CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SCHLUGA v. AUSTRIA

(Applications nos. 65665/01, 71879/01 and 72861/01)

JUDGMENT

STRASBOURG

19 February 2004

FINAL

19/05/2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Schluga v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 29 January 2004,

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

PROCEDURE

1. The case originated in three applications (nos. 65665/01, 71879/01 and 72861/01) 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, Mrs Eveline Schluga ("the applicant"), on 19 January 2001, 29 May and 24 July 2001, respectively.

2. The applicant was represented by Mr W.L. Weh, a lawyer practising in Bregenz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. On 26 September 2002 the Court decided to join the applications, to declare them partly inadmissible and to communicate the complaint concerning the length of the proceedings to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the applications at the same time as their admissibility.

THE FACTS

4. The applicant was born in 1963 and lives in Bregenz. She complains about six sets of administrative criminal proceedings against her.

I. Proceedings complained of in application no. 65665/01

5. On 12 July 1994 the Bregenz District Administrative Authority (*Bezirkshauptmannschaft*) issued a penal order against the applicant for

prostitution contrary to sections 4 and 18 of the Vorarlberg Morals Act (*Sittenpolizeigesetz*) and sentenced her to twenty days' imprisonment. In addition, it imposed a fine of ATS 10,000.

6. On 21 November 1994 the District Authority issued another penal order against the applicant for having committed such offences on another occasion and sentenced her to thirty days' imprisonment. In addition, it imposed a fine of ATS 20,000.

7. The applicant appealed against the decisions. Subsequently, the proceedings were joined.

8. On 4 October 1995, after having held an oral hearing, the Vorarlberg Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) upheld both penal orders but reduced the prison sentence of the one dated 21 November 1994 to twenty days.

9. On 19 June 1996 the Constitutional Court (*Verfassungsgerichtshof*) refused to deal with the applicant's complaint for lack of prospects of success. Upon the applicant's request of 23 July 1996, it referred the case to the Administrative Court (*Verwaltungsgerichtshof*) by decision of 24 July 1996.

10. On 23 September 1996, upon the Administrative Court's request, the applicant filed supplementary submissions. Subsequently, on 31 October 1996 the Administrative Court refused the applicant's request that her complaint be given suspensive effect.

11. On 27 November 1996 the Independent Administrative Panel submitted its comments on the applicant's appeal.

12. On 3 July 2000 the Administrative Court dismissed the applicant's appeal as being unfounded. The decision was served on 19 July 2000.

B. Proceedings complained of in application no. 71879/01

13. On 27 October 1993 the Bregenz District Administrative Authority issued a penal order against the applicant for prostitution contrary to sections 4 and 18 of the Vorarlberg Morals Act and sentenced her to twenty days' imprisonment. In addition it imposed a fine of ATS 10,000.

14. On 1 February 1994 the District Authority issued another penal order against her for having committed such offences, sentencing her to twenty days' imprisonment. In addition it imposed a fine of ATS 10,000.

15. The applicant appealed against both decisions.

16. After having held an oral hearing in each case, the Vorarlberg Independent Administrative Panel, on 17 January and 21 March 1994, respectively, confirmed the decisions.

17. On 9 March and 3 August 1994, respectively, the applicant lodged complaints against both decisions with the Constitutional Court.

18. On 6 March 1995 the Constitutional Court, in joined proceedings, refused to deal with the applicant's complaint for lack of prospects of

success. Upon the applicant's request of 1 June 1995, it referred the case to the Administrative Court by decision of 3 July 1995.

19. On 27 November 1995 the Administrative Court quashed both decisions and referred the matter to the Independent Administrative Panel. It found that, when fixing the sentence, the authority had failed duly to establish the aggravating circumstances it had taken into account.

20. On 30 April 1996 the Independent Administrative Panel upheld the penal orders, but reduced the prison sentences to eighteen days' each and lifted the fines. On 2 October 1996 the applicant submitted a complaint to the Constitutional Court.

21. On 9 October 1996 the Constitutional Court again refused to deal with the applicant's complaint for lack of prospects of success. Upon the applicant's request of 30 October 1996, it referred the case to the Administrative Court by decision of 5 November 1996.

22. On 19 February 1997, upon the latter's request, the applicant filed supplementary submissions.

23. On 7 April 1997 the Vorarlberg Independent Administrative Panel filed its comments.

24. On 13 November 2000 the Administrative Court dismissed the complaint as being unfounded. The decision was served on 29 November 2000.

C. Proceedings complained of in application no. 72861/01

25. On 30 October 1995 the Bregenz District Administrative Authority issued a penal order against the applicant for having breached sections 4 and 9 of the Aids Act (*Aidsgesetz*) and imposed a fine of ATS 10,000.

26. After having held an oral hearing, the Vorarlberg Independent Administrative Panel, on 10 September 1996, upheld the decision. On 30 October 1996 the applicant lodged a complaint with the Constitutional Court.

27. Meanwhile, on 2 September 1996 the Bregenz District Administrative Authority issued a penal order against the applicant for prostitution contrary to section 4 and 18 of the Vorarlberg Morals Act and sentenced her to eighteen days' imprisonment.

28. After having held an oral hearing, the Vorarlberg Independent Administrative Panel, on 20 January 1997, confirmed the decision. On 10 March 1997 the applicant lodged a complaint with the Constitutional Court.

29. On 27 November 1997 the Constitutional Court, having joined the two sets of proceedings, declined to deal with the applicant's case for lack of prospects of success. Upon the applicant's request of 25 February 1998, it referred the case to the Administrative Court by decision of 9 March 1998.

30. The Administrative Court dealt with each set of proceedings separately.

31. On 18 June 1998 the applicant filed supplementary submissions in respect of both cases.

32. On 5 and 19 October 1998, respectively, the Independent Administrative Panel submitted its comments.

33. On 18 December 2000 the Administrative Court, in two separate decisions, dismissed the applicant's complaints as being unfounded. The decisions were served on 24 January 2001 (as regards the proceedings under the Aids Act) and on 29 January 2001 (as regards the proceedings under the Vorarlberg Morals Act).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

35. The Government contested that argument.

36. The Court considers that, as regards the two sets of proceedings complained of in application no. 65665/01, the period to be taken into consideration began on 12 July and 21 November 1994, respectively, when penal orders were issued against the applicant. It ended on 19 July 2000 when the decision of the Administrative Court, concerning both sets of proceedings which had been joined, was served. Thus, one set of proceedings lasted six years and the other lasted five years and eight months.

37. As to the two sets of proceedings complained of in application no. 71879/01 they started on 27 October 1993 and 1 February 1994, respectively, when penal orders were issued against the applicant and were terminated on 29 November 2000, when the decision of the Administrative Court, concerning both sets of proceedings which had been joined, was served. Thus one set of proceedings lasted seven years and one month and the other lasted six years and ten months.

38. As to the two sets of proceedings complained of in application no. 72861/01, the period to be taken into consideration started on 30 October 1995 and 2 September 1996, respectively, when penal orders were issued against the applicant. It ended on 24 and 29 January 2001,

respectively, when the Administrative Court's decisions were served. The first set of proceedings therefore lasted five years and three months and the second lasted four years and five months.

A. Admissibility

39. The Court notes that this complaint 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

40. The Government asserted that the criminal proceedings at issue were interrelated. They argued that the reasonable time requirement was met.

41. The applicant contended that the proceedings were of no complexity at all. The duration of the proceedings was mainly imputable to the Administrative Court, before which long periods of complete inactivity occurred.

42. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicants and of the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

43. The Court considers that the case was not particularly difficult to determine. It notes that the proceedings, which came before four levels of jurisdiction, lasted between four years and five months and seven years and one month. Their common feature is that, in each case, a considerable period of inactivity occurred before the Administrative Court between the date on which the Independent Administrative Panel submitted its comments and the date when the court gave its decision. This period of inactivity varies between two years and two months and three years and seven months.

44. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's case was not heard within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 3,633.65 euros (EUR) in respect of pecuniary damage, namely as compensation for the fines imposed in the proceedings complained of and EUR 32,400 in respect of non-pecuniary damage, namely as compensation for distress suffered on account of the duration of the proceedings and for the prison terms imposed in these proceedings.

47. The Government contended in particular that there is no causal link between the alleged violation and the pecuniary and non-pecuniary damage claimed.

48. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

49. Further, the Court observes that there is no causal link between the duration of the proceedings and the imposition of prison terms. However, the Court accepts that the applicant may have suffered stress and anxiety on account of the excessive length of the criminal proceedings against her. It therefore awards the applicant the following sums for non-pecuniary damage: EUR 4,000 in respect of the proceedings complained of in application no. 65665/01, EUR 5,000 in respect of the proceedings complained of in application no. 71897/01 and EUR 3,000 in respect of the proceedings complained of in application no. 72861/01, that is a total amount of EUR 12,000.

B. Costs and expenses

50. The applicant also claimed EUR 45,201.26 for the costs and expenses incurred before the domestic authorities and in the proceedings before the Court.

51. The Government asserted that none of the costs of the domestic proceedings were incurred in order to prevent the alleged violation and that the costs claimed for the Strasbourg proceedings are excessive.

52. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and

expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 3,000 for the proceedings before the Court. In making this award it has taken into account, on the one hand, that the present judgment concerns three applications and, on the other hand, that all three cases were only partially declared admissible.

C. Default interest

53. 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 applications admissible;

2. *Holds* that there has been a violation of Article 6 § 1 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 according to Article 44 § 2 of the Convention, EUR 12,000 (twelve-thousand euros) in respect of non-pecuniary damage and EUR 3,000 (three-thousand euros) in respect of costs and expenses plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 19 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President