

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

FIRST SECTION

CASE OF KRUMPHOLZ v. AUSTRIA

(Application no. 13201/05)

JUDGMENT

STRASBOURG

18 March 2010

FINAL

18/06/2010

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

In the case of Krumpholz v. Austria**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 25 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 13201/05) 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 a German national, Mr Claus Krumpholz ("the applicant"), on 25 March 2005.

2. The applicant was represented by Mr K. Schelling, a lawyer practising in Dornbirn. The Austrian Government ("the Government") were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for European and International Affairs. The German Government did not make use of their right to intervene under Article 36 § 1 of the Convention.

3. The applicant alleged a violation of the right to silence and the presumption of innocence as he had been convicted of speeding on the sole ground of having refused to disclose the identity of the driver.

4. On 23 June 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Grafengehaig.

6. On 26 February 2003 at 3.03 p.m. the car of which the applicant is the registered keeper was recorded by police officers using a radar speed detector travelling at a speed of 181 k.p.h., thus exceeding the speed limit of 130 k.p.h.

7. On 26 March 2003 the Graz-Umgebung District Authority (*Bezirkshauptmannschaft*) ordered the applicant to disclose within two weeks the full name and address of the person who had been driving his car at the material time. The order referred to section 103(2) of the Motor Vehicles Act (*Kraftfahrzeuggesetz*) as its legal basis. The applicant did not reply.

8. On 14 April 2003 the Graz-Umgebung District Authority issued a provisional penal order (*Strafverfügung*). Relying on sections 20(2) and 99(3)(a) of the Road Traffic Act, it sentenced the applicant to pay a fine of 181 euros (EUR) with three days' imprisonment in default for speeding. In addition, relying on sections 103(2) and 134(1) of the Motor Vehicles Act, it sentenced the applicant to pay a fine of EUR 181 with three days' imprisonment in default for failure to comply with the order of 26 March 2003 to disclose the driver's identity.

9. The applicant lodged an objection against this decision. On 19 May 2003 he filed submissions stating that he had not been driving his car but that he refused to disclose the driver's identity as he considered this obligation to be at variance with Article 6 of the Convention.

10. Subsequently, the Graz-Umgebung District Authority heard evidence from the police officer who had initiated the proceedings for speeding. On 15 July 2003 the statement of the police officer, who had confirmed that the radar detector, which had been duly calibrated, had measured a speed of 181 k.p.h. and that he had recorded the number of the car, was communicated to the applicant and he was requested to submit his defence in respect of the speeding offence. At the same time he was informed that the proceedings for failure to disclose the identity of the driver had been discontinued.

11. By letter of 31 July 2003 the applicant, represented by counsel, maintained his defence.

12. On 15 October 2003 the Graz-Umgebung District Authority dismissed the applicant's objection and issued a penal order (*Strafverfügung*) in which it convicted him of speeding and imposed a fine of EUR 180 with three days' imprisonment in default. It also ordered him to pay procedural costs in the amount of EUR 18.

13. The authority noted that the applicant had refused to disclose who had driven his car on 26 February 2003 when it had been recorded exceeding the speed limit. The authority therefore concluded that he had himself been the driver. It observed that this presumption was based on the case-law of the Administrative Court, which had considered that in a case in which the registered keeper of a car did not disclose the driver's identity and

did not submit any exculpating evidence in his defence, the authority could reasonably conclude that the keeper himself had been the driver.

14. The applicant appealed to the Styria Independent Administrative Panel (*Unabhängiger Verwaltungssenat*). He maintained that the obligation to disclose the identity of the driver pursuant to section 103(2) was incompatible with Article 6 of the Convention, as was the drawing of inferences from the mere fact that he had refused to disclose the driver's identity. In this connection the applicant referred to *John Murray v. the United Kingdom* (8 February 1996, *Reports of Judgments and Decisions* 1996-I). In addition, he reiterated that he had not been driving his car on 26 February 2003 and had not even been in Austria at the relevant time. He further asserted that his car had been used regularly by a number of persons but that he had not kept any records and was therefore not in a position to provide the required information.

15. On 18 November 2003 the Styria Independent Administrative Panel dismissed the appeal. It dispensed with a hearing by virtue of section 51e(3) of the Administrative Offences Act (*Verwaltungsstrafgesetz*).

16. The Independent Administrative Panel's reasoning reads as follows:

> "In accordance with the principle of establishment of the facts of the authorities' own motion for the purposes of section 37 of the General Administrative Procedure Act (AVG), the material truth must be ascertained; in this regard the authorities are not bound by the facts submitted by the parties, but must establish the true facts by taking the necessary evidence. Under section 45(2) of the AVG the authorities must assess freely, giving careful consideration to the results of the investigation, whether or not a given fact is to be accepted as proven. On the basis of the principle that the court controls the conduct of the proceedings, articulated in section 39 of the AVG, the obligation to establish the facts lies with the authorities; this does not, however, dispense the party from the obligation to contribute to the establishment of the relevant facts. The obligation on the accused in criminal proceedings to cooperate means that he is not merely responsible for contesting the specific evidence against him, without submitting equally specific statements in reply and adducing the relevant evidence ... Nor can the appellant in the present case be released from this obligation by relying on Article 6 of the European Convention on Human Rights. On the contrary, the fact of refusing to name the driver of the vehicle amounts to an infringement of the obligation to cooperate as set forth above. Hence, merely asserting that he was not driving the vehicle registered in his name at the scene of the offence and at the material time runs counter to the appellant's obligation to contribute to the establishment of the relevant facts.
>
> In accordance with section 45(2) of the AVG the authorities therefore presume that the appellant himself was the driver. His statements are to be regarded as an attempt to justify his conduct. It has not been established during the proceedings, nor has the applicant seriously asserted in substance, that he could not have contributed to the establishment of the facts without incriminating himself and could not have been expected to do so.
>
> The offence with which the appellant was charged is therefore to be regarded as subjectively and objectively proven and imputable to him. His appeal submissions

concerning Article 6 of the European Convention on Human Rights are unfounded in relation to the offence with which he was charged."

Turning to the fixing of the sentence, the Independent Administrative Panel noted that the applicant had been charged with exceeding the speed limit substantially, by 45 k.p.h. As excessive speed on motorways was often the reason for serious or very serious traffic accidents, the imposition of a fine of EUR 180 had been appropriate.

17. The applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*). Referring to *John Murray* (cited above), he asserted that he had been convicted solely on account of the fact that he had made use of his right to remain silent. The Independent Administrative Panel had not been in possession of any evidence to indicate that he was the driver. Moreover, it had disregarded his defence that he had not been in Austria at the material time and was unable to provide the name of the driver as he had not kept any records. These procedural deficiencies were aggravated by the fact that the Independent Administrative Panel had failed to hold a hearing.

18. On 9 June 2004 the Constitutional Court declined to examine the applicant's complaint for lack of prospects of success.

19. On 19 October 2004 the Administrative Court declined to examine the applicant's complaint by virtue of section 33a of the Administrative Court Act, since the amount of the penalty did not exceed EUR 750 and no important legal issue was at stake.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. Section 51e of the Administrative Offences Act (*Verwaltungsstrafgesetz*) reads as follows:

"(1) The Independent Administrative Panel shall hold a hearing in public.

...

(3) The Independent Administrative Panel may dispense with an appeal hearing if

1. the appeal is based solely on an incorrect legal assessment, or

2. the appeal is directed solely against the amount of the penalty, or

3. the decision being appealed against imposed a financial penalty not exceeding 500 euros

4. the appeal is directed against a procedural decision

and no party has requested that a hearing be held. Any request by the appellant for a hearing to be held must be made in the appeal itself..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

21. The applicant complained that his conviction for speeding on the sole ground that he had refused to disclose the identity of the driver violated Article 6 of the Convention which, in so far as material, reads as follows:

> "1. In the determination of ...any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

22. The Government submitted that the applicant could not claim to be a victim as, according to their information, the fine imposed on him had not been enforced and could no longer be enforced as it was time-barred, since more than three years had elapsed since it had been imposed with final effect.

23. The applicant contested this assertion and submitted evidence in the form of a copy of the bank transfer covering the amount of the fine and the costs of the proceedings.

24. The Court notes that on the basis of the file it is established that the applicant paid the fine imposed on him. In any case, the question whether an applicant can claim to be a victim does not depend on actual prejudice being suffered. The question whether an applicant has actually been placed in an unfavourable position is not a matter for Article 34 of the Convention and the issue of damage becomes relevant only in the context of Article 41 (see, among many authorities, *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 65, ECHR 2006-XI, and *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The Court therefore rejects the Government's argument that the applicant cannot claim to be a victim of the alleged violation.

A. Admissibility

25. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

26. The applicant maintained that his conviction violated Article 6 §§ 1 and 2 of the Convention. He submitted in particular that apart from the fact that he was the registered keeper of the car which had been recorded speeding on 26 February 2003, the authorities did not have any evidence against him. The fact that he had been found guilty of speeding merely because he had refused to disclose the identity of the driver violated his right to silence on the one hand and the presumption of innocence on the other. In addition, he asserted that the registered keeper's obligation to disclose the identity of the driver of the vehicle pursuant to section 103(2) of the Motor Vehicles Act in itself violated the right to silence.

27. The Government observed that the right to silence and the presumption of innocence were closely connected and that they would therefore address both issues jointly. They noted at the outset that in the present case the applicant had not been convicted of failure to disclose the identity of the driver, as the proceedings regarding that offence had been discontinued. The applicant had been convicted of the underlying traffic offence, namely speeding, on the basis of evidence which had been freely evaluated by the authority.

28. Referring to *John Murray* (cited above) the Government stressed that the right to silence was not absolute and that it did not preclude the drawing of inferences from the accused's silence where, on the basis of the evidence obtained, the situation clearly called for an explanation. Furthermore, they explained that in administrative criminal proceedings the authorities were obliged to establish the relevant facts of their own motion and to take all necessary evidence. However, where facts were known only to one of the parties to the proceedings, the latter had to contribute to the establishment of the facts, if need be by submitting evidence. In that connection the silence of a party could be taken into account in the evaluation of the evidence.

29. In the Government's view the authorities in the present case had been confronted with a situation that clearly required an explanation from the applicant. His car had been recorded speeding and it had been for him to give a plausible reason as to why he had not been in Austria driving his car at the specified date and time and to offer some evidence. However, he had confined himself to stating that he had not been driving the car, which was regularly used by several persons and that owing to the lapse of time since the events he could no longer recall who had been the driver. In drawing the conclusion that the applicant had himself been the driver, the authorities had done no more than make use of their power to freely evaluate the evidence before them.

2. The Court's assessment

30. The Court considers that the right to silence and the privilege against self-incrimination as guaranteed by Article 6 § 1 and the presumption of innocence enshrined in Article 6 § 2 are closely linked, and it will therefore examine both aspects together (see, for instance, *John Murray*, cited above, §§ 57-58).

31. Although not specifically mentioned in Article 6 of the Convention, the right to silence and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 (see *John Murray*, cited above, § 45).

32. While the Court has accepted that the drawing of adverse inferences from an accused's silence does not in itself infringe Article 6, the question of a possible violation has to be determined in the light of all the circumstances of the case, having particular regard to the situations where inferences may be drawn, the weight attached to them by the national courts in their assessment of the evidence before them and the degree of compulsion inherent in the situation (ibid., § 47). The *John Murray* judgment concerned the application of a law which allowed the drawing of inferences from the accused's silence, where the prosecution had established a case against him which clearly called for an explanation. Considering, on the facts of the case, that the evidence adduced at the trial constituted a formidable case against the applicant, the Court found that the drawing of such inferences, which was moreover subject to important procedural safeguards, did not violate Article 6 §§ 1 and 2 in the circumstances of the case (ibid., §§ 48-58).

33. Furthermore, the Court has held that the drawing of inferences from an accused's silence may also be permissible in a system like the Austrian one where the courts freely evaluate the evidence before them, provided that the evidence is such that the only common-sense inference to be drawn is that the accused has no answer to the case against him (see *Telfner v. Austria*, no. 33501/96, § 17, 20 March 2001).

34. Similarly, a person's right in a criminal case to be presumed innocent and to require the prosecution to bear the onus of proving the allegations against him or her is not absolute, since presumptions of fact or law operate in every criminal-law system and are not prohibited in principle by the Convention, as long as States remain within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence (see *Salabiaku v. France*, 7 October 1988, § 28, Series A no. 141-A).

35. In addition to these general principles, the Court reiterates its case-law concerning the right to silence and the presumption of innocence in the specific context of the prosecution of road traffic offences.

36. In *O'Halloran and Francis v. the United Kingdom* [GC] (nos. 15809/02 and 25624/02, §§ 55-63, ECHR 2007-VIII) and,

subsequently, in *Lückhof and Spanner* (nos. 58452/00 and 61920/00, §§ 52-59, 10 January 2008), the Court found that the obligation for the registered keeper of the vehicle to disclose, on pain of a fine, who had been the driver at the time when a traffic offence was committed did not violate the right to silence and the privilege against self-incrimination. In coming to that conclusion it had regard to the fact that although direct compulsion was brought to bear on the respective applicants as the registered keepers of a car, it had to be seen in the specific context of the regulatory regime for the use of motor vehicles in which car owners and drivers subjected themselves to certain responsibilities and obligations. The Court also had regard to the nature of the penalties and the limited nature of the inquiry permitted. Finally, it noted that certain procedural safeguards were in place so that the registered keeper of the car was not left without any defence.

37. In *Falk v. the Netherlands* (dec.), (no. 66273/01, 19 October 2004) the Court found that the registered owner's liability for minor traffic offences was not incompatible with Article 6 § 2 of the Convention. In reaching that conclusion it had regard to its case-law concerning the use of presumptions in criminal law, and also noted that the person concerned could challenge the fine before a trial court with full competence in the matter and was not left without any means of defence.

38. The Court observes that in the present case the authorities did not make use of the possibility to punish the applicant for failure to disclose the identity of the driver under section 103(2) of the Motor Vehicles Act. In fact these proceedings were discontinued. For reasons which remain unclear, the authorities chose to prosecute the applicant for the underlying traffic offence, namely speeding. In this context it is noted that Austrian law does not contain any presumption that the registered keeper of a motor vehicle is to be considered as the driver unless he proves otherwise, nor does it establish the registered keeper's liability for traffic offences committed with the motor vehicle.

39. It is therefore to be examined in accordance with the general principles set out above whether or not the applicant's conviction for speeding violated Article 6 §§ 1 and 2.

40. The Government argued in essence that the Independent Administrative Panel, which freely evaluates the evidence before it, drew inferences from the manner in which the applicant conducted his defence in a situation that clearly required an explanation. The Court is not convinced by that argument. The only evidence which the Independent Administrative Panel possessed were a speed recording of the car of which the applicant was the registered keeper and the policeman's statement that this recording had been duly made. There was no evidence giving any indication as to the identity of the driver. Furthermore, the Independent Administrative Panel had before it the applicant's written submission in which he claimed that he had not been driving the car, had not even been in Austria at the material

time and was not in a position to provide the name and address of the driver as the car had been used regularly by a number of persons. The Court cannot find that in such a situation the only common-sense conclusion was that the applicant himself had been the driver. By requiring the applicant to provide an explanation although it had not been able to establish a convincing prima facie case against him, the Independent Administrative Panel shifted the burden of proof from the prosecution to the defence (see, *Telfner*, cited above, § 18).

41. Moreover, the Court notes that there were no sufficient procedural safeguards in place. The Independent Administrative Panel found that it had been for the applicant to make specific submissions as to his whereabouts and to submit evidence. In addition, pursuant to section 51e of the Administrative Offences Act, the Independent Administrative Panel, which was the first and only court to examine the case (see *Baischer v. Austria*, no. 32381/96, §§ 25-30, 20 December 2001), was not obliged to hold a hearing unless the applicant requested one. Thus, not only the burden of proof but the responsibility for the conduct of the proceedings was shifted on to the applicant. The Court considers that if the Independent Administrative Panel wished to draw inferences from the applicant's refusal to disclose the identity of the driver, it should have held a hearing of its own motion in order to question the applicant and to obtain a direct impression of his credibility.

42. In sum, the drawing of inferences in a situation which did not clearly call for an explanation from the applicant and without sufficient procedural safeguards being applied violated the applicant's right to silence and the presumption of innocence.

43. There has therefore been a violation of Article 6 §§ 1 and 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 234 euros (EUR) in respect of pecuniary damage, in the form of compensation for the fine imposed on him for speeding plus the procedural costs.

46. The Government commented that it was not for the Court to speculate what the outcome of the proceedings would have been had there been no violation of the Convention.

47. The Court reiterates that it is not for the Court to speculate as to what would have been the outcome of the proceedings if they had satisfied the requirements of Article 6 § 1 (see *Werner v. Austria*, 24 November 1997, § 72, *Reports* 1997-VII). It therefore rejects the applicant's claim for pecuniary damage. The applicant has not claimed any amount in respect of non-pecuniary damage. Consequently, the Court does not make any award under this head.

B. Costs and expenses

48. The applicant also claimed a total amount of EUR 8,598.48 for costs and expenses. This sum, which includes value-added tax, consists of EUR 4,674.48 for costs and expenses incurred in the domestic proceedings and EUR 3,924 for those incurred before the Court.

49. The Government submitted that the applicant's claim was excessive.

50. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

51. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 §§ 1 and 2 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 7,000 (seven thousand euros), plus any tax that may be chargeable to the applicant in respect of costs and expenses;
(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 18 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
DeputyRegistrar

Christos Rozakis
President