CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32097/96
by BIEGLER BAUGESMBH
against Austria

The European Court of Human Rights, sitting on 3 July 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr P. KŪRIS,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Sir Nicolas BRATZA,
Mr K. TRAJA, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 29 May 1996 and registered on 2 July 1996,

Having deliberated, decides as follows:

THE FACTS

The applicant, Biegler BauGesmbH, is a limited liability company with its seat in Gumpoldskirchen (Austria). It is represented before the Court by Mr H. Reitböck, a lawyer practising in Vienna.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

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.

The Regional Court held hearings on 14 October and 16 December 1980, 25 February, 26 May, 21 September and 15 December 1981, 15 June 1982, 24 January, 28 March and 12 December 1983, 4 September 1984, 23 December 1985, 8 April and 23 September 1986, 26 January, 1 June and 24 November 1987, 12 May 1988, 20 March and 10 December 1991 and 14 April 1994. The parties as well as witnesses and experts were heard.

The delay between the hearings on 15 December 1981 and 15 June 1982 occurred due to a request for the adjournment of hearings by the defendant who had suffered a heart attack at that time. Between 23 September 1986 and 7 January 1987 the proceedings were suspended for friendly settlement negotiations. On the latter date, the applicant requested the continuation of the proceedings.

On 1 November 1989, 1 November 1990, 1 August 1991, and 1 June and 18 October 1993, the presiding judges changed. Throughout the proceedings six different judges were in charge of the case.

Four different experts were appointed. The first was dismissed according to his own wish in August 1982. The second and third experts gave opinions. After the third expert's death in 1989, a fourth expert was appointed who submitted a further opinion. Some delay was caused by the experts failing to lodge their opinions on time, by the applicant who challenged one of the experts, and by the defendant who challenged an expert's fees. Both parties filed numerous requests for the rehearing of certain witnesses or the hearing of others.

On 21 November 1994 the Vienna Regional Civil Court dismissed the applicant's action.

On 23 May 1995 the Vienna Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal, and on 25 October 1995 the Supreme

Court (*Oberster Gerichtshof*) rejected the applicant's further appeal on points of law (served on 5 December 1995).

B. Relevant domestic law

Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*), which has been in force since 1 January 1990, provides as follows.

> "(1) If a court is dilatory in taking any procedural step, such as announcing or holding a hearing, obtaining an expert's report, or preparing a decision, any party may submit a request to this court for the superior court to impose an appropriate time-limit for the taking of the particular procedural step; unless sub-section (2) of this section applies, the court is required to submit the request to the superior court, together with its comments, forthwith.
>
> (2) If the court takes all the procedural steps specified in the request within four weeks after receipt, and so informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request.
>
> (3) The request referred to in sub-section (1) shall be determined with special expedition by a chamber of the superior court consisting of three professional judges, one of whom shall preside; if the court has not been dilatory, the request shall be dismissed. This decision is not subject to appeal."

THE LAW

The applicant's complaint relates to the length of the proceedings, which began on 30 May 1980 and ended on 5 December 1995 with the service of the Supreme Court's decision. They lasted over fifteen and a half years for three levels of jurisdiction. For almost fourteen and a half years the proceedings were pending at first instance.

The Government contend that the applicant company failed to exhaust domestic remedies as it did not make an application for expedition pursuant to Section 91 of the Courts Act. In the Government's view such an application is an effective remedy as its use would have reduced the length of the proceedings.

The applicant contests the Government's view and submits, in particular, that such an application would not have significantly expedited the proceedings.

In the case of Holzinger v. Austria the Court has found that a request under Section 91 of the Austrian Courts Act is, in principle, an effective remedy which has to be used in respect of complaints about the length of court proceedings (*Holzinger v. Austria*, no. 23459/94, 30.01.01, §§ 24-25, to be published in ECHR 2001). It stated, however, that the effectiveness of

such a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole (*ibid*., § 22). Thus, the Court found that where the duration of the proceedings has already been substantial before the entry into force of Section 91 of the Courts Act on 1 January 1990, this remedy cannot be considered to be effective (*Holzinger (no. 2) v. Austria,* no. 28898/95, 30.01.01, §§ 21-22, to be published in ECHR 2001).

In the present case, the lapse of time before the entry into force of Section 91 of the Courts Act was considerable, the proceedings having already lasted nine years and seven months by then. The case, thus, resembles the Holzinger (no. 2) case. In these circumstances, Section 91 of the Courts Act cannot be regarded as an effective remedy.

It follows that the application cannot be rejected for non-exhaustion of domestic remedies.

As to the merits, the Government assert that the case was complex and that the delays were mainly attributable to the applicant's conduct. The applicant maintains that the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

The Court considers, in the light of the criteria established in its case-law on the question of "reasonable time" (the complexity of the case, the applicant's conduct and that of the competent authorities), and having regard to all the information in its possession, that an examination of the merits of this complaint is required.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

S. DOLLÉ
Registrar

J.-P. COSTA
President