

Application No. 13399/87  
by Paul GRÜSSINGER  
against Austria

The European Commission of Human Rights sitting in private  
on 1 March 1991, the following members being present:

MM. C.A. NØRGAARD, President  
S. TRECHSEL  
F. ERMACORA  
E. BUSUTTIL  
G. JÖRUNDSSON  
A.S. GÖZÜBÜYÜK  
A. WEITZEL  
J.-C. SOYER  
H. DANELIUS  
Mrs. G. H. THUNE  
Sir Basil HALL  
MM. F. MARTINEZ  
C.L. ROZAKIS  
Mrs. J. LIDDY  
MM. L. LOUCAIDES  
J.-C. GEUS  
M.P. PELLONPÄÄ

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the  
Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 13 July 1987  
by Paul GRÜSSINGER against Austria and registered on 23 November 1987  
under file No. 13399/87;

Having regard to the report provided for in Rule 47 of the  
Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

#### THE FACTS

The applicant is an Austrian citizen, born in 1912 and living  
in Klagenfurt.

He has lodged a previous application on another subject-matter  
(No. 3159/67) which was rejected in 1968.

It follows from his statements and the documents submitted  
that on 18 July 1986 the applicant and his wife were convicted by the  
Klagenfurt District Court (Bezirksgericht) of slander (üble Nachrede).  
The applicant was ordered to pay a fine of thirty day rates in the  
amount of 40 AS and his wife was ordered to pay a fine of twenty day  
rates in the amount of 50 AS.

According to the findings of the Court the applicant brought  
an action against the caretaker of the dwelling in which he and his  
family lived. His memorial was also signed by his wife. In his  
submissions to the Court the applicant alleged that the caretaker  
often shouted at children, chased them away and threatened them, that  
she had confiscated his son's ball when he was playing with it and  
that, in her capacity as caretaker, she exercised a "regime of terror"  
(Terrorregime) vis-à-vis the children of the community of flat  
owners. The caretaker thereupon brought a private action

(Privatanklage) against the applicant and his wife.

The District Court took into consideration that, according to the house rules, ball games were admitted only on the playground and it was the caretaker's duty to see that the house rules were respected. It further noted that, in the proceedings instituted against the caretaker by the applicant, it had been established that the ball of the applicant's son had been confiscated by the caretaker because the son had been playing with it outside the area where ball games were permitted. Furthermore the applicant had not been in a position to prove his allegation that a majority of the eighty flat owners was in favour of giving more liberty to children at play. In these circumstances, so the District Court considered, the caretaker had not only been authorised but even obliged to prevent children from playing with balls outside the playground. As regards the term "terror regime" the Court considered it was associated to ideas of murder, homicide and totalitarian governments massively violating human rights. As the defendants had not shown that their son or other children had been ill-treated or injured by the caretaker, the use of the term "terror regime" was considered to constitute the expression of contempt in regard of another person's personality or character within the meaning of Sec. 111 (1) of the Criminal Code (StGB) which provides:

(German)

"Wer einen anderen in einer für einen Dritten wahrnehmbaren Weise einer verächtlichen Eigenschaft oder Gesinnung zeigt oder eines unehrenhaften Verhaltens oder eines gegen die guten Sitten verstossenden Verhaltens beschuldigt, das geeignet ist, ihn in der öffentlichen Meinung verächtlich zu machen oder herabzusetzen, ist mit Freiheitsstrafe bis zu sechs Monaten oder mit Geldstrafe bis zu 360 Tagessätzen zu bestrafen."

(English translation):

"A person bringing another to contempt in a manner perceivable to a third party by denouncing him as being of mean character or dishonest or having immoral behaviour is punishable with imprisonment up to six months or a fine up to 360 day rates."

The appeal (Berufung) and plea of nullity (Nichtigkeitsbeschwerde) of the applicant and his wife were rejected by the Klagenfurt Regional Court (Landesgericht) on 12 February 1987. This Court stated, inter alia, that the conviction was compatible with the Convention as the right to freedom of expression, as guaranteed by Article 10, was limited in that it did not allow criminal acts.

## COMPLAINTS

The applicant stated that his action against the caretaker was still pending. He considered that his conviction features a means of intimidation. In this context he mentioned that the fines and the costs of the proceedings in the amount of 17,452 AS considerably exceeded his monthly pension. He submitted that the term "terror" referred to inconsiderate and violent action. He considered that, as a plaintiff, the safeguarding of his interests justified the use of the term in question.

He therefore considered that his conviction violated Article 10 as well as Article 7 of the Convention.

## PROCEEDINGS BEFORE THE COMMISSION AND FURTHER DEVELOPMENTS

On 8 March 1989 the Commission decided to communicate the

application to the respondent Government for observations on its admissibility and merits to be submitted before 9 June 1989. On 2 June 1989 the Government requested an extension of this time-limit until 1 September 1989 on the ground that meanwhile the Attorney General (Generalprokurator) had lodged a plea of nullity for the safeguarding of the law against the judgment complained of. On 31 August 1989 the respondent Government informed the Commission that the judgment had been quashed and the case had been sent back for a new trial. On 15 April 1990 the applicant wrote that he had been acquitted and the question of costs had been satisfactorily settled. He therefore wished to withdraw the application.

#### REASONS FOR THE DECISION

The applicant has withdrawn the application and there are no reasons of a general character affecting respect for human rights, as defined in the Convention, which require the further examination of the case by virtue of Article 30 para. 1 in fine of the Convention.

For these reasons, the Commission unanimously

DECIDES TO STRIKE THE CASE OFF THE LIST OF CASES.

Secretary to the Commission

President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)