



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

Communicated on 19 December 2013

FIRST SECTION

Application no. 33060/10
Helmut BLUM
against Austria
lodged on 11 June 2010

STATEMENT OF FACTS

The applicant, Mr Helmut Blum, is an Austrian national, who was born in 1959 and lives in Linz.

A. The circumstances of the case

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

The applicant is a lawyer practising in Linz.

In 2006 there were criminal proceedings pending before the Linz Regional Court against a lawyer from Upper Austria, O.G. and a Moldovan citizen, T.S., as they were charged of human trafficking. In these proceedings the applicant represented T.S. In the course of the criminal proceedings the judge of the Linz Regional Court on 31 October 2010 reported to the Upper Austrian Bar Association (*Rechtsanwaltskammer*) that he suspected the applicant of dual representation. The judge claimed that the applicant had asked T.S. to submit a statement to the court which contents were untrue but in favour of O.G.

Due to this information the Disciplinary Prosecutor (*Disziplinaranwalt*) on 13 December 2006 applied to introduce disciplinary proceedings against the applicant.

Accordingly, on an unspecified date, the Disciplinary Council of the Upper Austrian Bar Association (*Disziplinarrat der Oberösterreichischen Rechtsanwaltskammer*) introduced disciplinary proceedings against the applicant.

On 11 July 2007 the Linz Regional Court informed the Upper Austrian Bar Association that there were preliminary investigations against the applicant pending before the public prosecution because of attempted

accessory after the fact (*versuchte Begünstigung*) and falsifying evidence (*Fälschung eines Beweismittels*).

On 24 September 2007, in an oral hearing, the Disciplinary Council of the Upper Austrian Bar Association adjourned the disciplinary proceedings against the applicant until the criminal proceedings at the Linz Regional Court against him became final.

On 25 September 2007 the Disciplinary Prosecutor applied to withdraw the applicant's right to represent before the courts in criminal law.

The applicant was informed about this application and submitted his written comments on 4 October 2007 and 30 October 2007 in which he opposed to the measure.

On 17 December 2007 the Upper Austrian Bar Association, without a hearing, withdrew the applicant's right to represent before the Linz District Court, the Linz Regional Court and the Linz Court of Appeal in criminal law as a preliminary measure according to Section 19 of the Disciplinary Act (*Disziplinarstatut*). It held that due to the accusations against the applicant the imposed preliminary measure was proportionate.

The applicant appealed on 5 February 2008 and complained that the preconditions for the preliminary injunction were not met, the Disciplinary Council had failed to take any evidence and had not heard the applicant. Furthermore the measure was not proportionate to the allegations.

On 28 August 2008 the Appeals Board (*Oberste Berufungs- und Disziplinarkommission*) dismissed the applicant's appeal without having held an oral hearing. It found that it was the task of the criminal courts to take evidence. The applicant had submitted his comments and had therefore been heard.

On 28 October 2008 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*) and again complained about the lack of an oral hearing and that the measure was disproportionate.

On 25 November 2008 the applicant applied to the Disciplinary Board to withdraw the preliminary injunction as the criminal proceedings were still pending. He claimed that it was disproportionate to sustain the preliminary injunction over such a long period of time.

On 1 December 2009 the Constitutional Court dismissed the applicant's complaint and held that the reasoning of the authorities was sufficient and therefore the imposed measure was not arbitrary. Furthermore it found that the proceedings were overall fair. As the preliminary injunction imposed on the applicant was not a "criminal charge" in the sense of Article 6, an oral hearing was not compulsory.

Meanwhile, on 22 September 2009 the first oral hearing in the criminal proceedings against the applicant was held before the Linz Regional Court.

The next oral hearing was held on 24 November 2009.

A further oral hearing was held on 17 June 2011, with a new judge presiding.

On that date the Linz Regional Court acquitted the applicant on all counts.

On 8 November 2011 the Linz Court of Appeal dismissed the Public Prosecutor's appeal.

On 14 November 2011 the preliminary injunction imposed on the applicant which prohibited him from representing before the courts in criminal law was withdrawn by the Upper Austrian Bar Association.

On 11 March 2013, served to the applicant on 2 October 2013, the Disciplinary Council of the Bar Association acquitted the applicant from the accusation of having set up the statement for T.S. while knowing that it was untrue. However, it convicted him of dual representation in the criminal proceedings in which he represented T.S. and imposed a penalty of 1,000 euros on him. It considered as a mitigating circumstance that the disciplinary proceedings had lasted almost seven years and the right of the applicant to represent before certain courts in criminal law had been withdrawn for about four years, however it did not declare to which extent the applicant's penalty had been reduced.

In his submission to the Court of 3 October 2013 the applicant claims that he is intending to appeal against this decision.

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the lack of an oral hearing and about the length of the proceedings.

QUESTIONS TO THE PARTIES

1. Was the fact that there was no hearing held in the disciplinary proceedings regarding the preliminary measure imposed on the applicant in breach of the requirement of Article 6 § 1 of the Convention to hold a public hearing?

2. Was the length of the disciplinary proceedings in the present case in breach of the “reasonable time” requirement of Article 6 § 1 of the Convention?