

EUROPEAN COMMISSION OF HUMAN RIGHTS

SECOND CHAMBER

APPLICATION No. 16038/90

Heinrich WRBA

against

AUSTRIA

REPORT OF THE COMMISSION

(adopted on 8 January 1993)

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I. INTRODUCTION

1. The present Report concerns Application No. 16038/90 by W. against Austria, introduced on 29 November 1989 and registered on 22 January 1990.

2. The applicant, born in 1922, is an Austrian national and resident in Vienna. He is a professor at Vienna University. Before the Commission, he is represented by Mr. K. Bernhauser, a lawyer practising in Vienna, and by Mr. W.L. Weh, a lawyer practising in Bregenz.

The Austrian Government are represented by their Agent, Ambassador H. Türk, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The application was communicated to the Government on 25 February 1991. On 27 May 1991 the application was referred to a Chamber. Following an exchange of memorials, the applicant's complaint under Article 6 para. 1 of the Convention relating to the length of criminal proceedings was declared admissible on 13 January 1992. The decision on admissibility is appended to this Report.

With a view to securing a friendly settlement of the case, consultations took place with the parties between 17 January and 4 September 1992.

4. Having noted that there is no basis upon which a friendly settlement within the meaning of Article 28 para. 1 (b) of the Convention can be secured, the Commission (Second Chamber), after deliberating, adopted this Report in accordance with Article 31 para. 1 of the Convention, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS

5. In this Report the Commission states its opinion as to whether the facts found disclose a violation of the Convention by Austria.

6. The text of the Report is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 1 of the Convention.

II. ESTABLISHMENT OF THE FACTS

7. In 1979 criminal investigations were started against the applicant who was suspected of having, as chairman of a private association supporting a particular research institute at the Vienna University, committed fraudulent conversion within the meaning of S. 153 of the Austrian Criminal Code (Strafgesetzbuch). The proceedings were also conducted against the Secretary to the Association.

8. On 3 August 1979 the Vienna Regional Court (Landesgericht), upon request of the Vienna Public Prosecutor's Office (Staatsanwaltschaft), ordered that all documents of the above association relating to credits, expenses etc. be seized.

9. On 25 April 1980, an accountant expert opinion was ordered. The opinion was submitted on 16 June 1981 and received by the Regional Court on 6 July 1981. The co-accused was heard by the Investigating Judge (Untersuchungsrichter) on 22 November 1981 and 12 February 1982. On 1 December 1982 the co-accused unsuccessfully requested that the criminal proceedings be discontinued. The co-accused was again heard by the Investigating Judge on 22 June 1983 and 22 November 1984.

10. On 3 July 1986 the Vienna Public Prosecutor's Office preferred an indictment (Anklageerhebung). The applicant was charged with fraudulent conversion in the period from March 1979 until February 1982 for having made unjustified payments to the co-accused.

11. On 26 January 1988 the Vienna Regional Court convicted the applicant of fraudulent conversion and sentenced him to six months' imprisonment on probation. The co-accused was convicted of fraudulent conversion and false evidence. In these and the following proceedings the applicant was represented by counsel.

12. On 27 October 1988 the Supreme Court (Oberster Gerichtshof), upon the applicant's plea of nullity (Nichtigkeitsbeschwerde), quashed the Regional Court's judgment with regard to his conviction. With regard to his conviction of fraudulent conversion, the co-accused's plea of nullity was also successful. The case was sent back to the Regional Court.

13. On 27 June 1989, the Vienna Regional Court, upon a further hearing, acquitted the applicant and the co-accused of the charges of fraudulent conversion.

III. OPINION OF THE COMMISSION

A. Complaint declared admissible

14. The Commission has declared admissible the applicant's complaint that his case was not heard within a reasonable time.

B. Point at issue

15. The point at issue is whether there has been a violation of the Article 6 para. 1 (Art. 6-1) of the Convention in that the length of the proceedings complained of exceeded a "reasonable time".

C. Article 6 para. 1 (Art. 6-1) of the Convention

16. Article 6 para. 1 (Art. 6-1) of the Convention includes the following provision:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by (a) ... tribunal ..."

17. The period to be considered started at the latest on 3 August 1979 and terminated on 27 June 1989, thus almost ten years later.

18. The Commission recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to its complexity, the conduct of the parties and the conduct of the authorities dealing with the case. In this instance the circumstances call for an overall assessment (cf. Eur. Court H.R., Ficara judgment of 19 February 1991, Series A no. 196-A, p. 9, para. 17).

19. According to the Government, the length of the period in question was due to the complexity of the case, in particular the necessary investigations relating to the financial transactions of the association concerned as from 1970. Furthermore, the co-accused of the applicant had made numerous requests concerning the taking of evidence and other submissions, and the applicant had never objected thereto. Having regard to the co-operation between the two accused, who in the course of the proceedings had sometimes been assisted by the same counsel, proceedings could not be separated. There were no delays to be imputed to the Austrian judicial authorities.

20. The applicant denies any particular complexity of the case. Moreover, he submits that he cannot be held responsible for any delay caused by the co-accused in the course of the criminal proceedings. He considers that there were several periods of inactivity on the part of the judicial authorities, and on the whole an inefficient handling of the case.

21. The Commission notes that the criminal proceedings against the applicant concerned charges of fraudulent conversion. The establishment of the financial transactions of the accused and the association concerned required expert evidence. But, on the whole, the case was not particularly complex.

22. The applicant's conduct did not contribute to the overall length of the proceedings.

23. As regards the conduct of the Austrian authorities, the

Commission finds that the proceedings were not conducted with the necessary expediency. In particular, it took the Prosecutor's Office almost seven years to complete the investigations and prefer the indictment against the applicant. At that stage, the preparation of an expert opinion lasted more than thirteen months. The first set of proceedings at first instance lasted about eighteen months. The Austrian Government have not sufficiently explained these delays.

24. In these circumstances, the Commission finds that the length of the proceedings complained of exceeded the "reasonable time" referred to in Article 6 para. 1 (Art. 6-1) of the Convention.

D. Conclusion

25. The Commission concludes, unanimously, that there has been a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

Secretary to the Second Chamber

(K. ROGGE)

President of the Second Chamber

(S. TRECHSEL)