

AUT-2023-2-002

a) Austria b) Constitutional Court c) d) 28/06/2023 e) G 299/2022 f) g) ECLI:AT:VFGH:2023:G299.2022 h) Codices (German)

Keywords of the Systematic Thesaurus

5.3.13.13 · Fundamental Rights - Civil and political rights - Procedural safeguards, rights of the defence and fair trial - Trial/decision within reasonable time

5.3.13.15 · Fundamental Rights - Civil and political rights - Procedural safeguards, rights of the defence and fair trial - Impartiality

Keywords of the alphabetical index

Judge, Challenge, Bias / Judicial impartiality, Constitutional principle / Trial within reasonable time, Remedy / Limitation period

Headnotes

In criminal proceedings, any lack of impartiality on the part of the court of origin can be remedied by the appellate court. The procedure for deciding on challenges for bias filed at the beginning of or during a trial (Article 45 of the Criminal Procedure Code) is therefore in line with the requirement of impartiality.

The principle that proceedings should be of a reasonable duration does not imply that criminal prosecutions must be subject to an absolute limitation period.

Summary

The applicants were accused of breach of trust. After the criminal investigation had started in 2009, charges were brought in 2016. Finally, in December 2022, the Vienna Criminal Court convicted all applicants and sentenced them to imprisonment. The applicants filed a constitutional complaint with the Constitutional Court. They claimed that the criminal court had applied legal provisions that violate [Article 6 ECHR](#), namely Article 45 of the Criminal Procedure Code (*Strafprozessordnung*) regarding the procedure for deciding on challenges for bias, as well as Article 58 of the Penal Code (*Strafgesetzbuch*) regarding statutory time-limits for prosecution, and requested that the Court repeal those provisions as unconstitutional.

Under the Criminal Procedure Code, judges at criminal courts are disqualified from conducting a case if there are conditions or circumstances which are likely to cast reasonable doubt on the judge's impartiality (Article 43), and all parties to a criminal proceeding may challenge judges on such grounds (Article 44). In principle, a motion for bias shall be decided upon by the president of the court. However, if a motion for bias is lodged at the beginning of or during a trial, such motion shall be decided upon by the court itself including the judge who has been challenged (Article 45).

The applicants claimed that the last-mentioned provision ran counter to the constitutional principle of a fair hearing by an impartial court. They argued that it was not appropriate for a judge to decide on a challenge for bias against himself.

The Constitutional Court observed that under the Criminal Procedure Code any decision on a motion for bias must be properly reasoned and communicated to the parties to the proceedings. In addition, the parties may complain of bias on the part of the court of origin by appealing against the final judgment of that court; in so doing, the parties may obtain relief from the appellate court against any lack of impartiality on the part of the court of origin.

Against that background, the Constitutional Court found that Article 45 of the Criminal Procedure Code complied with the requirement of impartiality.

Under the Penal Code, criminal offences (except offences punishable by life imprisonment) shall not be punished if the statutory limitation period of between one and twenty years has expired (Article 57). However, the period of time between the day on which the suspect has been heard for the first time and the day on which the judgment has become final shall not be included in the limitation period (Article 58.2 of the Penal Code).

The applicants argued that those provisions constituted an infringement of [Article 6.1 ECHR](#) as they were not capable of ensuring that criminal proceedings are concluded within a reasonable time.

The Constitutional Court recalled that limitation periods serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time.

Yet, it is not the primary goal of limitation periods to prevent an excessive duration of proceedings. As for criminal proceedings, the Criminal Procedure Code includes provisions such as Article 9 (general requirement of rapid action) and Article 108a (judicial review of the duration of investigation proceedings) which specifically aim to ensure that criminal proceedings are conducted with due speed.

The Court therefore concluded that Article 58.2 of the Penal Code did not violate the principle that proceedings should be of a reasonable duration. If, in a specific case, criminal proceedings cannot be concluded within a reasonable time, this can only be attributed to the competent prosecution authorities, and not to structural reasons casting doubts on the constitutionality of the law itself.

As a result, the Constitutional Court dismissed the complaint in its entirety.

Cross-references

European Court of Human Rights:

- *Mikhail Mironov v. Russia*, no. 58138/09, 06.10.2020;
- *Oleksandr Volkov v. Ukraine*, no. 21722/11, 09.01.2013;
- *Stubbings and Others v. The United Kingdom*, nos. 22083/93 and 22095/93, 22.10.1996.

