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

FOURTH SECTION

DECISION

Application no. 8761/23
Julian HESSENTHALER
against Austria

The European Court of Human Rights (Fourth Section), sitting on 26 August 2025 as a Committee composed of:

Anne Louise Bormann*, President*,
Sebastian Răduleţu,
András Jakab*, judges*,

and Veronika Kotek, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 8761/23) 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") on 16 February 2023 by an Austrian national, Mr Julian Hessenthaler, who was born in 1980 and lives in St Pölten ("the applicant") and was represented by Ms E.J. Messerschmidt, a lawyer practising in Vienna;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the conviction of the applicant for drug trafficking and for the possession and use of forged official documents. Referring to Articles 6, 10 and 13 of the Convention, the applicant alleged that his criminal prosecution had been politically motivated as he had been one of the key figures who had triggered the "Ibiza affair" (*Ibiza-Affäre*).

2. The Ibiza affair was a political scandal in Austria which led to the collapse of the governing coalition and early elections in 2019. On 17 May 2019 a secretly recorded video of a meeting between two well-known politicians and an alleged niece of a Russian oligarch in a villa on the Spanish island of Ibiza was published in the media. The meeting took place in July 2017 and was a sting operation which had been arranged, *inter alia*, by the applicant. The conversation between the two politicians recorded on the video

revealed their willingness to engage in corrupt activities, circumvent party funding laws and covertly take control of non-party media.

3. The Vienna Public Prosecutor's Office (*Staatsanwaltschaft Wien*) and the Economic and Corruption Prosecutor's Office (*Wirtschafts- und Korruptionsstaatsanwaltschaft*) initiated criminal investigations against various individuals in relation to the Ibiza affair. In the course of the investigations, the applicant was accused of trafficking cocaine by several individuals who had been questioned. In particular, he was accused by K.H. of having sold large quantities of cocaine to S.K., who had also confessed to those offences. Furthermore, the applicant was accused of having procured a forged Slovenian identity card and a forged Slovenian driving licence.

4. Prior to the publication of the above-mentioned video and independently of the associated criminal investigations, the applicant was stopped by a police patrol in Vienna and subjected to a driver and vehicle check. The applicant identified himself with a forged Slovenian driving licence which was noticed by the police officers.

5. On 30 March 2022 the St Pölten Regional Court convicted the applicant of trafficking cocaine, procuring forged Slovenian official documents and using a forged Slovenian driving licence, and sentenced him to three years and six months' imprisonment. The court found that the applicant had sold a total of 1250 grams of cocaine with a purity of 50% to S.K. for 40 euros (EUR) per gram in 2017 and 2018. Furthermore, the applicant had obtained forged Slovenian identity documents, had kept them for a few weeks and had then passed them on to A.K. in 2019, from whom they were seized by the authorities during a house search. Moreover, the applicant had used a forged Slovenian driving licence to identify himself to police officers in 2019.

6. The court dismissed the applicant's allegations that the main witnesses S.K. and K.H. had given false statements concerning his involvement in drug trafficking. The applicant alleged that S.K. had been paid for the false testimony against him because he had arranged the secret recording of the video which had led to the Ibiza affair. The court heard several witnesses in that regard and held that there was no evidence to doubt the credibility of the statements made by S.K., who had also incriminated himself with his testimony. In addition, the applicant argued that K.H.'s statements during the criminal investigations and the oral hearing had been contradictory and inconsistent. The court noted that there had been certain inconsistencies in K.H.'s testimony and that she had appeared to be in a fragile mental state. The court therefore appointed a neurological and psychiatric expert to assess K.H.'s ability to testify. The expert stated that K.H. was able to testify but had been traumatised by the violent relationship with her former partner S.K. and by a situation in which she had been threatened by the applicant with a firearm. K.H. also had problems understanding more complex issues in German. In accordance with the expert's recommendations and with Article 250 of the Code of Criminal Procedure (hereinafter "the CCP"), the

court heard testimony from K.H. with the assistance of an interpreter and in the absence of the applicant while his lawyers remained present during the questioning. The applicant was informed of the content of the statements given by K.H. in his absence. Based on the personal impression gained at the oral hearing and on the expert findings, the court held that K.H.'s statements had been credible and essentially in line with S.K.'s account of the applicant's involvement in drug trafficking. With regard to the forged Slovenian official documents, the applicant admitted that he had possessed them, but denied that he had intended for those documents to be used for identification purposes. The court held that against the background of the sequence of events established, which had also been confirmed by the applicant, the lack of intent was not credible.

7. In a plea of nullity (*Nichtigkeitsbeschwerde*) to the Supreme Court the applicant argued, *inter alia*, that the St Pölten Regional Court had refused several motions to collect evidence, in breach of Article 6 of the Convention, and its judgment had not been sufficiently reasoned. Contrary to the applicant's requests the St Pölten Regional Court had heard testimony from K.H. in his absence and several relevant witnesses had not been heard at all. On 27 September 2022 the Supreme Court rejected the applicant's plea of nullity. The Supreme Court noted that K.H. had been heard in the absence of the applicant because there had been a reasonable assumption that K.H. would have felt intimidated by the applicant and would not have testified truthfully in his presence. That approach by the St Pölten Regional Court had complied with Article 250 of the CCP and had not violated the applicant's rights of defence. Regarding the requested witnesses who had not been heard by the St Pölten Regional Court, the Supreme Court observed that the applicant's motions to collect evidence had failed to substantiate the facts on which the witnesses could have given evidence in relation to the judgment to be delivered. As to the applicant's objections concerning the reasoning of the judgment, the Supreme Court held that they had been essentially only directed against the St Pölten Regional Court's assessment of the evidence. However, the St Pölten Regional Court had not been obliged to address every single detail of the statements given by the applicant and the witnesses in its reasoning if they had been irrelevant for the legal classification or the question of guilt. Furthermore, the St Pölten Regional Court's assessment of the evidence had not been manifestly unreasonable.

8. On 16 December 2022 the Higher Regional Court dismissed the appeal lodged by the applicant against the sentence and held that three years and six months' imprisonment was an appropriate sentence in the given case.

9. The applicant complained under Article 6, alone and in conjunction with Article 13 of the Convention, that the relevant arguments and evidence in his favour had not been sufficiently examined. The domestic courts had failed to consider that his criminal prosecution had been politically motivated owing to the Ibiza affair. The applicant had repeatedly pointed out that the

witnesses S.K. and K.H. had not been credible or reliable. Obvious discrepancies in the statements of those witnesses had not been sufficiently addressed by the domestic courts which had even refused several motions to take additional evidence in that regard. Thus, the decisions of the domestic courts had not been sufficiently reasoned and had not observed the basic requirement of criminal justice that the prosecution had to prove its case beyond reasonable doubt. Furthermore, the witness K.H. had been heard in the absence of the applicant, which had also rendered the proceedings unfair. In addition, the applicant relied on Article 10 of the Convention alleging that his politically motivated conviction could have a chilling effect on others, discouraging them from disclosing information relevant to democracy, as in the Ibiza affair.

THE COURT'S ASSESSMENT

10. The Court notes that at the heart of the applicant's complaints lies the allegation that he had been wrongly accused and that the criminal proceedings against him had been unfair on account of a lack of reasons in the domestic courts' decisions and an impairment of his rights to adduce evidence and to be present during the questioning of a main witness for the prosecution.

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

11. At the outset, the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by the domestic courts, unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where they can be said to amount to "unfairness" in breach of Article 6 of the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the domestic courts. In principle, issues such as the weight attached by the domestic courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the judgment of the domestic courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, for instance, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015, and *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017).

12. The Court clarified the general principles concerning the examination of defence witnesses under Article 6 §§ 1 and 3 (d) of the Convention in *Murtazaliyeva v. Russia* ([GC], no. 36658/05, §§ 150-68, 18 December 2018). With regard to the refusal to hear a witness of the defence, it has to be determined whether the request to examine a witness was sufficiently

reasoned and relevant to the subject matter of the accusation, whether the domestic courts considered the relevance of that testimony and provided sufficient reasons for their decision not to examine a witness at trial, and whether the domestic courts' decision not to examine a witness undermined the overall fairness of the proceedings.

13. In the present case, the applicant requested the examination of further defence witnesses in order to cast doubt on the credibility and reliability of the witnesses for the prosecution, S.K. and K.H. However, as the Supreme Court stressed, the applicant failed to elaborate in concrete terms on how their testimony could have reasonably been expected to strengthen the case for the defence. The St Pölten Regional Court heard several witnesses with regard to the applicant's allegations that S.K. had been paid for false testimony against him and held with detailed reasoning that there were no indications that would suggest a link between the accusations against the applicant and the Ibiza affair. Furthermore, the St Pölten Regional Court appointed a neurological and psychiatric expert to assess K.H.'s ability to testify. Having regard to those considerations, and since Article 6 § 3 (d) of the Convention does not require the attendance and examination of every witness on the accused's behalf (see *Murtazaliyeva*, cited above, § 165), the refusal to hear further witnesses as requested by the applicant did not render the criminal proceedings unfair.

14. As to the question of whether the questioning of the witness K.H. in the absence of the applicant complied with Article 6 §§ 1 and 3 (d) of the Convention, the Court reiterates that in exceptional circumstances there may be reasons for hearing evidence from a witness in the absence of the person against whom the statement is to be made on the condition that his or her lawyer is present (see *Šmajgl v. Slovenia*, no. 29187/10, § 63, 4 October 2016).

15. Turning to the present case, the Court notes that the applicant was ordered to leave the courtroom when the witness K.H. gave evidence against him. The order was given in accordance with Article 250 of the CCP and was based on the expert's recommendation according to which K.H. had been traumatised by the violent relationship with her former partner S.K., and by a situation in which she had been threatened by the applicant with a firearm. It appears that in this case, in order to obtain unreserved statements, the St Pölten Regional Court had adequate reasons for ordering the applicant to leave the courtroom. The applicant's lawyers remained present in the courtroom and had the opportunity to question K.H. and challenge her credibility. Furthermore, the applicant was informed of the content of the statements given in his absence. Moreover, although the St Pölten Regional Court relied on K.H.'s testimony in its reasoning, it was not the sole or decisive basis for the applicant's conviction, as the witness S.K. confessed that he had bought cocaine from the applicant, thereby incriminating himself. The Court finds that, in these circumstances, the limitations which were

imposed on the rights of the defence were not such as to deprive the applicant of a fair trial (see *Hilden v. Finland* (dec.) no. 32523/96, 14 September 1999, and *Klimentyev v. Russia*, no. 46503/99, § 125, 16 November 2006).

16. The applicant also complained in a general manner that the decisions of the domestic courts had not been adequately reasoned, since obvious discrepancies in the statements of the witnesses S.K. and K.H., as well as the political motivation behind the applicant's criminal prosecution, had not been sufficiently addressed. The Court has acknowledged that under specific circumstances the lack of sufficient reasoning in a court decision might raise an issue as to the fairness of criminal proceedings (see *Ajdarić v. Croatia*, no. 20883/09, § 51, 13 December 2011). Although Article 6 § 1 does oblige the courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Perez v. France* [GC], no. 47287/99, § 81, ECHR 2004-I).

17. In the present case, the St Pölten Regional Court explained the reasons for its judgment at length and addressed the applicant's allegations that the witnesses S.K. and K.H. had given false statements concerning his involvement in drug trafficking in detail. Based on the testimony of several witnesses, the St Pölten Regional Court gave thorough reasons as to why it considered that there was no indication that S.K. had been paid to give false testimony against the applicant because he had been one of the key figures who had triggered the Ibiza affair. Furthermore, the St Pölten Regional Court acknowledged that there had been certain inconsistencies in K.H.'s testimony and consequently appointed a neurological and psychiatric expert to assess her ability to testify. In accordance with the expert's recommendations, the St Pölten Regional Court heard evidence from K.H. with the assistance of an interpreter and in the absence of the applicant. In its judgment the St Pölten Regional Court provided detailed reasoning as to why it considered K.H.'s statements credible and in line with S.K.'s account of the applicant's involvement in drug trafficking. Against this background, the applicant received a specific and explicit reply to the arguments which had been decisive for the outcome of the proceedings (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017). The Supreme Court accepted the reasoning of the St Pölten Regional Court and held that its assessment of the evidence had not been manifestly unreasonable (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). The applicant may therefore not validly argue that the domestic court's decisions lacked sufficient reasons.

18. Overall, there is no indication that the criminal proceedings against the applicant were unfair or arbitrary. It follows that the complaints under Article 6 are manifestly ill-founded in accordance with Article 35 § 3 (a) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

19. Turning to the complaint under Article 13 taken in conjunction with Article 6 of the Convention, the Court refers to its case-law on the lack of an independent existence of Article 13 of the Convention (see *Zavoloka v. Latvia*, no. 58447/00, § 35(a), 7 July 2009). In view of the above findings that the applicant's complaints under Article 6 of the Convention are manifestly ill-founded (see paragraphs 11-17 above), the Court finds that no issue can arise under Article 13 taken together with that provision. Consequently, this complaint is manifestly ill-founded in accordance with Article 35 § 3 (a) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. In his complaint under Article 10 of the Convention the applicant stated again that his criminal prosecution and conviction had been politically motivated and could have a chilling effect on others. The Court considers that the secretly recorded video which triggered the Ibiza affair concerned improper conduct by high-ranking politicians (see paragraph 2 above) and there is no doubt that this is an important matter in a democratic society which the public has a legitimate interest in being informed about and which falls within the scope of political debate (see *Guja v. Moldova* [GC], no. 14277/04, § 88, ECHR 2008, and *Halet v. Luxembourg* [GC], no. 21884/18, § 134, 14 February 2023). It also reiterates that the vexatious or malicious use of the law and legal process to prevent or sanction contributions to public debate can become a means of intimidating and silencing journalists and other social watchdogs (see *Ali Gürbüz v. Turkey*, nos. 52497/08 and 6 others, §§ 67-68, 12 March 2019, and *Yefimov and Youth Human Rights Group v. Russia*, nos. 12385/15 and 51619/15, § 35, 7 December 2021).

21. However, as can be seen from the above findings (see paragraphs 13, 15 and 17 above), there are no indications that criminal proceedings had been initiated against the applicant as a repressive measure in reaction to the publication of the video which had led to the Ibiza affair. Moreover, the acts for which the applicant was convicted are completely unrelated to his involvement in the secret recording and publication of the video in question. The present case therefore concerns the taking of measures against the applicant for actions that, under the domestic legal system, infringed criminal law in a manner unrelated to the exercise of freedom of expression. As the applicant was held liable for breaching a generally applicable law that was not designed to suppress nor have the effect of interfering with the applicant's freedom of expression, the Court finds that the conduct for which he was sanctioned did not fall within the ambit of Article 10 of the Convention (see *Kotlyar v. Russia*, nos. 38825/16 and 2 others, §§ 38-45, 12 July 2022). It

follows that this complaint is incompatible *ratione materiae* in accordance with Article 35 § 3 (a) of the Convention.

IV. CONCLUSION

22. In conclusion, it follows from the above considerations that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 September 2025.

Veronika Kotek Acting Deputy Registrar	Anne Louise Bormann President