

APPLICATION/REQUÊTE N° 12560/86

Hugo HANZMANN v/AUSTRIA

Hugo HANZMANN c/AUTRICHE

DECISION of 16 March 1989 on the admissibility of the application

DÉCISION du 16 mars 1989 sur la recevabilité de la requête

Article 14 of the Convention, in conjunction with Article 1 of the First Protocol:
Income tax.

- a) In the field of taxation, States enjoy a wide margin of appreciation in assessing the aims and the means.*
- b) Difference in taxation between, on the one hand, civil servants who work in their own country but live abroad and, on the other hand, civil servants who either work and live in their own country or work and live abroad. In this case, the distinction has an objective and reasonable justification.*

Article 14 de la Convention, combiné avec l'article 1 du Protocole additionnel:
Impôt sur le revenu des personnes physiques.

- a) En matière de taxation fiscale, les Etats disposent d'une grande marge d'appréciation quant aux buts et aux moyens.*
 - b) Imposition différentielle entre, d'une part, les fonctionnaires qui travaillent dans leur pays mais résident à l'étranger et, d'autre part, les fonctionnaires qui, soit travaillent et résident dans leur pays, soit travaillent et résident à l'étranger. En l'espèce, la distinction repose sur une justification objective et raisonnable.*
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THE FACTS

(français : voir p. 197)

The facts, as presented by the applicant through his lawyer, Rechtsanwalt Dr. W.L. Weh of Bregenz, may be summarised as follows.

The applicant is an Austrian citizen, born in 1950, who resides at Hergensweiler in the Federal Republic of Germany, near the Austrian border. He is employed as a civil servant of the provincial administration of Vorarlberg. Under the Austrian-German Double Taxation Agreement of 1954 frontier commuters are normally liable to pay income tax in the country of residence, but in the case of civil servants the right of taxation is exercised by the country of employment. Accordingly, the applicant's income is subject to taxation in Austria, and because of his residing in a foreign country there arises no full but only a limited tax liability (*beschränkte Steuerpflicht*) for him. This has the consequence that certain tax advantages applicable to persons with full tax liability are not available to the applicant, in particular he cannot claim a single bread-winner's deduction (*Alleinverdienerabsetzbetrag*) from his taxable income.

The applicant nevertheless applied for such a deduction in his tax declaration for 1982. On 2 March 1984 the Regional Directorate of Finance (*Finanzlandesdirektion*) of Vorarlberg rejected the application.

The applicant then lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*) complaining of the different legal treatment of public employees who reside but do not work in a foreign country in comparison with public employees who work and reside in Austria or those who not only reside but also work in a foreign country (e.g. diplomats). However, on 27 September 1985 the Constitutional Court, in summary proceedings under Article 144 para. 2 of the Federal Constitution, refused to deal with the case on the ground that the applicant's complaint lacked sufficient prospects of success. In this respect it referred to its earlier case-law, according to which the different treatment between persons with full and those with limited tax liability was objectively justified, in particular as it was difficult for the Austrian authorities to verify facts which occurred outside Austria; furthermore, the fact that no exception was made for frontier commuters also did not infringe the principle of equality.

By a further decision of 8 January 1986 the Constitutional Court referred the case to the Administrative Court (*Verwaltungsgerichtshof*) as requested by the applicant. However, the latter Court, noting the applicant's statement that he did not claim that the law had been wrongly applied, rejected the applicant's complaint by a decision of 8 April 1986 which was served upon the applicant on 22 May 1986. It stated that it was not competent to deal with the applicant's argument that the applicable law infringed the principle of equality, this being a question reserved to the Constitutional Court.

COMPLAINTS (Extract)

The applicant now complains that through the refusal of a single bread-winner's deduction from his income tax he has been discriminated against both in comparison to Austrian civil servants residing and working in Austria and those residing and

working in a foreign country. In this respect he invokes Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1 to the Convention.

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THE LAW (Extract)

1. The applicant complains that, because of his residence in a foreign country, he has been discriminated against in that he was refused a single bread-winner's deduction from his income tax. He invokes Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1 to the Convention, which secures to everyone the right to the peaceful enjoyment of his possessions.

As taxation falls within the general scope of Article 1 of Protocol No. 1, the prohibition against discrimination in Article 14 of the Convention is applicable to it (cf. No. 11089/84, *Lindsay v. United Kingdom*, Dec. 11.11.86, D.R. 49 p. 181).

In examining the applicant's complaint of discrimination, the Commission recalls the principles established by the European Court of Human Rights in the Belgian linguistic case (Eur. Court H.R., judgment of 9 February 1967, Series A no. 5, p. 35). The Commission must therefore examine whether the difference of treatment in the present case has an objective and reasonable justification, i.e. whether it pursues a legitimate aim and whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

The Commission notes that residence is the normal criterion for determining to what country taxes shall be paid but that the income of civil servants is under the Austrian-German Double Taxation Agreement taxed by the paying State. Austrian civil servants residing in Germany and working in Austria therefore have a liability to pay tax on their income limited to that derived from Austrian sources. Persons with a limited liability to taxation are not entitled to make a single bread-winner's deduction from their income for tax purposes.

The Commission is of the opinion that it is for the national authorities to make the initial assessment, in the field of taxation, of the aims to be pursued and the means by which they are pursued: accordingly, a margin of appreciation is left to them. The Commission is also of the view that the margin of appreciation must be wider in this area than it is in many others. The Commission recalls in this respect that systems of taxation inevitably differentiate between different groups of taxpayers and that the implementation of any taxation system creates marginal situations (cf. No. 11089/84, Dec. 11.11.84, *loc. cit.*, cf. also No. 6163/73, Dec. 19.12.74, D.R. 1 p. 60 and No. 6087/73, Dec. 13.5.76, D.R. 5 p. 10).

The Commission considers that the classification of persons in the applicant's position as having limited tax liability is justifiable. Austrian tax is only chargeable

on a part of the income they receive. There is no discrimination in treating civil servants resident in Austria as bearing full tax liability. Nor is there a discrimination in treating diplomats or other civil servants in similar situations as having full tax liability, as normally their receipts would fall to be taxed exclusively by the Austrian authorities. Nor is there discrimination in the general rule that persons with limited tax liability shall not be entitled to the single bread-winner's allowance. Although the rule may operate harshly in a particular case the determination of the allowances chargeable against income where there is a limited tax liability is a matter falling within a Contracting State's margin of appreciation. In this context the Constitutional Court has referred to the fact that it may be difficult for Austrian authorities to verify relevant facts which have occurred outside Austria. These circumstances constitute an objective and reasonable consideration susceptible of justifying the distinction made in respect of the single bread-winner's allowance. The applicant's above complaint must therefore be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

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