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. 36678/97
by Dietmar Karl GUGGENBICHLER
against Austria

The European Court of Human Rights, sitting on 28 August 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 12 June 1997 and registered on 24 June 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Dietmar Karl Guggenbichler, is a Austrian national, born in 1942 and living in Thalgau. He is represented before the Court by Mr J. Neumayer, 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.

The applicant was arrested on 14 August 1982 on suspicion of blackmail. On 20 October 1982 he was released on bail. On 31 May 1985 he was partly acquitted by the Salzburg Regional Court (*Landesgericht*). Upon his appeal he was fully acquitted by the Linz Court of Appeal (*Oberlandesgericht*) on 23 December 1985.

On 16 March 1990, the applicant filed an action requesting compensation for his detention on remand under the 1969 Compensation (Criminal Proceedings) Act. The Salzburg Regional Court dismissed the applicant's claim on 8 August 1990. Upon the applicant's appeal, the Linz Court of Appeal, on 17 October 1990, quashed the decision of the Salzburg Regional Court and referred the case back to it.

On 31 March 1995, the Salzburg Regional Court dismissed the applicant's action for a second time. Upon the applicant's appeal, the Linz Court of Appeal again quashed the decision of the Salzburg Regional Court and referred the case back to this court on 6 July 1995.

On 18 December 1996, the Salzburg Regional Court dismissed the applicant's action for a third time. The applicant's appeal of 3 January 1997 was dismissed by the Linz Court of Appeal on 6 February 1997.

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."

COMPLAINTS

The applicant complains under Article 6 § 1 of the Convention about the length of the criminal proceedings and of the compensation proceedings.

In his observations of 25 April 2000 he raised a further complaint, namely that Article 6 § 2 of the Convention had allegedly been disregarded in the compensation proceedings following his acquittal.

THE LAW

1. The applicant complains about the length of the compensation proceedings, which began on 16 March 1990 and ended on 6 February 1997. They therefore lasted six years, ten months and three weeks in two instances, during which time they were twice referred back to the first instance. The applicant invokes Article 6 § 1 of the Convention, which 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..."

The Government contend that the applicant failed to exhaust domestic remedies as he did not make an application pursuant to Section 91 of the Courts Act. In the Government's view such an application is an effective remedy as it would have significantly reduced the length of the proceedings. The Government point out that the applicant could have made use of it between 17 October 1990 and 31 March 1995, during which time the case was pending a second time at first instance, and between 6 July 1995 and 18 December 1996 in its third round at first instance.

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

The Court recalls that, in the case of Holzinger v. Austria, it 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).

In the present case, the Court agrees with the Government that the applicant, during the above dilatory periods at first instance, could have filed an application pursuant to Section 91 of the Courts Act to expedite the proceedings. However, he did not make use of this possibility and has,

therefore, failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention.

This part of the application must therefore be rejected in accordance with Article 35 § 4.

2. The applicant further complains about the length of the criminal proceedings, which ended on 23 December 1985, more than six months before the introduction of the application on 12 June 1997. Therefore, this part of the application does not fulfill the requirements of Article 35 § 1 of the Convention and must be rejected, in accordance with Article 35 § 4.

3. Insofar as the applicant complains about the alleged violation of the presumption of innocence in the compensation proceedings, the Court notes that he raised this allegation for the first time in his observations of 25 April 2000. However, the proceedings at issue were terminated on 6 February 1997. Therefore, this part of the application also does not fulfill the requirements of Article 35 § 1 of the Convention and must be rejected, in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President