

EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 13126/87

Karl SEKANINA

against

AUSTRIA

REPORT OF THE COMMISSION

(adopted on 20 May 1992)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the

European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The applicant is an Austrian citizen born in 1937, who resides in Vienna. He is represented before the Commission by Mr. Wolfgang Moringe, a lawyer practising in Linz.

3. The application is directed against Austria whose Government are represented by their Agent, Ambassador Helmut Türk, Deputy Secretary General and Legal Counsel of the Federal Ministry of Foreign Affairs.

4. The case concerns a judicial decision by which the applicant was refused compensation for unjustified detention following his acquittal of a charge of murder. The court considered that even after the acquittal a suspicion continued to exist against the applicant. The applicant complains that this finding violates the presumption of innocence under Article 6 para. 2 of the Convention.

B. The proceedings

5. The application was introduced on 21 April and registered on 10 August 1987.

6. On 4 September 1989 the Commission decided to give notice of the application to the respondent Government and to invite them to submit observations in writing on the admissibility and merits of the application.

7. On 1 December 1989 the Government submitted their observations to which the applicant replied on 9 January 1990.

8. On 3 September 1991 the Commission declared the application admissible.

9. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, also placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. Consultations with the parties took place between 23 October 1991 and 5 February 1992. The Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

10. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. C. A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A. S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. G. SCHERMERS
H. DANIELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C. L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS

M. P. PELLONPÄÄ
B. MARXER

11. The text of this Report was adopted on 20 May 1992 and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

12. The purpose of the Report, pursuant to Article 31 of the Convention is:

- i) to establish the facts, and
- ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

13. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

14. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular circumstances of the case

15. The applicant was detained on remand for about one year, from 1 August 1985 to 30 July 1986, in connection with criminal proceedings in which he was suspected of having murdered his wife. She died following a fall out of a window of the matrimonial home on the fifth floor of an apartment house in Linz.

16. Various remedies by which the applicant sought to challenge the murder suspicion during his detention were rejected. Eventually he was tried on a charge of murder and on a further charge of illegal coercion against a fellow prisoner whom he had allegedly threatened to kill if he disclosed certain admissions concerning the murder charge which the applicant had allegedly made during his detention.

17. On 30 July 1986 a Court of Assizes (Geschworenengericht) at the Regional Court (Landesgericht) of Linz acquitted the applicant of both charges. The jury rejected the murder charge by a verdict of seven to one, the coercion charge by a unanimous verdict.

18. The jury stated in its memorandum (Niederschrift der Geschworenen) concerning the question of murder:

(German)

"Keine stichhaltigen Beweise, um Herrn Sekanina als Mörder zu verurteilen. Laut medizinischem Gutachten von Prof. Kaiser hätte die Frau Sekanina ihren Mann noch als Mörder bezeichnen können. Die Aussagen einiger Zeugen erscheinen uns unglaubwürdig."

(Translation)

"No conclusive evidence justifying Mr. Sekanina's conviction of murder. According to Prof. Kaiser's medical expert opinion Mrs. Sekanina would still have been able to call her husband a murderer. The statements of some witnesses appear incredible to us."

19. Concerning the question of coercion they stated:

(German)

"Die anderen drei Mithäftlinge haben nichts von einer schweren Drohung mit dem Tod gehört (laut ihrer Zeugenaussagen)."

(Translation)

"(According to their testimony) the other three fellow prisoners have not heard anything of a serious threat of killing."

20. The applicant was released immediately after the reading of the verdict. The public prosecution did not appeal against the applicant's acquittal.

21. Subsequently, the applicant requested a State contribution to the necessary costs of his defence (in accordance with Section 393 a of the Code of Criminal Procedure) and compensation for pecuniary damage suffered as a result of the fact that he had been kept in detention.

22. The public prosecutor's office raised objections as to the quantum of the first claim. As regards the second claim, it requested the court to find that the conditions of Section 2 para. 1 b of the Act on Compensation in Criminal Matters (strafrechtliches Entschädigungsgesetz) were not met as the suspicion raised in the criminal proceedings against the applicant had not been entirely dissipated.

23. The Regional Court of Linz, sitting without a jury, dealt with the matter in two separate decisions.

24. On 12 December 1986 it ordered the State to pay a contribution of 22,546.50 AS towards the necessary costs of the applicant's defence. The applicant's appeal against this decision, by which he demanded the award of a higher amount, was rejected by the Linz Court of Appeal (Oberlandesgericht) on 15 January 1987.

25. On 10 December 1986 the applicant's claim to be awarded compensation for pecuniary damage was rejected by the Regional Court. The court stated, noting the applicant's acquittal:

(German)

"Der Verdacht ist erst dann entkräftet, wenn alle gegen den Verhafteten sprechenden Verdachtsmomente widerlegt worden sind, so dass sie aufgehört haben, ein Argument für die Schuld des Verdächtigen zu bilden."

(Translation)

"The suspicion is only dissipated if all elements of suspicion against the detained have been disproved with the consequence that they have ceased to provide any argument for the guilt of the suspect."

26. The court found further that there were still important elements of suspicion: repeated threats, attacks and aggressions, satisfaction at his wife's death, admissions made to a fellow prisoner, financial difficulties, and unsuccessful attempts to be given the custody of the children. The vote of the jury also showed that it had acquitted the applicant only because it gave him the benefit of the doubt.

27. On 25 February 1987 the Linz Court of Appeal confirmed this decision. It rejected the applicant's argument that the relevant provision of the Act on Compensation in Criminal Matters (Section 2 para. 1 b) was unconstitutional and infringed Article 6 para. 2 of the Convention because it required, beyond an acquittal, dissipation of suspicion. The presumption of innocence was to be observed in the proceedings prior to the judgment, but did not give a right to compensation to every detained person in case of his acquittal. The

exclusion of compensation in the challenged provision was not based on guilt, but on continued existence of suspicion. The finding by a court that such a suspicion still existed did not infringe the presumption of innocence.

28. In the present case it could not be concluded merely from the vote of the jury that the suspicion had been dissipated. More important was the memorandum of the jury which implied doubts in this respect. In any event the court competent to decide on the compensation issue was not bound by the acquittal as regards the question of suspicion. This suspicion had repeatedly been confirmed in the investigation, in particular by the decisions prolonging the applicant's detention on remand.

29. The Regional Court had rightly described the elements justifying the assumption of continued suspicion. In addition there was further evidence to support this assumption in the light of the trial. Therefore the applicant's claim to be awarded compensation for pecuniary damage had to be rejected.

B. Relevant domestic law

30. The relevant parts of Section 2 para. 1 b of the Act on Compensation in Criminal Matters (Fed. Law Gazette No. 270/1969) read as follows:

(German)

"Der Ersatzanspruch besteht, wenn

....

b) der Geschädigte wegen des Verdachtes einer im Inland zu verfolgenden strafbaren Handlung vom einem inländischen Gericht in vorläufige Verwahrung oder in Untersuchungshaft ... genommen und in der Folge in Ansehung dieser Handlung freigesprochen ... worden ist und der Verdacht, daß der Geschädigte diese Handlung begangen habe, entkräftet ... ist,"

(Translation)

"The right to compensation arises if

...

b) the injured person has been placed in provisional custody or detention on remand by a domestic court on suspicion of a criminal offence liable to domestic prosecution ... and if subsequently he has been acquitted of the charge in question ... and if the suspicion that the injured person has committed the offence in question has been dissipated... ."

III. OPINION OF THE COMMISSION

A. Complaint declared admissible

31. The Commission has declared admissible the applicant's complaint that in the decision to refuse him compensation for unjustified detention on remand the Austrian courts disregarded the presumption of innocence.

B. Point at issue

32. The Commission must accordingly determine whether there has been a violation of Article 6 para. 2 (Art. 6-2) of the Convention.

C. As to the alleged violation of the presumption of innocence

33. Article 6 para. 2 (Art. 6-2) of the Convention reads as follows:

"Everyone charged with a criminal offence shall be presumed

innocent until proved guilty according to law."

34. The applicant alleges a violation of this provision in that, despite his acquittal, the courts assumed a continuing suspicion against him when rejecting his claim to be compensated for his detention on remand.

35. The Government submit that the European Court of Human Rights repeatedly found it compatible with the presumption of innocence, as laid down in Article 6 para. 2 (Art. 6-2), to refer to a continued state of suspicion where this did not amount to a determination of the accused person's guilt (cf. *Adolf* judgment of 26 March 1982, *Minelli* judgment of 25 March 1983, and the *Lutz, Englert and Nölkenbockhoff* judgments of 25 August 1987, Eur. Court H.R., Series A nos. 49, 62 and 123). The Government contend that the principles developed in those judgments also apply in the present case. The statements contained in the Austrian court decisions complained of in the present case did not amount to a finding of guilt, but were merely based on a state of suspicion, and thus compatible with the presumption of innocence as laid down in Article 6 para. 2 (Art. 6-2).

36. The Commission recalls that despite the wording of Article 6 para. 2 (Art. 6-2), which secures the presumption of innocence to "everyone charged with a criminal offence" ("*toute personne accusée d'une infraction*"), this provision has been consistently interpreted as also applying to situations where the person concerned is not or no longer formally charged with a criminal offence (cf. *inter alia* the above cases referred to by the Government). Furthermore the presumption of innocence is to be observed not only by the criminal court trying a case, but also by other authorities (cf. No. 7986/77, *Petra Krause v. Switzerland*, Dec. 13.10.78, D.R. 13 p. 73; No. 9077/80, *X. v. Austria*, Dec. 6.10.81, D.R. 26 p. 211; and No. 10847/84, *R.F. and S.F. v. Austria*, Dec. 7.10.85, D.R. 44 p. 238) including courts other than those which are competent to determine a criminal charge (in this respect, cf. in particular No. 9295/81, *X. v. Austria*, Dec. 6.10.82, D.R. 30 p. 227).

37. In the latter case the Commission stated *inter alia* (loc. cit. p. 228):

"No authority may treat a person as guilty of a criminal offence unless he has been convicted by the competent court and in the case of an acquittal the authorities may not continue to rely on the charges which have been raised before that court but which have been proved to be unfounded. This rule also applies to courts which have to deal with non-criminal consequences of behaviour which has been subject to criminal proceedings. They must be bound by the criminal court's finding according to which there is no criminal responsibility for the acts in question although this naturally does not prevent them to establish e.g. a civil responsibility arising out of the same facts."

38. An acquittal does not necessarily exclude the making of official statements as to the suspicion against or the guilt of the accused in the course of later stages of the proceedings in the same case. In particular no problem under Article 6 para. 2 (Art. 6-2) arises where such statements are made in the context of an appeal against an acquittal (cf. No. 15871/89, *X. v. Federal Republic of Germany*, and No. 17664/91, *Y. v. Federal Republic of Germany*, Dec. 9.10.91, to be published in D.R.).

39. Problems may, however, arise where the criminal proceedings are still pending or where they have resulted in an acquittal or a discontinuation without a determination of the criminal charges. In this respect the Convention organs distinguish between statements which reflect the opinion that the person concerned is guilty, and statements which merely describe a state of suspicion. The former infringe the

presumption of innocence (cf. in particular Eur. Court H.R., Minelli judgment, loc. cit., p. 18, para. 37; No. 10107/82, I. and C. v. Switzerland, Comm. Report 4.12.85, D.R. 48, p. 35; cf. also No. 12748/87, Grabemann v. Federal Republic of Germany, Dec. 14.3.89, to be published in D.R.), whereas the latter have been regarded as unobjectionable in various situations examined by the Convention organs.

40. Such situations have included statements made by a politician (cf. No. 7986/77, loc. cit.), the police (Nos. 9077/80 and 10847/84, loc. cit.) or a court (No. 11170/84, Brandstetter v. Austria, Dec. 14.7.87, Appendix II to Comm. Report 8.5.90) prior to the institution of criminal proceedings, and also statements made by courts in connection with (cf. Eur. Court H.R., Adolf judgment, loc. cit.) or after the discontinuation of criminal proceedings without the previous conduct or completion of a procedure satisfying all the requirements of Article 6 (Art. 6) (cf. Eur. Court H.R., Lutz, Englert and Nölkenbockhoff judgments, loc. cit.). In those cases the Court found that Article 6 para. 2 (Art. 6-2) is not violated if the relevant judicial decisions only describe a state of suspicion and do not contain a finding of guilt nor impose a penalty or other measure which can be equated with a penalty.

41. However, the Convention organs have not so far been called upon to decide the question whether remarks referring to a state of suspicion are also permitted following a final acquittal of the person concerned, as in the present case.

42. The Commission recalls that the applicant was refused compensation for unjustified detention on remand on the ground that despite his acquittal there continued to exist a suspicion of murder against him.

43. The relevant decisions were taken under Section 2 para. 1 b of the Act on Compensation in Criminal Matters which provides for compensation, inter alia, if the person concerned has been acquitted and the suspicion against him has been dissipated. The Austrian courts interpret this provision in the sense that the acquittal must also have removed any suspicion against the accused.

44. It is not the function of the Convention organs to rule in abstracto on the compatibility of legal rules with the Convention (Eur. Court H.R., Golder judgment of 21 February 1975, Series A no. 18, p. 19, para. 39). In the present case the Commission is not called upon to examine whether the above legal provision is compatible with the Convention. It only has to review the manner in which it was applied (cf. Eur. Court H.R., Adolf judgment, loc. cit., p. 18, para. 39; Nölkenbockhoff judgment, loc. cit., p. 87, para. 41).

45. The Commission has held that no right to compensation for lawful detention on remand is guaranteed by the Convention in a case where the accused is eventually acquitted or the proceedings are discontinued (cf. No. 9108/80, Dec. 14.5.81, D.R. 24 p. 232; No. 9912/82, Lutz v. Federal Republic of Germany, Comm. Report 18.10.85, para. 43; No. 10282/83, Englert v. Federal Republic of Germany, Comm. Report 9.10.85, para. 41; and No. 10300/83, Nölkenbockhoff v. Federal Republic of Germany, Comm. Report 9.10.85, para. 42).

46. However, like any other judicial decisions taken after an acquittal those concerning compensation claims must not violate the presumption of innocence enshrined in Article 6 para. 2 (Art. 6-2). They are required to "presume" that the person concerned is "innocent" as he has not been "proved guilty according to law".

47. The references to "suspicion" against the applicant made by the Austrian courts did not relate to the issue of the justification of the pre-trial suspicion. The impugned remarks of the courts referred to

a suspicion which they believed continued to exist against the applicant even after his acquittal by the Court of Assizes because in their view that court's judgment had not dissipated the said suspicion.

48. In the Commission's view the criminal courts' judicial authority would be severely undermined if after an acquittal a suspicion could be maintained that the accused had committed the offences dealt with at the trial. The role of the courts, as conceived in Article 6 (Art. 6) in general and which also finds its expression in the principle of the presumption of innocence laid down in Article 6 para. 2 (Art. 6-2) excludes such a suspicion in the case of a person whose record has been cleared by a final acquittal.

49. In the present case the Austrian courts moreover did not limit their findings to the assumption of a suspicion continuing after the applicant's acquittal. In the decision of 10 December 1986 the Regional Court also suggested that such a suspicion could continue to provide an argument for the "guilt" of the suspect. The Regional Court's decision further relied on facts in respect of which the applicant had been acquitted (admissions made to a fellow prisoner). The Court of Appeal expressly stated that it did not consider itself bound by the applicant's acquittal.

50. It follows that the statements made by the Austrian courts in the decisions to refuse the applicant compensation for unjustified detention were incompatible with the presumption of innocence.

Conclusion

51. The Commission concludes, by 18 votes to 1, that there has been a violation of Article 6 para. 2 (Art. 6-2) of the Convention.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)

Dissenting Opinion of Sir Basil HALL

In my opinion there has been no violation of Article 6 para. 2 in this case. The paragraph reads:

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

Mr. Sekanina had been acquitted after a trial by jury. He claimed compensation for damage suffered as a result of his having been kept in provisional detention pending trial. That matter was not dealt with by the trial court, but by the Regional Court of Linz and, on appeal, by the Linz Court of Appeal.

The issue before those courts was not whether he was guilty of the offence with which he had been charged. Their jurisdiction indeed only arose after an acquittal. They had to determine whether "the suspicion that the injured person has committed the offence in question has been dissipated". In these circumstances I do not consider that Mr. Sekanina can be regarded as having been, at the time at which the Linz courts dealt with his claim, a person charged with a criminal offence.

Even if that were not the case I do not find that the remarks made by the courts amounted to a statement of guilt which offended against the principle of the presumption of innocence.

I do not read the judgment of the Court of Appeal as questioning the decision of the jury. The legislation made it plain that acquittal was not conclusive as to entitlement to compensation. It had also to be shown that suspicion had been dissipated. The court was therefore

justified in saying that the acquittal was not binding on them. The courts' statements do not in the circumstances offend against Article 6 para. 2. They merely reflect the view that all elements of suspicion had not been disproved, a view which they were required to formulate under national legislation, which was not of itself incompatible with Article 6 para. 2 of the Convention.

APPENDIX I

HISTORY OF PROCEEDINGS

Date	Item
21 April 1987	Introduction of the application
10 August 1987	Registration of the application
A. Examination of Admissibility	
4 September 1989	Commission's decision to invite the Government to submit observations on the admissibility and merits of the application
2 December 1989	Government's observations
9 January 1990	Applicant's observations in reply
3 September 1991	Commission's decision to declare the application admissible
B. Examination of the merits	
5 September 1991	Decision on admissibility transmitted to the parties
11 January 1992	Commission's consideration of the state of proceedings
14 May 1992	Commission's deliberations on the merits and final votes
20 May 1992	Adoption of the Report