

EUROPEAN COMMISSION OF HUMAN RIGHTS

FIRST CHAMBER

Applications Nos. 21089/92, 21443/93 and 22476/93

G.M. and U.B.

against

Austria

REPORT OF THE COMMISSION

(adopted on 9 April 1997)

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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 applications

2. The first applicant is an Austrian citizen, and the second applicant is a German citizen. They both live in Graz, and were represented before the Commission by Ms. E. Berchtold-Ostermann, a lawyer practising in Vienna.

3. The applications are directed against Austria. The respondent Government were represented by Mr. F. Cede, Agent of the Austrian Federal Government.

4. The case concerns administrative criminal proceedings for a series of breaches of working hours' regulations in the Styrian hospitals of which the applicants were managers (Geschäftsführer).

B. The proceedings

5. The applications were introduced on 9 October 1992, 26 February 1993 and 19 August 1993 respectively. They were registered on 16 December 1992, 26 February 1993 and 19 August 1993 respectively.

6. On 11 May 1994 the Commission (First Chamber) decided to join the applications and, pursuant to Rule 48 para. 2 (b) of its Rules of Procedure, to give notice of the applications to the respondent Government without inviting the parties, at that stage of the proceedings, to submit written observations on the admissibility and merits of the case.

7. On 12 October 1994 the Commission (First Chamber) resumed its examination of the case and decided to request the Government whether, in the light of the Article 31 Reports adopted on 19 May 1994 in similar cases, they wished to waive the possibility of submitting observations on the admissibility and merits of the complaints under Article 6 para. 1 of the Convention. It declared inadmissible the remainder of the applications.

8. The Government submitted their observations on 1 February 1995. The applicants replied on 23 March 1995.

9. On 17 January 1996 the Commission declared the remainder of the applications admissible.

10. The text of the Commission's decision on admissibility was sent to the parties on 29 January 1996 and they were invited to submit such further information or observations on the merits as they wished. No such observations were submitted, save that on 4 February 1997 the Government informed the Commission that they did not wish to make further observations.

11. 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. In the light of the parties' reaction, the Commission now finds that there is no basis on which such a settlement can be effected.

C. The present Report

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

Mrs.	J. LIDDY, President
MM.	M.P. PELLONPÄÄ
	E. BUSUTIL
	A. WEITZEL
	C.L. ROZAKIS
	L. LOUCAIDES
	B. MARXER
	B. CONFORTI
	I. BÉKÉS
	G. RESS
	A. PERENI?

	C. BÎRSAN
	K. HERNDL
	M. VILA AMIGÓ
Mrs.	M. HION
Mr.	R. NICOLINI

13. The text of this Report was adopted on 9 April 1997 by the Commission and is now transmitted to the Committee of Ministers of the Council of Europe, in accordance with Article 31 para. 2 of the Convention.

14. 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.

15. The Commission's decisions on the admissibility of the applications are annexed hereto.

16. 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

17. The applicants were convicted in administrative criminal proceedings of a series of breaches of working hours' regulations in the Styrian hospitals of which they were managers (Geschäftsführer). The hospitals system in Styria had been restructured to resemble private-law organisms. Penal orders were issued by the Leoben Works Inspectorate in 1988 and 1989. The proceedings in Application No. 21089/92 were stayed by the Graz City Council, and the applicants were convicted and fined by the Styrian Provincial Governor on the Works Inspectorate's appeal. In Applications Nos. 21443/93 and 22476/93 the applicants were fined by the Works Inspectorate and themselves appealed. The fines imposed were as follows.

Application No. 21089/92

The first applicant: a total of AS 417,850.00, with 541? days' detention in default;

The second applicant: a total of AS 425,800, with 561? days' detention in default.

Application No. 21443/93

Both applicants: a total of AS 131,200 each, with 164 days' detention in default each.

Application No. 22476/93

Both applicants: a total of AS 115,100 each, with 338 days' detention in default each.

18. The Styrian Provincial Governor's decisions on the appeals are dated 17 December 1989 (Application No. 21089/92), 18 February 1992, 10 August 1992, 17 August 1992, and 20 October 1992 (Application No. 21443/93) and 16 February 1993, 8 March 1993, and 14 April 1993 (Application No. 22476/93).

19. On 27 February 1992 (Application No. 21089/92) and on 15 June 1992 (Application No. 21443/93) the Constitutional Court rejected the applicants' constitutional complaints, and on 30 September 1993, 11 November 1993 (Application No. 21089/92), 25 November 1993 (Application No. 21443/93), 25 November 1993 and 19 January 1994 (Application No. 22476/93) the Administrative Court dismissed the applicants' administrative complaints.

III. OPINION OF THE COMMISSION

A. Complaint declared admissible

20. The Commission has declared admissible the applicants' complaint that their conviction in administrative criminal proceedings was not accompanied by the requisite procedural guarantees, in particular that the Administrative Court was not a "tribunal" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

B. Point at issue

21. The only point at issue is whether there has been a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

C. As regards Article 6 (Art. 6) of the Convention

22. Article 6 (Art. 6) of the Convention provides, so far as relevant, as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ..."

23. The applicants claim that they did not have the benefit of a "tribunal" in the administrative criminal proceedings against them.

24. The Government, in their observations on admissibility and merits of 1 February 1995, considered that the case did not disclose a violation of the Convention. On 4 February 1997, they informed the Commission that they did not wish to submit further observations in the light of the judgments of the European Court of Human Rights in the Schmutz and others cases of 23 October 1995.

25. The Commission recalls that in a series of judgments (Eur. Court HR, Schmutz v. Austria, Umlauf v. Austria and Grading v. Austria judgments of 23 October 1995, Series A no. 328-A, 328-B and 328-C, and Pramstaller v. Austria, Palaoro v. Austria and Pfarrmeier v. Austria, Series A no. 329-A, 329-B and 329-C), the European Court of Human Rights found that the proceedings determined a "criminal charge" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, that the Austrian reservation to Article 5 (Art. 5) did not apply to the criminal administrative proceedings at issue, and that neither the Constitutional Court (Verfassungsgerichtshof) nor the Administrative Court (Verwaltungsgerichtshof) had the "full jurisdiction" required by Article 6 (Art. 6) in criminal cases.

26. In the present case, too, the administrative criminal proceedings in Applications Nos. 21089/92 and 21443/93 were considered by the Constitutional Court and Administrative Court, and the administrative criminal proceedings in Application No. 22476/93 were considered by the Administrative Court. Those courts had the same jurisdiction as they had in the cases of Schmutz and others.

27. The Commission therefore finds that the applicants did not have access to a "tribunal" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

CONCLUSION

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

M.F. BUQUICCHIO  
Secretary  
to the First Chamber

J. LIDDY  
President  
of the First Chamber