



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

FIRST SECTION

**CASE OF BIEGLER BAU GESMBH v. AUSTRIA**

*(Application no. 32097/96)*

JUDGMENT  
(Friendly settlement)

STRASBOURG

11 July 2002

This judgment is final but it may be subject to editorial revision.



**In the case of Biegler Bau GesmbH v. Austria,**

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr G. BONELLO,

Mr E. LEVITS,

Mr A. KOVLER,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 27 June 2002

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

**PROCEDURE**

1. The case originated in an application (no. 32097/96) 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 limited liability company with its seat in Austria, Biegler Bau GesmbH (“the applicant”), on 29 May 1996.

2. The applicant was represented by Mr H. Krenn, a lawyer practising in Vienna. 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 complained under Article 6 § 1 of the Convention about the length of a set of civil proceedings.

4. On 1 November 1998 the case was transferred to the Court by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 9 November 1999 the Court communicated the above complaint to the Government. On 3 July 2001, having obtained the parties' observations and supplementary observations, the Court declared the application admissible.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

6. On 26 March 2002, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 8 April and on 25 April 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

## THE FACTS

7. The applicant is a limited liability company with its seat in Gumpoldskirchen (Austria).

8. As a client had allegedly not paid enough for construction work accomplished for him, the applicant filed an action for unjustified enrichment with the Vienna Regional Civil Court (*Landesgericht für Zivilrechtssachen*) on 30 May 1980.

9. On 21 November 1994 the Regional Court, after having held numerous hearings, dismissed the applicant's action.

10. On 23 May 1995 the Vienna Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal.

11. On 25 October 1995 the Supreme Court (*Oberster Gerichtshof*) rejected the applicant's further appeal on points of law.

## THE LAW

12. On 8 April and on 25 April 2002, respectively, the Court received the following declaration from the applicant and the Government:

“With reference to Article 38 § 1 (b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the parties in the proceedings concerning application no. 32097/96, lodged by Biegler Bau GesmbH, declare with a view to a friendly settlement reached with the assistance of the European Court of Human Rights, as follows:

1. The Government of the Republic of Austria will pay the applicant a sum of altogether 12,000 euros (EUR) as compensation in respect of any possible claims relating to the present application. This sum includes EUR 1,000 in respect of costs and expenses incurred in the domestic proceedings.

This sum will be payable to the applicant's representative, Mr Helmut Krenn in Wien, within three months from the date of delivery of the judgment given by the Court pursuant to Article 39 of the Convention.

2. The applicant declares the application settled.

3. The applicant waives any further claims against the Republic of Austria relating to the facts underlying the present application.

4. The parties undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.”

13. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols

(Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

14. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 11 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President