



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

FIRST SECTION

**CASE OF MAURER v. AUSTRIA**

*(Application no. 50110/99)*

JUDGMENT

STRASBOURG

17 January 2002

**FINAL**

*17/04/2002*

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 Maurer v. Austria,**

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 13 December 2001,

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

**PROCEDURE**

1. The case originated in an application (no. 50110/99) 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, Herbert Maurer ("the applicant"), on 29 April 1999.

2. The applicant was represented before the Court by Mr F. Amler, a lawyer practising in St. Pölten. 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.

3. The applicant alleged that criminal proceedings against him lasted unreasonably long.

4. 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.

5. By a decision of 21 November 2000 the Court declared the application admissible.

6. As of 1 November 2001 the application was allocated to the First Section of the Court. Within that Section, the Chamber that would consider the case was constituted as provided for in Rule 26 § 1 of the Rules of Court.

## THE FACTS

7. On 3 June 1994 an action in defamation (*üble Nachrede*) was brought against the applicant. He was suspected of having abused another person in the course of an altercation. Trial hearings were held on 8 November 1994, 8 May 1995 and 3 October 1995 before the Herzogenburg District Court (*Bezirksgericht*). On the latter date the applicant was convicted of defamation and sentenced to a fine.

8. On 4 March 1996, following the applicant's appeal, the St. Pölten Regional Court quashed the sentence because of errors of procedure and law, and referred the case back to the District Court. It found, *inter alia*, that the District Court had relied on evidence that had been precluded.

9. On 17 February 1997, after hearings on that date and 10 January 1997, the District Court convicted the applicant again, qualifying the incriminated behaviour this time as an insult (*Beleidigung*).

10. On 8 January 1998, following the applicant's appeal, the St. Pölten Regional Court quashed the sentence again and referred the case back to the District Court. The Court of Appeal found that the District Court had failed to take evidence concerning the applicant's intentions.

11. On 18 May 1998 the District Court again convicted the applicant of insult. On 25 January 1999 the St. Pölten Court of Appeal dismissed the applicant's appeal. The decision was served on 27 April 1999.

## THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTION

12. The Government contended that the applicant failed to exhaust domestic remedies as he did not make an application under Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*). It provides for interlocutory applications whereby a higher court is requested to impose an adequate time-limit on a lower court for taking a procedural measure with which it has been dilatory. The Government relied on two recent judgments, in which the Court found that Section 91 of the Courts Act was an effective remedy as regards complaints about the length of proceedings (*Holzinger v. Austria*, no. 23459/94, 30.01.01, §§ 24-25, to be published in ECHR-2001), except where there has already been a substantial delay before the entry into force of this provision on 1 January 1990 (*Holzinger (no. 2) v. Austria*, no. 28898/95, 30.01.01, §§ 21-22, also to be published in ECHR-2001).

13. The Government further submitted that they did not raise this plea earlier in their observations on admissibility, as it did not have any prospects of success in the light of the case-law as it stood.

14. The applicant contested the Government's view. He submitted that the Government had not shown any periods during which the courts were dilatory with a particular procedural step. An application pursuant to Section 91 of the Courts Act would therefore not have offered prospects of success.

15. The Court recalls that pursuant to Rule 55 of the Rules of Court any plea of inadmissibility must be made by the respondent party in its observations on the admissibility of the application, insofar as its character and the circumstances permit.

16. The Court notes that the application was communicated to the respondent Government on 9 November 1999. Shortly before then, the Court had given a decision in which it had found, in general terms, that Section 91 of the Courts Act was not an effective remedy as regards length of proceedings (*Holzinger (no. 2) v. Austria* [decision], no. 28898/95, 12.10.1999, unreported). However, at that time this was the Court's only decision on the issue and it had not yet been confirmed by a judgment. This is all the more important, as it cannot be said that there was any constant case-law of the Commission with regard to Section 91 of the Courts Act. Moreover, on 2 December 1999, the Court found that an application under Articles 108 and 109 of the Portuguese Code of Criminal Procedure was an effective remedy as regards complaints about the length of proceedings (*Tomé Mota v. Portugal* [decision], no. 32082/96, ECHR 1999-IX). This remedy is comparable to an application under Section 91 of the Austrian Courts Act, as it provides for an interlocutory application which allows a superior authority *inter alia* to fix a time-limit for taking a procedural measure which the competent court has failed to take. In these circumstances, the Court finds that the Government could have been expected to raise the issue of non-exhaustion either in their observations on admissibility, or at least following the *Tomé Mota* decision, which was given well before the Court's admissibility decision of 21 November 2000 in the present case. As there are no particular reasons which would have absolved the Government from raising this objection in the proceedings on admissibility, they are estopped from doing so now (see also the recent judgment in the case of *Schweighofer and Others v. Austria*, no. 35673/97, 09.10.01, § 26, concerning the same issue).

17. Accordingly, the Government's preliminary objection must be dismissed.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

18. The applicant complained that the criminal proceedings against him lasted unreasonably long. He relied on Article 6 § 1 of the Convention which, so far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

19. The Government contested this view. They asserted that the duration of the proceedings was due to the fact that the case had to be remitted twice to the District Court but that there were no periods of inactivity attributable to the authorities.

20. The Court recalls that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court’s case-law, in particular the complexity of the case, the applicants’ conduct and the conduct of the competent authorities (see among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

21. The proceedings at issue started on 3 June 1994 and ended on 27 April 1999. Thus, they lasted four years and almost eleven months at two levels of jurisdiction, whereby the case was twice referred back to the first instance. The Court finds that the case was far from being complex. Further the Court notes that following the St. Pölten Regional Court’s judgment of 4 March 1996 it took until 10 January 1997, i.e. more than ten months until the Herzogenburg District Court held a hearing in the new set of proceedings. Following its judgment of 17 February 1997, the appeal proceedings lasted another eleven months, namely until 8 January 1998. These delays are attributable to the courts, while no delays were caused by the applicant.

22. Having regard to the circumstances of the case, the Court finds that the overall duration of the proceedings exceeded a “reasonable time”. There has, thus, been a breach of Article 6 § 1 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant requested 300,000 Austrian schillings (ATS) [21,802.32 euros (EUR)] as compensation for non-pecuniary damage. The Government did not comment.

25. The Court, having regard to its case-law and making an assessment on an equitable basis, awards the applicant ATS 50,000 (EUR 3,633.72).

### B. Costs and expenses

26. The applicant stated that the excessive duration of the proceedings caused an increase in costs. He submits that the total amount of costs incurred was ATS 200,000 (EUR 14,534.88) and requests the Court to reimburse an appropriate part of these costs. The Government did not comment.

27. The Court notes that none of the costs of the domestic proceedings can be considered as having been incurred in an attempt to prevent or redress the violation found. However, considering that unreasonable delays in proceedings involve an increase in an applicant's costs (see *Bouilly v. France*, no. 38952/97, 7.12.99, § 33) the Court awards the applicant ATS 10,000 (EUR 726.74) under this head.

28. As to the costs of the Convention proceedings, the Court notes that the applicant, who was represented by counsel, did not have the benefit of legal aid. Making an assessment on an equitable basis and having regard to the sums awarded in similar cases, the Court awards the applicant ATS 20,000 (EUR 1,453.49) under this head.

29. Thus, the Court makes a total award of ATS 30,000 (EUR 2,180.23) for costs and expenses.

### C. Default interest

30. 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. *Dismisses* the Government's preliminary objection;
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 from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts: 50,000 (fifty-thousand) Austrian schillings ie. EUR 3,633.72 (three-thousand six-hundred-thirty-three euros and seventy-two cents) in respect of non-pecuniary damage and 30,000 (thirty-thousand) Austrian schillings ie. EUR 2,180.23 (two-thousand one-hundred and eighty euros and twenty-three cents) 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;

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

Done in English, and notified in writing on 17 January 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President