



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

1959 · 50 · 2009

FIRST SECTION

CASE OF GORIANY v. AUSTRIA

(Application no. 31356/04)

JUDGMENT

STRASBOURG

10 December 2009

FINAL

10/05/2010

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 Goriany v. Austria,

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

Christos Rozakis, *President*,

Nina Vajić,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 31356/04) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Michael Goriany (“the applicant”), on 30 August 2004.

2. The applicant was represented by Dr Johannes Reich-Rohrwig, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. On 9 October 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Vienna. The applicant is a lawyer by profession, who practised law in Vienna and Retz (Lower Austria).

1. The disciplinary proceedings under file no. D169/98

5. The first set of proceedings (D169/98) started on 14 July 1998, when Mr G., a partner in the law firm of Dr K., who served as President of the Vienna Bar Chamber from 1999 to 2002, lodged a disciplinary complaint against the applicant alleging that he had committed documentary fraud. Subsequently, on 23 July 1998, an Investigating Commissioner (*Untersuchungskommissär*) was appointed, who issued his report on 12 November 1999.

6. On the basis of the Commissioner's report, the Disciplinary Council of the Vienna Bar Chamber (*Disziplinarrat der Wiener Rechtsanwaltskammer*) decided to open the main proceedings on 24 May 2000.

7. On 2 June 2000 and on 18 September 2000 Mr G. lodged a further disciplinary complaint against the applicant alleging that he had obtained credit by fraud, and obstructed enforcement proceedings. On 30 November 2000 the Investigating Commissioner's terms of reference were extended to these two allegations. A new commissioner was appointed on 7 June 2002, who issued his report on 21 October 2002.

8. Following the recommendations of this report, the Disciplinary Council of the Vienna Bar Chamber decided on 29 January 2003 that the allegations concerning obtaining credit by fraud and obstruction of enforcement proceedings were ill-founded.

9. With regard to the Disciplinary Council's prior decision of 24 May 2000 to open proceedings against the applicant (see paragraph 6 above), a hearing was held on 14 November 2003.

10. On 19 January 2004 the applicant ceased to practise law for health reasons. Subsequently, on 26 February 2004, the Disciplinary Council discontinued the proceedings, applying by analogy section 412 of the Austrian Criminal Procedure Act (*Strafprozessordnung*).

2. The disciplinary proceedings under file no. D33/99

11. The disciplinary proceedings D33/99, concerning enforcement proceedings against the applicant, started on 23 February 1999, when an Investigating Commissioner was appointed. On 20 October 1999 he issued his report, on the basis of which the Disciplinary Council decided to open main proceedings on 26 January 2000. On 28 June 2001 the applicant was summoned to an oral hearing scheduled for 8 September 2001. As he did not appear on that date, the hearing could not be held.

12. On 8 August 2002 a new hearing was scheduled for 25 September 2002, also with regard to the proceedings D102/99, D165/00 and D15/01 (see below). On 19 August 2002 the applicant objected to the attendance of one of the members of the Disciplinary Council at the hearing, which therefore was adjourned. On 14 November 2003 the hearing was held. Following the applicant's resignation from exercising his profession also

this set of disciplinary proceedings was discontinued by the Disciplinary Council on 26 February 2004.

3. The disciplinary proceedings under file no. D102/99

13. The proceedings D102/99, concerning alleged failures to perform professional duties in client relations, started on 12 May 1999 with the appointment of an Investigating Commissioner, who issued his report on 18 April 2001, after having heard witness evidence. Subsequently, on 30 May 2001, the Disciplinary Council decided to open the main proceedings. No further measures were taken until 8 August 2002 (see paragraph 12 above).

14. On 8 August 2002 a hearing was scheduled for 25 September 2002, which, however, was postponed. On 14 November 2003 this hearing, which also concerned the proceedings D 33/99, D165/00 and D 15/01 was held. Following the applicant's resignation from exercising his profession also this set of disciplinary proceedings was discontinued by the Disciplinary Council on 26 February 2004.

4. The disciplinary proceedings under file no. D165/00

15. The proceedings D165/00, concerning enforcement proceedings against the applicant, started on 22 September 2000, when an Investigating Commissioner was appointed. On the basis of the Commissioner's report (issued on 27 February 2001) the Disciplinary Council decided to open the main proceedings on 25 April 2001. No further measures were taken until 8 August 2002 (see paragraph 12 above).

16. On 8 August 2002 a hearing was scheduled for 25 September 2002, which, however, was postponed. On 14 November 2003 this hearing, which also concerned the proceedings D 33/99, D165/00 and D 15/01 was held. Following the applicant's resignation from exercising his profession also this set of disciplinary proceedings was discontinued by the Disciplinary Council on 26 February 2004.

5. The disciplinary proceedings under file no. D15/01

17. In the proceedings D15/01, concerning alleged failure to inform the Lawyer's Chamber of his change of business seat before the move, an Investigating Commissioner was appointed on 29 January 2001. On the basis of his report, issued on 20 February 2002, the Disciplinary Council decided to open the main proceedings on 17 April 2002. No further measures were taken until 8 August 2002 (see D33/99 above).

18. On 8 August 2002 a hearing was scheduled for 25 September 2002, which, however, was postponed. On 14 November 2003 this hearing, which also concerned the proceedings D33/99, D165/00 and D15/01 was held. Following the applicant's resignation from exercising his profession also

this set of disciplinary proceedings was discontinued by the Disciplinary Council on 26 February 2004.

6. The disciplinary proceedings under file no. D231/99

19. The proceedings D231/99, concerning enforcement proceedings against the applicant, started on 18 October 1999 with the appointment of an Investigating Commissioner. On the basis of his report (issued 13 January 2002), the Disciplinary Council decided to open the main proceedings on 20 February 2002. No further measures were taken until 3 March 2004, when the proceedings were discontinued following the applicant's resignation from exercising his profession.

THE LAW

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

20. 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...”

A. Admissibility

21. As to the applicability of Article 6 § 1, the Court reiterates that disciplinary proceedings in which the right to continue to exercise a profession is at stake give rise to a dispute over civil rights (see *Philis v. Greece (no.2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1085, § 45 with further references, and *W. R. v. Austria*, no. 26602/95, 21 December 1999, §§ 25 - 31). Since the applicant's right to continue to practise as a lawyer was at stake in the disciplinary proceedings against him, the Court considers that Article 6 § 1 is applicable under its civil head.

22. The Court further notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. The Government argued that the different sets of proceedings conducted against the applicant had to be seen in their context and did not comment on them individually. They contended that the subject matter of these proceedings had been of a highly complex nature in particular because of the number of further disciplinary complaints received. Moreover, most of the delays in these proceedings had been caused by the applicant. In particular, in proceedings D 33/99 he did not appear for one scheduled hearing and did not excuse his absence, he challenged the President of the Disciplinary Council for bias (D 33/99, D 102/99, D 165/99, D 15/01), he requested expert opinions in all sets of proceedings and he moved his practice from Vienna to Retz, all of which prolonged the proceedings. Moreover, the disciplinary authority had to wait with dealing with the disciplinary complaints whenever further proceedings were opened because, for reasons of expediency, it was preferable to deal with all cases at the same time. Taking all this into account, the length of the proceedings had complied with the “reasonable time” requirement.

24. The applicant submitted that the subject matter of the cases was not complex and that no particular delays had been caused by him. Furthermore there had been periods of inactivity before the Disciplinary Council.

25. As regards the periods to be taken into account in the different sets of disciplinary proceedings the Court observes as follows:

The proceedings D169/98 started in July 1998 and were terminated when the Disciplinary Council of the Vienna Austrian Bar Chamber discontinued them on 26 February 2004. Thus they lasted 5 years and some 7 months.

The proceedings D 33/99 lasted 5 years, because they were pending from February 1999 to February 2004.

The proceedings D102/99 started in May 1999 and ended in February 2004, thus lasting 4 years and 9 months.

The proceedings D165/00 lasted from September 2000 to February 2004 amounting to a total of 3 years and 5 months.

The proceedings D15/01 started in January 2001 and were terminated in February 2004. They therefore lasted for 3 years and 1 month.

The proceedings D231/99 lasted from October 1999 to March 2004 and were thus pending for 4 years and 4 months.

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

27. The Court observes at the outset that all sets of proceedings, although they lasted from 3 years and 1 month to 5 years and 7 months,

remained pending at first instance and that in none of them a decision in that instance was taken. The different sets of proceedings do not appear to have been particularly complex. In this respect the Court observes that the taking of evidence did not appear particularly time-consuming as in none of the proceedings expert opinions were obtained and only in the context of one set of proceedings (D102/99) were witnesses questioned.

28. As regards the conduct of the applicant, the Court notes that on one occasion a hearing scheduled for 8 September 2001 had to be postponed due to the applicant's absence (D33/99), but it cannot be said that his conduct in general caused major delays in the proceedings.

29. On the other hand numerous delays are attributable to the disciplinary authorities:

In D169/98 it took the Investigating Commissioner more than 16 months to submit his investigation report and once a further report on additional charges had been obtained on 21 October 2002 a hearing in the case was only scheduled for 14 November 2003.

In D33/99 it took the Disciplinary Council more than 18 months to schedule, on 28 June 2001, a hearing in that case. Since this hearing could not be held it took more than one year to schedule a further hearing and since also that hearing had to be cancelled the only hearing in that case took place on 14 November 2003, more than 3 years after the main proceedings were opened.

In D102/99 it took the Investigating Commissioner almost 2 years to submit his investigation report and once the Disciplinary Council decided to open main proceedings on 30 May 2001, it took more than 15 months before a hearing was scheduled for 8 August 2002.

In D165/00 once the Disciplinary Council decided to open main proceedings on 25 April 2001, it took more than 15 months before a hearing was scheduled for 8 August 2002.

In D15/01 it took the Investigating Commissioner more than one year to submit his investigation report and once a hearing in the main proceedings scheduled for 25 September 2002 was postponed it took the Disciplinary Council more than one year to schedule a further (and the only) hearing.

In D231/99 01 it took the Investigating Commissioner more than 2 years and 3 months to submit his report and once the main proceedings were opened 20 February 2002 no further steps were taken until 3 March 2004 when they were eventually discontinued.

30. The Court is not persuaded by the Government's arguments put forward in order to explain the particular length of all sets of proceedings and the delays occurred therein.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

32. The applicant further complained under Article 6 § 1 that the discontinuation of disciplinary proceedings infringed his right to a fair trial, because no decisions on the merits of the cases were rendered. Under the same provision he also complained that the disciplinary panel was not impartial, because it refused to open proceedings against Dr K., President of the Vienna Bar Chamber, whose law firm had lodged a disciplinary complaint against the applicant in the proceedings.

33. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

34. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant claimed 400,000 euros (EUR) in respect of non-pecuniary damage. He also claimed a monthly amount of EUR 1,900 from February 2004 (time when he resigned) until June 2009 (when he reached the age of 65) in respect of pecuniary damage.

37. The Government contested his claim for non-pecuniary damage as excessive and his claim for pecuniary damage as unjustified.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore dismisses this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 8,000 under that head plus any tax that may be chargeable on this amount.

B. Costs and expenses

39. Since the applicant failed to specify his claim for costs by submitting a bill, no award can be made under this head.

C. Default interest

40. 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 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 8,000 (eight thousand), plus any tax that may be chargeable to the applicant in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President