

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

FIRST SECTION

CASE OF AIGNER v. AUSTRIA

(Application no. 28328/03)

JUDGMENT

STRASBOURG

10 May 2012

FINAL

10/08/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Aigner v. Austria,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach*, Deputy Section Registrar*,

Having deliberated in private on 17 April 2012, and

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

PROCEDURE

1. The case originated in an application (no. 28328/03) 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 Johann Aigner ("the applicant"), on 16 August 2003.

2. The applicant, who had been granted legal aid, was represented by Mrs P. Steinbauer, a lawyer practising in Graz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry of European and International Affairs.

3. The applicant alleged that the criminal proceedings against him had been unfair because the Austrian courts refused to grant his request for the further hearing of witnesses.

4. By a decision of 15 February 2007 the Court declared the application admissible.

5. Neither the applicant nor the Government filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1954 and lives in Graz.

7. On 20 March 2001 Mrs K was questioned by the police after shouting from the window of the applicant's room. She stated that she had met the applicant that afternoon in a public house. After visiting further pubs she had accompanied him to his rented room where, she alleged, he had attempted to rape her. On 21 March 2001 Mrs K was again questioned by the police and criminal proceedings were instituted against the applicant.

8. Between 1.04 p.m. and 3.16 p.m. on 18 April 2001 Mrs K was questioned by the investigating judge in the presence of the applicant, his lawyer, a psychiatric expert Mr H and the court stenographer. The applicant and his lawyer were given the opportunity to put questions to Mrs K and the hearing was recorded on video. Mrs K stated that in the course of the attempted rape the applicant had hit her across the left temple, grabbed her by the hair and threatened her with a knife. In the course of the struggle she had injured her hand on the knife. Mrs K also stated that she had worked as a prostitute between 1990 and 1996/97, but said that the applicant had been unaware of this. At the end of the examination the applicant's counsel stated that she had no further questions to put to Mrs K. Subsequently the questioning was transcribed and the transcript ran to 29 pages.

9. On 9 October 2001 the Graz Regional Court (*Landesgericht*) convicted the applicant of attempted rape with violence. At the trial Mrs K refused to give evidence. The applicant appealed to the Supreme Court (*Oberster Gerichtshof*), which upheld his plea of nullity and quashed the conviction. It found that the proceedings before the Regional Court were defective under Article 258 of the Code of Criminal Procedure (*Strafprozeßrechtsordnung*) as the Regional Court had based its findings on Mrs K's statements to the police, which had not been read out at the trial.

10. The Regional Court then resumed the proceedings in a new composition. At hearings on 1 July, 26 August, 15 October and 19 November 2002, it heard evidence from the applicant and further witnesses. These witnesses included Mr S, a waiter working in one of the pubs which the applicant had visited with Mrs K, Mrs P, the innkeeper of another pub, and Mr L, Mrs K's partner. In the course of their testimony these witnesses made *inter alia* the following statements: Mr S, who had previously stated that he had noticed a blue mark on Mrs K's left temple, now said that he did not know exactly where the blue mark was and that he had not seen Mrs K's face. Mrs P stated that Mrs K's behaviour often became erratic after she had consumed alcohol, that she frequently sought refuge from her partner and later invented a pretext, that her partner beat her

and that she often had black eyes. Mr L stated that Mrs K had worked as a prostitute but had stopped doing so some months prior to the incident.

11. The Regional Court heard evidence from four police officers who had been called to the scene. All of them had noticed a knife wound on Mrs K's hand. Two officers had noticed a slight swelling on her temple. Another police officer had noticed loose strands of Mrs K's hair including some on the applicant's clothes.

12. The Regional Court also heard evidence from Mr H, who had submitted an expert opinion on the question of the extent to which Mrs K's alcohol level at the material time had affected her ability to remember the events. Mr H stated that Mrs K's statements were likely to be true.

13. Mrs K was invited to give evidence while the applicant, pursuant to Article 250 of the Code of Criminal Procedure, was taken into an adjacent room. However, as Article 152 § 1 subsection 2a of the Code of Criminal Procedure entitled her to do, Mrs K refused to give evidence and requested that the statements she had made to the police and the investigating judge be read out instead. The court granted her request. The Court also granted the applicant's request for the video recording of her deposition before the investigating judge to be shown. However, when played, the video recording turned out to be a blank tape.

14. The applicant contested Mrs K's credibility. He argued in particular that her account of how she had come to be in his room and of her conduct after the alleged offence was not plausible and requested the court to inspect the scene. He further contended that there were a number of discrepancies between the events as described by Mrs K to the police and those she had described to the investigating judge, as well as between her evidence and the evidence given by the witnesses, Mr S, Mr L and Mrs P, at the trial. He therefore requested the court to call Mrs K again and, to the extent his opinion was of relevance for the court, the expert witness Mr H. The applicant submitted that Mr H should also give evidence on the methods he had used to assess Mrs K's credibility and the kind of questions he had asked when she appeared before the investigating judge. The applicant argued, lastly, that, in view of the large number of contradictions in the evidence given by Mrs K, who was the sole prosecution witness, it was essential for the court to view the video recording of her hearing in order to be able to assess her credibility. He added that, if the recording could not be shown, then he should be given the benefit of the doubt and acquitted.

15. The court dismissed the applicant's requests for the further taking of evidence. It did not consider it useful to visit the scene as the room in question was no longer in the state it had been in at the material time. Furthermore, photographs of the premises could be seen in a file prepared by the police, and it was for the court to analyse the inconsistencies between Mrs K's and the applicant's differing statements. For the latter reason it also refused to put further questions to Mr H. Lastly, it dismissed the applicant's

request for Mrs K to be called again to give further evidence as she had refused to give evidence at the trial and there was no indication that she would change her mind.

16. On 19 November 2002 the Regional Court, sitting in a formation of two professional judges and two lay judges, convicted the applicant of attempted rape with violence. It relied partly on Mrs K's statements to the police and the investigating judge. It noted that Mrs K had been under the influence of alcohol to a considerable degree at the time of the events. The court accepted the applicant's argument that Mrs K had accompanied him to his room voluntarily. It found, however, that despite Mrs K's inability to recall the events immediately before and after the attempted rape, her allegations of assault were credible. It noted in this regard that they were consistent with the other evidence obtained in the proceedings, namely the injuries to Mrs K witnessed by the police officers. The court did not believe the applicant's account that he had invited Mrs K for drinks all afternoon and then to his room out of sympathy for her. It further noted that the applicant could not give any convincing reason for the fact that strands of Mrs K's hair had been spotted by a police officer on his clothes. Furthermore, it did not believe the applicant's assertions that Mrs K had injured herself in a fall on the way from the pub to his flat or that she had not suffered any other injuries, in particular the wound to her hand. Having regard to Mrs K's injuries and to the applicant's criminal record of eleven previous convictions, it sentenced the applicant to three years' imprisonment. Referring to a psychiatric expert opinion, it further ordered that he be detained in an institution for mentally ill offenders.

17. The applicant filed a plea of nullity with the Supreme Court (*Oberster Gerichtshof*) in which he complained *inter alia* about the dismissal of his requests for further evidence to be taken. He submitted in particular that the photographs to which the Regional Court had referred did not show the room as it was at the time of the events. He argued that in view of the various inconsistencies in Mrs K's description of the events, the Regional Court should have visited the scene in order to stage a reconstruction. He further argued that the proceedings had been conducted contrary to the direct evidence rule (*Unmittelbarkeit*) in that the trial court had not seen the video recording of the hearing at which the depositions were taken. In view of this and of new evidence that had come to light at the trial, namely the statement by Mrs P that Mrs K frequently made up stories as she feared being beaten up by her partner, the trial court should have recalled Mrs K or, at least, allowed further questions to be put to Mr H. In the applicant's submission, the proceedings had therefore violated his right under Article 6 of the Convention to conduct his defence effectively.

18. On 20 February 2003 the Supreme Court rejected the applicant's plea of nullity. It noted that no inspection of the scene was necessary as the applicant's intention was to prove that Mrs K's allegations concerning the

way to his room and her behaviour after the attempted rape were not true; however, these facts had not been relevant to the court's decision. As regards his request to call Mrs K again, the applicant had not submitted any reasons why Mrs K would be prepared to give evidence after refusing to do so at the trial on 1 July 2002. The Supreme Court also found that the applicant's request to hear further evidence from Mr H had not been sufficiently substantiated as it was conditional. In any event, the Regional Court had not relied on Mr H's expert opinion in its judgment. The Supreme Court noted, lastly, that the Regional Court had dealt with the inconsistencies between Mrs K's statements to the police and to the investigating judge and between her statements and Mrs P's statement in the context of its assessment of evidence, an assessment that appeared logical.

19. On 9 April 2003 the Graz Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal, but granted the Public Prosecutor's cross-appeal and increased the sentence to four years' imprisonment. That decision was served on the applicant's counsel on 9 May 2003.

II. RELEVANT DOMESTIC AND EUROPEAN UNION LAW

20. Article 258 of the 1975 Code of Criminal Procedure (*Strafprozessordnung*), provides that all evidence must in principle be taken at the trial. In particular, witnesses and experts must make their statements orally before the court. Documents may only be used as evidence if they have been read out in court.

21. Article 252 lays down that court transcripts of the questioning of witnesses, other official documents in which statements of witnesses have been recorded and technical recordings of the questioning of witnesses may only be read out or shown at the trial if the witnesses concerned are entitled to refuse to give evidence at the trial (Article 152) and the parties have had the opportunity to participate in the questioning (Article 162a and 247).

22. Article 162a § 1 of the 1975 Code of Criminal Procedure provides for an adversarial hearing before the investigating judge if, on factual or legal grounds, there is reason to fear that the hearing of a witness will not be possible at the trial. The public prosecutor, the defendant and the defendant's lawyer should be given an opportunity to attend the hearing and question the witness.

23. Article 152 § 1 subsection 2a states that victims of sexual offences by the accused are exempted from giving evidence at the trial if there has been an adversarial hearing of the victim in the preliminary proceedings. This provision was introduced as part of the 1998 reform of the Code of Criminal Procedure. Prior to this reform, only minors aged under fourteen at the time of an alleged sexual offence were exempted from giving evidence at trial. The relevant explanatory notes to the government bill (*Erläuterungen zur Regierungsvorlage*) state:

> "In fact it is to be assumed that the manner in which and date on which the victim gives evidence in criminal proceedings are closely linked to the context of the conflicting aims of victim protection, defence rights and the interest of prosecution. The 1993 reform of the Code of Criminal Procedure has already taken account of the necessary rights for the defence to participate in the proceedings and to question [the victim] and these are also relevant to the provisions of the European Convention of Human Rights. However, it would also appear to be in the interest of victims of sexual offences aged over fourteen for them to be questioned only once, as, in general, making a statement places a heavy mental burden on them. On the other hand, it cannot be overlooked that if the victim is only questioned once and at an early date, there is a danger that it will not be possible to obtain complete consistency between this testimony and the results of subsequent investigations or examinations ... However, the argument in favour of nevertheless increasing procedural safeguards for the alleged victims of sexual offences is the danger of the court proceedings causing damage and traumatisation [to the victim] (secondary victimisation) which has, incidentally, been highlighted by all the experts who work with such victims. When responsibly weighing these interests of the victim against the interests of ascertaining the facts, preference must nevertheless be given to the protection of the victim, especially since it is usually possible to at least partly counterbalance the possible negative effects on evidence by corresponding 'case management' and since an examination at a potentially early date is not only in the interest of the witnesses but also promotes the purpose of the procedure, as recollections will still be fresh."

24. Article 250 of the 1975 Code of Criminal Procedure provides that the presiding judge at the trial may exceptionally order an accused to be held in an adjacent room while a witness gives evidence. The accused must be informed of all statements made in his absence.

25. On 1 January 2008 the Code of Criminal Procedure Amendment Act (*Strafprozessreformgesetz*) entered into force. While this act brought major changes in particular for the proceedings at the pre-trial stage, the above provisions remained essentially unchanged, even though the numbering of some of the Articles described changed.

26. Article 3 of Council Framework Decision no. 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings requires each Member State *inter alia* to supply evidence and to take appropriate measures to ensure that its authorities question victims only in so far as necessary for the purpose of criminal proceedings. Articles 2 and 8(4) require each Member State to make every effort to ensure that victims are treated with due respect for their personal dignity during proceedings, to ensure that particularly vulnerable victims benefit from specific treatment best suited to their circumstances and to ensure that where there is a need to protect victims, particularly those most vulnerable, from the effects of giving evidence in open court, victims may, by decision taken by the court, be entitled to testify in a manner enabling that objective to be achieved, by any appropriate means compatible with its basic legal principles.

27. In its judgment of 16 June 2005 in case no. C-105/03, the European Court of Justice stated that the objectives of these provisions consist, in particular, in ensuring that particularly vulnerable victims receive "specific

treatment best suited to their circumstances" and the benefit of special hearing arrangements that are capable of guaranteeing to all victims treatment which pays due respect to their individual dignity and gives them the opportunity to be heard and to supply evidence, and in ensuring that those victims are questioned "only insofar as necessary for the purpose of criminal proceedings". Where national legislation allows testimony to be given only once, during the preliminary enquiries, a national court should be able, in respect of particularly vulnerable victims, to use a special procedure if it best corresponds to the situation of the victims and is necessary in order to prevent the loss of evidence, to reduce the repetition of questioning to a minimum and to prevent the damaging consequences, for the victims, of their giving testimony at the trial.

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

28. The applicant complained that the criminal proceedings against him had been conducted in breach of his right to defend himself effectively. He relied on Article 6 §§ 1 and 3 (d) of the Convention which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"

A. Submissions by the parties

29. The applicant complained that the criminal proceedings had been conducted in breach of his right to conduct his defence effectively. He referred in this regard to the courts' refusal to put further questions to Mrs K or, alternatively, the expert witness Mr H at the trial and their refusal to visit the scene of the alleged offence. The applicant also submits that the Austrian courts did not correctly assess the evidence before them.

30. The applicant contended that while it was true that he and his counsel had been able to question Mrs K during the preliminary proceedings, they had not been able to confront her with the new evidence that had been obtained at the trial, namely Mrs P's statement that Mrs K had often invented stories in order to avoid being beaten by her partner. He submitted that, in accordance with its duty to ascertain the truth *ex officio*, the court should have examined Mrs K again. As the video recording of Mrs K's testimony could not be shown, the court had not been able to form an impression of the prosecution's only eye witness or, therefore, to assess her credibility. This omission was all the more important in that Mrs K was a former prostitute and an alcoholic. Furthermore, an inspection of the scene should have been carried out. There were discrepancies and incoherencies in Mrs K's description of the events. For instance, she had stated that the applicant had hit her in the face; however, at the trial another witness had stated that he had noticed an injury to her face before the time the offence was alleged to have been committed. After the alleged attempted rape the police could had found no evidence of a struggle in the room. Furthermore, Mrs K's description of the way to the room was incorrect. Further questions to the expert would have confirmed that Mrs K was not a credible witness.

31. The Government argued that an extremely comprehensive adversarial hearing of Mrs K had taken place before the investigating judge in the presence of the applicant and his counsel, who had had the opportunity to put questions. Subsequently, as Mrs K was entitled to refuse to give evidence, her testimony had been read out at the trial. This was admissible evidence under domestic law. It had not been possible to show the video recording, but in any event, this was not a mandatory requirement. The first-instance court had been able to obtain a clear impression of the victim's evidence as a comprehensive record had been kept. Moreover, the applicant had not indicated any reasons why Mrs K would be prepared to give evidence at the trial despite her previous refusal to do so.

32. While the relevant domestic legislation restricted the direct taking of evidence at trial in order to avoid further victimisation of a witness by repeated questioning, fairness was nevertheless guaranteed by the fact that in such cases the investigating judge was able to form an immediate impression of the witness. In criminal proceedings concerning alleged sexual offences courts had to weigh the victim's interest against that of the accused and strike a fair balance. The legislature considered it necessary to restrict the questioning of victims of sexual offences to the extent necessary to protect the victim, for whom giving evidence was generally a traumatic experience. The Government referred in this regard to the explanations that had been given in the relevant government bill (see the section on "Relevant domestic and European Union law" above). The right of victims to refuse to give evidence at trial stemmed from the experience that requiring a victim to recount a sexual assault in detail under repeated questioning placed a special

burden on him or her and had, therefore, to be kept to an absolute minimum. In this regard the Government further referred to EU legislation, namely Council Framework Decision 2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings and its interpretation by the European Court of Justice in its judgment of 16 June 2005 in case no. C-105/03 (see the section on "Relevant domestic and European Union law" above). In the present case, a balance had been struck between Mrs K's and the applicant's rights as the first-instance court had not relied exclusively on Mrs K's statements. It had dealt with the inconsistencies in Mrs K's own statements and between her statements and the statement of Mrs P. It had had regard to Mrs K's considerable alcohol consumption at the material time and the resulting gaps in her memory. It had then proceeded to follow those parts of Mrs K's description of the events it considered realistic and consistent with the other evidence. The domestic courts had also given sufficient reasons for dismissing the applicant's further requests to visit the scene and for leave to put further questions to the expert witness Mr H.

B. The Court's assessment

33. The Court recalls at the outset that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties in the Convention. In particular, 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 (see *Garcia Ruiz v. Spain*, judgment of 21 January 1999, *Reports of Judgments and Decisions* 1999-I, § 28, and *Pesti and Frodl v. Austria* (dec.), nos. 27618/95 and 27619/95, ECHR 2000-I).

34. The guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial set forth in paragraph 1. For this reason, the Court considers it appropriate to examine the complaints under the two provisions taken together (see *Artner v. Austria* judgment of 28 August 1992, Series A no. 242-A, p. 10, § 19; *Pullar v. the United Kingdom*, judgment of 10 June 1996, Reports 1996-III, § 45; and *Meftah and Others v. France* [GC], nos. 32911/96, 35237/97 and 34595/97, § 40, ECHR 2002-VII).

35. The Court reiterates that the admissibility of evidence is governed primarily by the rules of domestic law. The Court's task under the Convention is not to rule on whether witnesses' statements were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). All the evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, however. As a general rule, paragraphs 1 and 3 (d) of

Article 6 cannot be interpreted as requiring in all cases that questions be put directly by the accused or his lawyer, whether by means of cross-examination or by any other means, but rather that the accused must be given an adequate and proper opportunity to challenge and question a witness against him, either when the witness makes his statement or at a later stage. The use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with the provisions cited above, provided that the rights of the defence have been respected (see *Saïdi v. France*, 20 September 1993, § 43, Series A no. 261-C). Even where such a statement is the sole or decisive evidence against a defendant, its admission in evidence will not automatically result in a breach of Article 6 § 1. However, the Court will examine in each case whether there were sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence (*Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 147, 15 December 2011).

36. Furthermore, Article 6 does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to call a witness (see, among many other authorities, *Accardi and Others v. Italy* (dec.), no. 30598/02, ECHR 2005-II, with further references; see also *Asch v. Austria*, judgment of 26 April 1991, Series A no. 203, § 27).

37. The Court must also have regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the private life of the alleged victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence (*S.N. v. Sweden*, no. 34209/96, § 47, ECHR 2002-V, and *Bocos-Cuesta v. the Netherlands*, no. 54789/00, § 69, 10 November 2005 with further references).

38. Turning to the circumstances of the present case, the Court observes that in the criminal proceedings against him the applicant had been charged with the offence of attempted rape and Mrs K. was the purported victim of this crime who was called upon to give evidence on that matter. However, she did not attend the trial against the applicant. The Court reiterates in this respect that there must be a good reason for the non-attendance of a witness and that this requirement for admitting the evidence of an absent witness is a preliminary question which must be examined before any consideration is

given as to whether that evidence was sole or decisive (see *Al-Khawaja and Tahery*, cited above, § 120).

39. Given the Court's particular regard to the special features of criminal proceedings concerning sexual offences, and the need to take specific measures for the purpose of protecting the victim, the Court is satisfied that good reasons for the non-attendance of Mrs K. of the trial against the applicant existed.

40. The Court notes further that Mrs K's description of events constituted decisive evidence on which the courts' findings were based as the other witnesses heard by the Regional Court were not eyewitnesses and gave evidence only as to their perception of Mrs K and events before and after the commission of the alleged offence. The Court must, therefore, examine whether the applicant was provided with an adequate opportunity to exercise his defence rights within the meaning of Article 6 of the Convention in respect of the evidence given by Mrs K. In doing so, the Court will examine whether there were factors capable of counterbalancing the fact that the defence could not question Mrs K. before the trial court.

41. The Court notes that Mrs K was heard by the investigating judge in the presence of the applicant and his counsel, who put questions to her. The applicant maintains, however, that this questioning did not satisfy the requirements of Article 6 of the Convention as the video recording of this hearing was not available at the trial and the evidence given by other witnesses heard at the trial conflicted with Mrs K's description of the events. The trial court also refused his request made in the alternative for leave to put further questions to the expert witness Mr H. Lastly, it did not visit the scene of the alleged offence.

42. The Court observes that when questioning Mrs K in the preliminary proceedings the defence must have been aware that the position under Austrian law was that, after the adversarial hearing, Mrs K would be exempted from giving evidence at the trial as the proceedings related to a sexual offence. In the subsequent court proceedings Mrs K did indeed assert her right not to give evidence, despite twice being invited to do so. The trial court then read out the transcripts of the adversarial hearing, which the defence did not contest. The Court acknowledges that it would have been preferable for the trial court also to have been able to study the video recording of that hearing to gain a direct impression of Mrs K's conduct under questioning. However, in the light of the fact that at the time of the hearing Mrs K was an adult with full mental capacity, the Court cannot subscribe to the applicant's view that this was indispensable for the fair conduct of the proceedings (see, in contrast, *S.N. v. Sweden*, cited above, § 52).

43. Furthermore, the Court does not find that the applicant's inability to confront Mrs K with the testimony given by Mr S, Mr L and Mrs P at the trial restricted his rights of the defence to an unacceptable extent. In that

connection, it notes that the applicant was able to provide the Regional Court with his own version of the events and point out any incoherence in Mrs K's statements or inconsistencies with the statements of the other witnesses heard at the trial. Indeed, he did so at some length at the trial before the Regional Court.

44. As to the decision not to allow further questions to the expert witness Mr H or to visit the scene of the alleged offence, the Court notes that the Regional Court concluded, on the basis of logical and pertinent arguments, that this was of no relevance to the proceedings. It subsequently convicted the applicant on the basis of Mrs K's statements, which it found credible and corroborated by other evidence that had been examined at the trial, and gave detailed reasons why it did not believe the applicant's version of events.

45. The Court finds that this manner of proceeding fell within the domestic court's normal discretion in deciding on the relevance and admissibility of evidence and does not disclose any failure by the Austrian authorities to afford the applicant a fair hearing for the purposes of Article 6 §§ 1 and 3(d) of the Convention.

46. Accordingly, there has been no breach of Article 6 §§ 1 and 3 (d) of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 of the Convention.

Done in English, and notified in writing on 10 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Nina Vajić
Deputy Registrar	President