

In the case of Mlynek v. Austria*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr F. Matscher,
Mr C. Russo,
Mr A. Spielmann,
Mrs E. Palm,
Mr R. Pekkanen,
Mr F. Bigi,
Sir John Freeland,
Mr L. Wildhaber,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 26 October 1992,

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

Notes by the Registrar

* The case is numbered 6/1992/351/425. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 21 February 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 15016/89) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by an Austrian national, Mr Hannes Mlynek, on 21 March 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 27 February 1992, in the presence of

the Registrar, the President drew by lot the names of the other seven members, namely Mr J. Cremona, Mr C. Russo, Mr A. Spielmann, Mrs E. Palm, Mr R. Pekkanen, Sir John Freeland and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr F. Bigi, substitute judge, replaced Mr Cremona, who had left the Court on the expiry of his term of office and whose successor had taken up his duties before the hearing (Rules 2 para. 3 and 22 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the Delegate of the Commission and the applicant on the organisation of the procedure (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 16 June 1992. On 9 April the Government had informed the Registrar that they did not intend to file a memorial.

5. On 22 and 29 September the Government and Mr Mlynek's lawyer communicated to the Registrar the text of an agreement concluded between them on 15 September.

The Delegate of the Commission was consulted and on 14 October expressed the view that the settlement represented a solution consistent with respect for the human rights laid down in the Convention.

6. On 26 October 1992 the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from the usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

7. Mr Hannes Mlynek is an Austrian national currently living in Vienna.

8. On 21 May 1980 criminal proceedings were brought against him in the Vienna Regional Court (Landesgericht). They led to his conviction, on 30 May 1984, on counts of misappropriation of funds (Untreue) and fraud (Betrug). On 30 January 1987 the Supreme Court (Oberster Gerichtshof) quashed the judgment and remitted the case to the same court, which reopened the proceedings on 11 January 1988.

9. On 10 March 1988 the European Commission of Human Rights, with which the applicant had lodged a first application (no. 11688/85), drew up a report expressing the opinion that the length of the proceedings had exceeded a "reasonable time" within the meaning of Article 6 para. 1 (art. 6-1) of the Convention. Taking its decision on 19 September 1989 pursuant to Article 32 (art. 32) of the Convention, the Committee of Ministers of the Council of Europe reached the same conclusion and recommended that the Government pay Mr Mlynek 275,000 schillings as just satisfaction.

10. In the meantime, after thirty-three days of hearings, including inter alia the taking of evidence from some hundred witnesses, the Regional Court had, on 23 March 1988, sentenced the applicant to three years' imprisonment, two of which were suspended, for misappropriation of funds and negligent bankruptcy (fahrlässige Krida).

11. The Supreme Court quashed the judgment on 1 June 1990 and once again remitted the case to the Vienna Regional Court. The proceedings are still pending, but are confined to a prosecution for negligent bankruptcy.

PROCEEDINGS BEFORE THE COMMISSION

12. Mr Mlynek lodged a second application with the Commission on 21 March 1989; he complained of the length of the proceedings after 10 March 1988 (see paragraph 9 above).

The Commission declared the application (no. 15016/89) admissible on 2 July 1990. In its report of 9 December 1991 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1) of the Convention. The full text of its opinion is reproduced as an annex to this judgment*.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 242-C of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

13. On 22 September 1992 the Court received from the Ministry of Foreign Affairs of the Republic of Austria the following text, signed by the Government's representative and Mr Mlynek on 15 September 1992:

"...

1. The Austrian Federal Government undertake to exonerate the applicant, Dr Hannes Mlynek, ... from the obligation to pay the costs and fees (in particular experts' fees) incurred in the proceedings in case 12 b Vr 3769/81, Hv 3646/87 (now 12 b E Vr 3079/91, Hv 1799/91) before the Vienna Regional Criminal Court, in accordance with a claim to be made ... once the decision in the proceedings which are the subject of the complaint has become final.

2. The applicant declares that his above-mentioned applications [application no. 15016/89 and an application no. 19513/92, which is still pending before the Commission] are to be regarded as settled.

3. The applicant and the Republic of Austria declare that they will under no circumstances bring before an authority, whether Austrian or international, claims arising in any way from the subject-matter of [the aforesaid] human rights applications ..., that is the criminal proceedings referred to in point 1.

4. The applicant will not pursue a claim for costs and expenses incurred in connection with the proceedings concerning [the said] applications ...

5. The introduction of claims under the criminal law compensation Act in the event of the applicant's acquittal in the criminal proceedings referred to under point 1 is not covered by the undertaking in point 3.

..."

By a letter of 25 September 1992 to the Registrar the applicant's lawyer confirmed the agreement concluded between his client and the Government. The Delegate of the Commission was consulted in accordance with Rule 49 para. 2 of the Rules of Court and expressed a favourable opinion (see paragraph 5 above).

14. The Court takes formal note of the friendly settlement reached

between the Government and Mr Mlynek. It discerns no reason of public policy militating against striking the case out of the list (Rule 49 paras. 2 and 4).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 27 October 1992.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar