Bearbeiter: Karsten Gaede
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EGMR Nr. 41444/98 - Urteil vom 2. Oktober 2003 (Hennig v. Österreich)

Recht auf eine Verhandlung in angemessener Frist (Gesamtbetrachtung; Organisationspflicht; konkrete Prüfung der Komplexität / Schwierigkeit; Wirtschaftsstrafverfahren; Verzögerungen in einzelnen Verfahrensabschnitten: Differenzierung nach Verfahrensstadien; Beschleunigungsgrundsatz).

Art. 6 Abs. 1 Satz 1 EMRK; Art. 20 Abs. 3 GG

Leitsätze des Bearbeiters

1. Die Angemessenheit der Dauer von Strafverfahren muss im Lichte der besonderen Fallumstände unter Berücksichtigung der in der ständigen Rechtsprechung des EGMR niedergelegten Kriterien gewürdigt werden. Diese sind im Besonderen die Komplexität des Falles, das Prozessverhalten des Beschwerdeführers und der relevanten staatlichen Behörden sowie die persönliche Bedeutung des Verfahrens für den Beschwerdeführer.

2. Die zu würdigende Periode beginnt in Strafverfahren, sobald eine Person strafrechtlich angeklagt ist. Dies kann auch schon vor der Überstellung des Falles an das Tatgericht der Fall sein. Anklage im Sinne des Art. 6 EMRK ist im allgemein die offizielle Mitteilung an den Angeklagten darüber, dass er von den zuständigen staatlichen Stellen wegen der Begehung einer Straftat verfolgt wird. Eine Anklage liegt auch dann vor, wenn der Verdächtige bereits durch ein Verfahren tatsächlich substantiell betroffen worden ist.

3. Ein Verfahren, das Teil einer im Allgemeinen komplexen Untersuchung von Wirtschaftsstraftaten ist, kann nicht pauschal als komplex bezeichnet werden. Auch ein mit komplexen Untersuchungen im Zusammenhang stehendes Verfahren ist insbesondere dann nicht komplex, wenn der Beschwerdeführer selbst die erforderlichen Informationen zur Bewältigung des zudem auf wenige Transaktionen beschränkten konkreten Verfahrens gegeben hat.

4. Auch eine gewisse Komplexität des Falles reicht allein nicht hin, die erhebliche Dauer eines Strafverfahrens zu rechtfertigen. Der EGMR ist sich der Schwierigkeiten bewusst, welche den Vertragsstaaten bei der Führung von Wirtschaftsstrafverfahren begegnen. Art. 6 I EMRK verpflichtet die Konventionsstaaten, ihre Justiz so einzurichten, dass die Gerichte allen Anforderungen dieser Vorschrift entsprechen können, einschließlich der Verpflichtung, innerhalb angemessener Frist zu entscheiden.

5. Ist in einem Fall festzustellen, dass das Verhalten staatlicher Stellen in den Ermittlungsstadien des Verfahrens übermäßige Verzögerungen bewirkt hat, kann eine Verletzung des Art. 6 I 1 EMRK nicht allein durch die zügige Durchführung des Verfahrens vor dem Gericht verneint werden. Treten derartige Verzögerungen auf und ist der Fall weder komplex, noch durch im Verhältnis zu den staatlich begründeten Verzögerungen nennenswerte Verzögerungen seitens des Beschwerdeführers gekennzeichnet, liegt eine Verletzung vor.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE 1

9 . The applicant was born in 1938 and lives in Oberwart/Austria. He is an auditor and tax consultant (Wirtschaftstreuhänder). 2

10. In December 1989, the Salzburg Tax Office (Finanzamt), in the course of investigations into a large scale fraud relating to the "WEB/IMMAG" group, instituted criminal proceedings against 97 persons, requesting them to submit in writing their comments as suspects. 3

11. On 14 December 1989 the applicant, who in his professional capacity assisted the "WEB/IMMAG" group, wrote a 4

letter to the Oberwart Tax Office. Therein he asked that his income tax declarations for the years 1985 to 1987 be corrected, so that the losses declared be cancelled, in particular ATS 541,585 for the year 1985; ATS 1 million for 1986 and ATS 220,000 for 1987. He further asked that following a re-calculation of his income, new tax assessment orders be issued.

1. Investigations by the Tax Authorities against the applicant for tax evasion 5

12. On 27 and 28 December 1989 the Salzburg Tax Office informed the applicant that he was suspected of tax evasion in that he had acted as a sham holder of shares in three cases concerning the years 1985-87. It further invited him to submit his comments in writing. 6

13. After the applicant's request of 15 January 1990 for an extension of the time-limit had been granted, he submitted his comments on 31 January 1990. 7

14. Until 29 October 1992 the Salzburg Tax Office for the Audit of Large-scale Companies (Großbetriebsprüfung) examined the "WEB/IMMAG" group. 8

15. On 22 March 1993 the Salzburg Tax Office requested the Oberwart Tax Office to transmit the applicant's tax file in order to determine the amount of evaded taxes. 9

16. On 17 May 1993 the Oberwart Tax Office replied to the Salzburg Tax Office that the file could not be transferred because of pending investigations. 10

17. Following another request for transfer of the file by the Salzburg Tax Office on 23 July 1993, the Oberwart Tax Office, on 24 January 1994, replied that the file had been sent to the Vienna Tax Office for the Audit of Large-scale Companies and could only be transmitted after these investigations had been completed. 11

18. Upon the Salzburg Tax Office's request of 28 January 1994, the Vienna Tax Office for the Audit of Large-scale Companies transferred the applicant's file on 25 May 1994. 12

19. On 3 June 1994 the Salzburg Tax Office informed the Salzburg Public Prosecutor's Office of the result of its investigations and requested that the applicant be prosecuted for tax evasion. It noted that the losses declared by the applicant for the years 1985-1989 (ATS 541,585 for the year 1985, ATS 1 million for 1986 and ATS 220,000 for 1987) resulted in tax evasion of ATS 327,016 for the year 1985, ATS 603,552 for 1986 and ATS 148,821 for 1987. Thus, the total amount of evaded taxes was ATS 1,079,389. 13

20. On 8 August 1994, when interrogated by the Oberwart District Court, the applicant stated that he wished to submit his comments in writing directly to the Salzburg Regional Court by 31 August 1994. On that date and on 30 September 1994, he requested extensions of the time-limit as he had fallen ill. On 27 January 1995 he submitted his comments and observations in writing. 14

2. Court proceedings against the applicant 15

21. On 9 February 1995 the Public Prosecutor's Office preferred a bill of indictment against the applicant charging him with tax evasion of ATS 1,079,389 in that he had made false statements of losses in his income tax forms between 1985 and 1987 (ATS 541,585 for 1985; ATS 1 million for 1986 and ATS 220,000 for 1987). The bill of indictment comprised eleven pages. 16

22. On 31 March 1995, the presiding judge of the chamber dealing with the applicant's case informed the President of the Regional Court that he considered himself biased since he had been the deputy investigating judge in proceedings against other accused relating to the same case. On 21 June 1995, the President decided nevertheless that the presiding judge should not withdraw from the case. 17

23. On 4 September 1995 the applicant requested that the trial scheduled for 13 September 1995 be adjourned. This request was granted by the court. 18

24. On 22 November 1995 the Regional Court convicted the applicant of tax evasion, pursuant to Section 33 § 1 of the Code of Tax Offences (Finanzstrafgesetz). As regards the applicant's argument that he could not be punished because his letter of 14 December 1989 constituted "self-denunciation" of a tax offence resulting in exemption from punishment, 19

the court observed that it had not been made in time because the tax authorities had already discovered the offence, and it had not been sufficiently detailed for the purposes of a "self-denunciation".

25. On 29 October 1996 the written version of the judgment, comprising twelve pages, was served on the applicant's counsel. Thereupon, on 26 November 1996, the applicant filed a plea of nullity (Nichtigkeitsbeschwerde) and requested that the transcripts of the trial be corrected. On 4 February 1997, after having obtained various statements, the Salzburg Regional Court corrected the transcripts. 20

26. On 28 May 1997 the Procurator General (Generalprokurator) submitted his observations on the applicant's plea of nullity. 21

27. On 25 June 1997 the Supreme Court scheduled the hearing on the plea of nullity for 29 July 1997. On that day the Supreme Court dismissed the applicant's plea of nullity. This decision was pronounced orally. On 2 October 1997 the written version of the judgment, consisting of twelve pages, was served on the applicant's counsel. 22

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION 23

28. The applicant complained that the length of the criminal proceedings against him was in breach of Article 6 § 1, which as far as material, reads as follows: 24

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..." 25

29. He argued that his case was not complex since he himself had provided the information necessary for his tax assessments to be corrected, the amount thereof was undisputed. What was at stake in his case was, therefore, whether or not the information given by him on 14 December 1989 constituted a "self-denunciation" of a tax offence resulting in exemption from punishment. The lack of complexity of the proceedings could also be inferred from the length of the judgments given by the courts, comprising a maximum of twelve pages. Considerable delays had been caused by the tax authorities before the bill of indictment was drawn up by the Public Prosecutor. In particular, it took the Salzburg Tax Office more than three years, namely from 31 January 1990, when he submitted his comments on the suspicions of tax evasion, before it requested the Oberwart Tax Office to transfer the tax file on 22 March 1993. Subsequently, more than one year elapsed from that date until the file was transferred to the Salzburg Tax Office on 25 May 1994. In the applicant's view, there was no explanation why the authorities could not have made copies of the tax file while the Salzburg and Vienna Tax Offices for the Audit of Large-scale Companies were examining the "WEB/IMMAG" group. Compared to the delays caused by the authorities, his own motions did not contribute significantly to the overall duration. 26

30. The Government submitted that the proceedings were particularly complex as they concerned highly complicated and time consuming investigations into a sophisticated network of some 400 companies and the financial relations among them within the framework of the "WEB/IMMAG" group. During the preliminary investigations the disclosure of some 800 bank accounts was ordered in Austria and abroad, 410 letters rogatory were prepared and transferred to foreign judicial authorities, and some 8,000 volumes of documents were seized and examined. Moreover, several delays were caused by the applicant who repeatedly requested extensions of time-limits, adjournment of the proceedings and that the transcripts of the hearings be corrected. 27

31. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see Humen v. Poland [GC], no. 26614/95, 15 October 1999, § 60). 28

32. As regards the period to be taken into account, the Court reiterates that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged" with an offence; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether "the situation of the [suspect] has been substantially affected" (see among other autorities; Reinhardt and Slimane-Kaïd v. France, judgment of 31 March 1998, Reports of Judgments and Decisions 1998-II, § 93). Having regard to this, the 29

Court finds that the proceedings commenced on 27 December 1989, when the Salzburg Tax Office informed the applicant that he was suspected of tax evasion, and ended on 2 October 1997, when the written version of the judgment was served on the applicant's lawyer (see Worm v. Austria, judgment of 29 August 1997, Reports 1997-V, § 33). Thus, the proceedings lasted approximately seven years and nine months.

33. The Court is not persuaded by the Government's argument that the applicant's case was particularly complex. The present case can be distinguished from the undoubtedly more complex investigations into the whole "WEB/IMMAG" group and its financial network, as the applicant's case concerned merely three financial transactions, for which he had given information already in 1989 and the amount of which had been uncontested throughout the proceedings. It does not, therefore, appear that the applicant's case was particularly complex. The Court reiterates in this context that even a certain complexity of the proceedings does not in itself suffice to justify a substantial duration (see Schweighofer and others v. Austria, nos. 35673/97, 35674/97, 36082/97 and 37579/97, § 32, 9 October 2001; Rösslhuber v. Austria (no. 32869/96, § 27, 28 November 2000). 30

34. As to the applicant's conduct, the Court notes that he caused some delays, but they must be viewed against the considerable delay which occurred before the bill of indictment was drawn up. The Court refers in this respect to the case of Rösslhuber (cited above, § 28). 31

35. In the applicant's case, the proceedings had already lasted for more than five years and one month when, on 9 February 1995, the bill of indictment was drawn up. As in the Rösslhuber case, the Court considers that the Government have not sufficiently explained the delays occurred in this period of time. In particular, there is no explanation why it took the Salzburg Tax Office more than three years, namely from 31 January 1990, when the applicant submitted his comments on the suspicions of tax evasion, before it requested the Oberwart Tax Office to transfer the tax file on 22 March 1993. From that date, more than one year elapsed until the applicant's tax file was ultimately transferred to the Salzburg Tax Office on 25 May 1994. No copies of the files were made, nor was it considered whether a severance of the applicant's case could have accelerated the proceedings. There is nothing to suggest that such measures would have been incompatible with the good administration of justice (see mutatis mutandis, Neumeister v. Austria, judgment of 27 June 1968, Series A no. 8, p. 42, § 21). 32

36. Unlike the preliminary investigations, the trial was conducted with reasonable diligence. However, the Court notes that approximately eleven months elapsed from 22 November 1995 when the Regional Court pronounced the oral judgment until its written version, comprising twelve pages, was served on 29 October 1996. In the Court's view, the speedy conduct of the trial was not sufficient to make up for the above considerable delays which had already occurred during the pre-trial phase. 33

37. The Court is aware of the difficulties States may encounter in conducting criminal proceedings relating to white-collar crime with reasonable diligence, as such cases often involve very complex facts and a large number of suspects (see Rösslhuber, cited above, § 30). 34

38. The Court reiterates, however, that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see, among other authorities, Vocaturo v. Italy, judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17; and Spentzouris v. Greece, no. 47891/99, § 27, 7 May 2002). The evidence adduced in the present case shows that there were excessive delays, which were mainly attributable to the national authorities. Consequently, there has been a violation of Article 6 § 1 of the Convention. 35

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION 36

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FOR THESE REASONS, THE COURT

1. Holds by six votes to one that there has been a violation of Article 6 § 1 of the Convention; 38

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