CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37585/97
by V.P.
against Austria

The European Court of Human Rights, sitting on 2 October 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr P. KŪRIS,
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 19 March 1997 and registered on 1 September 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 partial decision on admissibility by the Court on 27 April 2000,

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, V.P., is an Austrian national, born in 1929 and living in Vienna. He is represented before the Court by Mr K. Muzik, 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.

On 20 July 1990, after having questioned the applicant, the Vienna Federal Police Authority (*Bundespolizeidirektion*) reported to the Vienna Public Prosecutor's Office that the applicant was suspected of attempted fraud and suppression of documents. He was said to have misappropriated several savings books, which had belonged to a deceased relative and had tried to withdraw the saving deposits a few days after the relative's death.

On 25 July 1990 the Public Prosecutor's Office requested the Vienna Regional Criminal Court (*Landesgericht für Strafsachen*) to conduct preliminary inquiries against the applicant and the co-defendant S. on suspicion of aggravated theft. On concluding these inquiries, which involved the hearing of several witnesses and two suspects, as well as the procurement of files, the case-file was returned to the Prosecutor's Office.

On 29 April 1991 the Public Prosecutor's Office charged the applicant with attempted fraud and suppression of documents.

On 17 July 1991 the single judge of the Vienna Regional Criminal Court held a trial hearing, which was adjourned *sine die* to summon further witnesses and obtain other files.

On 10 September and 11 November 1991 counsel for the private party to the proceedings requested the taking of further evidence.

On 28 January 1992 an expert on handwriting was appointed.

On 9 March and 1 April 1992 further trial hearings took place. On the latter date the judge issued a judgment in which he pronounced his lack of jurisdiction on the ground that the prosecutor had extended the charges to aggravated fraud, which would now fall to be examined by a court sitting with two professional and two lay judges (*Schöffengericht*).

Subsequently, the Public Prosecutor's Office requested further preliminary investigations to be conducted by re-examining the two suspects in respect of the extended charges and hearing further witnesses. Subsequently, the Public Prosecutor revoked the decision to extend the charges.

On 11 August 1992, the court appointed another handwriting expert. As counsel for the co-defendant S. submitted that the latter suffered from forgetfulness, the trial judge had S.'s capacity to stand trial examined by an expert. After receiving the expert opinion, a trial hearing was held on

28 October 1994. In order to have a witness for the defence questioned in Germany by way of mutual legal assistance, the hearing was adjourned *sine die*.

On 25 August 1995 the trial was resumed before the single judge. Following the hearing of a number of witnesses, it was adjourned in order to take the opinion of another handwriting expert on the question whether the signature on a certain letter was that of the deceased relative. This opinion was received by the court on 10 October 1995.

On 20 December 1995 the trial was again resumed and the first instance judgment was handed down. At the close of the hearing, the Regional Court convicted the applicant of attempted fraud and suppression of documents, and sentenced him to ten months' imprisonment suspended on probation.

On 22 April 1996 the applicant filed an appeal on points of fact and law and against sentence.

On 29 July 1996 the Vienna Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal. The judgment was served on the applicant's counsel on 27 September 1996.

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."

COMPLAINT

The applicant's remaining complaint under Article 6 of the Convention concerns the length of the criminal proceedings against him.

THE LAW

The applicant's remaining complaint relates to the length of the proceedings, which began on 25 July 1990 and ended on 27 September 1996 with the judgment of the Vienna Court of Appeal being served on the applicant's counsel. They therefore lasted six years and two months. Article 6 § 1 of the Convention, as far as relevant, 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..."

The Government contend that the applicant failed to exhaust domestic remedies since he did not file a request pursuant to section 91 of the Courts Act.

The applicant contests the Government's view and maintains that an application under section 91 of the Courts Act would not have been an effective remedy to speed up the proceedings since the delays were caused by the experts who did not submit their opinions in time.

The Court recalls that a request under section 91 of the 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 relating to civil proceedings, and *Talirz v. Austria* (dec.), no. 37323/97, 11.09.2001, relating to criminal proceedings). The Court notes that the applicant could have made such a request between 11 August 1992 and 28 October 1994 for the court to fix a time-limit for the expert to submit his opinion and for a hearing date to be fixed. However, he did not make use of this possibility and has, thus, failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention.

It follows that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the remainder of the application inadmissible.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President