

## **BGE 20000530\_31982\_96 vom 30. Mai 2000**

Bundesgericht (BGE), 2000-05-30, FR

Quelle: [https://mcp.opencaselaw.ch/entscheid/bge\\_20000530\\_31982\\_96](https://mcp.opencaselaw.ch/entscheid/bge_20000530_31982_96)

FR: BGE 20000530\_31982\_96 du 30 mai 2000

IT: BGE 20000530\_31982\_96 del 30 maggio 2000

### **Regeste**

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 4 Prot. n° 7 CEDH. Ne bis in idem. Retrait du permis de conduire par le bureau de la circulation routière cantonal et condamnation à une peine d'emprisonnement avec sursis ainsi qu'à une amende pour conduite en état d'ivresse. Les mesures prévues par la loi ont été ordonnées en même temps par deux autorités différentes, soit une autorité pénale et une autorité administrative. Il n'y a donc eu aucune violation de l'art. 4 Prot. n° 7 CEDH au titre de la répétition d'une procédure pénale. Conclusion: requête déclarée irrecevable.

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### **Erwägungen**

#### **E. 1**

The applicant complains that the proceedings before the Administrative Appeals Commission did not comply with Article 6 § 1 of the Convention. The oral hearing required by this provision must concern all aspects relevant for the judgment, including legal issues. In the present case the court only heard the applicant, but did not let his lawyer comment comprehensively on all relevant factual and legal issues of the withdrawal of his driving licence, in particular on ne bis in idem . The subsequent explanation in written proceedings before a higher instance cannot heal this breach.

#### **E. 2**

The Court has first examined the applicant's complaint under Article 6 § 1 of the Convention. This provision states, insofar as relevant: "In the determination of ... any

criminal charge against him, everyone is entitled to a fair and public hearing ... by ... (a) tribunal ... " According to the Court's case-law, "the 'right to a court' ... and the right to a judicial determination of the dispute ... cover questions of fact just as much as questions of law" (see the *Le Compte, van Leuven and de Meyere v. Belgium* judgment of 23 June 1981, Series A no. 43, p. 23, § 51). In respect of the Austrian Administrative Court, the Court has held that "the European Court should confine itself as far as possible to examining the question raised by the case before it. Accordingly, it should only decide whether, in the circumstances of the case, the scope of the Administrative Court satisfied the requirements of Article 6 § 1 of the Convention" (see the *Zumtobel v. Austria* judgment of 21 September 1993, Series A no. 268, p. 14, § 32). Turning to the present case, the Court notes that the Federal Court in its decision of 11 January 1995 quashed the decision of the Administrative Appeals Commission as the latter had not conducted an oral hearing. The Appeals Commission thereupon fixed a date for the hearing, though the lawyer was informed before the hearing that certain statements would be inadmissible, in particular to repeat or to add appeal grounds. At the hearing of 31 May 1995 before the Administrative Appeals Commission, the applicant's lawyer was able to raise in open court in particular his complaint about *ne bis in idem*. In its judgment of the same day, the Administrative Appeals Commission discussed, and then dismissed, this complaint on the merits, while leaving open whether or not such a complaint in open court was admissible. As a result, the Administrative Appeals Commission effectively dealt with the applicant's complaint about *ne bis in idem*. Insofar as the applicant states that he was interrupted by the judges of the Administrative Appeals Commission, he has not demonstrated any particular issue or complaint which he had not been able to raise, or which he had raised but which had not been considered by the Administrative Appeals Commission. This part of the application is, therefore, manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

### **E. 3**

Under Article 4 of Protocol No. 7 the applicant complains that that he was punished twice in two separate proceedings for drunken driving. Thus, first his driving licence was withdrawn by the Road Traffic Office, and later he was convicted and sentenced by the Gossau District Court. Article 4 of Protocol No. 7 states, insofar as relevant: "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. 2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case. ..." The Court recalls that, on 11 May 1993 the Road Traffic Office withdrew the applicant's driving licence. This was eventually confirmed by judgments of the Administrative Appeals Commission and of the Federal Court. On 9 June 1993 the Gossau District Office imposed a penal order on the applicant which sentenced him to two weeks' suspended imprisonment of two years and a fine of 1,100 CHF. This penal order acquired legal force. According to the Court's case-law, the aim of Article 4 of Protocol No. 7 is to prohibit the repetition of criminal proceedings which have been concluded by a final decision (see the *Gradinger v. Austria* judgment of 23 October 1995, Series A no. 328-C, p. 65, § 53; the *Oliveira v. Switzerland* judgment of 30 July 1998, Reports of Judgments and Decisions 1998-V, p. 1998, § 26 et seq.). In the present case the Court notes that the Swiss authorities were merely determining the three different sanctions

envisaged by law for such an offence, namely a prison sentence, a fine, and the withdrawal of the driving licence. These sanctions were issued at the same time by two different authorities, i.e. by a criminal and by an administrative authority. It cannot, therefore, be said that criminal proceedings were being repeated contrary to Article 4 of Protocol No. 7 within the meaning of the Court's case-law. This part of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3. Entscheidung For these reasons, the Court, unanimously, **DECLARES THE APPLICATION INADMISSIBLE** . Erik Fribergh  
Registrar András Baka    President

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