

REINTHALER v. AUSTRIA

AS TO THE ADMISSIBILITY OF

Application No. 19360/92
by Ludwig REINTHALER
against Austria

The European Commission of Human Rights sitting in private on
20 January 1994, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A. WEITZEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 6 April 1991 by
Ludwig REINTHALER against Austria and registered on 16 January 1992
under file No. 19360/92;

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

Having regard to :

- the Commission's decision of 11 March 1992 to communicate the
application;
- the observations submitted by the respondent Government on
25 September 1992 and the observations in reply submitted by the
applicant on 1 December 1992;
- the Commission's decision to adjourn the present case pending the
further proceedings in Applications No. 18892/91 and No. 19362/92
(hearings on 3 December 1993);
- the Commission's decision on the admissibility of Application
No. 18892/91;

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Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they have been submitted by the parties, may be summarised as follows:

The applicant, born in 1952, is an Austrian national and resident in Wels. He is a driving instructor by profession.

A. Particular circumstances of the case

In March 1991 the applicant attended as a spectator a trial before the Wels Regional Court (Landesgericht) against third persons.

On 21 March 1991 the Wels Regional Court, referring to S. 233 para. 3 of the Code of Criminal Procedure (Strafprozeßordnung), imposed a fine (Ordnungsstrafe) of AS 2,000 upon the applicant. It also stated that, in accordance with S. 237 para. 1 of the Code of Criminal Procedure, there was no appeal against this decision.

The Wels Regional Court considered in particular that the applicant had attended the trial as a spectator on other previous days, e.g. on 18 March 1991. Already on the last-mentioned date, it had been necessary for the Presiding Judge, after applause in the audience, to admonish the persons present and warn them that, in case of continuing disturbances, spectators would individually or in general be excluded from the trial. On 21 March 1991 the applicant had, without authorisation by the Presiding Judge under S. 228 of the Code of Criminal Procedure, recorded the trial with a private tape recorder which he had kept on his upper thigh where it could not be seen by the Presiding Judge. This behaviour constituted a further disturbance within the meaning of S. 233 para. 3 of the Code of Criminal Procedure. Thereupon the applicant was excluded from the trial. He first complied with this order, but entered the court room again after the lunch break. Despite the Presiding Judge's order to leave the court room and warning about a penalty, he refused to do so.

A payment order concerning this fine was issued against the applicant on the same date.

On 10 April 1991 the Linz Court of Appeal (Oberlandesgericht) declared the applicant's appeal (Beschwerde) against the Regional Court's decision of 21 March 1991 inadmissible, in accordance with S. 237 para. 1 of the Code of Criminal Procedure. As regards the applicant's hierarchical complaint under S. 15 of the Code of Criminal Procedure, the Court of Appeal observed that such a complaint was not a general or subsidiary remedy in respect of individual court decisions.

The applicant paid the fine on 4 September 1991.

B. Relevant domestic law

SS. 232 to 238 of the Austrian Code of Criminal Procedure concern the powers of the presiding judge and of the court for maintaining order in the court in the course of the trial.

S. 233 relates to "offences against the order in court" and, so far as relevant, reads as follows:

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"1. The presiding judge shall ensure the maintenance of peace and order as well as good conduct in the court room as befitting the dignity of the court. ...

3. Signs of approval or disapproval are prohibited. The presiding judge is entitled to call persons to order who disturb the trial by making such signs or otherwise, and, if necessary, to exclude spectators individually or in general. If anybody disobeys or if the disturbances are repeated, the presiding judge may impose upon the person concerned a penalty (Ordnungsstrafe) not exceeding AS 10,000, or, if indispensable for maintaining the order, imprisonment for a period not exceeding eight days."

S. 237 para. 1 of the Code of Criminal Procedure provides that decisions under S. 233 are immediately enforceable, and that there is no appeal against them.

S. 7 para. 1 of the Code of Criminal Procedure provides that a fine (Geldstrafe) imposed under the Code may be transformed into a sentence of imprisonment in default of payment (Ersatzfreiheitsstrafe) not exceeding a term of eight days, if the fine is partly or fully irrecoverable and does not call for a reassessment.

COMPLAINTS

1. The applicant complains in general that the trial which he attended was unfair and that the defence rights of the accused were violated. He invokes Articles 6 and 17 of the Convention.

2. The applicant further complains about the penalty imposed upon him by the Wels Regional Court on 21 March 1991. He submits in particular that he had offered to hand over his tape recorder. Furthermore, in the course of the lunch break on 21 March 1991, Judge O. had allowed him to attend the trial again. He considers that the Wels Regional Court, by imposing this penalty, found him guilty of a criminal offence not provided for under Austrian law, contrary to Article 7 of the Convention.

3. The applicant also complains that he did not have a remedy as regards the decision of 21 March 1991. He invokes Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 6 April 1991 and registered on 16 January 1992.

On 11 March 1992 the Commission decided to communicate the application for written observations on its admissibility and merits.

The Government's observations were submitted on 25 September 1992. The applicant submitted his observations in reply on 1 December 1992.

On 11 May 1993 the Commission decided to adjourn the further examination of the present application until having decided on the admissibility of Applications No. 18892/91 and No. 19362/92 relating to similar issues. The Commission decided upon the admissibility of the said Applications on 3 December 1993.

THE LAW

1. The applicant complains in general that the trial which he

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attended was unfair and that the defence rights of the accused were violated. He invokes Articles 6 and 17 (Art. 6, 17) of the Convention.

The Commission finds that the trial was not conducted against the applicant, but against third persons. The applicant's submissions in this respect do not relate to any alleged violation of his Convention rights. Consequently, the applicant cannot, to this extent, himself claim to be a victim within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention.

It follows that this part of the application is incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains under Article 7 para. 1 (Art. 7-1) of the Convention about the penalty imposed upon him by the Wels Regional Court on 21 March 1991.

Article 7 para. 1 (Art. 7-1) of the Convention, as far as relevant, reads as follows:

"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 or international law at the time when it was committed."

In the sphere of criminal law Article 7 para. 1 (Art. 7-1) confirms the general principle that legal provisions which interfere with individual rights must be adequately accessible, and formulated with sufficient precision to enable the citizen to regulate his conduct. Article 7 para. 1 (Art. 7-1) prohibits in particular that existing offences be extended to cover facts which previously clearly did not constitute a criminal offence (cf. No. 13079/87, Dec. 6.3.89, D.R. 60 p. 256).

The Commission, assuming that Article 7 para. 1 (Art. 7-1) applies to the present case, notes that the Wels Regional Court imposed the fine concerned upon the applicant for an "offence against the order in court" under S. 233 para. 3 of the Austrian Code of Criminal Procedure. This provision lays down a penalty in case of insulting remarks or other behaviour disregarding the authority of the court. The Wels Regional Court found the applicant in breach of S. 233 of the Code of Criminal Procedure in that he had disturbed the trial by recording the trial with a private tape recorder without prior permission by the Presiding Judge.

The Commission considers that the application of S. 233 para. 3 of the Code of Criminal Procedure in the present case cannot be regarded as a violation of Article 7 para. 1 (Art. 7-1) of the Convention.

It follows that the applicant's complaint under Article 7 para. 1 (Art. 7-1) is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains that he did not have a remedy as regards the decision of 21 March 1991. He invokes Article 13 (Art. 13) of the Convention.

The Commission has considered this aspect of the application under Article 2 of Protocol No. 7 (P7-2) which, as far as relevant, provides as follows:

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"1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, ..."

The Commission, assuming that the above court decisions imposing fines upon the applicant for an "offence against the order in court" related to a criminal offence within the meaning of Article 2 of Protocol No. 7, had regard to paragraph 2 (P7-2-2) of this provision, which subjects the right to review by a higher tribunal to "exceptions in regard to offences of a minor character, as prescribed by law".

The Commission notes that S. 235 of the Code of Criminal Procedure envisages a fine, and, if indispensable for maintaining the order, imprisonment not exceeding eight days. S. 7 of this Code provides for imprisonment in default of payment.

The Commission finds that an "offence against the order in court" within the meaning of the Code of Criminal Procedure constitutes a less serious offence both as to its nature and to the severity of the punishment involved. The Commission therefore considers an "offence against the order in court" as being of a minor character. The exception to the right to a review by a higher tribunal, pursuant to Article 2 para. 2 of Protocol No. 7 (P7-2-2), thus applies.

It follows that this part of the application is 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 Commission

President of the Commission

(H.C. Krüger)

(C.A. Nørgaard)