

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

FIRST SECTION

DECISION

Application no. 33992/07
Ignaz KRAKOLINIG
against Austria

The European Court of Human Rights (First Section), sitting on 10 May 2012 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 26 July 2007,

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

1. The applicant, Mr Ignaz Krakolinig, is an Austrian national who was born in 1936 and lives in Graz. He is represented before the Court by Mr F. Unterasinger, a lawyer practising in Graz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

The circumstances of the case

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

3. On 28 June 1985 the Eisenstadt Public Prosecutor's Office filed an indictment against the applicant, accusing him of aiding and abetting embezzlement (*Untreue*). The Vienna Court of Appeal dismissed the applicant's objections against the indictment on 12 November 1985.

4. The trial was scheduled by the Eistenstadt Regional Court (*Landesgericht*) from 5 May 1986 to 10 July 1986. As he had suffered a heart attack the previous day, the applicant was unable to attend the trial on 5 May 1986.

5. Following two expert opinions obtained on 5 July 1988 and 1 December 1988 attesting that he was temporarily unfit to stand trial, the Eisenstadt Regional Court decided to stay the proceedings against the applicant.

6. As further expert opinions of 10 July 1991 and 5 May 1992 showed that the applicant would be able to attend the trial under certain conditions, the Eisenstadt Regional Court scheduled hearings for 18 March 1992 and 17 July 1992. Referring to his state of health, the applicant refused to attend these hearings.

7. On 29 March 1993 the Eisenstadt Regional Court ordered that the trial be held at Graz, where the applicant resided, on 17 and 18 June 1993. On 9 June 1993 the applicant asked the Regional Court to postpone the hearing because of his poor state of health. The Regional Court granted the request for the further postponement, having examined the applicant's state of health.

8. Two further expert opinions of 20 January 1994 and 30 January 1995 attested that the applicant had a limited ability to attend the trial, whereas a later opinions dated 6 February 1997 raised concerns regarding the applicant's attendance at a lengthy trial.

9. On 18 February 1997 the Regional Court again decided to stay the proceedings.

10. Two expert reports obtained on 1 September 2000 and 19 March 2001 stated that the applicant's state of health had worsened and that, as it was unlikely to improve in the near future, he should not be exposed to major stress.

11. On 19 November 2003 and on 31 January 2005 the applicant submitted to the Regional Court, upon its request, certificates by two specialist doctors treating him showing that he was still unfit to stand trial.

12. On 17 March 2007 the applicant requested that the criminal proceedings be terminated (*Einstellung des Verfahrens*) because he considered that it was against the Convention to continue the proceedings in circumstances like his.

13. The Regional Court dismissed the applicant's request on 18 April 2007. It held that since the indictment was issued the grounds for suspicion had not changed or been dissipated and that the applicant's state of health

alone did not constitute a reason to terminate the criminal proceedings against him.

14. On 13 June 2007 the Vienna Court of Appeal dismissed the applicant's subsequent appeal against that decision. It found that it was only possible to terminate the proceedings against the applicant upon a request by the Public Prosecutor.

15. Meanwhile, on 23 April 2007, the Eisenstadt Regional Court again decided to stay the proceedings. An appeal against this decision was dismissed by the Vienna Court of Appeal on 13 June 2007. The proceedings are still pending.

16. It appears further that, in separate proceedings, on 28 August 2000 the Klagenfurt Regional Court convicted the applicant of fraud (*Betrug*), on 31 July 2006 the Wolfsberg District Court convicted him of having caused negligent bodily harm (*fahrlässige Körpeverletzung*) and on 18 May 2009 the Graz District Court convicted him of theft (*Diebstahl*).

COMPLAINT

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

THE LAW

18. The applicant complained that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

19. The Government submitted that the applicant had failed to exhaust domestic remedies, as he had not at any stage of the proceedings filed a request under section 91 of the Courts Act for the proceedings to be expedited.

20. The Government submitted further that the reasonable time requirement had been complied with in the proceedings. The Austrian courts had dealt with the case expeditiously and the exceptional length of the proceedings had been caused solely by the applicant's state of health and his unfitness to attend the trial. The Austrian Supreme Court's settled case-law had established that it was an essential element of the notion of "fair trail" that an accused have the opportunity to be actively involved in the proceedings and to defend him or herself effectively. This, in turn, required that the accused be in adequate physical and mental health. A person was therefore unable to stand trial if that person was not in a position to follow the course of the proceedings for physical or mental health reasons, to

express himself in an understandable manner and to defend his rights, or if, although he would be able to follow the course of the proceedings, they presented a specific risk of a considerable impairment of his health. The Regional Court had therefore had to postpone the trial and to stay the proceedings as long as the applicant was unfit for trial. Given that in August 2000, in July 2006 and in May 2009 the applicant had been convicted of criminal offences in different proceedings, the Regional Court had reasonably concluded that the applicant's health did not permanently prevent him from standing trial. It had therefore been required to continue the proceedings until a trial would be possible.

21. This was disputed by the applicant, who argued that the proceedings had lasted for an unreasonably long time and that, because of his unfitness to stand trial, they should have been terminated a long time ago. The reference of the Government to other criminal proceedings in which he had stood trial and had been convicted was irrelevant, because those proceedings had concerned minor charges and the respective trials had only lasted for a few hours.

22. As regards the question of whether the applicant has exhausted domestic remedies, the Court notes that in the case of *Holzinger v. Austria* the Court 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 (no. 23459/94, §§ 24-25, ECHR 2001-I, relating to civil proceedings; see also *Talirz v. Austria* (dec.), no. 37323/97, 11 September 2001, relating to criminal proceedings). 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, where proceedings include a substantial period during which the applicant has no remedy at his or her disposal with which to have the proceedings expedited, a request under section 91 cannot be considered an effective remedy (see *mutatis mutandis, Holzinger (no. 2 v. Austria,* no. 28898/95, §§ 21-22, ECHR 2001-I).

23. The criminal proceedings in issue started (at the latest) in June 1985, whereas section 91 of the Austrian Courts Act was introduced on 1 January 1990. The proceedings, therefore, include a substantial period during which the applicant could not have made a request under section 91 of the Courts Act. The Court nevertheless notes that the proceedings continued after 1 January 1990 and are still pending. The applicant did nothing to expedite the proceedings until many years after section 91 of the Courts Act came into force.

24. However, the Court need not examine whether or not the applicant exhausted domestic remedies in the proceedings in issue, because the complaint about the length of those proceedings is, in any event, manifestly ill-founded for the following reasons.

25. The Court notes that the reasonableness of the length of proceedings has to be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant

authorities (see among many others, *Kudla v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

26. The Court does not exclude that the subject-matter of the present case was of some complexity, as it concerned a case of white-collar crime, but considers that this element alone cannot explain the exceptional length of the proceedings in issue. However, the Court considers that the Austrian authorities cannot be held exclusively responsible for the length of the proceedings. There is no indication that the domestic authorities contributed to the length of the proceedings. The Eisenstadt Regional Court, in particular, tried repeatedly to hold trial hearings and, moreover, had the applicant's fitness to stand trial examined by medical experts at regular intervals.

27. As regards the conduct of the applicant, the Court considers that even though the applicant cannot be considered responsible for the repeated postponement of the trial and the stays of the proceedings as the reason for this, his state of health, was outside of his control, it was without doubt the objective reason for the resulting length of the proceedings. The delays cannot, for this reason, be attributed to the domestic courts, and a breach of the reasonable time requirement under Article 6 can only be found when such delays are attributable to the domestic courts. The Court further observes that Article 6 does not give a right to have criminal proceedings terminated on account of the accused's state of health. This principle is all the more valid when there is, like in the present case, an indication that the person concerned was not entirely prevented by his state of health from attending court proceedings as such.

28. The Court therefore concludes that the specific circumstances of the case do not disclose any appearance of a breach of the reasonable time requirement. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Nina Vajić
President