



No indication of political motivations behind prosecution of a key figure in the “Ibiza affair”

In its decision in the case of [Hessenthaler v. Austria](#) (application no. 8761/23) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the conviction of Mr Hessenthaler for drug trafficking and for the possession and use of forged official documents. He alleged that his criminal prosecution had been politically motivated as he had been one of the key figures who had triggered the “Ibiza affair” which had led to the collapse of the Austrian governing coalition in May 2019 and the calling of an early election.

The Court found that there was no indication that the criminal proceedings against Mr Hessenthaler had been unfair or arbitrary, nor initiated in reaction to his involvement in the Ibiza affair. His complaints were clearly ill-founded.

Principal facts

The applicant, Julian Hessenthaler, is an Austrian national who was born in 1980 and lives in St. Pölten (Austria).

On 17 May 2019, a secretly recorded video of a meeting between two well-known Austrian 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, a sting operation, had taken place in July 2017 and had been arranged by Mr Hessenthaler and others. The conversation between the two politicians revealed their willingness to engage in corrupt activities, circumvent party funding laws and covertly take control of independent media. Publication of the conversation led to the collapse of the Austrian governing coalition the following day and the announcement of an early election.

The Vienna Public Prosecutor’s Office and the Economic and Corruption Prosecutor’s Office initiated criminal investigations against various individuals in relation to the Ibiza affair. In the course of the investigations, Mr Hessenthaler was accused of trafficking cocaine by several people questioned. In particular, he was accused by K.H. of having sold large quantities of cocaine to S.K., who had confessed to buying it from him. Furthermore, he was accused of having procured a forged Slovenian identity card and a forged Slovenian driving licence. On 30 March 2022 the St Pölten Regional Court convicted Mr Hessenthaler of trafficking cocaine, obtaining forged official documents and using a forged Slovenian driving licence, and sentenced him to three years and six months’ imprisonment.

The regional court dismissed Mr Hessenthaler’s allegations that S.K. and K.H. had given false statements concerning his involvement in drug trafficking. It held that there was no evidence to doubt the credibility of the statements made by S.K. who, with his testimony, had also incriminated himself. Noting certain inconsistencies in K.H.’s testimony and that she appeared to be in a fragile mental state, it appointed a neurological and psychiatric expert, who found that K.H. was able to testify but had been traumatised by the violent relationship with her former partner S.K. and by Mr Hessenthaler threatening her with a firearm. The court questioned her with the assistance of an interpreter and in the presence of the applicant’s lawyers, but not the applicant himself. Based on the impression gained at the oral hearing and on the expert findings, the court held that K.H.’s statements were 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, Mr Hessenthaler admitted possession, but denied that he had intended to use them for identification purposes. The regional court did not find the lack of intent credible.

In a plea of nullity (*Nichtigkeitsbeschwerde*) to the Supreme Court, Mr Hessenthaler argued, amongst other things, that the St Pölten Regional Court had refused several motions to collect evidence, and its judgment had not been sufficiently reasoned. It had heard testimony from K.H. in Mr Hessenthaler's absence, and several relevant witnesses had not been heard at all. On 27 September 2022 the Supreme Court rejected the plea, noting that K.H. had been heard without Mr Hessenthaler being present to prevent her from feeling intimidated and not testifying truthfully, and that the motions to collect evidence had not been substantiated. As to his objections concerning the reasoning of the judgment, they had been essentially only directed against the St Pölten Regional Court's assessment of the evidence, whereas the Supreme Court did not find that assessment to be unreasonable.

On 16 December 2022 the Higher Regional Court dismissed the appeal lodged by Mr Hessenthaler and held that three years and six months' imprisonment was an appropriate sentence.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 February 2023.

Relying on Article 6 (right to a fair trial), alone and in conjunction with Article 13 (right to an effective remedy) of the Convention, and on Article 10 (freedom of expression), Mr Hessenthaler complained that he had been wrongly accused, 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, and that his politically motivated conviction could discourage others from disclosing information relevant to democracy.

The decision was given by a Committee of three judges, composed as follows:

Anne Louise **Bormann** (Denmark), *President*,
Sebastian **Rădulețu** (Romania),
András **Jakab** (Austria),

and also Simeon **Petrovski**, *Deputy Registrar*.

Decision of the Court

Article 6

The Court observed that Mr Hessenthaler had requested the examination of further defence witnesses. However, as underlined by the Supreme Court, he had failed to properly explain in what way their testimony might have strengthened the case for the defence. The St Pölten Regional Court had heard several witnesses with regard to his allegations that S.K. had been paid for false testimony against him, and had held with detailed reasoning that there was no indication of a link between the accusations against Mr Hessenthaler and the Ibiza affair. Furthermore, it had appointed a neurological and psychiatric expert to assess K.H.'s ability to testify. Therefore, the Court found that the refusal to hear further witnesses as requested by Mr Hessenthaler had not rendered the criminal proceedings unfair.

Noting that making Mr Hessenthaler leave the courtroom when K.H. gave evidence against him had been in line with the criminal code and had been based on the expert's recommendation, the Court found that the St Pölten Regional Court had had adequate reasons for doing so. Moreover, his lawyers had remained in the courtroom and had had the opportunity to question K.H. and challenge her credibility. Thereafter, Mr Hessenthaler had been informed of the content of the statements given in his absence. Furthermore, K.H.'s testimony had not been the sole or decisive basis for his conviction, as S.K. had confessed to buying cocaine from him. Therefore, his not being present during K.H.'s

With regard to Mr Hessenthaler's general complaint that the national courts' decisions had not been adequately reasoned since certain discrepancies in the witness statements and the alleged political motivation behind his criminal prosecution had not been sufficiently addressed, the Court reiterated that, although Article 6 § 1 did oblige the courts to give reasons for their decisions, that did not stretch to their having to provide a detailed answer to every argument.

Overall, there was no indication that the criminal proceedings against the applicant had been unfair or arbitrary. Therefore, the complaints under Article 6 were clearly ill-founded.

As alleged breaches of Article 13 had to be assessed in conjunction with another Article and, in view of the finding that the complaints under Article 6 were clearly ill-founded, the Court declared the complaint under Article 13 also ill-founded.

As Mr Hessenthaler's conviction had been for something that was completely unrelated to his involvement in the secret recording and publication of the video which had led to the Ibiza affair, the Court found that the conduct for which he had been sanctioned did not fall within the ambit of Article 10 of the Convention.

The decision is available only in English.

Where can the Court's press releases be found? [HUDOC - Press collection.](#)

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