CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF DIRNBERGER v. AUSTRIA

(Application no. 39205/98)

JUDGMENT

STRASBOURG

5 February 2004

FINAL

05/05/2004

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 Dirnberger v. Austria,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr J. HEDIGAN,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mrs E. STEINER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 15 January 2004,

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

PROCEDURE

1. The case originated in an application (no. 39205/98) 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 an Austrian national, Franz Dirnberger ("the applicant"), on 24 September 1997.

2. The applicant was represented by Mr G. Kollmann, a lawyer practising in Vienna (Austria). The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

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

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. 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.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1.

7. By a decision of 16 January 2003 the Court declared the application admissible.

8. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

9. The applicant, born in 1936, lives in Vienna (Austria).

10. At the relevant time the applicant was the owner of several firms, whose business was trading in fowl and game as well as the processing, importation and exportation of meat. From 1975 onwards, one of the firms imported meat, processed it and re-exported it without putting it on the domestic market. Such an activity is exempted from restrictions to which the ordinary importation of meat is subject and the applicant was accordingly issued a permit for inward processing *(aktiver Veredelungsverkehr*) setting out the conditions for import and export.

11. On 25 June 1981 the Investigating Judge at the Vienna Regional Court (*Landesgericht*) instituted preliminary investigations against the applicant who was suspected of having breached the conditions of the inward processing permit by having exported a different quality of meat than he had imported and by having put the imported meat onto the domestic market without having paid the customs duties. These acts constituted offences under the Act on Fiscal Offences (*Finanzstrafgesetz*), the Trade in Animals Act (*Viehwirtschaftsgesetz*) and the Export Act (*Aussenhandelsgesetz*). Subsequently, the Investigating Judge ordered searches at the offices of the applicant's firms and at the cold storage depots where the meat had been kept. The applicant's stock of meat was seized.

12. On 24 June 1982 bankruptcy proceedings (*Konkursverfahren*) were opened against the applicant and, at an unspecified date, he was declared bankrupt. On 12 October 1983 the applicant was arrested and remanded in custody on suspicion of fraud. In 1984 he was convicted of that offence and sentenced to two and a half years' imprisonment. Subsequently, he was convicted of other criminal offences on two occasions and sentenced to further terms of imprisonment. In 1992 he was eventually released.

13. Meanwhile, on 25 February 1987 the Vienna Customs Office submitted a report on the charges in respect of which the proceedings had been opened on 25 June 1981 to the Public Prosecutor's Office and supplemented this report on 23 October 1987.

14. The Animals and Meat Commission (*Vieh- und Fleischkommission*), which is the authority competent under the Trade in Animals Act to decide on the relevant amount for the assessment of the fine, gave its decision on 30 December 1987. On 15 February 1988 the applicant appealed against this decision and on 31 October 1990 the competent Federal Minister dismissed the appeal. On 25 September 1991 the Administrative Court dismissed a

complaint by the applicant against the Animals and Meat Commission's decision.

15. In the meantime, on 26 February 1990, the Vienna Customs Office (*Zollamt*) issued tax orders claiming outstanding customs duty and importation turnover tax (*Einfuhrumsatzsteuer*). It considered that the customs privileges linked to the inward processing permit were no longer applicable to certain quantities of meat imported in 1980. On 7 May 1990 the applicant appealed.

16. On 28 January 1994 the Vienna Public Prosecutor's Office indicted the applicant of the offences in respect of which preliminary investigations had been opened on 25 June 1981. Subsequently an ex officio defence counsel was appointed for the applicant, who filed objections to the indictment. On 24 June 1994 the Regional Court dismissed these objections as unfounded.

17. On 31 May 1994 the applicant was summoned to attend trial before the Regional Court on 12 and 13 July 1994. Since the applicant was in hospital, the trial could not take place and was postponed until 14 and 15 July 1994. Again, the applicant did not appear. The trial was adjourned and a warrant of arrest issued.

18. On 13 February 1995 the Regional Court interrupted the proceedings as the applicant's address was unknown.

19. On 31 Mai 1995 the Vienna Public Prosecutor requested the Regional Court to discontinue the proceedings in accordance with the 1995 Amnesty Act in respect of all criminal offences committed before 27 April 1980. According to Section 1 § 3 of this Act, criminal proceedings may be discontinued if they concern charges with offences which had been committed before 27 April 1980 and where the maximum sanction did not exceed three years' imprisonment.

20. On 19 December 1996 the applicant was served with a new summons for trial on 22 April 1997.

21. On 27 December 1996 the competent Regional Tax Authority (*Finanzlandesdirektion*) quashed the Customs Office's orders of 26 February 1990. If found that, in part, the customs and tax assessment proceedings had become time-barred and, in respect of the remaining charges, it accepted the applicant's argument that, under the permit for inward processing, he had exported the same meat as he had previously imported but, as a favour to his clients, he had mentioned a different quality of meat in the export declaration.

22. On 16 April 1997 the Regional Court discontinued the criminal proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant complains of the length of the criminal proceedings against him. He relies on Article 6 § 1 of the Convention which, insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

24. The applicant submits that the excessive length of the criminal proceedings against him, which have lasted for almost sixteen years, is clearly the fault of the Austrian authorities.

25. The Government submit that the criminal proceedings had been complex, as they involved numerous single charges, some of which had only been discovered in the course of the continuing investigations. Moreover, in the course of the investigations numerous requests for administrative assistance had to be submitted to foreign customs and police authorities, and at various stages the Austrian courts had to wait for decisions by domestic administrative authorities on preliminary questions. While the Austrian courts, once the preliminary investigations had been completed, dealt expeditiously with the applicant's case, several delays were caused by him, as he repeatedly appealed against interim decisions and, on two occasions, did not appear for the trial.

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see *Humen v. Poland* [GC], no. 26614/95, 15 October 1999, § 60).

27. As regards the period to be taken into account the Court observes that the proceedings at issue started on 25 June 1981, when preliminary investigations were opened, and ended on 16 April 1997, when the Regional Court discontinued them. Thus, they lasted for almost sixteen years.

28. The Court finds that the case was not particularly complex, although some preliminary issues had to be dealt with by administrative authorities in separate proceedings. As regards the conduct of the applicant, the Court cannot find that the delays caused by the applicant contributed significantly to the overall duration. The main responsibility for the length of the proceedings lies, however, with the authorities, as the proceedings, which never went beyond first instance proceedings, progressed particularly slowly.

29. The Court therefore finds that the overall duration of the proceedings exceeded a "reasonable time". Consequently, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. Under the head of pecuniary damage the applicant requested 1,526,129.50 euros (EUR) for loss of earnings as a result of the duration of the proceedings. He further claimed EUR 500,000 as compensation for non-pecuniary damage for anxiety suffered on account of their length.

32. The Government contended that there was no causal link between the length of the proceedings and the pecuniary damage claimed by the applicant.

33. The Court agrees with the Government that there is no causal link between the pecuniary damage claimed and the violation found.

34. As to non-pecuniary damage, the Court, having regard to its case-law, taking into account the importance of the proceedings at issue for the applicant and making an assessment on an equitable basis, awards the applicant EUR 10,000.

B. Costs and expenses

35. The applicant claimed EUR 54,296.17 as costs incurred in the Convention proceedings.

36. The Government submitted that this claim was excessive.

37. 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 applicants EUR 2,000 under this head.

C. Default interest

38. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *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, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 2,000 (two thousand euros) in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 5 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	Georg RESS President