CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 18348/02
by Gerlinde HRABIK
against Austria

The European Court of Human Rights (First Section), sitting on 1 February 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 9 October 2001,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicant, Gerlinde Hrabik, is an Austrian national, who was born in 1962 and lives in Vienna. She is represented before the Court by Schuppich, Sporn and Winischhofer, a company of lawyers practising inVienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

The circumstances of the case

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

On 11 November 1987 the Vienna Public Prosecutor's Office (*Staatsanwaltschaft*) requested the institution of preliminary investigations (*Voruntersuchungen*) against the applicant on suspicion of having, together with other co-accused, forged documents and of having aided and abetted tax evasion.

Upon request of the Vienna Regional Court (*Landesgericht*) the Vienna Customs Office (*Hauptzollamt*) conducted further investigations between March 1988 and May 1990.

On 1 October 1992 the Vienna Regional Court decided to disjoin the applicant's proceedings from the proceedings of other co-accused. The investigating judge at the Regional Court closed the preliminary investigations in September 1993 and transmitted the file to the Public Prosecutor's Office.

Subsequently, the Public Prosecutor's Office remitted the file back to the Regional Court in order to conduct further investigations. On 17 June 1994 the investigating judge again closed the preliminary investigations.

On 14 November 1996 the Supreme Court issued a final judgment in the proceedings against the applicant's co-accused. The Public Prosecutor's Office, on 7 September 1998, remitted the file to the Regional Court, requesting it to update the applicant's personal data.

On 14 April 1999 the investigating judge transmitted the file to the Public Prosecutor's Office.

The Public Prosecutor's Office preferred a bill of indictment against the applicant on 8 April 2000.

Having held trial between November 2000 and April 2001 the Vienna Regional Court acquitted the applicant on 4 April 2001. On 16 July 2001 the written version of the judgment was served on the applicant's counsel.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings.

THE LAW

On 1 December 2004 the Court received the following declaration from the applicant:

> "I note that the Austrian Government offer to pay the applicant the amount of EUR 11,500 on an *ex gratia* basis in respect of the above application pending before the Court. This sum (EUR 11,500) shall cover any pecuniary and non-pecuniary damage as well as costs and expenses. It will be paid, free of any taxes that may be applicable, within three months from the notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> I accept the offer and withdraw the application waiving any further claims against Austria in respect of the application. I declare that this constitutes a final settlement of the case."

On 13 December 2004 the Court received the following declaration from the Government:

> "I declare that the Government of Austria offer to pay the amount of EUR 11,500 to the applicant in respect of the above application an *ex gratia* basis for the withdrawal of her application pending before the Court. This sum (EUR 11,500) shall cover any pecuniary and non-pecuniary damage as well as costs and expenses. It will be paid, free of any taxes that may be applicable, within three months from the notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

The Court reiterates the terms of Article 37 § 1 of the Convention which, so far as relevant, reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;
>
> (b) the matter has been resolved;..
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court takes note of the friendly settlement reached between the parties and considers that the applicant no longer intends to pursue her application and that the matter has been resolved. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued. Accordingly, the application to the case of Article 29 § 3 of the Convention should be discontinued and the case struck out of the list.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President