CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 69169/01
by Florian REINMÜLLER
against Austria

The European Court of Human Rights (Third Section), sitting on 1 April 2004 as a Chamber composed of:

Mr G. RESS, *President*,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mrs E. STEINER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 2 March 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Florian Reinmüller, is an Austrian national, who was born in 1964 and lives in Tamsweg, Austria. He is represented before the Court by Mrs I. Neyer, a lawyer practising in Feldkirch, Austria.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Criminal proceedings

On 2 May 1999 until 23 December 1999 and from 27 December 1999 to 22 May 2000 the Innsbruck Regional Court (*Landesgericht*) remanded the applicant in custody on suspicion of drug trafficking on a large scale and other offences under the Drugs Act (*Suchtmittelgesetz*).

On 3 July 2000 the Innsbruck Regional Court, sitting as a court with two professional and two lay judges (*Schöffengericht*), acquitted the applicant, who was assisted by counsel. It found that, although there were several aspects militating against the applicant, the evidence produced at the trial had not been sufficient to convict him as the statement of the incriminating witness lacked credibility. Therefore the court acquitted the applicant on the basis of the principle of *in dubio pro reo*. Moreover, it dismissed the applicant's request to hear further witnesses as it found that there was no additional evidence necessary to prove the lack of credibility of the incriminating statement.

2. Proceedings on the applicant's compensation claim

Immediately after the pronouncement of the acquittal, and at the same hearing, the Innsbruck Regional Court dismissed the applicant's request for compensation for his detention on remand. It found that "pursuant to Section 2 (1)(b) of the Criminal Proceedings Compensation Act 1969 (*Strafrechtliches Entschädigungsgesetz 1969* – "the 1969 Act") compensation for detention on remand [might] be granted if the accused had been acquitted and the suspicion that he had committed the offence has been dispelled." Further, it found that "the requirements for granting compensation for detention on remand under Section 2 (1)(b) of the 1969 Act were not met as the applicant was only acquitted on the basis of the principle of *in dubio pro reo"*. This decision was served on the applicant after his acquittal had become final on 18 August 2000.

The applicant lodged an appeal with the Innsbruck Court of Appeal (*Oberlandesgericht*). He argued that the Regional Court's finding was incompatible with Article 6 § 2 of the Convention.

On 19 September 2000 the Innsbruck Court of Appeal dismissed the appeal. Referring to the case of *Sekanina v. Austria* (judgment of 25 August 1993, Series A no. 266-A, pp.15-16, § 30), it considered that only a decision which, following the accused's acquittal, expressed the view that he or she was guilty could violate the presumption of innocence, and that in the present case no additional finding on the suspicion against the applicant was

made. Moreover, it found that, considering the incriminating statement of witness P.R., suspicion against the applicant persisted.

3. Proceedings on the applicant's claim for contribution to legal costs

Meanwhile, on 12 July 2000 the applicant claimed a contribution to the necessary legal costs provided under Section 393a of the Code of Criminal Procedure (*Strafprozessordnung*).

On 18 August 2000 the Innsbruck Regional Court partly allowed the applicant's claim and awarded ATS 20,000. The applicant appealed.

On 19 September 2000 the Innsbruck Court of Appeal allowed the appeal and awarded ATS 30,000 (EUR 2,181), the maximum amount under the applicable law.

B. Relevant domestic law and practice

The relevant provisions of the Criminal Proceedings Compensation Act 1969 read as follows:

Section 2

"(1) A right to compensation arises: (...)

(b) where the injured party has been placed in detention or remanded in custody by a domestic court on suspicion of having committed an offence making him liable to criminal prosecution in Austria ... and is subsequently acquitted of the alleged offence or otherwise freed from prosecution and the suspicion that he committed the offence has been dispelled or prosecution is excluded on other grounds, in so far as these grounds existed when he was arrested; (...)

Section 6

(2) A court which acquits a person or otherwise frees him from prosecution ... (Section 2 (1)(b) or (c)) must decide either of its own motion or at the request of the individual in question or the public prosecutor's office whether the conditions for compensation under Section 2 (1)(b) or (c), (2) and (3) have been satisfied or whether there is a ground for refusal under Section 3. If the judgment was based on the verdict of a jury, the bench shall decide together with the jury. (...)

(4) Once the judgment rendered in the criminal proceedings has become final, the decision, which need not be made public, must, as part of the proceedings provided for in paragraph 2, be served on the detained or convicted person personally and on the public prosecutor. (...)"

COMPLAINTS

The applicant, relying on Article 6 § 2 of the Convention, complained that the Austrian courts disregarded the presumption of innocence when refusing his compensation claim for detention on remand and they only awarded ATS 30,000, when his legal costs amounted to ATS 340,875.

He also complained under Article 6 § 3 (d) of the Convention about the Innsbruck Regional Court's refusal to hear further witnesses and stressed that, otherwise, the continuing suspicion could have been wholly dispelled.

THE LAW

1. The applicant complained that the courts' reasoning disregarded the principle of the presumption of innocence under Article 6 § 2 of the Convention, which provides as follows:

> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

The Government, referring to their submissions in the case of *Demir v. Austria* (no. 35437/97, § 26, 5 November 2002), repeated the view that the reasoning of the Austrian courts did not infringe Article 6 § 2 of the Convention. The Government contended that the present case had to be distinguished from the above-mentioned *Sekanina v. Austria* case. What was decisive in that case was that the court itself, deciding on the compensation claim, assessed the question whether the suspicion against the accused had been dissipated on the basis of the file, thereby replacing the jury's evaluation of the evidence. In the present case, however, the same jury (*Schöffengericht*) which had pronounced the applicant's acquittal decided on the compensation claim and did no more than repeat the verdict of the jury – i.e. the acquittal on the basis of the principle of *in dubio pro reo* – and the reasons given in the judgment, without making separate statements about the applicant's guilt. The Court of Appeal proceeded likewise.

The applicant conceded that although the Austrian courts did not reassess the applicant's guilt, they referred nonetheless to the Regional Court's finding that the acquittal had been afforded on the basis of the principle of *in dubio pro reo* and that the suspicions against the applicant had not been dissipated. However, in the light of the cases of *Rushiti v. Austria* (no. 28389/95, 21 March 2000) and *Lamanna v. Austria* (no. 28923/95,

10 July 2001), any such voicing of suspicion after an acquittal was in breach of Article 6 § 2 of the Convention.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. In respect of the applicant's complaint concerning the amount of reimbursement of legal costs, the Court notes at the outset that the Innsbruck Court of Appeal, in its decision of 19 September 2000, awarded the applicant the maximum amount under the applicable law.

The Court reiterates, however, that neither Article 6 § 2 nor any other provision of the Convention gives a person "charged with a criminal offence" a right to reimbursement of his costs or a right to compensation for lawful pre-trial detention where proceedings taken against him are discontinued (see *Englert v. Germany,* judgment of 25 August 1987, Series A no. 123, p. 54, § 36; and *Hibbert v. The Netherlands* (dec.), no. 30087/97, 26 January 1999).

It follows that this complaint is incompatible *ratione materiae* within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

3. (a) Insofar as the applicant complained under Article 6 § 3 (d) of the Convention of alleged unfairness of the criminal proceedings as the Innsbruck Regional Court had refused to hear further witnesses, who could have dispelled any further suspicion against him, the Court observes that the applicant was acquitted from the charges against him and, thus, can no longer be considered to be "victim" within the meaning of Article 34 of the Convention.

It follows that this complaint is incompatible *ratione personae* and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) As far as the applicant may be understood as complaining about the courts' refusal to hear further witnesses in the proceedings on his compensation claim, the Court observes that the applicant failed to make a request to this effect in these proceedings and therefore has not exhausted domestic remedies.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint under Article 6 § 2 of the Convention that the reasoning of the Austrian court decisions on the applicant's compensation claim disregarded the presumption of innocence;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President