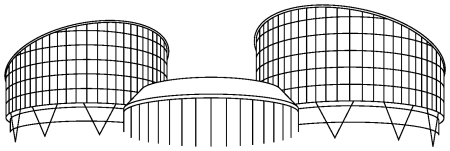

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF HAUPTMANN v. AUSTRIA

(Application no. 61708/12)

JUDGMENT

.

STRASBOURG

24 April 2014

This judgment is final. It may be subject to editorial revision.

In the case of Hauptmann v. Austria,

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*
and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 1 April 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 61708/12) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mr Walter Hauptmann ("the applicant"), on 14 September 2012.

2. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. On 19 December 2012 the President of the First Section decided to give the application priority (Rule 41 of the Rules of Court).

4. On 22 February 2013 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Elixhausen.

6. On 19 November 1993 the applicant's wife made a claim for spousal maintenance to the Salzburg District Court (*Bezirksgericht Salzburg* - hereinafter "the District Court"). She also requested the court to make an interim order for provisional maintenance pending the conclusion of the main proceedings. At that time, the applicant had already filed for divorce and had left the marital home.

7. In his written submissions of 21 December 1993, the applicant accused the presiding judge of bias. On 24 March 1994 the District Court issued an interim order requiring him to pay his wife provisional maintenance. On 8 April 1994 he appealed against that order. The judge in

those proceedings was subsequently excluded from the case. His decisions were declared null and void, with the exception of the interim order of 24 March 1994, which was confirmed by the Salzburg Regional Court (*Landesgericht Salzburg* – hereinafter "the Regional Court") on 7 July 1995.

8. On 29 September 1994 the applicant's wife sought to amend her claim and requested another interim order for provisional maintenance. On 6 July 1995 the District Court issued a fresh interim order awarding her a higher amount of provisional maintenance. On 18 September 1995, after an oral hearing, the court dismissed an appeal by the applicant against that order. However, on 7 July 1997 the Regional Court quashed that decision in part, and on 5 January 1998 the District Court partly allowed the applicant's appeal.

9. On an unspecified date in 1997, the presiding judge of the Regional Court was excluded from the case for bias upon a request by the applicant. The replacement judge left the court soon after, and a third judge took over the case.

10. During an oral hearing on 20 March 1998 the applicant and his wife agreed that he would pay her a specific amount of provisional maintenance until the conclusion of the proceedings. On 6 May 1998 the applicant submitted a request to the District Court to have the proceedings accelerated.

11. On 28 July 1999 the applicant requested that the hearing scheduled for 30 July 1999 be postponed because of serious health problems. The next hearing was held on 14 October 1999. On 20 August 1999 the District Court granted the applicant and his wife's divorce and found that the applicant had been largely responsible for the breakdown of the marriage. He appealed. The outcome of these proceedings is unclear.

12. During an oral hearing on 6 December 1999 the parties agreed to stay the main maintenance proceedings. On 25 May 2000 the applicant requested that they be continued. Between 2000 and 2004, a number of further oral hearings were held. On three occasions, hearings were postponed upon requests by the applicant, mainly for health reasons. The applicant's wife also requested several postponements.

13. On 19 December 2001 and on 16 July 2004 the applicant lodged applications to the Regional Court under section 91 of the Courts Act (*Gerichtsorganisationsgesetz*) for an appropriate time-limit to be imposed on the District Court (*Fristsetzungsantrag*). It appears that his applications were never decided.

14. During an oral hearing on 8 October 2004 the applicant's wife sought to amend her claim and requested another interim order for provisional maintenance. On 12 February 2005 the applicant lodged a further application under section 91 of the Courts Act, but it was rejected by

the Regional Court on 9 May 2005. On 29 November 2005 another hearing was held. The presiding judge changed twice during that year.

15. On 28 July 2006, after further oral hearings, the District Court issued an interim order partly awarding the applicant's wife the provisional maintenance she had requested. On 29 June 2007 the Regional Court partly allowed an appeal by the applicant and decreased the amount of provisional maintenance he had to pay.

16. On 6 November 2007 the Salzburg District Court ordered the enforcement of interim maintenance arrears for the period October 2004 until October 2007 and of the current claims. On 6 February 2008 the applicant lodged an action challenging the application for enforcement, which was dismissed on 7 June 2010. It appears that the proceedings are still pending before the appellate courts.

17. After another change of judge in 2008, several further hearings in the maintenance proceedings were held, including on 30 April 2009, 4 June 2009 and 11 March 2010. Between 9 July 2010 and 10 February 2011 the case file was missing. In February 2011 a new judge took over the case. In an oral hearing on 18 April 2011 the applicant and his wife agreed to stay the proceedings. On 29 November 2011 the applicant requested that they be continued.

18. On 12 October 2011 the applicant applied to have the provisional maintenance order varied. On 18 November 2011 the District Court rejected his application, referring to the fact that the proceedings challenging the enforcement order of 6 November 2007 were still pending. On 21 March 2012 the Regional Court quashed that decision and referred the matter back to the District Court. The next hearing was scheduled for 18 April 2013.

The main maintenance proceedings are still pending at first instance.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF PROCEEDINGS

19. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal..."

20. The Government contested that argument.

21. The period to be taken into consideration began on 19 November 1993, when the applicant's wife first applied for spousal maintenance. The

proceedings have therefore lasted more than twenty years at one level of jurisdiction and are still pending at first instance.

A. Admissibility

22. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

23. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

24. The Government contended that the length of the proceedings may still be regarded as reasonable. They argued that the fact that the applicant had made numerous complaints about court officials and made use of almost all the legal remedies available to him significantly added to the complexity and scope of the proceedings. They therefore considered their resulting length to be mainly attributable to the applicant's conduct.

25. The applicant maintained that the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, while admitting that some of the delays had been the result of his own conduct, because he had requested the hearings to be postponed on several occasions.

26. The Court finds that the proceedings at issue were of some complexity, mainly because there were a number of sets of proceedings running simultaneously. This complexity in itself, however, is insufficient to explain their length. Further, the fact that the applicant made use of the legal remedies available to him in order to secure his rights cannot be held against him, as a considerable number of the appeals and requests the applicant lodged were successful (see *C.P. and Others v. France*, no. 36009/97, § 31, 1 August 2000).

27. The Court observes that the proceedings were stayed twice upon the agreement of the applicant and his wife, for thirteen months in total. Further, some minor delays can be attributed to the applicant because of the requests he made for hearings to be postponed. However, these delays cannot explain the duration of more than twenty years.

28. As for the authorities' conduct, however, the Court notes that over the course of more than twenty years, there were considerable delays to the

proceedings because the presiding judge had to be replaced seven times. Furthermore, it seems that at least two of the applicant's section 91 applications were never decided. The case file went missing for seven months, and there were other significant periods of inactivity on the part of the domestic courts.

29. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to that in the present case (see, among many other authorities, *Baumann v. Austria*, no. 76809/01, § 45, 7 October 2004, and *Eigenstiller v. Austria*, no. 42205/06, §§ 39 et seq, 14 October 2010).

30. The Court reiterates in this connection that Article 6 § 1 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, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, ECHR 1999-II, and *Baumann*, cited above, § 45). Consequently, it takes the view that a period of more than twenty years does not satisfy the "reasonable time" requirement laid down in Article 6 § 1.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

31. The applicant further complained under Article 1 of Protocol No. 1 of the Convention about the amount of provisional maintenance he had to pay, which he considered to be excessive.

32. However, as the proceedings in the instant case are still pending at first instance, this complaint is premature and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

34. The applicant claimed 267,100 euros (EUR) in respect of pecuniary damage. In particular, he asserted that his share of the marital home had to be sold because of the excessive length of the proceedings. Further, the applicant claimed EUR 50,400 in respect of non-pecuniary damage.

35. The Government contested these claims, arguing that there was no causal link between the damage claimed and the violations alleged.

36. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court finds that the applicant has sustained non-pecuniary damage which cannot be compensated by the finding of a violation. Assessing the claim on an equitable basis, it awards the applicant EUR 30,000 under this head.

B. Costs and expenses

37. The applicant also claimed EUR 63,704 for the costs and expenses incurred before the domestic courts, including Turnover Tax. He did not make a claim in respect of the proceedings before the Court.

38. The Government pointed out that only costs incurred in an attempt to redress the violation found could be reimbursed, namely for the three applications under section 91 of the Courts Act and the request for the acceleration of the proceedings.

39. According to the Court's case-law, an applicant is entitled to the reimbursement of such costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court awards the total sum of EUR 2,208.21.

40. As the applicant made no claim for costs incurred in the Convention proceedings, no award is made under this head.

C. Default interest

41. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts:

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;

(ii) EUR 2,208.21 (two thousand two hundred and eight euros and twenty-one cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President