

M. v. AUSTRIA

AS TO THE ADMISSIBILITY OF

Application No. 19924/92
by F.M.
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 2 September 1992, the following members being present:

MM. J. A. FROWEIN, President of the First Chamber
F. ERMACORA
E. BUSUTTIL
A. S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C. L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to the First Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 7 January 1992 by F.M. against Austria and registered on 30 April 1992 under file No. 19924/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

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THE FACTS

The applicant is an Austrian citizen born in 1938 and living in Pöndorf. He is represented by Mr. J. Hofer, a lawyer practising in Wels.

It follows from the applicant's statements and the documents submitted that on 12 June 1991 the applicant was convicted by the District Court (Bezirksgericht) in Wels of a violation of Section 63 (2) No. 1 of the Austrian Food Act (Lebensmittelsgesetz) in that as a butcher he offered sausages for sale to the public deliberately indicating an excessive preservation period.

The applicant was sentenced and was imposed a fine of 40 day rates amounting to 400 AS each. The execution of 20 day rates was suspended on probation for a period of 3 years.

According to the findings of the District Court a control was carried out in one of the applicant's retail shops on 23 August 1990 and two packages of sausages in a plastic bag were seized which contained the packing date 16 August 1990 and a preservation date of 26 August 1990. An examination of the contents showed that the sausages were no longer edible.

In the court's opinion the applicant had knowingly indicated a

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wrong preservation date of 10 days while the maximum preservation period was 8 days. This was known to the applicant who had already on two previous occasions been fined for similar offences committed unintentionally.

The court stated that the wrong declaration violated Section 1 lit. f of the Food Act which provided for the indication of a period of preservation in connection with the sale of certain food. According to Section 63 (2) No. 1 of the Food Act a wrong indication is punishable only if it runs counter to the indications in the Austrian Food Regulations (Lebensmittelbuch). While no indications were contained in the chapter "Meat and Meat Products", chapter A 3 containing the General Principles of Appreciation, Third Edition, stated in para. 40 that the obligatory description of food was wrong if it contained any wrong indication on circumstances which the consumer considered to be of importance. The period of preservation of food was an important factor for the consumer. Guidelines as to periods of preservation were to be found in a decree of the Federal Minister for Health and Environmental Protection dated 10 July 1981.

Finally the court observed that the applicant knew that the preservation period indicated by him was too long.

The applicant's appeal was rejected by the Regional Court (Kreisgericht) in Wels on 4 September 1991.

Insofar as the applicant had complained that Section 63 (2) No. 1 of the Food Act did not relate to the general part of the Austrian food regulations and therefore not to Chapter A 3, para. 40, the appellate court pointed out that the applicability of the chapter in question had already been confirmed by the Supreme Court (Oberster Gerichtshof) in a decision of 19 February 1987.

In addition the appellate court referred to Chapter B 14 subchapter D, para. 5 lit. h of the Food Regulations according to which meat and meat products are wrongly characterized if, inter alia, indications as to quality (Beschaffenheit) are not met by the food. The indication on the period of preservation was, in the opinion of the court, related to the consumer's quality expectations and consequently the guideline in question had been violated.

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In addition the appellate court referred to subchapter D para. 1 of Chapter B 14 according to which the general chapters applied *mutatis mutandis*.

The appellate court concluded that the applicant's appeal was unfounded.

COMPLAINTS

The applicant maintains that the food regulations do not contain concrete provisions as to the period of preservation for the kind of sausages seized in his retail shop. He therefore considers that his conviction violates Article 7 of the Convention.

THE LAW

The applicant invokes a violation of Article 7 (Art. 7) of the Convention which provides that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law . . . at the time when it was committed".

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It follows however from the decisions submitted that the applicant's conviction was based on Section 63 of the Austrian Food Act in connection with provisions in the Austrian Food Regulations.

The Commission notes that according to the findings of the Regional Court of Wels it had already been made clear in a decision of the Austrian Supreme Court of 19 February 1987 that the regulations and guidelines relied on by the Austrian courts in the applicant's case were applicable in matters of the kind in question. In addition the Commission notes that the applicant had been convicted for unintentional violations of these provisions on two previous occasions.

Finally the Commission notes that according to the findings of the Regional Court it also followed from other provisions in the Food Regulations that under applicable Austrian law the vendor of food had to make correct indications as to the period during which the food remained edible.

The Commission cannot find that the Austrian courts' interpretation of the Austrian law was in any way arbitrary and unexpected.

It follows that there is no appearance of a violation of Article 7 (Art. 7) of the Convention and the application consequently has to be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the First Chamber

President of the First Chamber

(M. de SALVIA)

(J. A. FROWEIN)