



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

FIRST SECTION

CASE OF HOLZINGER (NO 3) v. AUSTRIA

(Application no. 9318/05)

JUDGMENT

STRASBOURG

15 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Holzinger v. Austria,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 9318/05) 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 an Austrian national, Mr Adolf Holzinger (“the applicant”), on 27 January 2005.

2. The Austrian Government (“the Government”) were represented by their Agent, Mr Ferdinand Trauttmansdorff, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. On 2 July 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS**The civil proceedings against ML**

4. The applicant was born in 1934 and lives in Oberalm.

5. On 16 March 1994 the applicant requested legal aid as he intended to bring an action for damages against M.L., a lawyer who had represented him in previous civil proceedings. On an unspecified date the applicant withdrew his request.

6. The applicant, now represented by E.H., a lawyer appointed by him, brought an action against M.L. for damages on 30 November 1994.

7. On 3 January 1995 the Salzburg Regional Court summoned the applicant for a hearing, scheduled for 6 February 1995. However, on 16 January 1995 the Salzburg Regional Court cancelled the hearing and interrupted proceedings, as the competent Hallein District Court needed to examine the question whether a guardian should be appointed for the applicant. In the decision it noted that as early as 1984 the applicant had suffered from psychosis and a guardian had been appointed. Guardianship had been terminated in June 1987.

8. On 23 January 1995 the applicant filed a motion challenging judge S., the judge of the Regional Court dealing with the civil proceedings against M.L., for bias. The Regional Court returned the motion to the applicant. On 13 February 1995, as it did not carry the signature of a lawyer.

9. On 8 June the Hallein District Court provisionally appointed a guardian for the applicant. On 13 September 1995 the Regional Court set the applicant a time-limit of fourteen days for re-submitting the motion of 23 January 1995 signed by his lawyer, otherwise it would be deemed that he had withdrawn his motion.

10. The applicant again applied for legal aid for the proceedings against M.L. on 23 October 1995. The Regional Court, on 9 November 1995, informed the applicant that his request for legal aid would be transmitted to E.H., who had meanwhile been appointed the applicant's provisional guardian, for signature. E.H. signed the request on 15 November 1995.

11. Judge S. commented on the applicant's motion challenging him for bias on 16 November 1995 and, on 23 November 1995, the Salzburg Regional Court dismissed the applicant's motion of 23 January 1995. The applicant appealed.

12. On 19 January 1996 the District Court discontinued the guardianship proceedings against the applicant. According to an expert opinion obtained he was capable of understanding his actions and their consequences.

13. By decision of 11 April 1996 the Linz Court of Appeal dismissed the applicant's appeal against the Regional Court's decision of 23 November 1995. On 9 May 1996 the Regional Court dismissed a further motion challenging the judge for bias. On 8 January 1997 the Linz Court of Appeal dismissed the applicant's motion challenging judge S. for bias.

14. The applicant requested the Salzburg Regional Court to resume the proceedings against M.L. and to schedule a hearing on 19 March 1997. On 1 April 1997 the applicant requested under Section 91 of the Court Act ("section 91 request"), to the Salzburg Regional Court, that a time-limit be set for deciding upon his request for legal aid.

15. The President of the Regional Court, referring to the applicant's section 91 request, informed him on 23 April 1997 that, after his motion challenging the judge for bias had finally been dismissed, Judge S. could take further steps in the proceedings.

16. On 30 May 1997 the Regional Court dismissed the applicant's request for legal aid, finding that the applicant had sufficient means to afford assistance by a lawyer. On 12 June 1997 the Regional Court dismissed the applicant's request for legal aid in order to appeal against the decision of 30 May 1997, as no representation by a lawyer in such proceedings was necessary.

17. On 30 September 1997 the applicant made a section 91 request, asking that a time-limit for scheduling a hearing be set. He submitted that he was not represented by a lawyer.

18. On 20 November 1997 the applicant deposited a folder of documents with the Regional Court. On the next day the Regional Court returned the folder to the applicant, informing him that evidence could only be properly submitted by counsel representing him in the proceedings and in conformity with the rules of the code of civil procedure.

19. The Salzburg Regional Court, on 10 December 1997, ordered the applicant to re-submit his section 91 request, properly signed by a lawyer. He was also informed that in future submissions made by him personally would no longer be taken into account.

20. On 29 January 1998 a newly-appointed lawyer, S.K., requested the Regional Court to resume the proceedings against M.L., as after the Hallein District Court's decision of 19 January 1996 there was no longer a justification for interrupting the proceedings. Thereupon, on 3 February 1998, the Regional Court scheduled a hearing for 1 April 1998. On 1 April 1998 the hearing took place. The Regional Court held further hearings on 9 June 1998 and 8 July 1998.

21. On 10 July 1998 the Salzburg Regional Court gave a judgment in the proceedings against M.L.. It granted a part of the applicant's claim and dismissed the remainder.

22. The applicant appealed on 21 September 1998 and the opposing party replied on 28 October 1998. The Court of Appeal held a hearing on 7 July 1999, in which the applicant, assisted by his counsel, was heard.

23. On 7 July 1999 the Linz Court of Appeal gave a partial judgment (*Teilurteil*). It confirmed the Regional Court's judgment in so far as it had granted the applicant's claim and modified the Regional Court's further decision, holding that 50% of the applicant's further claim was well-founded in substance (*dem Grunde nach*) but further proceedings had to be conducted to assess the amount due.

24. The applicant informed the Regional Court on 8 November 1999 that he had withdrawn the power of attorney from his lawyer S.K. and at the same time he requested legal aid. On 22 November 1999 the applicant, at the time not represented by counsel, brought an action for the reopening of the proceedings against the judgment of the Linz Court of Appeal of 7 July 1999. He submitted that one of the documents on which he had relied

in these proceedings had actually been forged by him and as this changed the material facts, proceedings should be reopened.

25. On 18 February 2000 the applicant made a section 91 request for a time-limit to be set for a decision on his request for legal aid concerning his action for reopening the proceedings.

26. On 10 April 2000 the applicant was granted legal aid and on 21 April 2000 K.R. was appointed his *ex officio* lawyer. On 3 May 2000 K.R. re-submitted the action for reopening of the proceedings and the section 91 request.

27. By decision of 30 August 2000 the Supreme Court dismissed an extraordinary appeal on points of law by the applicant against the partial judgment of the Linz Court of Appeal of 7 July 1999.

28. The applicant's lawyer informed him on 9 October 2000 that the Regional Court had scheduled a hearing for 22 November 2000. This hearing was subsequently adjourned to 13 February 2001. On 16 November 2000 the defendant M.L. replied to the action for reopening of the proceedings.

29. On 20 February 2001 the applicant himself made a section 91 request in proceedings against M.L., complaining that the hearing had been adjourned at the request of counsel for the opposing party, which in his view led to an undue prolongation of the proceedings, and that a time-limit for scheduling a hearing should be set.

30. On 22 February 2001 K.R. informed the applicant that he had agreed to the adjournment request by the opponent party's lawyer. K.R. informed the applicant on 5 March 2001 that the section 91 request had now been transmitted to him for signature and that he would only sign it on the express instruction of the applicant. On 7 March 2001 the applicant instructed his lawyer to do so, arguing that otherwise he would not be awarded compensation in future proceedings before the European Court of Human Rights.

31. Judge S. commented on the section 91 request on 21 March 2001. He stated that the hearing had been adjourned with the consent of both parties' representatives and must therefore be considered vexatious.

32. On 18 May 2001 the Salzburg Regional Court dismissed the action for reopening of the proceedings. On 20 August 2001 the applicant, represented by K.R., appealed against the refusal to reopen the proceedings. On 24 September the opposing party replied.

33. By decision of 16 April 2002 the Linz Court of Appeal dismissed the applicant's appeal against the Regional Court's refusal of 18 May 2001 to reopen the proceedings. It granted, however, an ordinary appeal on points of law against that decision, as it considered that there was no case-law on the question whether a reopening could be based on the ground that forged documents had been used, if such an argument had been raised by a plaintiff who had forged the relevant document himself. On 2 May 2002 the

applicant lodged an extraordinary appeal on points of law with the Supreme Court.

34. On 11 July 2002 the Supreme Court dismissed the extraordinary appeal on points of law. This decision was served on K.R. on 2 September 2002.

35. In the ongoing proceedings following the partial judgment of the Court of Appeal of 7 July 1999 the Regional Court held hearings on 9 January and 11 April 2003. Meanwhile, on 14 January 2003, the applicant modified his claims.

36. On 5 April 2004 the applicant made a further section 91 request, complaining that on 11 April 2003 the oral proceedings had been closed but up to then no written judgment had been issued.

37. By decision of 19 April 2004 the Salzburg Regional Court dismissed the applicant's further claims against M.L. by final judgment (*Endurteil*). On 11 May 2004 the applicant appealed and on 9 June 2004 the opposing party replied. On 14 July 2004 the Linz Court of Appeal did not grant the applicant's appeal, but reduced the award of procedural costs to the opposing party.

38. Meanwhile, on 22 June 2004 the applicant brought a further action for reopening of proceedings. On 31 August 2004 the Linz Court of Appeal corrected clerical errors in its judgment of 14 July 2004.

39. On 22 September 2004 the applicant lodged an extraordinary appeal on points of law with the Supreme Court, which the latter rejected as inadmissible on 21 October 2004.

40. On 1 March 2005 the applicant made a criminal deposition (*Anzeige*) against Judge S. On 21 April 2005 the Salzburg Public Prosecutor's Office refused to open criminal proceedings against Judge S. On 9 May 2005 the Review Chamber (*Ratskammer*) of the Salzburg Regional Court rejected an appeal by the applicant against this decision.

41. By decision of 22 June 2005 the President of the Salzburg Regional Court dismissed the applicant's motion challenging Judge S. for bias. It noted that the Regional Court had given its judgment on 19 April 2004, the Court of Appeal had decided on 14 July 2004 and the Supreme Court on 21 October 2004. The applicant's challenge of 1 March 2005 was therefore belated. The applicant filed a motion challenging Judge S. for bias because he considered the judgment arbitrary, but he could have raised this critique in appeal proceedings.

The applicant's detention on remand

42. The applicant remained in detention on remand from 14 May to 14 July 1999 on suspicion of having uttered dangerous threats. On 18 June 1999 the Salzburg Regional Court convicted him of this offence

and sentenced him to eight months' imprisonment, of which six months were suspended.

43. During his detention on remand a hearing was scheduled by the Court of Appeal in the civil proceedings against M.L.. The applicant submits that when he was brought from his cell to the courtroom he was handcuffed.

44. On 30 December 1999 the applicant complained to the Salzburg Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) about the handcuffing and claimed compensation. On 1 February 2000 the IAP rejected the application as inadmissible. It found that the measure at issue was taken in the course of criminal proceedings before ordinary courts (namely the proceedings against him for uttering dangerous threats) and was not imputable to an administrative authority, so the IAP did not have jurisdiction.

THE LAW

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

45. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

46. The period to be taken into consideration began on 30 November 1994, when the applicant brought his action against M.L., and ended on 21 October 2004, when the Supreme Court rejected the applicant's extraordinary appeal on points of law. It thus lasted ten years and ten months for three levels of jurisdiction.

A. Admissibility

47. 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

48. The Government acknowledged that the proceedings at issue have lasted an exceptionally long time, but considered that in view of the following circumstances the overall length could still be regarded as reasonable. The length of the proceedings was essentially caused by the applicant's conduct, namely the continual lodging of applications and extensive requests for the taking of evidence. Moreover, at the beginning of the proceedings it had been necessary to clarify in the applicant's own interest whether he was actually able to stand trial, which unavoidably prolonged the proceedings. Admittedly, there was one delay for which the Salzburg Regional Court was responsible, namely between 11 April 2003 and 14 April 2004. A period of one year for drafting the written version of a judgment was hardly acceptable, but this delay was caused by exceptional circumstances, namely the illness of the judge and the exceptional workload of the judges at the Salzburg Regional Court.

49. This was disputed by the applicant. In his view the Austrian courts did not handle his cases properly, which made it necessary for him to make repeated use of all available remedies. This resulted in delays, which were, however, attributable to the Austrian courts.

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, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

50. The extraordinary length of the proceedings - ten years and ten months at three levels of jurisdiction - can neither be fully explained by a certain degree of complexity of the subject matter nor by the admittedly rather difficult conduct of the applicant. It appears that also the Austrian courts dealt with the applicant's case at a very slow pace and, on one occasion, between April 2003, when a last hearing was held, and April 2004, when the Regional Court finally decided on the applicant's claim, proceedings came to a standstill. The Court is not persuaded by the Government's explanation, namely the workload of the Regional Court and the health of the judge. In this respect the Court reiterates that it is for Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision within a reasonable time (see, for instance, *Löffler v. Austria*, no. 30546/96, § 21, 3 October 2000; and *Vocaturo v. Italy*, 24 May 1991, § 17, Series A no. 206-C).

51. There has thus been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

Admissibility

52. The applicant further complained under Article 6 of the Convention that the proceedings had been unfair. He submitted that the courts did not properly assess the evidence before them and that the Court of Appeal and the Supreme Court did not correct the wrong decisions by the First Instance Court. He also submitted that all judges, in particular Judge S., had been biased against him. This was evident from this judge's initiative to have guardianship proceedings instituted against him. Moreover Judge S. should have instructed him, especially at the beginning of the proceedings, how to conduct them effectively. Further, at the time of the hearing on 7 July 1999, he had been in detention on remand and could not effectively prepare for that hearing. Lastly the applicant complained under Article 3 of the Convention that, while in detention on remand, he had been escorted to the court hearing on 7 July 1999 in handcuffs, which constituted inhuman and degrading treatment.

53. As to the alleged unfairness of the proceedings, the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

54. As regards the applicant's submission that all judges, in particular Judge S., had been biased against him, the Court observes that the applicant only filed a motion challenging Judge S. for bias but did not challenge any other judge dealing with his case. As regards this judge the applicant gave as reasons for doubting his impartiality that this was evident from this judge's initiative to have guardianship proceedings instituted against him and that the judge should have instructed him, especially at the beginning of the proceedings, how to conduct them effectively.

55. In this respect the Court reiterates that the existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality. As to the subjective test, the

personal impartiality of a judge must be presumed until there is proof to the contrary (see *Wettstein v. Switzerland*, no. 33958/96, §§ 42-43, ECHR 2000-XII).

56. From the reasons given by the applicant it is apparent that he was questioning the personal impartiality of that judge. However, the Court finds that the reasons given by him are not persuasive. The failure of a judge to advise the applicant on how to conduct the proceedings, possibly to the detriment of the opponent, cannot be held against him, nor the fact that he had asked for guardianship proceedings to be opened against the applicant, which was in any event his duty if he had doubts as to the applicant's capacity to protect himself from financial loss.

57. The applicant also submitted that, at the time of one hearing on 7 July 1999, he had been in detention on remand and could not prepare effectively for that hearing.

58. The Court observes that the applicant was actually in detention on remand for approximately two months, between 14 May 1999 and 14 July 1999. However it cannot find that the applicant has sufficiently substantiated his allegation that he could not effectively prepare for this hearing. The applicant, who was assisted by counsel, does not claim that he was prevented from consulting the case file, meeting his lawyer or preparing appropriate notes.

59. Having regard to the above it follows that these complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

60. The applicant also complained under Article 3 of the Convention that, while in detention on remand, he had been escorted from his cell to the courtroom for the hearing on 7 July 1999 in handcuffs, which constituted inhuman and degrading treatment.

61. However, the Court observes that the measure complained of occurred on 7 July 1999, while the present application was only introduced on 27 January 2005.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 112,293.31 Euros (EUR) in respect of pecuniary damage and EUR 5,500 in respect of non-pecuniary damage, specifying that an amount of EUR 4,000 was claimed for a breach of Article 6 § 1 (length of proceedings) found.

65. The Government contested the claim for pecuniary damage.

66. 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, it considers that the award claimed in respect of non-pecuniary damage for a breach of Article 6 § 1 as regards the length of the proceedings appears reasonable and awards it in full plus any tax that may be chargeable on that amount.

B. Costs and expenses

67. The applicant, who has not been assisted by counsel in the Convention proceedings, claims EUR 232.55 for out-of-pocket expenses such as postage and photocopies. The Government does not comment on this claim.

68. The Court finds that the amount claimed by the applicant appears reasonable and awards it in full plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

69. 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 in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand Euros) in respect of non-pecuniary damage and EUR 232.55 (two hundred thirty two Euros fifty five cents) in respect of costs and expenses plus any tax that may be chargeable to the applicant on those 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 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President