CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 14205/02
by Hermann MITTERBAUER
against Austria

The European Court of Human Rights (First Section), sitting on 23 September 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 1 March 2002,

Having regard to the decision of 6 May 2002 to apply the procedure under Article 29 § 3 of the Convention.

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Hermann Mitterbauer, is an Austrian national, who was born in 1972 and lives in Pischelsdorf. He is represented before the Court by Mr J. Postlmayr, a lawyer practising in Mattighofen. 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 7 December 1995, whilst driving under the influence of alcohol, the applicant knocked down and damaged road facilities. The applicant then drove away and did not report the accident to the police.

On 20 June 1996 the Braunau District Administrative Authority (*Bezirkshauptmannschaft*) issued a penal order (*Straferkenntnis*) against the applicant and ordered him to pay a fine of 14,000 Austrian schillings (ATS), with fourteen days' imprisonment in default for drunken driving.

On 18 December 1996 the Upper Austria Independent Administrative Panel (*Unabhängiger Verwaltungssenat*), after having held a hearing, dismissed the applicant's appeal.

On 4 February 1997 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*). On 10 October 1997 the Constitutional Court quashed the decision of the Independent Administrative Panel.

On 6 November 1997 the Independent Administrative Panel, without holding a further hearing, again dismissed the applicant's appeal against the penal order of 20 June 1996.

On 1 December 1998 the Constitutional Court refused to deal with the applicant's complaint against this decision, finding that it lacked prospects of success.

On 6 April 1999 the Constitutional Court, upon the applicant's request of 19 March 1999, remitted the case to the Administrative Court (*Verwaltungsgerichtshof*).

On 25 January 2002 the Administrative Court dismissed the applicant's complaint. This decision was served on the applicant's counsel on 20 February 2002.

COMPLAINTS

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

He also complained that, after the Constitutional Court had quashed the Independent Administrative Panel's decision, the latter decided in the same composition as in the proceedings leading to the quashed decision, and held no further hearing.

In his submissions of 22 November 2002 the applicant further complained under Article 13 that he did not have an effective remedy as regards the length of the proceedings.

THE LAW

On 24 June 2004 the Court received the following declaration from the Government:

> "I declare that the Government of Austria offer to pay the amount of EUR 7,000 to Mr Hermann Mitterbauer in respect of the above application on an *ex gratia* basis for the withdrawal of his application pending before the Court. This sum (EUR 7,000) 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."

On 24 June 2004 the Court received the following declaration from the applicant's counsel :

> "I note that the Austrian Government offer to pay the applicant the amount of EUR 7,000 on an *ex gratia* basis in respect of the above application pending before the Court. This sum (EUR 7,000) 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."

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

> "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 agreement reached between the parties and considers that the applicant no longer intends to pursue his 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 should be struck out of the list in accordance with Article 37 § 1 (a) and (b) of the Convention.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention;

Decides to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President