In the case of Putz v. Austria (1),

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 Rules of Court B (2), as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. Bernhardt,
Mr F. Gölcüklü,
Mr F. Matscher,
Mr J. De Meyer,
Mr A.N. Loizou,
Mr D. Gotchev,
Mr K. Jungwiert,
Mr P. Kuris,

and also of Mr H. Petzold, Registrar, and Mr P.J. Mahoney, Deputy Registrar,

Having deliberated in private on 26 October 1995 and 26 January 1996,

Delivers the following judgment, which was adopted on the last-mentioned date:

Notes by the Registrar

1. The case is numbered 57/1994/504/586. 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.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9 (P9).

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 8 December 1994 and by Mr Wilhelm Putz ("the applicant"), an Austrian national, on 23 December 1994, 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. 18892/91) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by Mr Putz on 23 September 1991.

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 applicant's application referred to Article 48 as amended by Protocol No. 9 (P9) as regards Austria. The object of the request and of the application 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 paras. 1 and 3 (art. 6-1, art. 6-3) of the Convention.

2. On 16 January 1995 the President gave the applicant's lawyer leave to use the German language in both the written and the oral proceedings (Rule 28 para. 3 of Rules of Court B).

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 January 1995, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr F. Gölcüklü, Mr J.De Meyer, Mr A.N. Loizou, Mr D. Gotchev, Mr K. Jungwiert and Mr P. Kuris (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 18 August 1995 and the applicant's memorial on 22 August. On 28 August the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 25 August 1995 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the President's instructions.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 October 1995. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr W. Okresek, Head of the International Affairs Division, Constitutional Department, Federal Chancellery, Agent,
Mrs I. Gartner, State Counsel, Federal Ministry of Justice,
Mrs E. Bertagnoli, International Law Department, Federal Ministry of Foreign Affairs, Advisers;

(b) for the Commission

Mr A. Weitzel, Delegate;

(c) for the applicant

Mr C.J. Schwab, Rechtsanwalt, Counsel.

The Court heard addresses by Mr Weitzel, Mr Schwab, Mr Okresek and Mrs Gartner.

AS TO THE FACTS

I. The circumstances of the case

6. Mr Wilhelm Putz, an Austrian national born in 1936, lives at Bad Goisern (Upper Austria).

A. Background to the case

7. In 1985 criminal proceedings in respect of, among other things, bankruptcy (fahrlässige Krida) were instituted against the applicant, who was the manager of several commercial companies. During the proceedings the Wels Regional Court (Kreisgericht) imposed several pecuniary penalties (Ordnungsstrafen) on him for disrupting court proceedings.

B. Decisions of the Wels Regional Court

1. The first fine

8. On 2 April 1991 the Wels Regional Court sentenced Mr Putz to a fine of 5,000 Austrian schillings (ATS) under Article 235 of the Code of Criminal Procedure (Strafprozeßordnung - see paragraph 19 below). It added that by Article 237 para. 1 of the same Code (see paragraph 19 below), no appeal lay against the decision.

In its reasons the Regional Court pointed out that during the criminal proceedings against the applicant it had warned him on several occasions that he was liable to disciplinary penalties, as provided in Article 235 of the Code of Criminal Procedure, if he persisted in his behaviour and his repeated outbursts, in particular against the court's presiding judge. It added that during the hearing on the merits on 2 April 1991 Mr Putz had reiterated some of these criticisms (in particular, the assertion that the presiding judge had not complied with the law during the committal proceedings (Zwischenverfahren) and had taken part in the instant proceedings whereas he had allegedly withdrawn earlier), although the Linz Court of Appeal (Oberlandesgericht) had several times attempted to explain to him that those accusations were baseless. The applicant had also accused the presiding judge of having broken his oath, of continuing to infringe the law and of having brought pressure to bear on officials in order to "deprive him of all his defence rights by means of deception, untruths and lies". The Regional Court held that this last accusation, which referred to an alleged refusal to communicate the record of the trial, was completely baseless and unfounded, particularly when regard was had to the presiding judge's statements on the matter; it was consequently necessary to take a suitable disciplinary measure against the applicant.

On 16 April 1991 the Wels Regional Court served that decision on Mr Putz.

9. On 21 April 1991 it made an order sentencing the applicant to pay the fine in question and subsequently converted it into a three-day prison sentence for failure to pay.

On 3 December 1991 the Wels Regional Court ordered the applicant to serve the prison sentence, whereupon he paid the fine.

2. The second fine

10. On 8 April 1991 the Wels Regional Court again sentenced Mr Putz to a fine of ATS 7,500 under Article 235 of the Code of Criminal Procedure (see paragraph 19 below). It stated that by Article 237 para. 1 of the same Code (see paragraph 19 below) no appeal lay against the decision.

In its reasons the Regional Court referred to its decision of 2 April 1991, whereby it had already imposed a pecuniary penalty on the applicant on the basis of the same Article (see paragraph 8 above). It pointed out that during the trial on 8 April 1991 the applicant had again made unjustified criticisms of the presiding judge, in which he had accused him of breaking his oath, deliberately contravening the law and conducting an unfair criminal trial in order, among other things, to further his own career, and having already decided on the verdict before the end of the trial. The Regional Court held that a suitable pecuniary penalty therefore had to be imposed on Mr Putz.

11. On 17 April 1991 the Wels Regional Court made an order sentencing the applicant to pay the fine in question and subsequently converted it into a five-day prison sentence for failure to pay.

On 3 December 1991 it ordered the applicant to serve the prison sentence, whereupon he paid the fine.

C. Decisions of the Linz Court of Appeal

1. The decision of 24 May 1991

12. On 21 April 1991 the applicant lodged a disciplinary appeal (Aufsichtsbeschwerde) with the Linz Court of Appeal against the Wels Regional Court's decisions of 2 and 8 April 1991.

13. On 24 May 1991 the Court of Appeal, giving its ruling in private after hearing the prosecution, declared the appeal inadmissible as, under Article 237 para. 1 of the Code of Criminal Procedure, no appeal lay against the imposition of pecuniary penalties. It held:

> "Quite apart ... from the fact that the legislature has expressly provided that such pecuniary penalties are to be unappealable (unanfechtbar), there is no reason to suppose that there was any denial of justice (Rechtsverweigerung) or deliberate departure from the law (Rechtsbeugung) on the part of the court below. The applicant in fact insulted the presiding judge of the court below like a criminal ... It was within the court's powers under Article 235 of the Code of Criminal Procedure to impose a fine of its own motion in order to punish those manifestly unfounded accusations."

2. The third fine

14. On 20 June 1991 the applicant sent observations to the Linz Court of Appeal.

15. On 17 July 1991 that court sentenced Mr Putz to a fine of ATS 10,000 under sections 85 (1) and 97 of the Courts Act (Gerichtsorganisationsgesetz - see paragraph 22 below) taken together with Article 220 para. 1 of the Code of Civil Procedure (Zivilprozeßordnung - see paragraph 23 below). It added that no appeal lay against the decision.

The Court of Appeal criticised the applicant for having made the following accusations against the presiding judge of the court below in his pleadings:

> "Judge Sturm [the presiding judge] thus prevents truth being discovered. The method he applies during the hearing is typical of the one employed under the Nazi regime and the regimes in the Eastern bloc ... The hearing is thus reduced to a sham trial designed to confirm a preconceived judgment ... A certain Jörg Haider is being prosecuted for reviving Nazi ideas while violations of the law take place every day, just as they did under Hitler or Stalin, at the Wels Regional Court, yet no similar proceedings have been brought to date against the judges and prosecutors concerned."

In its reasons the Court of Appeal recapitulated the statutory provisions applicable where offensive remarks in writing have been made about judges during criminal proceedings.

It then summarised as follows the criteria for determining whether written submissions were offensive:

> "To recapitulate, it may be pointed out here that the question whether a document contains offensive remarks is not for the court to decide at its discretion but has to be determined as an issue of law. It is not necessary that the remarks in question should amount to a criminal offence; the only requirement is that they should be offensive. It is similarly of no importance whether or not there was an intention to be offensive. It suffices that the impugned remarks are objectively offensive, that is to say that they breach the duty of propriety towards the authority. Nor can the fact that the defendant believed that his criticism was well-founded justify the offensive remarks. It may be said that remarks are offensive where an application is drafted in such a way that it constitutes unseemly conduct towards the authority. This is the case where an application lacks the moderation that, out of respect for the authority, should be observed in dealings with it. Anyone who finds that an authority or one of its bodies has exceeded or misused its powers may make a complaint in the manner prescribed by law, but he does not have the right to injure the authority's (or body's) reputation by means of subjective remarks which disregard the duty of propriety."

It held that Mr Putz had overstepped the bounds of objectivity and decency in comparing the judicial methods in the proceedings in question to those characteristic of Nazi trials and trials in the Eastern bloc, and in referring to criminal violation of the law like that under Hitler or Stalin. It therefore considered a pecuniary penalty of ATS 10,000 to be appropriate.

16. On 18 March 1992 the Linz Court of Appeal made an order sentencing the applicant to pay the fine in question, and on 26 March 1992 the applicant paid it.

D. The judgment of the Supreme Court

17. On 25 February 1992 an appeal brought by the applicant against the Linz Court of Appeal's decision of 17 July 1991 was declared inadmissible by the Supreme Court (Oberster Gerichtshof).

II. Relevant domestic law

18. Austrian law provides that offensive remarks or unfounded accusations made in the context of criminal proceedings are punishable by a pecuniary penalty (Ordnungsstrafe). If the remarks or accusations in question have been made during a hearing, the provisions of the Code of Criminal Procedure (Strafprozeßordnung) apply. If, on the other hand, they have been made in writing, the applicable provisions are those of the Courts Act (Gerichtsorganisationsgesetz) taken together with those of the Code of Civil Procedure (Zivilprozeßordnung). In both cases the appeal procedure is governed by the Code of Criminal Procedure.

A. Code of Criminal Procedure

1. Keeping order in oral proceedings

19. Article 233

"1. The presiding judge shall be responsible for ensuring peace and order in the courtroom and the propriety of behaviour appropriate to the dignity of the court.

2. ...

3. Displays of approval or disapproval shall be prohibited. The presiding judge shall have the right to call to order anyone who disturbs the proceedings by such displays or otherwise and, if need be, to order that the courtroom be cleared or that individual members of the public be removed. If there is any resistance or if the disturbances are repeated, he may impose on the person refusing to comply a pecuniary penalty not exceeding ten thousand schillings or, if essential for maintaining order, commit him to prison for a period not exceeding eight days."

Article 235

"The presiding judge must ensure that no insults or manifestly unfounded or irrelevant accusations are made against anyone. If the accused, a private prosecutor (Privatankläger), a civil party to the proceedings (Privatbeteiligter), a witness or an expert has taken the liberty of making such remarks, the court may, at the request of the person against whom the remarks were directed or the public prosecutor, or of its own motion, impose a pecuniary penalty not exceeding ten thousand schillings or, where essential for maintaining order, commit him to prison for a period not exceeding eight days."

Article 237 para. 1

"Decisions taken under Articles 233 to 235 ... shall be enforceable immediately. No appeal shall lie against them."

2. Criminal offences

20. Article 237 para. 2

"If the conduct referred to in the aforementioned Articles amounts to a criminal offence, the provisions of Article 278 shall be applied."

Article 278 para. 1

"If a criminal offence is committed in the courtroom during the trial and the offender is caught in the act, the court may, on an application by the competent prosecutor and after hearing the accused and any witnesses present, deal with the matter either immediately by adjourning or at the end of the trial. Appeals against decisions so taken shall not have a suspensive effect."

Article 67

"No judge or registrar may perform any judicial functions in criminal proceedings if he is himself the victim of the offence ..."

3. Conversion of fines

21. Article 7

"1. Where a fine imposed under the Code of Criminal Procedure proves to be wholly or partly irrecoverable, the court must, in cases deserving of consideration, adjust the amount of the fine, but otherwise convert it into a period of imprisonment not exceeding eight days.

2. The provisions of the Act on the enforcement of custodial sentences not exceeding three months shall be applicable, in accordance with the purpose of the Act (dem Sinne nach), to the enforcement of the aforesaid sentences of imprisonment in default, the enforcement of the custodial sentences provided for in the Code of Criminal Procedure and the enforcement of coercive imprisonment.

3. ..."

Under Article 114 para. 1 of the same Code, an appeal lies against decisions to convert a fine into a sentence of imprisonment in default.

B. Courts Act

Preserving propriety in written proceedings

22. Section 85 (1)

"[Pecuniary penalties; responsibility for keeping order in the courtroom] Without prejudice to any criminal proceedings, the court may impose a pecuniary penalty (Article 220 of the Code of Civil Procedure) on parties who in written applications in non-contentious matters show disrespect for the court by making offensive attacks or insult the opposing party, a representative, authorised agents, witnesses or experts."

Section 97

"[Application to criminal proceedings] The provisions of this Act shall apply to criminal matters in so far as they are apt for that purpose and no special rules have been made in provisions governing criminal procedure."

C. Code of Civil Procedure

Conversion of fines

23. Article 220

"1. A pecuniary penalty (Ordnungsstrafe) may not exceed 20,000 schillings ...

2. ...

3. In the event of inability to pay, a fine (Geldstrafe) shall be converted into imprisonment. The length of imprisonment shall be determined by the court, but may not exceed ten days.

4. ..."

D. Criminal Code

24. The Criminal Code contains the following rules:

Article 18

"1. ...

2. A fixed-term custodial sentence may not be for less than one day or more than twenty years."

Article 19

"1. Fines (Geldstrafen) shall be expressed as day-fines. They shall not amount to less than two day-fines.

2. Day-fines shall be fixed according to the offender's means and personal circumstances at the time of the judgment at first instance. However, they shall not amount to less than 30 schillings or more than 4,500 schillings.

3. If a fine proves to be irrecoverable, a sentence of imprisonment in default shall be passed. One day's imprisonment in default shall correspond to two day-fines.

4. ..."

PROCEEDINGS BEFORE THE COMMISSION

25. Mr Putz applied to the Commission on 23 September 1991. Relying on Article 6 paras. 1 and 3 and Article 13 (art. 6-1, art. 6-3, art. 13) of the Convention, he complained that he had had neither a fair hearing by an impartial tribunal nor any effective remedy in respect of the decisions of the Austrian courts whereby pecuniary penalties had been imposed on him for disrupting court proceedings. He also alleged violations of Articles 3, 7, 9, 10 and 17 (art. 3, art. 7, art. 9, art. 10, art. 17) of the Convention.

26. On 3 December 1993 the Commission declared the first two complaints admissible as regards the Wels Regional Court's decisions of 2 and 8 April 1991 and the Linz Court of Appeal's decision of 17 July 1991, and declared the remainder of the application (no. 18892/91) inadmissible.

In its report of 11 October 1994 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 6 paras. 1 and 3 (art. 6-1, art. 6-3) (ten votes to six) and that it was unnecessary to consider the applicant's complaint under Article 13 (art. 13) (unanimously). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment (1).

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Note by the Registrar

1. For practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions - 1996), but a copy of the Commission's report is obtainable from the registry.

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FINAL SUBMISSIONS BY THE GOVERNMENT TO THE COURT

27. In their memorial the Government asked the Court to hold

"1. that Article 6 para. 1 (art. 6-1) of the Convention did not apply to the proceedings in question,

or alternatively,

2. that there has been no violation of Article 6 paras. 1 and 3 (art. 6-1, art. 6-3) of the Convention in these proceedings".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 (art. 6) OF THE CONVENTION

28. The applicant relied on Article 6 paras. 1 and 3 (art. 6-1, art. 6-3) of the Convention, which provide:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

..."

In his submission, pecuniary penalties for disrupting court proceedings were "criminal" in nature and had to be imposed in a manner that satisfied the requirements of Article 6 (art. 6).

29. The Government disputed the applicability of that provision to the penalties in issue, which, in their view, were not "criminal" but disciplinary. At all events, the decisions of the Austrian courts had not breached Article 6 (art. 6).

30. The Commission concluded that the offences of which the applicant had been accused were to be classified as "criminal" within the meaning of the Convention and considered that the applicant had not had a fair hearing enabling him to exercise his defence rights as guaranteed in Article 6 paras. 1 and 3 (art. 6-1, art. 6-3).

31. In order to determine whether Article 6 (art. 6) was applicable under its "criminal" head, the Court will have regard to the three alternative criteria laid down in its case-law (see the following judgments: Engel and Others v. the Netherlands, 8 June 1976, Series A no. 22, p. 35, para. 82; Weber v. Switzerland, 22 May 1990, Series A no. 177, pp. 17-18, paras. 31-34; Demicoli v. Malta, 27 August 1991, Series A no. 210, pp. 15-17, paras. 30-35; Ravnsborg v. Sweden, 23 March 1994, Series A no. 283-B, p. 28, para. 30; and, as the

most recent authority, Schmautzer v. Austria, 23 October 1995, Series A no. 328-A, p. 13, para. 27).

A. Legal classification of the offence in Austrian law

32. It must first be ascertained whether the provisions defining the offence in issue belong, according to the domestic legal system, to criminal law.

In the instant case the pecuniary penalties imposed on Mr Putz were based, firstly, on Article 235 of the Code of Criminal Procedure and, secondly, on sections 85 (1) and 97 of the Courts Act taken together with Article 220 of the Code of Criminal Procedure, and not on provisions of the Criminal Code (see paragraphs 19 and 22-23 above). The relevant provisions confer powers on the presiding judge of the court to maintain order during court proceedings, both oral and written. In the case of offences classified as criminal in the Criminal Code, Articles 237 para. 2 and 278 of the Code of Criminal Procedure provide for a separate procedure (see paragraph 20 above). The pecuniary penalties in question are not entered in the criminal record and their amount does not depend on income as in criminal law (see paragraph 24 above). These features tend to show that Austrian law does not regard them as criminal penalties.

The Court accordingly considers, like the Government and the Commission, that there is nothing to show that in the national legal system the provisions covering disruptions of court proceedings belong to criminal law.

B. Nature of the offence

33. The Court notes that in Austrian law unfounded accusations or offensive remarks made at a hearing are punishable under Article 235 of the Code of Criminal Procedure, whereas if such accusations or remarks have been made in writing, the applicable provisions are sections 85 (1) and 97 of the Courts Act taken together with Article 220 of the Code of Civil Procedure. In both cases punishment is laid down for behaviour judged to be disruptive.

In this respect, the situation is similar to the one in the Ravnsborg case. Rules enabling a court to sanction disorderly conduct in proceedings before it are a common feature of the legal systems of most of the Contracting States. Such rules and sanctions derive from the inherent power of a court to ensure the proper and orderly conduct of its own proceedings. Measures ordered by courts under such rules are more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence (see the Ravnsborg judgment previously cited, p. 30, para. 34).

The Court consequently considers, like the Government and the Commission, that the kind of proscribed conduct for which the applicant was fined in principle falls outside the ambit of Article 6 (art. 6). The courts may need to respond to such conduct even if it is neither necessary nor practicable to bring a criminal charge against the person concerned (ibid.).

C. Nature and degree of severity of the penalty

34. Notwithstanding the non-criminal nature of the proscribed misconduct, the nature and degree of severity of the penalty that the person concerned risked incurring - the third criterion - may bring the matter into the "criminal" sphere (loc. cit., pp. 30-31, para. 35).

35. The applicant drew attention to the large amount of the pecuniary penalties imposed on him; such fines could be larger than those imposed for a criminal offence. Furthermore, as the amount of the latter was fixed according to income and he had been bankrupt, they would even have been smaller in his case.

36. The Commission was of the opinion that the penalties imposed in the case were large enough to warrant classifying the offences as "criminal" under the Convention.

37. The Court notes that Article 235 of the Code of Criminal Procedure concerning responsibility for keeping order at hearings provides for the imposition of a fine not exceeding ATS 10,000 or, where essential for maintaining order, a custodial sentence not exceeding eight days. If the fine proves to be irrecoverable, the custodial sentence will be for a term of at most eight days (Article 7 of the Code of Criminal Procedure - see paragraph 21 above). As regards written proceedings, Article 220 of the Code of Civil Procedure provides for the imposition of a fine not exceeding ATS 20,000 and, in the event of inability to pay, a custodial sentence not exceeding ten days. In the instant case the Austrian courts sentenced Mr Putz to pay fines of ATS 5,000, 7,500 and 10,000 (see paragraphs 8, 10 and 15 above). Two of them were converted into prison sentences, but after payment the applicant did not have to serve these (see paragraphs 9 and 11 above).

In this respect, the Court notes a number of dissimilarities between the instant case and the Ravnsborg case, in which the amount of the fines could not exceed 1,000 Swedish kronor and the decision to convert them into custodial sentences required a prior hearing of the person concerned. This finding, however, is qualified by three features of the instant case: firstly, as in the Ravnsborg case, the fines are not entered in the criminal record; secondly, the court can only convert them into prison sentences if they are unpaid, and an appeal lies against such decisions (see paragraph 21 above), as it does against custodial sentences imposed straight away at the hearing where that course was essential for maintaining order; lastly, whereas in the Ravnsborg case the term of imprisonment into which a fine could be converted ranged from fourteen days to three months, in the instant case it cannot exceed ten days.

However real they may be, the dissimilarities, which reflect the characteristics of the two national legal systems, therefore do not appear to be decisive. In both cases the penalties are designed to enable the courts to ensure the proper conduct of court proceedings (see paragraph 33 above).

Having regard to all these factors the Court considers, like the Government, that what was at stake for the applicant was not sufficiently important to warrant classifying the offences as "criminal".

D. Conclusion

38. In sum, Article 6 (art. 6) did not apply to the matters complained of and there has therefore been no breach of it.

II. ALLEGED VIOLATION OF Article 13 (art. 13) OF THE CONVENTION

39. Mr Putz also maintained that the lack of an effective remedy against the Wels Regional Court's decisions of 2 and 8 April 1991 and the Linz Court of Appeal's decision of 17 July 1991 had infringed Article 13 (art. 13) of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

40. In its report the Commission, having expressed the opinion that there had been a breach of Article 6 (art. 6), considered it unnecessary to examine this complaint.

41. The Court points out that Article 13 (art. 13) guarantees the availability of a remedy at national level to allege non-compliance with the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order (see the Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In the instant case, however, it has held that there was no "criminal charge" and, accordingly, that Article 6 (art. 6) did not apply. The applicant therefore cannot claim to be the victim of a breach of rights protected by that provision. Consequently, his complaint lies outside the ambit of Article 13 (art. 13).

FOR THESE REASONS, THE COURT

1. Holds by seven votes to two that Article 6 (art. 6) of the Convention did not apply to the pecuniary penalties imposed on the applicant and that there has accordingly been no breach of it;

2. Holds by seven votes to two that Article 13 (art. 13) of the Convention did not apply in the instant case and that there has accordingly been no breach of it.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 February 1996.

Signed: Rolv RYSSDAL
President

Signed: Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 55 para. 2 of Rules of Court B, the following separate opinions are annexed to this judgment:

(a) dissenting opinion of Mr De Meyer;

(b) dissenting opinion of Mr Jungwiert.

Initialled: R. R.

Initialled: H. P.

DISSENTING OPINION OF JUDGE DE MEYER

(Translation)

1. This case concerns someone who, during criminal proceedings against him, had fines imposed on him, with prison sentences in default of payment, for having made accusations against the court on various occasions both at hearings and in his pleadings.

The Court has held that Article 6 (art. 6) of the Convention does not apply to such penalties.

I cannot approve of such a narrow interpretation.

2. The instant case is not the first one in which the Court has had to deal with the maintenance of order in court proceedings.

There have already been the Weber case, which concerned a fine imposed by the President of the Criminal Cassation Division of the Canton of Vaud on a complainant who had breached the confidentiality of a judicial investigation (1), and the Ravnsborg case, which concerned three fines imposed by the Göteborg District Court and by the Court of Appeal for Western Sweden on a litigant who had made improper remarks in his written observations (2).

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1. Weber v. Switzerland judgment of 22 May 1990, Series A no. 177

2. Ravnsborg v. Sweden judgment of 23 March 1994, Series A no. 283-B

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Both these cases were decided by the Court in the light of the three criteria it laid down nearly twenty years ago for distinguishing criminal law from other sanction systems, in particular from disciplinary provisions, namely: the classification in the law of the State concerned, the nature of the offence and the degree of severity of the penalty (3).

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3. Engel and Others v. the Netherlands judgment of 23 November 1976, Series A no. 22, pp. 34-35, para. 82

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The Court has adopted the same approach in deciding the instant case.

Experience appears to show that these criteria are not very satisfactory.

3. The Court recognised at the outset, in the Engel judgment, that the "indications" afforded by the first criterion, the classification in national law, "have only a formal and relative value" (4).

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4. Ibid., p. 35, para. 82

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This criterion does indeed give too much scope to the differences between States' legal systems.

And in fact it does not appear ever to have served to influence the Court in one direction or the other.

The Court barely touches on this aspect of the question in the Weber judgment (5). In the Ravnsborg case it resigned itself to noting that the "formal classification under Swedish law [was] open to differing interpretations" (6).

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5. Weber judgment previously cited, pp. 17-18, para. 31

6. Ravnsborg judgment previously cited, p. 30, para. 33

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In the present case it notes that various features "tend

to show that Austrian law does not regard [the fines in question] as criminal penalties" and that "there is nothing to show that in the national legal system the provisions covering disruptions of court proceedings belong to criminal law" (7).

7. Paragraph 32 of the present judgment

What are those features and what is their persuasive weight?

How is it relevant that "the pecuniary penalties imposed on Mr Putz were based" not on the Criminal Code but on the Code of Criminal Procedure, the Courts Act and the Code of Civil Procedure? In other cases the Court has held that "the character of the legislation which governs how the matter is to be determined" is of little consequence for determining whether there is a "contestation (dispute) over civil rights and obligations" (8) and that "whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right - and not its legal classification - under the domestic law of the State concerned" (9). Why should matters be any different when it comes to determining what falls within the criminal sphere?

8. Ringeisen v. Austria judgment of 16 July 1971, Series A no. 13, p. 39, para. 94. See also the König v. Germany judgment of 28 June 1978, Series A no. 27, pp. 29-30, paras. 88-89, and the Baraona v. Portugal judgment of 8 July 1987, Series A no. 122, pp. 17-18, paras. 42 and 43

9. König judgment previously cited, p. 30, para. 89

Furthermore, what does it matter that the procedure laid down for imposing the fines is different from the one laid down for "offences classified as criminal in the Criminal Code", that the fines are not entered in the criminal record or that their amount does not depend on income? None of those can justify an exemption from the obligation to comply with the principles of a fair trial. That would be too easy.

4. The second criterion, the nature of the offence, is, according to what the Court said in the Engel judgment, "a factor of greater import" (10).

10. Engel judgment previously cited, loc. cit. See also the Weber judgment previously cited, p. 18, para. 32

The Court spelled out its significance from the point of view of distinguishing criminal law from disciplinary provisions in the Weber judgment, when it said that "disciplinary sanctions are generally designed to ensure that the members of particular groups comply with the specific rules governing their conduct" (11).

11. Weber judgment previously cited, p. 18, para. 33

As regards court proceedings, it said in the same judgment that "the parties ... only take part in the proceedings as people subject to the jurisdiction of the courts" and that "they therefore do not come within the disciplinary sphere of the judicial system". Noting that Article 185 of the Vaud Code of Criminal Procedure, under which a fine had been imposed on

Mr Weber because he had breached the confidentiality of a judicial investigation, affected "potentially ... the whole population", it found that the "offence" it defined and to which it attached a "punitive sanction" was "a `criminal' one for the purposes of the second criterion" (12).

12. Ibid., loc. cit.

It is difficult to see in what respect, in this connection, the Ravnsborg and Putz cases, to which, in the Court's view, Article 6 (art. 6) did not apply as the measures ordered against the two applicants were "more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence" (13), could differ from the Weber case. Just like Mr Weber, Mr Putz and Mr Ravnsborg did no more than "take part in the proceedings as people subject to the jurisdiction of the courts" and the provisions that were applied to them, like those that were applied to Mr Weber, affected "potentially ... the whole population".

13. Ravnsborg judgment previously cited, p. 30, para. 34, and paragraph 33 of the present judgment

Is disruptive or disorderly conduct in proceedings before a court (14) of a different "nature", as an offence, from disruptive or disorderly conduct elsewhere or from other forms of contempt of court (15), such as breaching the confidentiality of a judicial investigation?

14. Paragraph 33 of the present judgment

15. In English law contempt in the face of the court and contempt out of court are merely two facets of the single offence of contempt of court. See the Sunday Times v. the United Kingdom judgment of 26 April 1979, Series A no. 30, pp. 14-16, para. 18

What objective and reasonable justification can there be for a difference of treatment such that, by stating that this kind of conduct "falls outside the ambit of Article 6 (art. 6)" (16), one deprives the person guilty of it of the safeguards of a fair trial?

16. Paragraph 33 of the present judgment

Does the "nature of the offence" allow of such a distinction?

5. The third criterion, according to the Engel judgment, must be "the degree of severity of the penalty that the person concerned risks incurring" (17).

17. Engel judgment previously cited, loc. cit.

Applying this criterion leads to odd results.

The fine imposed on Mr Weber was 300 Swiss francs, the maximum allowed by the law being 500 francs; in default of payment, it was convertible into days of imprisonment, at the rate of one day's imprisonment for every thirty francs of fine, which amounted to ten days in the applicant's case, the maximum being sixteen days. The Court held in that case that "what was

at stake was thus sufficiently important to warrant classifying the offence with which the applicant was charged as a criminal one under the Convention" (18). Currently, 300 and 500 Swiss francs are equivalent to nearly 1,300 and a little over 2,100 French francs respectively.

18. Weber judgment previously cited, p. 18, para. 34

In contrast, in the cases of Mr Ravnsborg and Mr Putz the Court held that "what was at stake for the applicant was not sufficiently important to warrant classifying the offences as `criminal'" (19).

19. Ravnsborg judgment previously cited, p. 31, para. 35, and paragraph 37 of the present judgment

The three fines imposed on Mr Ravnsborg were each of 1,000 Swedish kronor, the maximum provided; in default of payment, they could be converted into sentences of fourteen days' to three months' imprisonment. Currently, 1,000 Swedish kronor are worth a little under 750 French francs, which gives a total of a little over 2,200 francs for the three fines together.

In the instant case the fines imposed on Mr Putz were of 5,000 and 7,500 Austrian schillings, converted into three and five days' imprisonment respectively, as regards the incidents at the hearings, and of 10,000 schillings as regards the written accusations; the maximum was 10,000 schillings or eight days in respect of the former offences and 20,000 schillings or ten days in respect of the latter (20). Currently 5,000 Austrian schillings are worth more than 2,500 French francs, 7,500 schillings are worth a little under 3,700 francs, 10,000 a little under 4,900 francs, and 20,000 nearly 9,800 francs.

20. Paragraphs 8-11, 15 and 19-24 of the present judgment

A comparison of these various amounts (21) and of the lengths of the corresponding prison terms in default clearly shows the inadequacy of the third criterion.

21. It may also be remembered that in the Öztürk v. Germany case, which the Court held to be criminal in nature, the fine in issue was of 60 German marks, the maximum being 1,000 marks (judgment of 21 February 1984, Series A no. 73, p. 9, para. 11, and p. 10, para. 18); those amounts are currently equivalent to a little less than 210 French francs and a little under 3,500 francs.

But that is not all. Does it really have to be accepted that a person does not have the right to be tried properly where only a small fine or a short term of imprisonment is at stake? And if so, where does the threshold of severity lie that triggers entitlement to that right? What amount? How many days' imprisonment?

The severity of a penalty may be taken into consideration in order to ascertain that it was fair, in particular in the light of the proportionality principle, or to examine more closely the way in which it was imposed, or again, to determine if it requires there to be a remedy (22), but it is unsuitable as a criterion for the applicability of the guarantees in Article 6 (art. 6) of the Convention.

22. As to the need for a remedy, Article 2 of Protocol No. 7 (P7-2) merely makes explicit what is already implicit in the very concept of a fair trial

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6. I think it would be more in accordance with the object, aim and spirit of the Convention (23) to adopt a simpler, more common-sense method of reasoning.

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23. Here too it is necessary to "seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties" (Wemhoff v. Germany judgment of 27 June 1968, Series A no. 7, p. 23, para. 8)

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To begin with, as regards disciplinary provisions, rather than contrast these with criminal law, it should be recognised that they are part of it and that they constitute a special branch of it in that they make up the criminal law peculiar to a specific body or group.

If there is a distinction to be made, it can only be between this special criminal law, applicable exclusively to members of the body or group, and the general criminal law, applicable to everyone.

The same is true of any other sanction system that might be regarded as akin to disciplinary provisions (24) or as distinct, on whatever ground, from the general criminal law.

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24. Paragraph 33 of the present judgment. Ravnsborg judgment previously cited, p. 30, para. 34

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It seems to me that whatever names may be given to things, any sanction imposed on someone on account of conduct considered reprehensible is a "penalty" (25) and accordingly, by its very "nature", comes within the criminal sphere. This must certainly be true of any pecuniary or custodial sanction. Such sanctions can only, in my opinion, be imposed on someone by, or under the supervision of, a judicial authority that affords the person concerned the safeguards laid down more or less perfectly in Article 6 (art. 6) of the Convention.

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25. Lawyer's jargon must not diverge too widely from everyday language. Above all, it must not serve to restrict fundamental rights

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It is for the States to ensure this, under the supervision of the Court.

7. The distinction made hitherto between criminal and "other" proceedings, such as disciplinary proceedings, may be explained in part by the fear of having to apply those safeguards to these proceedings too.

It is indeed all too true that what goes on in these "other" proceedings often leaves much to be desired in this respect.

That is not, in my view, a sufficient reason for washing our hands of them. On the contrary, it would be appropriate to bring some order into them, albeit while taking due account of the special features of the situations governed by these other

sanction systems.

Thus where, for example, discipline within the armed forces or a code of conduct within a professional association is involved, the judicial nature, independence and impartiality of the authority imposing the sanction do not necessarily have to be assessed in the same way as where a case is being tried under the ordinary criminal law. When exercising disciplinary powers, a hierarchical superior or a professional disciplinary council does not have to be regarded a priori as being a tribunal less independent or less impartial than an "ordinary" court or jury in relation to an offence under the ordinary law (26).

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26. See, as regards professional disciplinary bodies, the H. v. Belgium judgment of 30 November 1987, Series A no. 127-B, pp. 34-35, paras. 50-52

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But at all events, in the fields covered by special sanction systems as well as under the general criminal law, the trial must be a fair one. In order for it to be so, it is necessary, among other things, that the sanction should be reasonably proportionate to the offence and that an adequate appeal against it should lie if it exceeds a certain threshold of severity.

8. In the Ravnsborg case it was scarcely in doubt that the applicant had no cause to complain of a breach of his fundamental rights.

In three pleadings, he had insulted - without making any specific charges - the Board of the Principal Guardian, the other boards and councils of the municipality of Göteborg, the Swedish Supreme Court and several members of the Göteborg District Court (27).

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27. Ravnsborg judgment previously cited, p. 23, para. 10, p. 24, para. 12, and p. 25, para. 16

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I think it was obvious that these flagrant actions could be punished summarily, without further formalities and, in particular, without any hearing, by moderate fines, as they were in the first case by the Göteborg District Court and in the second and third cases by the Court of Appeal for Western Sweden. This was all the more permissible as the applicant's intemperate language had not been directed against the courts themselves and these would have had discretion to convert the fines into prison sentences only on an application by the public prosecutor and after summoning the prosecution and the person concerned to a hearing (28).

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28. Ibid., p. 27, para. 24

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In the interests of the proper, undisturbed administration of justice, the courts must be able to punish in this way those who indulge in such lapses of behaviour.

9. The instant case resembles the Ravnsborg case in that the third fine was imposed on Mr Putz by the Linz Court of Appeal on account of accusations he had made in written observations submitted to that court against the presiding judge of the Wels Regional Court and, more vaguely, against the "judges and prosecutors concerned" at that court (29).

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29. Paragraph 15 of the present judgment

The situation was slightly different as regards the first two fines, which were imposed on Mr Putz by the Wels Regional Court on account of accusations he had made out of court against the presiding judge of the court (30).

30. Paragraphs 8 and 10 of the present judgment

In itself, despite appearances, this did not necessarily entail a breach of Mr Putz's right to a fair trial. A court must be able to enforce respect for its authority (31).

31. Insulting a court or making accusations against it is not sufficient to entitle someone to claim that on that account it is no longer an "independent and impartial tribunal established by law" or that it can no longer give the case a "fair" hearing.

On the other hand, each of the three fines imposed on Mr Putz was appreciably heavier than each of those incurred by Mr Ravnsborg. This severity could raise questions on the basis of the proportionality principle; above all, it required there to be a remedy which would have made it possible to review both compliance with that principle and the merits of the punishment.

But that is not all. It was not simply a question of insults, as in Mr Ravnsborg's case; Mr Putz's main allegation was that his judges at Wels had behaved unlawfully and unfairly towards him.

In this connection, his counsel, Mr Schwab, pointed out to the Court at the hearing on 23 October last, without being contradicted by the representatives of the respondent Government, that no incident of that kind had occurred when the applicant's case was heard by the Innsbruck and Vienna courts.

The case therefore, it seems, came not so much within the field of maintaining order in proceedings as within that of challenging a judge, bringing an action against a judge for misuse of his authority or disqualification on the ground of reasonable suspicion of bias.

This aspect of the case, taken together with the fact that the applicant had no remedy against the decisions in issue (32), leads me to think that he did not have a fair trial.

32. Paragraphs 8, 10, 15 and 19 of the present judgment

10. Because there were no remedies, there has also been, in my opinion, a breach of Article 13 (art. 13) of the Convention.

DISSENTING OPINION OF JUDGE JUNGWIERT

(Translation)

Unlike the majority of the Chamber, I have reached the conclusion that there have been breaches of Article 6 and Article 13 (art. 6, art. 13) in the instant case.

The majority note certain dissimilarities between this case and the Ravnsborg case but do not regard them as decisive. In their opinion, what was at stake for the applicant was not sufficiently important to warrant classifying the offences as

"criminal".

What appears to me to be decisive is the degree of severity of the pecuniary penalties and their convertibility into prison sentences.

It is important to note that the penalties in this case are much more severe than in the Ravnsborg case. The fact that the applicant did not have to serve the prison sentences does not alter that.

I consider that the nature and degree of severity of the penalties are important not only in this particular case but in Austrian law in general. The nature and severity of the penalties are further reinforced by the nature of the proceedings (criminal and civil). A pecuniary penalty of ATS 10,000 (and which could be as high as ATS 20,000) is at the level of a criminal punishment. The criminal nature of the penalty is much more apparent still if account is taken of its possible conversion into a prison sentence. I find it difficult to describe as disciplinary a custodial penalty of up to "only" eight or ten days. Furthermore, if the applicant did not have to serve the prison sentences of three and five days, it was solely because he had earlier paid the fines. I consider that the penalties in issue were sufficiently important for them to be described as "criminal" within the meaning of the Convention. I have accordingly reached the conclusion that Article 6 (art. 6) of the Convention applies in the instant case and that there has been a breach of it.

As regards the submissions on compliance with Article 6 (art. 6), I moreover entirely agree with the Commission's opinion as expressed in paragraphs 57-70 of its report.

In the proceedings the applicant did not have an effective remedy. Having found that there has been a breach of the applicant's rights under Article 6 (art. 6) of the Convention, I do not consider it necessary to examine in detail the issue of the applicability of, and compliance with, Article 13 (art. 13) of the Convention, which, in my opinion, has also been breached.