

BÖHMER v. AUSTRIA

AS TO THE ADMISSIBILITY OF

Application No. 18219/91
by Robert BÖHMER
against Austria

The European Commission of Human Rights (First Chamber) sitting in private on 17 May 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
N. BRATZA
E. KONSTANTINOV

Mrs. M.F. BUQUICCHIO, Secretary to the 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 27 February 1991 by Robert BÖHMER against Austria and registered on 17 May 1991 under file No. 18219/91;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is an Austrian national, born in 1965, who resides in Vienna.

On 16 February 1987 the applicant was taken into detention on remand for suspicion of, inter alia, theft, fraud and false imprisonment.

On 20 March 1987 an Investigating Judge of the Vienna Regional Court (Landesgericht), based on a psychiatric expert's opinion according to which the applicant suffered from schizophrenia, ordered that the applicant be provisionally placed in an institution for delinquents of unsound mind (Anstalt für geistig abnorme Rechtsbrecher).

On 19 June 1987 the Investigating Judge dismissed the applicant's request for release. The Investigating Judge, after having obtained a new psychiatric expert's opinion, held that the situation of the applicant had not changed since his placement in the institution and that his further detention was therefore necessary since he continued to be dangerous. The applicant did not appeal against this decision.

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On 20 February 1990 the Vienna Regional Court found that the applicant had committed various criminal offences, but that, at the time of the offences he had lacked criminal responsibility. The Regional Court therefore committed the applicant to an institution for delinquents of unsound mind. However, it suspended the execution of this decision and ordered the applicant's release on the condition that he would continue his psychiatric treatment and fixed a probationary period of 10 years. The Regional Court relied on the expert opinion of a psychiatrist who had examined the applicant at the trial. According to this expert, the applicant's psychological conditions had improved during his stay at the institution to an extent that would justify his release. The applicant, who was represented by counsel in the proceedings, waived his right to appeal and the public prosecutor did the same. On the same day the applicant was released.

On 7 June 1990 the applicant was taken into detention on remand for suspicion of having committed theft after his release on 20 February 1990.

On 12 September 1990 the Supreme Court (Oberster Gerichtshof), upon a plea of nullity for the preservation of the law (Nichtigkeitsbeschwerde zur Wahrung des Gesetzes) introduced by the Attorney General's Office (Generalprokuratur), quashed the Regional Court's judgment and decision of 20 February 1990 and remitted the case to the Regional Court. The Supreme Court found that the Regional Court's judgment was inconsistent. A person could only be committed to an institution for delinquents of unsound mind if he had committed offences for which he was not criminally responsible and, due to his mental state, continued to be of danger to the public.

On 18 September 1990 the Vienna Regional Court convicted the applicant of aggravated and professional theft he had committed after his release on 20 February 1990 and sentenced him to four years' imprisonment. The applicant, who was represented by counsel, did not appeal or introduce a plea of nullity.

On 9 July 1991 the Public Prosecutor withdrew the request he had earlier made for committing the applicant to an institution of delinquents of unsound mind with regard to the first set of proceedings. On the same day these proceedings were discontinued.

On 4 November 1991 the applicant applied to the Regional Court for having his detention in the first set of proceedings taken into account with regard to his conviction of 18 September 1990. On 7 November 1990 the Public Prosecutor supported the applicant's request.

On 4 December 1991 the Regional Court decided to count the applicant's detention in the first proceedings towards the sentence imposed in the second proceedings.

On 18 December 1991 the applicant was released.

Subsequently, the applicant applied to the Vienna Court of Appeal (Oberlandesgericht) for obtaining a compensation for unlawful detention as he considered that because the Regional Court had counted his detention in the first set of proceedings towards the second sentence, he should have been released earlier than he actually had been.

On 27 June 1992 the Vienna Court of Appeal decided that the applicant was entitled to a compensation for unlawful detention under the Criminal Proceedings Compensation Act (Strafrechtliches Entschädigungsgesetz) as regards his detention from 13 May to 18 December 1991. His actual detention, taking into account the

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detention in the first set of proceedings, had exceeded the sentence imposed in the second proceedings and he should already have been released on 13 May 1991.

COMPLAINTS

1. The applicant complains under Article 5 para.1 (e) of the Convention that he had been unlawfully detained in an institution for delinquents of unsound mind as he was not of unsound mind.
2. The applicant further complains that his sentence in the second set of proceedings was higher because the two proceedings had not been joined and that the whole period of detention in the course of the first set of proceedings were not taken into account in the second set. He invokes Article 6 para. 1 of the Convention.

THE LAW

1. The applicant complains under Article 5 para. 1 (e) (Art. 5-1-e) of the Convention that he had been unlawfully detained in an institution for delinquents of unsound mind as he was not of unsound mind.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of Article 5 para. 1 (e) (Art. 5-1-e) of the Convention as, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

The Commission, assuming that the applicant complied with the requirement as to the exhaustion of domestic remedies, notes that the applicant was released from the institution on 20 February 1990. However, he only introduced the present application on 17 May 1991. It follows that the applicant has not complied with the time-limit stipulated by Article 26 (Art. 26) of the Convention, no circumstances which could have interrupted the running of this period having been established.

This part of the application must, therefore, be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant further complains that his sentence in the second set of proceedings was higher because the two proceedings had not been joined and that the whole period of detention in the course of the first set of proceedings were not taken into account in the second set. He invokes Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission notes that the applicant failed to introduce a plea of nullity against the Regional Court's judgment of 18 September 1990.

Furthermore, the Commission observes that on 4 December 1991 the Regional court decided to count his detention in the first proceedings towards the sentence imposed on 18 September 1990. Moreover, on 27 June 1992 the Court of Appeal decided that the applicant was entitled to compensation for unlawful detention with regard to his detention in excess of the sentence in the second proceedings for the period from 13 May to 18 December 1991.

In these circumstances the Commission considers that the applicant's further complaints have been resolved at domestic level. Therefore, he can no longer claim to be a victim within the meaning of Article 25 para. 1 (Art. 25-1) of the Convention.

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It follows that this part of the application is inadmissible 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.F. BUQUICCHIO)

(A. WEITZEL)