity of three years before the Administrative Court, and *Schutte v. Austria*, no. 18015/03, §§ 28-30, 26 July 2007, concerning administrative criminal proceedings for a traffic offence which lasted five years before four levels of jurisdiction, with a period of inactivity of two years before the Administrative Court).

35. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of

persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

36. There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6

Admissibility

37. The applicant complained about the lack of a hearing and about the failure to hear his passenger as a witness.

38. The Court has already noted that the applicant’s conviction for breaching the requirement to drive in the right-hand lane became final with the Administrative Court’s judgment of 23 July 2004, which was served on 24 August 2004. In this respect the applicant, who lodged the present application on 29 June 2005, has failed to comply with the six-month time-limit.

39. It follows that this part of the complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

40. For the remaining two offences, namely speeding and unjustified use of fog-lights, the Administrative Court referred the case back to the Independent Administrative Panel for the purpose of holding a hearing. The latter held hearings on 30 September and 29 November 2004, in which neither the applicant nor his counsel participated. The Court notes that the applicant did not lodge a complaint with the Constitutional Court or the Administrative Court against the Independent Administrative Panel’s decision. He has therefore failed to exhaust domestic remedies.

41. It follows that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

42. The applicant further complained about the lack of a remedy in respect of his complaint concerning the length of the proceedings. He relied on Article 13 of the Convention, which, in so far as material, 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 ...”

A. Admissibility

43. 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

44. The applicant asserted that no remedies were available in respect of the length of the administrative criminal proceedings.

45. For their part, the Government argued that the applicant's complaint related to the excessive length of the proceedings before the Administrative Court. They asserted that the system established under Article 13 and Article 35 § 1 of the Convention laid the primary responsibility for implementing and enforcing the Convention rights on the contracting States. They were required, *inter alia*, to provide effective remedies against violations of the Convention. Within that system of domestic remedies the role of the highest courts was to redress violations of the Convention. However, to request States to provide remedies against violations of the Convention by the highest courts would lead to an endless and ineffective chain of remedies.

46. The Court observes that it has recently dealt with the same issue in the case of *Vitzthum* (cited above, §§ 28-31; see also *Schutte*, cited above, §§ 35-38, and *Stempfer v. Austria*, no. 18294/03, §§ 45-48). It held as follows:

“28. 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-...).

29. The Government argue in essence that a Contracting State should not be required under Article 13 to provide a remedy against delays caused by one of its highest courts. The Court observes that the State's primary duty is to organise its judicial system so as to ensure that the overall duration of civil or criminal proceedings, including the duration before the highest courts, remains ‘reasonable’. As regards remedies against excessive length of proceedings, it follows from the Court's case law cited above that Contracting States have a choice as regards their

nature, since they may opt either for a preventive or for a compensatory remedy. Moreover, they remain free to establish the modalities for its exercise. The Court therefore finds that the States enjoy considerable freedom in complying with the requirements of Article 13.

30. Turning to the circumstances of the present case, the Court will examine whether 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.

31. The present proceedings exceeded the reasonable-time requirement under Article 6 of the Convention on account of the delays occurred before the Administrative Court (see paragraph 21 above). Since the Government have not shown that any form of relief – either preventive or compensatory – was available for these delays 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 (see, as a similar case, *Hauser-Sporn v. Austria*, no. 37301/03, § 40, 7 December 2006)."

47. The Court sees no reason to depart from this position in the present case. Consequently, it finds that there has been a violation of Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 614.08 euros (EUR) in respect of pecuniary damage, arguing that if a hearing had been held he would not have been convicted and no fines and procedural costs would have been imposed on him. He also claimed EUR 2,500 in respect of non-pecuniary damage resulting from the unreasonable duration of the proceedings.

50. The Government pointed out that the claim for pecuniary damage remained speculative. They also contested the claim for non-pecuniary damage, arguing that the finding of a violation would in itself constitute sufficient just satisfaction.

51. The Court has found violations of Article 6 § 1 and Article 13 on account of the length of the proceedings and the lack of a remedy in this respect. It does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore dismisses this claim. Regarding non-pecuniary damage, the Court, ruling on an equitable basis and having regard to the amounts awarded in comparable cases (see, in particular,

Vitzthum, § 40, *Schutte*, § 48, and *Stempffer*, § 60, all cited above) awards the applicant EUR 1,000 under this head.

B. Costs and expenses

52. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

53. The Government contested the claim.

54. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the amount claimed by the applicant in full, namely EUR 2,000 (see, as comparable cases, *Vitzthum*, § 44, *Schutte*, § 52, and *Stempffer*, § 64, all cited above).

C. Default interest

55. 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 and the lack of an effective remedy 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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses, plus and tax that may be chargeable to the applicant;

(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 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President