CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF LAMANNA v. AUSTRIA

(Application no. 28923/95)

JUDGMENT

STRASBOURG

10 July 2001

FINAL

10/10/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lamanna v. Austria,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 January 1999, 29 February 2000 and 19 June 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 28923/95) against the Republic of Austria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Salvatore Lamanna ("the applicant"), on 25 August 1995.

2. The applicant was represented before the Court by Mrs U. Hauser, a lawyer practising in Salzburg. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs. The French Government, having been informed by the Registrar of the right to intervene (Article 36 §1 of the Convention and Rule 61 § 2), did not avail themselves of this right.

3. The applicant alleged, in particular, that in compensation proceedings for detention on remand the decisions were not delivered publicly and that their reasoning violated the presumption of innocence.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11.

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 29 February 2000, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. On 11 March 1993 the applicant was arrested by the Belgian police in Brussels on the basis of an international arrest warrant issued by the Salzburg Regional Court (*Landesgericht*) on 14 May 1992. The applicant was suspected of attempted murder. Following his extradition by the Belgian authorities, he was placed in Salzburg Prison on 2 July 1993 and remanded in custody.

9. On 13 January 1994 the Salzburg Public Prosecutor's Office referred the applicant's case to the Salzburg Regional Court, charging him with attempted murder, aggravated robbery and the unlawful possession of a weapon.

10. On 10 October 1994 an assize court (*Geschwornengericht*) sitting at the Salzburg Regional Court acquitted the applicant of all the charges against him.

The operative provisions and grounds of the judgment read as follows:

> "Salvatore Lamanna is acquitted of the charges brought against him, namely that, on 2 May 1992 in Wagrain, acting as an accomplice to his brother A. Lamanna, who was prosecuted in separate proceedings,
>
> 1. he had attempted to murder Dani and Pedro N. by stabbing Dani N.'s left thigh, left hand, upper part of the body and throat and by shooting at his head which had been grazed by a bullet, ...
>
> 2. he had taken unlawfully by force, as described under point 1.), and with a weapon the luggage of Dani and Pedro N. which contained about ATS 250,000 in different currencies;
>
> 3. he had unlawfully possessed and carried a revolver; ...
>
> in accordance with section 336 of the Code of Criminal Procedure (*Strafprozessordnung*).
>
> Grounds
>
> The acquittal is founded on the jury's verdict."

11. According to the record of the jury's deliberations (*Niederschrift*), as regards the attempted murder charge, the jury found, *in dubio pro reo*, that the applicant's defence could not be refuted. In this respect, they noted that the applicant had been alone and the weapon had been in the possession of Dani and Pedro N. who had not testified at the trial. As regards the second charge of taking property by force, the jury considered that the applicant had had no intention to commit a robbery. Finally, concerning the unlawful possession of a revolver, they noted that the weapon had been in the possession of Dani and Pedro N. and that the applicant had only taken it in the course of the fight.

12. Upon pronouncement of the judgment, at the same hearing, defence counsel applied for the applicant's release and for compensation for pecuniary damage caused by his detention on remand. The prosecutor opposed the claim. The hearing was interrupted for the court to deliberate, but the compensation decision was not announced there and then as the judgment was not yet final. On resumption, the applicant's release was ordered and the trial closed.

13. The decision of the assize court of 10 October 1994, dismissing the applicant's request for compensation, was served upon the applicant's counsel on 4 November 1994. In that decision, the assize court found that the conditions laid down by section 2(1)(b) of the Compensation (Criminal Proceedings) Act 1969 (*Strafrechtliches Entschädigungsgesetz* – "the 1969 Act") were not satisfied. In its opinion,

> "A claim to compensation under section 2(1)(b) of the Compensation (Criminal Proceedings) Act ... is conditional on the applicant being cleared of the suspicion of which he was the object in the proceedings. A person who has been detained is so cleared only if all the suspicious circumstances telling against him have been satisfactorily explained, so that they cease to constitute an argument for the suspect's guilt.
>
> Having regard to the record of the jury's deliberations, who expressly referred to the principle of '*in dubio pro reo*' when answering the first main question, it had to be assumed that the suspicion against the applicant had not been dispelled. This circumstance was decisive for the decision of the assize court to refuse the request for compensation."

14. On 18 November 1994 the applicant appealed to the Linz Court of Appeal (*Oberlandesgericht*), arguing that the reasoning of the assize court was wrong. Reference was also made to Article 6 § 2 of the Convention and the judgment of 25 August 1993 of the European Court of Human Rights in the case of Sekanina v. Austria (Series A no. 266-A).

15. On 1 February 1995 the Linz Court of Appeal, sitting in private, dismissed the appeal as being unfounded. The reasons for its decision started with a summary of the Regional Court's decision. They went on to refute the applicant's objections as to the Regional Court's interpretation of the record of the jury's deliberations, confirming that the conditions of

section 2 § 1 (b) of the 1969 Act were not met. Further, it was stated that the applicant's reference to the judgment of the European Court of Human Rights in the Sekanina case was not relevant as there was no new and independent assessment of guilt in the present case. Finally, it was held that the Regional Court had correctly refused to take further evidence.

16. Following the Court's admissibility decision of 29 February 2000, the Supreme Court (*Oberster Gerichtshof*), upon the Attorney General's plea of nullity for the preservation of the law as regards the lack of publicity (*Nichtigkeitsbeschwerde zur Wahrung des Gesetzes*), found on 9 November 2000 that there had been a violation of section 6 § 4 of the 1969 Act, taken in conjunction with Article 6 § 1of the Convention, in that the Salzburg Regional Court's decision of 10 October 1994 had not been pronounced publicly, a deficiency which had not been remedied by the Linz Court of Appeal when taking its decision of 1 February 1995. Therefore, the Supreme Court ordered the Linz Court of Appeal to pronounce its decision of 1 February 1995 in public.

17. On 9 February 2001 the Linz Court of Appeal complied with this order, pronouncing its decision of 1 February 1995 at a public hearing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Acquittal

18. Under section 336 of the Code of Criminal Procedure, the assize court must acquit the accused as soon as the jury has answered the question of guilt in the negative.

B. Compensation for detention pending trial

19. The relevant provisions of the Compensation (Criminal Proceedings) Act 1969 read as follows:

Section 2

"(1) A right to compensation arises: ...

(b) where the injured party has been placed in detention or remanded in custody by a domestic court on suspicion of having committed an offence making him liable to criminal prosecution in Austria ... and is subsequently acquitted of the alleged offence or otherwise freed from prosecution and the suspicion that he committed the offence has been dispelled or the prosecution is excluded on other grounds, in so far as these grounds existed when he was arrested; ..."

Section 6

"(2) A court which acquits a person or otherwise frees him from prosecution ... (section 2 (1) (b) or (c)) must decide either of its own motion or at the request of the individual in question or the public prosecutor's office whether the conditions for compensation under section 2 (1) (b) or (c), (2) and (3) have been satisfied or whether there is a ground for refusal under section 3. If the judgment was based on the verdict of a jury, the bench shall decide together with the jury. ...

(4) Once the judgment rendered in the criminal proceedings has become final, the decision, which need not be made public, must, as part of the proceedings provided for in paragraph 2, be served on the detained or convicted person personally and on the public prosecutor ...

(5) The detained or convicted person and the public prosecutor may appeal against the decision to a higher court within two weeks. ..."

20. As a general rule, there is no public hearing in the Court of Appeal. The Court of Appeal rules after sitting in private.

21. In its judgment of 29 September 1994 the Constitutional Court ruled on the constitutionality of section 2 (1)(b) of the 1969 Act. It found that this provision in itself did not violate Article 6 § 2 of the Convention which, under Austrian law, has the force of constitutional law. In the light of the Sekanina v. Austria case (judgment of 25 August 1993, Series A no. 266-A), it held that it was not the refusal of a claim for compensation which was contrary to the Convention, but the re-examination of the question of guilt after a final acquittal. In the Constitutional Court's view only the separate re-assessment of evidence on the basis of the contents of the whole court file was likely to infringe the presumption of innocence. Nevertheless, the Constitutional Court observed that it would be desirable to amend section 2 (1)(b) of the 1969 Act in order to clarify the law.

THE LAW

I. SCOPE OF THE CASE

22. Following the Court's admissibility decision, the applicant made submissions on the merits in which he complains that the compensation proceedings were unfair in that he had no possibility to request the taking of evidence going beyond that which had already been taken in the criminal proceedings.

23. The Court recalls that, in its decision of 29 February 2000, it declared admissible the applicant's complaints about the lack of a public delivery of the decisions and the alleged infringement of the presumption of

innocence, whilst declaring inadmissible the remainder of the applicant's complaints, including the aforementioned matter. Thus, the scope of the case now before it is limited to the complaints which have been declared admissible.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

24. The Government contended that the applicant can no longer claim to be a victim of the alleged lack of a public delivery of the decisions given in the compensation proceedings as the Supreme Court ordered the Linz Court of Appeal to pronounce its decision of 1 February 1995 in public, which it proceeded to do (see paragraphs 15 and 16 above).

25. The applicant objected, arguing that the public delivery of the appellate court's decision cannot remedy the lack of a public delivery of the first instance court's decision.

26. The Court considers that the parties' arguments are closely linked to the well-foundedness of the applicant's complaint and will, therefore, join the Government's preliminary plea to the merits.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant complained about a lack of public delivery of the decisions given in the proceedings relating to his compensation claim for detention on remand. He relied on Article 6 § 1, which so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... public hearing ... by [a] ... tribunal ... Judgment shall be pronounced publicly ..."

The applicant did not dispute that the Linz Court of Appeal's decision of 1 February 1995 was delivered publicly on 9 February 2001 but maintained that he was also entitled to a public delivery of the first instance court's decision.

28. The Government conceded that initially there had been no public delivery of the courts' decisions in the compensation proceedings at issue, but contended that the alleged breach of the Convention had been put right by the Supreme Court's decision of 9 November 2000 and the subsequent delivery of the Linz Court of Appeal's decision of 1 February 1995 in open court.

29. The Court recalls that Article 6 § 1 applies to the proceedings under the 1969 Act, as they involve a determination of civil rights and obligations (see the Szücs v. Austria judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2479-80, §§ 33-38, and the Werner

v. Austria judgment of the same date, *Reports* 1997-VII, p. 2507-09, §§ 35-40).

30. The Court has frequently emphasised the importance of the public character of proceedings. It protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts is maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, a fair hearing, the guarantee of which is one of the foundations of a democratic society (see as the most recent authority, *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, 24.4.2001, § 36, to be published in ECHR 2001).

31. Nevertheless, the Court has applied the requirement of the public pronouncement of judgments with some degree of flexibility. Thus, it has held that despite the wording which would seem to suggest that reading out in open court is required, other means of rendering a judgment public may be compatible with Article 6 § 1. As a general rule, the form of publicity to be given to the judgment under domestic law must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1. In making this assessment, account must be taken of the entirety of the proceedings (see the Pretto and Others v. Italy judgment of 8 December 1983, Series A no. 71, p. 12, §§ 25-27, and the Axen v. Germany judgment of 8 December 1983, Series A no. 72, pp. 13-14, §§ 30-32; see also, *B. and P. v. the United Kingdom*, previously cited, § 45).

32. Further, it does not follow from the Court's case-law that the public delivery of a judgment is required at each level of jurisdiction, as the applicant seems to suggest. On the one hand, for instance in the Axen case, the Court found that public delivery of a supreme court decision was unnecessary, given that the judgment of the lower court had been pronounced publicly (ibid., § 32). On the other hand, in the Szücs and Werner cases, the Court found a violation of Article 6 § 1 as none of the decisions given in the proceedings under the 1969 Act had been delivered publicly and publicity was not sufficiently ensured by other means (see the Szücs judgment, previously cited, p. 2482, § 48, and the Werner judgment, also previously cited, p. 2513, § 60).

33. In the present case, the Salzburg Regional Court's decision of 10 October 1994 – although taken after a public hearing of the applicant's compensation claim – was not delivered publicly as it was dependent on his acquittal becoming final. Instead, it was served in writing on 4 November 1994. The decision by the Linz Court of Appeal of 1 February 1995, which contained a summary of the Regional Court's decision, confirmed its application of section 2 § 1 (b) of the 1969 Act and rendered its decision final, was initially also delivered in writing and was not rendered public by any other means. However, following the Supreme

Court's judgment of 9 November 2000, it was delivered publicly on 9 February 2001.

34. Having regard to the compensation proceedings as a whole as well as to their specific features, the Court finds that the purpose of Article 6 § 1, namely subjecting court decisions to public scrutiny, thus enabling the public to study the manner in which the courts generally approach compensation claims for detention on remand, was achieved in the present case by the public delivery of the appellate court's judgment.

Accordingly, there has been no violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

35. The applicant asserted that the reasoning of the Salzburg Regional Court and the Linz Court of Appeal dismissing his compensation claim on the ground that the suspicion against him had not been dispelled, violated the presumption of innocence, laid down in Article 6 § 2 of the Convention, which is worded as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

36. The applicant maintained that the denial of his compensation claim was not only founded on the acquittal judgment and the record of the jury's deliberations, but also on the remaining contents of the court file. In any case, once he had been finally acquitted, it could no longer be held against him if the suspicion had not been dissipated.

37. The Government, for their part, contended that the present case had to be distinguished from the above-cited Sekanina v. Austria judgment. What was decisive in that case, was the fact that the courts deciding on the compensation claim assessed the question whether the suspicion against the accused had been dissipated on the basis of the file, thereby replacing the jury's evaluation of the evidence. In the present case, however, the same assize court which had pronounced the applicant's acquittal determined the compensation claim and did no more than repeat the verdict of the jury – i.e. the acquittal *in dubio pro reo* – and the reasons given in the record of the jury's deliberations. Finally, the Government pointed out that their view was supported by the Constitutional Court's judgment of 29 September 1994, which had found that Article 6 § 2 only prohibited a court deciding a compensation claim for detention on remand from undertaking a new assessment of the claimant's guilt on the basis of the file.

38. The Court recalls that in *Rushiti v. Austria* (no. 28389/95, 21.3.2000, § 31) it has refuted the Government's identical argument, finding that once an acquittal has become final – be it an acquittal giving the accused the

benefit of the doubt in accordance with Article 6 § 2 – the voicing of any suspicions of guilt, including those expressed in the reasons for the acquittal, is incompatible with the presumption of innocence.

39. The Court sees nothing to distinguish the present application from the Rushiti case. The procedural difference pointed out by the Government, namely that, in the present case, the Regional Court's decision on the compensation claim was taken immediately after the applicant's acquittal, cannot be decisive. It was supposed to take effect and was served on the applicant only after the acquittal had become final. The appellate court's decision was also given after the acquittal had become final.

40. What is decisive is that both the Salzburg Regional Court and the Linz Court of Appeal made statements in the compensation proceedings following the applicant's final acquittal, expressing the view that there was a continuing suspicion against him and, thus, casting doubt on his innocence.

Accordingly, there has been a violation of Article 6 § 2 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 332,492 Austrian schillings (ATS) in respect of pecuniary damages, namely the loss of earnings suffered as a result of his detention on remand. The Government did not comment on this claim.

43. The Court finds that there is no causal link between the breach of the Convention found and the alleged pecuniary damage and therefore makes no award under this head.

B. Costs and expenses

44. The applicant claimed ATS 25,416 for the costs and expenses incurred in the domestic proceedings and ATS 56,840 for the costs and expenses incurred in the Convention proceedings.

45. The Government argued that the fees claimed in respect of the domestic proceedings were not in accordance with the Lawyer's Remuneration Act and accepted only ATS 18,295. They noted that the fees

are claimed in respect of the appeal against the Regional Court's decision and the statement in reply to the Senior Public Prosecutor's submissions. According to the Government, it is domestic practice to apply lower first instance court rates to proceedings under the 1969 Act, not appeal court rates. The applicant contested this.

In respect of the Convention proceedings, the Government submitted that it did not appear from their file whether submissions purportedly dated 6 September 1995 and 23 May 2000 had actually been made, and therefore they only accepted ATS 54,900 in fees.

46. As to the costs of the domestic proceedings, whatever rates should be applied, the Court notes that these proceedings were not entirely devoted to remedying the breach of the Convention which the Court has found. Accordingly, the Court does not consider it appropriate to make a full award concerning these costs. Deciding on an equitable basis, the Court awards ATS 18,295 under this head.

47. As to the costs of the Convention proceedings, the Court notes that the applicant did make submissions on the dates referred to by the Government, and that the resolution of the applicant's first complaint concerning the publicity of judgments was only resolved after the Court's decision on admissibility. It therefore awards this part of the claim in full.

48. In sum, the Court awards the applicant an amount of ATS 75,135 for costs and expenses.

C. Default interest

49. According to the information available to the Court, the statutory rate of interest applicable in Austria at the date of adoption of the present judgment is 4% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 75,135 (seventy-five

thousand one hundred and thirty-five) Austrian schillings for costs and expenses;

(b) that simple interest at an annual rate of 4% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 10 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President