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

THIRD SECTION

CASE OF TELFNER v. AUSTRIA

(*Application no. 33501/96*)

JUDGMENT

STRASBOURG

20 March 2001

DÉFINITIF

20/06/2001

In the case of Telfner v. Austria,

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

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Sir Nicolas BRATZA,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 February 2000 and 6 March 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 33501/96) against the Republic of Austria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mr Thomas Telfner ("the applicant"), on 22 August 1996.

2. The applicant was represented by Mr A. Fuith, a lawyer practising in Innsbruck (Austria). 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. The applicant alleged that, in the criminal proceedings against him, the courts failed to respect the presumption of innocence.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 8 February 2000 the Chamber declared the application admissible.

THE FACTS

7. On 8 April 1995, in the early hours, an accident took place in Obsteig, a small village in the Tyrol. Mr K. was struck by a car and suffered a slight injury to his arm. Mr K. reported the incident to the police and identified the type and registration number of the car involved. He had, however, not been in a position to identify the driver of the car.

8. On the same morning, officers of the local police station started investigations. They found the car, registered in the name of the applicant's mother, Mrs G., parked in front of the house where the applicant was living with his family. The applicant's mother stated that she had not been driving. As regards the applicant, she stated that he was not home yet and showed the police officers the applicant's room in which his bed was untouched. Further, she stated that the car was regularly used by several family members. She was requested to send the applicant to the police station as soon as he came in. When asked later that day, the applicant's mother stated that he still had not come home. In its investigation report the police referred to the applicant as the suspect and stated that, according to the police officers' general observations, he was the main user of the car.

9. On 20 December 1995 and on 2 February 1996 the Silz District Court (*Bezirksgericht*) tried the applicant on charges of causing injury by negligence (*fahrlässige Körperverletzung*). The applicant pleaded "not guilty". He stated that he had not been driving the car at the relevant time and that he did not wish to make any further submissions. Mr K., heard as a witness, confirmed his statements to the police, in particular that he had not been able to identify the driver of the car, nor to state whether the driver had been male or female. The applicant's mother and his sister exercised their right not to testify. The minutes state that they were cautioned as to this right, but do not mention the ground on which the caution was based. Pursuant to section 152 § 1 of the Code of Criminal Procedure (*Strafprozessordnung*), so far as relevant in the present context, a witness may refuse to give evidence if the statement would expose him or her to the danger of criminal prosecution; a witness may equally refuse to give evidence in proceedings against a close relative.

10. On 2 February 1996 the Silz District Court convicted the applicant of causing injury by negligence. It sentenced him to a fine of 24,000 Austrian schillings (ATS), half of which was suspended on probation, and ordered him to pay ATS 1,000 as a partial amount for damages to the victim. In establishing the facts, the court relied on the investigation report of the police, the statement of Mr K. and the applicant's defence. Its reasoning was as follows:

> "The accused stated in his evidence at trial that he had not been driving the vehicle at the time of the accident and denied every other point in the statement of facts. Both the accused's mother, who is the legal owner of the vehicle, and his sister, [M.G.],

whom the accused called as a witness, refused to give evidence at the trial. As the injured party, [Mr K.], could not determine at the time of the accident who had been driving the vehicle, the only evidence which remained in connection with this point were the observations of the Obermieming police station, according to which it was common knowledge that the vehicle in question was mainly driven by the accused, ... On the basis of those observations the court is also satisfied that [the applicant] was driving the vehicle at the material time and caused the accident. The additional circumstance that, according to the observations of the Obermieming police station, the accused was not at home after the accident and had evidently still not returned by 8 p.m. that day and, moreover, that no one knew where he was, leads to the sole, unequivocal conclusion that only the accused could have committed the offence; presumably he refused to make a statement because he was under the influence of alcohol, but there is no evidence for that finding. The remaining findings as to the circumstances of the accident or the subsequent course of events are based solely on the consistent and fully credible statements of the witness [Mr K.]."

11. On 23 July 1996 the Innsbruck Regional Court (*Landesgericht*), after having supplemented the proceedings by inspecting a file concerning administrative criminal proceedings against the applicant's sister relating to a traffic offence, and having found that the car at issue was also used by the applicant's sister, dismissed the applicant's appeal and confirmed the first instance judgment. In particular, as regards the District Court's evaluation of evidence, the Regional Court found as follows:

"The impugned assessment of the evidence is consistent, complete and convincing, so that the appellate court can adopt it as well as the findings based thereon. It is the case that the person claiming damages in criminal proceedings was only able to identify the car and could not describe the occupant or occupants of the vehicle. From the evidence it is established, however, that the car, registered in the name of the accused's mother, is mainly used by the accused, even if it is also occasionally used by others, such as the accused's sister. It would have been open to the accused to give a contrary version of events which conflicted with the charges and to put in relevant evidence without thereby at the same time having to name another person as the driver. That was evidently impossible, however, because having spent the night away from his parents' house and possibly consuming alcohol he had on 8 April 1995 driven his mother's car through Obsteig. The court of first instance correctly referred to the observations of the police officers to the effect that immediately after the accident the car was indeed in front of the parents' house, yet the accused's bed had not been slept in and he could not be found. Nor could it be ascertained where the accused, who refused to make a written statement to the police, was staying. On the basis of the available evidence before it the court of first instance made a realistic assessment of the facts, especially as there was no evidence that anyone else, such as the accused's sister, had been driving the car at the time of the accident."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

12. The applicant asserted that the criminal courts disregarded the presumption of innocence laid down in Article 6 § 2 of the Convention which reads as follows:

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

13. The applicant concedes that, under the Code of Criminal Procedure, the courts have the power to freely assess the evidence before them. However, in the present case they transgressed the limits of that power. His conviction could neither be based on his "not guilty" plea, as he had clearly stated that he had not driven the car at the material time, nor on the statement of the victim, who had not even been able to identify whether the driver was male or female. His mother and sister had exercised their right not to testify. The courts relied on the allegation made in the police report, according to which the car at issue was mainly used by him. Even if it were established that he generally used the car, neither this fact nor the fact that he had not passed the night at his mother's house permitted the "sole, unequivocal conclusion" that he had driven the car at the time of the accident. On the contrary, this conclusion was arbitrary and violated the presumption of innocence in that it wrongly placed the burden of proof on the defence.

14. The Government, for their part, contended that the assessment of evidence was a matter for the domestic courts. Referring to the Court's case-law, they argued that even legal presumptions were not generally incompatible with Article 6 and the courts were free to consider a defendant's silence when evaluating the persuasiveness of the evidence presented by the prosecution. The Government maintained that the applicant was given ample opportunity to defend himself and to refute the evidence adduced at the trial or to produce evidence in his favour. However, the applicant merely stated that he had not been using his mother's vehicle and otherwise chose to remain silent, thus waiving the opportunity to refute the evidence against him. The courts' conclusion that the applicant was guilty was – in view of the fact that the car at issue had mostly been used by the applicant, that it was parked in front of his parental home, that the applicant's bed had not been slept in, that the latter could not be found and that there was no indication that someone else had driven the car – free from contradiction, realistic and not at all far-fetched.

15. The Court recalls that, as a general rule, it is for the national courts to assess the evidence before them, while it is for the Court to ascertain that

the proceedings considered as a whole were fair, which in case of criminal proceedings includes the observance of the presumption of innocence. Article 6 § 2 requires, *inter alia*, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused (see the Barberà, Messegué and Jabardo v. Spain judgment of 6 December 1988, Series A no. 146, pp. 31 and 33, §§ 67-68 and 77). Thus, the presumption of innocence will be infringed where the burden of proof is shifted from the prosecution to the defence (see the John Murray v. the United Kingdom judgment of 8 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 52, § 54).

16. It is true, as the Government pointed out, that legal presumptions are not in principle incompatible with Article 6 (see for instance the Salabiaku v. France judgment of 7 October 1988, Series A no. 141-A, pp. 15-16, § 28); nor is the drawing of inferences from the accused's silence (see the John Murray judgment, cited above, pp. 49-52, §§ 45-54).

17. However, the present case does not concern the application of a legal presumption of fact or law, nor is the Court convinced by the Government's argument that the domestic courts could legitimately draw inferences from the applicant's silence. The Court recalls that the above-mentioned John Murray judgment concerned a case in which the law allowed for the drawing of common-sense inferences from the accused's silence, where the prosecution had established a case against him, which called for an explanation. Considering 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 in the circumstances of the case (ibid.). The Court considers 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 adduced is such that the only common-sense inference to be drawn from the accused's silence is that he had no answer to the case against him.

18. In the present case, both the District Court and the Regional Court relied in essence on a report of the local police station that the applicant was the main user of the car and had not been home on the night of the accident. However, the Court cannot find that these elements of evidence, which were moreover not corroborated by evidence taken at the trial in an adversarial manner, constituted a case against the applicant which would have called for an explanation from his part. In this context, the Court notes, in particular, that the victim of the accident had not been able to identify the driver, nor even to say whether the driver had been male or female, and that the Regional Court, after supplementing the proceedings, found that the car in question was also used by the applicant's sister. In requiring the applicant to

provide an explanation although they had not been able to establish a convincing prima facie case against him, the courts shifted the burden of proof from the prosecution to the defence.

19. In addition, the Court notes that both the District Court and the Regional Court speculated about the possibility of the applicant having been under the influence of alcohol which was, as they admitted themselves, not supported by any evidence. Although such speculation was not directly relevant to establishing the elements of the offence with which the applicant had been charged, it contributes to the impression that the courts had a preconceived view of the applicant's guilt.

20. In conclusion, the Court finds that there has been a violation of Article 6 § 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed a total amount of 50,000 Euros. He alleged that he suffered prejudice to his career on account of his conviction which, moreover, caused him mental strain. However, he did not specify which part of his claim was for pecuniary damage and which part was for non-pecuniary damage.

23. The Government contended that the applicant had failed to show that his conviction presented an obstacle to his career.

24. The Court agrees with the Government that the applicant has failed to substantiate his claim as regards any pecuniary damage allegedly suffered.

25. As to non-pecuniary damage, the Court considers that the conviction at issue must have caused the applicant some worry and anxiety, for which the finding of a violation does not afford sufficient just satisfaction. Having regard to the circumstances of the case, and making an assessment on an equitable basis, the Court awards the applicant ATS 20,000 under this head.

B. Costs and expenses

26. The applicant pointed out that he had incurred considerable costs in the domestic proceedings, without however specifying them. He made no

claim as regards the Convention proceedings. The Government stated that they could not comment on this point as there was no detailed statement of costs.

27. The Court, noting that the applicant failed to specify his costs, makes no award under this head.

C. Default interest

28. According to the information available to the Court, the statutory rate of interest applicable in Austria at the date of adoption of the present judgment is 4% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

2. *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, 20,000 (twenty-thousand) Austrian schillings in respect of non-pecuniary damage;
   (b) that simple interest at an annual rate of 4% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 20 March 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President