

**Contribution by the Department for the Execution of Judgments
of the European Court of Human Rights (02/07/2010)**

Introduction

The European Convention on Human Rights of 1950 (*the Convention*) was the first regional convention creating a collective guarantee for some of the rights contained in the Universal Declaration of Human Rights. The Convention system has subsequently seen, through 14 Protocols, a number of additions to the initial catalogue of rights and a number of reforms of the supervisory machinery.

An important element of the implementation of the Convention today is the right of individual petition to the European Court of Human Rights (*the Court*). In accordance with Article 46 of the Convention, the member states of the Council of Europe undertake to abide by all final judgments of the Court in cases to which they are parties. **The information below deals with the national situation as it emerges from the supervision of the execution of the judgments of the Court.**

It may be noted that since 2000 the Committee has adopted 7 recommendations to member states regarding the national implementation of the Convention (including the execution of the Court's judgments)¹.

The proper execution of the Court's judgments is supervised by the Committee of Ministers of the Council of Europe (*the Committee*).

The Committee's execution supervision aims at ensuring that:

- **Individual measures** have been taken, i.e. the applicant received, as far as possible *restitutio in integrum*, including through :
 - a) the payment of any monetary *just satisfaction* (Art. 41) awarded by *the Court*, and, where necessary
 - b) the adoption of further individual measures (such as the reopening of criminal proceedings, the destruction of information gathered in breach of the right to privacy, the enforcement of unenforced domestic judgments or the revocation of a deportation order issued despite a real risk of torture or other form of ill-treatment in the country of destination);
- **General measures** are adopted and implemented so as to prevent new violations similar to that/ those found and/or put an end to continuing violations. The obligation to take such measures may, depending on the violation, imply a review of legislation, government regulations and/or judicial practice. Some cases may even require constitutional changes. Remedying violations may also require other kinds of measures such as the refurbishing of a prison, an increase in the number of judges or of prison personnel or improvements of administrative arrangements or procedures. An increasingly important aspect of general

¹ -Recommendation Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights;

-Recommendation Rec(2002)13 on the publication and dissemination in the Member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights;

-Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training;

-Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights;

-Recommendation Rec(2004)6 on the improvement of domestic remedies.

- Recommendation Rec(2008)2 on improved domestic capacity for rapid execution of the judgments of the European Court of Human Rights;

-Recommendation Rec(2010)3 on effective remedies for excessive length of proceedings.

measures over the last years aims at ensuring that there exists, as required by the Convention (notably Art. 13) effective domestic remedies to ensure that further violations may be adequately redressed already by domestic authorities.

The Committee's supervision is carried out mainly at its regular Human Rights meetings (presently four a year). It is assisted notably by a special Secretariat, the Department for the Execution of judgments of the Court.

The Committee completes its examination of each case by adopting a final resolution. In the course of its supervision, *the Committee* may adopt interim resolutions and other forms of decisions, notably in order to provide information on the state of progress of the execution or, where appropriate, to express concern and/or to make suggestions with respect to the execution.

Interim and Final Resolutions are accessible through www.echr.coe.int on the HUDOC database. Decisions and other relevant execution information is available on the Internet site:

- of the Committee (http://www.coe.int/t/cm/humanrights_EN.asp), and/or
- of the Department for the Execution of judgments of the European Court (http://www.coe.int/t/dghl/monitoring/execution/default_EN.asp).

Since 2008, the Committee adopts an *annual report* on its activities under Article 46 of the Convention. The annual reports (for years 2007 and 2008) are available at the:
http://www.coe.int/t/DGHL/Monitoring/Execution/Documents/Publications_en.asp

The information presented below consists first of a list of the main pending cases for execution supervision, followed by an extract from the last public notes on the Committee's agenda with more detailed information on the execution situation in individual cases (highlighting both outstanding individual measures and more general reforms, whether legislative or other).

Explanatory note as to certain references made

In the presentations below the "meeting number" indicates the last Human Rights meeting at which the case was examined and/or the next meeting at which the case will be examined. The "meeting section" indicates whether the examination of the case concerns:

- *a first assessment of the execution measures needed (Section 2),*
- *the payment of any just satisfaction awarded (Sections 3.A or 3.B) or of default interest due (3.A.int)*
- *the adoption of individual and/or general execution measures (Section 4.2 (if only individual measures are examined at the meeting the case will be in a special Section 4.1) or if the cases raise more important problems section 4.3)*
- *the adoption of different measures already on their way, such as legislative reforms (Section 5.1), changes of case-law (Section 5.2), publication and awareness raising measures aimed at promoting the direct effect of ECHR case law (Section 5.3), or other measures, notably administrative nature or changes of practice (Section 5.4).*

List of Pending Cases against Austria

New cases to be examined

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number
31356/04	GORIANY v. Austria	10/12/2009	10/05/2010	1092
45369/07	RAMBAUSKE v. Austria	28/01/2010	28/04/2010	1092
20087/06	STECCHAUNER v. Austria	28/01/2010	28/04/2010	1092
20089/06	PUCHSTEIN v. Austria	28/01/2010	28/04/2010	1092

Pending cases – adoption of execution measures under way

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number
13471/06	ALMESBERGER v. Austria	10/12/2009	10/03/2010	1092, 1100
40825/98	RELIGIONSGEMEINSCHAFT DER ZEUGEN JEHOVAS AND OTHERS v. Austria	31/07/2008	31/10/2008	1092, 1100
20082/02	ZEHENTNER v. Austria	16/07/2009	16/10/2009	1092
76581/01	VEREIN DER FREUNDE DER CHRISTENGEMEINSCHAFT and Others v. Austria	26/02/2009	26/05/2009	1092, 1100
3138/04	ARBEITER v. Austria	25/01/2007	25/04/2007	1100
68354/01	VEREINIGUNG BILDENDER KUNSTLER v. Austria	25/01/2007	25/04/2007	1100
74336/01	WIESER AND BICOS BETEILIGUNGEN GMBH v. Austria	16/10/2007	16/01/2008	1100
56483/00	JANCIKOVA v. Austria	07/04/2005	07/07/2005	1100
30003/02	STOJAKOVIC v. Austria	09/11/2006	09/02/2007	1100
34082/02	RUSU v. Austria	02/10/2008	02/01/2009	1108
12556/03	PFEIFER v. Austria	15/11/2007	15/02/2008	1100
2884/04	ORTNER v. Austria	31/05/2007	31/08/2007	1100
27900/04	PALUSHI v. Austria	22/12/2009	22/03/2010	1092
32407/04	DONNER v. Austria	22/02/2007	22/05/2007	1100
49616/06	KOOTTUMMEL v. Austria	10/12/2009	10/03/2010	1092
37040/02	RIEPL v. Austria	03/02/2005	03/05/2005	1100
18015/03	SCHUTTE v. Austria	26/07/2007	26/10/2007	1100
18294/03	STEMPFER v. Austria	26/07/2007	26/10/2007	1100
37301/03	HAUSER-SPORN v. Austria	07/12/2006	23/05/2007	1100
39120/03	BARTENBACH v. Austria	20/03/2008	20/06/2008	1100
8140/04	VITZTHUM v. Austria	26/07/2007	26/10/2007	1100
20597/04	GURSOY v. Austria	05/06/2008	05/09/2008	1100
28034/04	MULLER v. Austria (II)	18/09/2008	18/12/2008	1100
25166/05	SCHNEIDER v. Austria	31/07/2008	31/10/2008	1100
25929/05	STROBEL v. Austria	04/06/2009	04/09/2009	1100
33928/05	KLUG v. Austria	15/01/2009	15/04/2009	1100
38032/05	GIERLINGER v. Austria	29/11/2007	29/02/2008	1100
4490/06	RICHTER v. Austria	18/12/2008	18/03/2009	1100
12702/08	OTTO v. Austria	22/10/2009	22/01/2010	1100
23960/02	ZEMAN v. Austria	29/06/2006, 10/01/2008	10/01/2008	1092

Cases awaiting the preparation of a final resolution – execution measures in principle adopted

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number
24430/94	LANZ v. Austria	31/01/2002	01/05/2002	1092
29477/95	EISENSTECKEN v. Austria	03/10/2000	03/10/2000	1092
32899/96	BUCHBERGER v. Austria	20/12/2001	20/03/2002	1092
36812/97	SYLVESTER v. Austria	24/04/2003	24/07/2003	1092
40016/98	KARNER v. Austria	24/07/2003	24/10/2003	1092
42967/98	LOFFELMANN v. Austria	12/03/2009	12/06/2009	1092
45983/99	KAPLAN v. Austria	18/01/2007	18/04/2007	1092
46389/99	ALBERT-ENGELMANN-GESELLSCHAFT MBH v. Austria	19/01/2006	19/04/2006	1092
53911/00	ACHLEITNER v. Austria	23/10/2003	23/01/2004	1092
55193/00	SCHELLING v. Austria	10/11/2005	10/02/2006	1092
58547/00	WIRTSCHAFTS-TREND ZEITSCHRIFTEN-VERLAGS GMBH v. Austria	27/10/2005	27/01/2006	1092
66298/01	WIRTSCHAFTS-TREND ZEITSCHRIFTEN-VERLAGSGESELLSCHAFT M.B.H. v. Austria	13/12/2005	13/03/2006	1092
43454/98	BAKKER v. Austria	10/04/2003	10/07/2003	1092
45203/99	BIRNLEITNER v. Austria	24/02/2005	24/05/2005	1092
49686/99	GUTL v. Austria	12/03/2009	12/06/2009	1092
54698/00	KAYA v. Austria	08/06/2006	08/09/2006	1092
60553/00	MALEK v. Austria	12/06/2003	12/09/2003	1092
60899/00	KOBENTER and STANDARD VERLAGS GMBH v. Austria	02/11/2006	02/02/2007	1092
62539/00	JURISIC AND COLLEGIUM MEHRERAU v. Austria	27/07/2006	11/12/2006	1092
69162/01	GEYER v. Austria	07/07/2005	07/10/2005	1092
76293/01	BRUGGER v. Austria	26/01/2006	26/04/2006	1092
76918/01	VERLAGSGRUPPE NEWS GMBH v. Austria	14/12/2006	14/03/2007	1092
10520/02	VERLAGSGRUPPE NEWS GMBH v. Austria (no. 2)	14/12/2006	14/03/2007	1092
10523/02	COORPLAN-JENNI GMBH and HASCIC v. Austria	27/07/2006	11/12/2006	1092
19710/02	STANDARD VERLAGS GmbH and KRAWAGNA-PFEIFER v. Austria	02/11/2006	02/02/2007	1092
35841/02	OSTERREICHISCHER RUNDFUNK v. Austria	07/12/2006	07/03/2007	1092
12555/03	MULLER v. Austria	05/10/2006	05/01/2007	1092
28648/03	LANG v. Austria	19/03/2009	19/06/2009	1092
30547/03	FERIHUMER v. Austria	01/02/2007	01/05/2007	1092
7401/04	HOFBAUER v. Austria (no. 2)	10/05/2007	10/08/2007	1092
11032/04	EMMER-REISSIG v. Austria	10/05/2007	10/08/2007	1092
26606/04	FALTER ZEITSCHRIFTEN GMBH v. Austria	22/02/2007	22/05/2007	1092
35354/04	ABRAHAMIAN v. Austria	10/04/2008	10/07/2008	1092
513/05	SCHMIDT v. Austria	17/07/2008	17/10/2008	1092
17912/05	BOSCH v. Austria	03/05/2007	03/08/2007	1092
26113/95	WIRTSCHAFTS-TREND v. Austria	18/05/1998	18/08/1998	1092
42780/98	I.H. and others v. Austria	20/04/2006	20/07/2006	1092
45289/99	BRUNNTHALER v. Austria	29/06/2006	29/09/2006	1092
2881/04	PRISCHL v. Austria	26/04/2007	26/07/2007	1092
5266/03	NIKOWITZ AND VERLAGSGRUPPE NEWS GESMBH v. Austria	22/02/2007	22/05/2007	1092
9605/03	KRONE VERLAG GMBH & CO KG v. Austria	14/11/2008	14/02/2009	1092
13071/03	STANDARD VERLAGS GMBH v. Austria	02/11/2006	02/02/2007	1092

Main pending cases or group of cases against Austria

Case name :	ZEHENTNER v. Austria	Appl N° :	<u>20082/02</u>
Judgment of :	16/07/2009		
Final on :	16/10/2009		
Violation :		Payment status :	No information
Theme / Domain :			
Next exam :	1092-4.2(14/09/2010); 1092-3.B(14/09/2010)		
Last exam :	1086-3.A(01/06/2010)		
First exam :	1078-2.1(02/03/2010)		

NOTES OF THE AGENDA

20082/02 Zehentner, judgment of 16/07/2009, final on 16/10/2009

The case concerns disproportionate interference with the applicant's right to respect for her home due to the judicial sale of her apartment in 1999 to pay off her creditors without her having been able to participate effectively in the proceedings (violation of Article 8).

The European Court found that the applicant, for whom a guardian had been appointed in 2000, had lacked legal capacity for years by the time the judicial sale of the apartment and her ensuing eviction in 2000 had taken place, so she had been unable either to object or to resort to available remedies. In addition, the absolute nature of the time-limit for appealing against a judicial sale provided in domestic law prevented her from obtaining a review of her case. Given that persons without legal capacity were particularly vulnerable, the Court found that specific justification was required. The Austrian Supreme Court, rejecting the applicant's extraordinary appeal by decision of 30/01/2002, had not given any such justification and had not weighed the conflicting interests of the purchaser in good faith and the debtor lacking legal capacity.

The case also concerns a breach of the applicant's right to peaceful enjoyment of her possessions in this respect (violation of Article 1 of Protocol No. 1).

The Court noted that even if the proceedings in this case had been between private parties, the state was under an obligation to afford both parties the necessary procedural guarantees. It found the procedural mechanism suggested by the government an unfeasible scenario for the applicant, a person lacking legal capacity, to be able to recover possessions of which she was deprived without adequate guarantees.

The Deputies decided to resume consideration of this item at the latest at their 1092nd meeting (September 2010) (DH), in the light of an action plan / action report to be provided by the authorities.

Case name :	ZEMAN v. Austria	Appl N° :	<u>23960/02</u>
Judgment of :	29/06/2006		
Final on :	29/09/2006		
Violation :		Payment status :	
Theme / Domain :			
Next exam :	1092-4.2(14/09/2010)		
Last exam :	1072-4.2(01/12/2009)		
First exam :	982-2(05/12/2006)		

NOTES OF THE AGENDA

23960/02 Zeman, judgment of 29/06/2006, final on 29/09/2006 and of 10/01/2008 (Article 41) – Friendly settlement

The case concerns sexual discrimination against the applicant due to the application of the Amended Pension and Pension Allowance Act, entitling widowers to 40% of the pension their deceased wife had acquired before January 1995 while widows would be entitled to 60%, without basing this distinction on any objective and reasonable justification (Article 14 in conjunction with Article 1 of Protocol No. 1).

Individual measures: In the judgment of 10/01/2008 (Article 41) the European Court noted that a friendly settlement had been reached between the applicant and the competent authorities covering all the applicant's claims in respect of his widower's pension.

• **Assessment:** No further individual measure seems necessary.

General measures: The European Court's judgment was published in the Newsletter of the Austrian Institute for Human Rights (NL 2006, p. 152 (NL 06/3/15), available online at http://www.menschenrechte.ac.at/docs/06_3/06_3_15).

On 23/01/2007 it was sent to the Constitutional Service of the Federal Chancellery, the Vienna Municipality and the Appeals Board of the Vienna Municipality. Furthermore, judgments of the European Court are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice (RIS).

• *Information is awaited on further legislative or other measures envisaged or taken to prevent new, similar violations and ensuring an equal treatment of survivor's pension rights acquired prior to 1995.*

The Deputies decided to resume consideration of this item at the latest at their 1092nd meeting (September 2010) (DH), in the light of information to be provided on general measures, in particular, on further legislative or other measures.

Case name :	PALUSHI v. Austria	Appl N° :	<u>27900/04</u>
Judgment of :	22/12/2009		
Final on :	22/03/2010		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1092-4.2(14/09/2010)		
Last exam :	1086-2.1(01/06/2010)		
First exam :	1086-2.1(01/06/2010)		

NOTES OF THE AGENDA

27900/04 Palushi, judgment of 22/12/2009, final on 22/03/2010

The case concerns inhuman and degrading treatment inflicted upon the applicant, who at the material time was being held in custody in Vienna Police Prison with a view to expulsion for illegal stay and the ensuing lack of medical care in solitary confinement (two violations of Article 3).

As regards the applicant's allegations that he had been stabbed behind his ears with ballpoint pens and the manner in which he was carried to the individual cell, such that his back dragged along the edges of the steps, the European Court found that his injuries had been established beyond reasonable doubt by the medical reports and witnesses. The Court considered that the treatment of the applicant, who had been on hunger strike for three weeks and was in a physically and mentally weakened state, must have caused him physical and mental pain and suffering and had been such as to arouse in him feelings of fear, anguish and inferiority capable of debasing him and possibly breaking his physical and moral resistance.

The European Court observed that the applicant was placed in solitary confinement despite the risks implied by his hunger-strike, such as loss of consciousness, on the assessment of a paramedic, who according to the 1994 CPT report had received only basic training, and had been refused access to a doctor for three days. Taken together, those factors must have caused him suffering and humiliation beyond that which is inevitable in a situation of detention.

The Deputies decided to resume consideration of this item at their 1092nd meeting (September 2010), in the light of an action plan / action report to be provided by the authorities.

Case name :	KOOTTUMMEL v. Austria	Appl N° :	<u>49616/06</u>
Judgment of :	10/12/2009		
Final on :	10/03/2010		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1092-4.2(14/09/2010)		
Last exam :	1086-2.1(01/06/2010)		
First exam :	1086-2.1(01/06/2010)		

NOTES OF THE AGENDA

49616/06 Koottummel, judgment of 10/12/2009, final on 10/03/2010

The case concerns a violation of the applicant's right to a fair trial in that, in April 2006 the applicant was denied an oral hearing before the Administrative Court in proceedings concerning applications under the Aliens' Employment Act for a grant of an employment permit (violation of Article 6§1).

The European Court could not find that in the present case the subject matter of the proceedings before the Administrative Court, namely a highly technical issue or of mere legal nature, was of such a nature as to dispense with its obligation to hold a hearing.

The Deputies decided to resume consideration of this item at their 1092nd meeting (September 2010) (DH), in the light of an action plan / action report to be provided by the authorities.

Case name :	WIESER AND BICOS BETEILIGUNGEN GMBH v. Austria	Appl N° :	<u>74336/01</u>
Judgment of :	16/10/2007		
Final on :	16/01/2008		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1100-4.1(30/11/2010)		
Last exam :	1086-4.1(01/06/2010)		
First exam :	1028-2.1(03/06/2008)		

NOTES OF THE AGENDA

74336/01 Wieser and Bicos Beteiligungen GmbH, judgment of 16/10/2007, final on 16/01/2008

The case concerns the violation of the right to respect for the correspondence of the applicants, an advocate who is proprietor and general manager of a limited-liability company (the first applicant) and the company itself (the second applicant), on account of a search and seizure of electronic data, carried out in October 2000 in the first applicant's chambers (violation of Article 8).

The European Court noted that the procedural guarantees provided in the Code of Criminal Procedure had not been respected with regard to the search and seizure of electronic data: the Bar Association member present could not properly exercise his supervisory function as regards the electronic data, and the report on the search was not drawn up at the end of the search but only later the same day.

The Court found that the police officers' failure to comply with procedural safeguards designed to prevent abuse or arbitrariness and to protect the advocate's duty of professional secrecy rendered the search and seizure of the electronic data disproportionate to the legitimate aim pursued.

Individual measures: The European Court awarded just satisfaction to the first applicant in respect of non-pecuniary damage sustained. The applicant company submitted no claim in respect of non-pecuniary damage. The Austrian authorities state that, on 23/03/2001, the Ministry of Justice sent the case file, including the disk on which the electronic data in question had been saved, to the Naples Public Prosecutor's Office following a request for legal assistance.

- *Bilateral contacts are under way to clarify whether further individual measures are necessary.*

General measures: Austrian law contains detailed provisions for the seizure of objects and, in addition, specific rules for the seizure of documents. It has been established in domestic courts' case-law that these provisions also apply to the search and seizure of electronic data. It seems that this was an isolated violation resulting from the particular circumstances of the case.

The European Court's judgment was published in German in the law journals (ÖJZ 2008/4; and *Newsletter* 2007, p. 258, available online at www.menschenrechte.ac.at/docs/07_5/07_5_09). On 29/01/2008 it was also sent to the Ministry of Justice, the Ministry of the Interior, the Salzburg Independent Administrative Panel and the Constitutional Service of the Federal Chancellery.

- *Assessment: In these circumstances, no further general measure appears necessary.*

The Deputies decided to resume consideration of this item at the latest at their 1100th meeting (December 2010) (DH), in the light of clarification to be provided on individual measures.

Case name :	ARBEITER v. Austria	Appl N° :	<u>3138/04</u>
Judgment of :	25/01/2007		
Final on :	25/04/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1100-4.1(30/11/2010)		
Last exam :	1086-4.1(01/06/2010)		
First exam :	1007-2(15/10/2007)		

NOTES OF THE AGENDA

3138/04 Arbeiter, judgment of 25/01/2007, final on 25/04/2007

This case concerns a violation of the right to freedom of expression on account of the injunction imposed on the applicant under Article 1330§2 of the Civil Code for making defamatory statements in the print media in 2001 (violation of Article 10).

Individual measures: The European Court awarded the applicant just satisfaction in respect of pecuniary damage. The Austrian authorities submit that although the injunction is still in place, it no longer appears to harm the applicant or to be relevant, the prohibition to make the statements in question relating to a specific situation in the past.

- *Bilateral contacts are under way to clarify whether further measures are needed.*

General measures: The requisite measures have been taken (see the case of *Wirtschaftstrend Zeitschriften-Verlagsgesellschaft m.b.H No. 2 (58547/00)* (Section 6.2). Between 2002 and 2009 the Ministry of Justice, together with the Ludwig Boltzmann Institut für Menschenrechte, organised regular training courses for judges and public prosecutors concerning the European Court’s case law on Article 10. It is planned to continue these training courses, as well as to undertake a study trip to the European Court.

Furthermore, the judgment of the European Court was published in the *Newsletter* of the Austrian Institute for Human Rights (NL 2007, p. 23, NL 07/1/09; available online at http://www.menschenrechte.ac.at/docs/07_1/07_1_09).

- *Assessment: In view of these measures taken and the direct effect of the Convention in Austria, it may be assumed that the requirements of Article 10 of the Convention and the Court’s case-law will be taken into account by the competent authorities in the future, thus preventing new, similar violations.*

The Deputies decided to resume consideration of this item at the latest at their 1100th meeting (December 2010) (DH), in the light of the outcome of the bilateral contacts on individual measures.

Case name :	PFEIFER v. Austria	Appl N° :	<u>12556/03</u>
Judgment of :	15/11/2007		
Final on :	15/02/2008		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1100-4.2(30/11/2010)		
Last exam :	1086-4.2(01/06/2010)		
First exam :	1028-2.1(03/06/2008)		

NOTES OF THE AGENDA

12556/03 Pfeifer, judgment of 15/11/2007; final on 15/02/2008

This case concerns a breach of the applicant’s right to respect for his private life due to domestic courts’ failure to protect his reputation against defamatory statements in a newspaper (violation of Article 8).

In June 2000, the newspaper *Zur Zeit* published a letter by its chief editor alleging that the applicant had caused the suicide of a professor by criticising his anti-Semitic publications. In June 2000 and October 2001, two sets of defamation proceedings brought by the applicant against the chief editor and the publishing company owning *Zur Zeit* were dismissed (proceedings under Article 111§1 of the Criminal Code and under Section 6 of the Media Act). The domestic courts held that the article at issue contained a value judgment which relied on a sufficient factual basis.

The European Court noted that, by alleging that the applicant’s commentary had caused the suicide of the professor, the chief editor’s letter overstepped acceptable limits, because it in fact accused the applicant of acts tantamount to criminal behaviour. Even if the statement were to be understood as a value judgment it lacked a sufficient factual basis and no proof had been offered for the alleged factual link.

Individual measures: The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage sustained and reimbursed him costs and expenses incurred in the domestic proceedings and before the Court.

On 21/08/2008 the Supreme Court rejected the applicant’s request to reopen the proceedings finding that, as a private prosecutor, he had no legal standing for such a request under Article 363a of the Code on Criminal Procedure. Moreover, reopening proceedings against the previously acquitted chief editor would infringe the principle of *reformatio in peius* applicable in criminal proceedings (Article 363b(3), *in fine*, of the Code of Criminal Procedure).

- *Information submitted by the applicant’s counsel and the Austrian authorities:* The applicant complained that despite the European Court’s judgment in his favour, Austrian law offered no *restitutio in integrum* with regard to the slur on his reputation.

The Austrian authorities are of the view that the European Court's award in respect of non-pecuniary damage provided the applicant sufficient just satisfaction. Furthermore, the Supreme Court had correctly rejected the applicant's request for re-opening of the proceedings as the state's duty under the Convention in executing a judgment could not be extended to the degree of violating the principle of *reformatio in peius* to the detriment of an acquitted person.

- *Bilateral contacts are underway to clarify whether further individual measures are necessary.*

General measures:

1) Publication and dissemination: The European Court's judgment was published in German in various law journals (ÖJZ 2008/2; and Newsletter 2007, p.307, available online at www.menschenrechte.ac.at/docs/07_6/07_6_05). Furthermore, on 17/08/2007 it was disseminated to all ministries and human rights coordinators, the Parliament, the Supreme Court, the Constitutional Court and the Administrative Court.

2) Training and awareness raising measures: A distinct issue was raised in Wirtschaftstrend No. 2 (Application No. 58547/00, Section 6.2), concerning the conviction of defamation for a publication in a magazine. In this case the European Court noted that the right to freedom of expression had been interpreted too narrowly by the Austrian Courts and found a violation of Article 10. Consequently between 2002 and 2009 the Austrian Ministry of Justice provided regular training for judges on the Convention and especially the European Court's case-law relating to the interplay of Articles 8 and 10. It is planned to continue these training courses, as well as to make a study visit to the European Court.

- *Taking into account the circumstances and the type of violation in this case, the necessity of further general measures is closely linked to the assessment on the need for further individual measures.*

The Deputies decided to resume consideration of this item at the latest at their 1100th meeting (December 2010) (DH), following bilateral contacts under way on the assessment of the need for further individual and general measures.

Case name :	RELIGIONSGEMEINSCHAFT DER ZEUGEN JEHOVAS AND OTHERS v. Austria		
		Appl N° :	<u>40825/98</u>
Judgment of :	31/07/2008		
Final on :	31/10/2008		
Violation :		Payment status :	No information
Theme / Domain :			
Next exam :	1092-3.B(14/09/2010); 1100-4.2(30/11/2010)		
Last exam :	1086-4.2(01/06/2010)		
First exam :	1051-2.1(17/03/2009)		

NOTES OF THE AGENDA

- 2 cases concerning freedom of religion

40825/98 Religionsgemeinschaft der Zeugen Jehovas and Others, judgment of 31/07/2008, final on 31/10/2008

76581/01 Verein der Freunde der Christengemeinschaft and others, judgment of 26/02/2009, final on 26/05/2009

The cases concern the unnecessary restriction of the applicants' right to freedom of religion due to a discriminatory decision to confer upon the applicant communities an inferior grade of legal personality.

In both cases the first applicants are the religious communities of Jehovah's Witnesses in Austria and *Verein der Freunde der Christengemeinschaft*, respectively: the four other applicants in each case are their respective members who, in 1978 and 1995, made a request to the Federal Minister for Education and Arts, under the 1874 Legal Recognition of Religious Societies Act, to have the Jehovah's Witnesses recognised as a religious society and granted legal personality.

As regards the Jehovah's Witnesses, the Ministry initially found that the law at issue did not confer upon the applicants any entitlement to a formal decision. In 1997 it dismissed their request, finding that the Jehovah's Witnesses could not be recognised as a religious society because their internal organisation was unclear and they had a negative attitude to the state and its institutions, demonstrated in particular by their refusal to do military service, to participate in local community life and elections or to have certain types of medical treatment such as blood transfusions. The Constitutional Court subsequently quashed that decision.

On 20/07/1998, an Act having been passed in January 1998 on the Legal Status of Registered Religious Communities, the Jehovah's Witnesses and *Christengemeinschaft* were granted legal personality as religious communities. From that point, they had legal standing before the Austrian courts and authorities and were allowed

to acquire and manage assets in their own name, establish places of worship and disseminate their beliefs. The applicants in both cases nonetheless brought a second set of proceedings, still requesting recognition as a religious society. Their requests were dismissed on 1/12/1998 as the Federal Minister found that, pursuant to Section 11(1) of the 1998 Religious Communities Act, a religious community could only be registered as a religious society if it had already existed for a minimum of ten years. The applicants' complaints against these decisions were ultimately dismissed in March 2001 (*Christengemeinschaft*) and October 2004 (Jehovah's Witnesses) on the ground that a ten-year qualifying period was in conformity with the Constitution.

The European Court noted concerning the Jehovah's Witnesses that the period between the submission of the applicants' request for recognition as a religious society and the granting of legal personality was substantial: some 20 years, and that during that period the Jehovah's Witnesses had had no legal personality in Austria. The Court concluded that the interference had gone beyond any "necessary" restriction on the applicants' freedom of religion (violation of Article 9).

The Court accepted as regards both cases that making a religious community wait for ten years before granting it the status of a religious society could be necessary in exceptional circumstances such as in the case of newly established and unknown religious groups. However, it hardly appeared justified in respect of religious groups which were well established both nationally and internationally and therefore familiar to the relevant authorities, as was the case with the Jehovah's Witnesses and *Christengemeinschaft*. The authorities should have been able to verify much more quickly whether the requirements of the relevant legislation had been fulfilled, as they had done in respect of The Coptic Orthodox Church. Accordingly, the Court concluded that that difference in treatment had not been based on any "objective and reasonable justification" (violations of Article 14 taken in conjunction with Article 9).

Furthermore, the Court found that in the second set of proceedings lodged by the Jehovah's Witnesses, which had lasted almost five years and 11 months, there had been two periods of inactivity, one of which had not been explained by the government (violation of Article 6§1).

Individual measures: In both cases the European Court awarded just satisfaction in respect of non-pecuniary damage. It rejected the Jehovah's Witnesses' claim for pecuniary damage as there was no causal link between the violation found and the alleged damage.

The European Court, having limited its scope of examination to the Ministry's decision refusing recognition of the first applicants as religious societies exclusively for non-compliance with the 10-year waiting period under Section 11(1) of the 1998 Religious Communities Act, found this reason to be discriminatory. It noted that it could not speculate on the outcome of the proceedings, as in any event, the first applicants would not have been automatically entitled to recognition as a religious society had the Austrian authorities not relied on the discriminatory ground of the 10-year waiting period, because there were various other requirements under the applicable law (§ 130 of the judgment concerning the Jehovah's Witnesses). In July 2008, the 10-year waiting period expired as regards the first applicants. They may lodge a new request for recognition as a religious society. On 7/05/2009 the Jehovah's Witnesses' new request was granted and they were recognised as a religious society by a decree (*Federal Gazette* II, 2009/139). Furthermore, the domestic proceedings concerning the Jehovah's Witnesses which the Court had found to be excessively long are closed.

• *Assessment:* no further individual measure appears necessary.

General measures:

1) Violation of Article 9: The European Court found a violation of the right to freedom of religion because of the lapse of time before the Jehovah's Witnesses were granted legal personality in 1998. The 1998 Religious Communities Act provides the registration of religious groups as religious communities and grants them a legal status.

• *Assessment:* The violation appears to be an isolated incident resulting from the particular circumstances of the case. No further general measure seems necessary in this respect.

2) Violations of Article 9 in conjunction with Article 14: The Court found the 10-years waiting period provided by Section 11(1) of the 1998 Religious Communities Act to be unjustified in respect of nationally and internationally well-established religious groups for which a considerably shorter period would be sufficient to verify whether they conform with the other applicable requirements. The recognition in 2003 of The Coptic Orthodox Church, which had also been registered as a religious community in 1998, demonstrates that the 10-year waiting period is not applied in all cases by the Austrian authorities.

The European Court's judgment concerning the Jehovah's Witnesses was published in the *Newsletter* of the Austrian Institute for Human Rights (NL 2008, p. 232 (NL 08/4/15)), available online at http://www.menschenrechte.ac.at/docs/08_4/08_4_15) and in *Österreichische Juristenzeitung* (ÖJZ 2008, p. 865). On 17/03/2009 both judgments were widely disseminated to Parliament, to Human Rights Coordinators, all Federal Ministries, the Constitutional Court, the Administrative Court and the Supreme Court. Moreover, to avoid similar violations, the ministries were requested to take these judgments into consideration when applying the law and/or when drafting further legislative proposals.

• *Information would be useful on measures taken or envisaged to avoid new, similar violations, in particular whether*

any legislative changes are envisaged.

3) Violation of Article 6§1: The case concerning the Jehovah's Witnesses presents similarities to the Ortner group as regards the excessive length of proceedings before administrative authorities and courts (next examination, 1086th meeting (June 2010).

The Deputies decided to resume consideration of these items at the latest at their 1100th meeting (December 2010) (DH) in the light of information to be provided on general measures.

Case name :	JANCIKOVA v. Austria	Appl N° :	<u>56483/00</u>
Judgment of :	07/04/2005		
Final on :	07/07/2005		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1100-4.2(30/11/2010)		
Last exam :	1086-4.2(01/06/2010)		
First exam :	940-2(11/10/2005)		

NOTES OF THE AGENDA

- 9 cases of length of proceedings concerning the determination of criminal charges before administrative authorities and courts and of lack of an effective remedy

56483/00 Jancikova, judgment of 07/04/2005, final on 07/07/2005
 39120/03 Bartenbach, judgment of 20/03/2008, final on 20/06/2008
 20597/04 Gürsoy, judgment of 05/06/2008, final on 05/09/2008
 37301/03 Hauser-Sporn, judgment of 7/12/2006, final on 7/03/2007
 28034/04 Müller No.2, judgment of 18/09/2008, final on 18/12/2008
 25166/05 Schneider, judgment of 31/07/2008, final on 31/10/2008
 18015/03 Schutte, judgment of 26/07/2007, final on 26/10/2007
 18294/03 Stempfer, judgment of 26/07/2007, final on 26/10/2007
 8140/04 Vitzthum, judgment of 26/07/2007, final on 26/10/2007

These cases concern the excessive length of certain proceedings in determination of criminal charges before administrative authorities and courts (violations of Article 6§1) as well as the lack of an effective remedy (violations of Article 13).

In the Jancikova case, proceedings concerning illegal employment of foreigners began in February 1993 and ended in September 1999 (more than six years), during which period the Independent Administrative Panel (*Unabhängiger Verwaltungssenat*) had been inactive for some two years and the Administrative Court for one year and almost four months.

Furthermore, the applicant had no effective remedy against the delays. In particular, Section 51§7 of the Code of Administrative Offences which guarantees a decision on appeals within 15 months did not apply to the present case as more than one party, namely the Labour Office, was entitled to appeal. The European Court noted furthermore that Section 31§3 of the Code of Administrative Offences did not ensure written notification of the Independent Administrative Panel's decision within the statutory time-limit of three years: under Austrian law only the public pronouncement had to be within that time-limit (see §25 of the judgment).

In the Hauser-Sporn case, proceedings against the applicant concerning an offence under the Road Traffic Act began in February 1995 and ended on 6/11/2003 with the notification of the Administrative Court's decision, refusing to deal with his complaint (eight years and some nine months). The case had been pending before the two highest courts for more than five years, namely for two years and some six months each before the Constitutional Court and the Administrative Court. In respect of these delays, the applicant had no effective remedy at his disposal.

The Schutte, Stempfer, Vitzthum and Schneider cases concerned the length of administrative criminal proceedings for driving offences. In Schutte, proceedings lasted for five years, during which there was a period of inactivity of two years before the Administrative Court. In Stempfer, the proceedings lasted for seven years and two and a half months during which time the case had been pending before the Constitutional Court for three and a half years, and there was a period of inactivity for more than two years before the Administrative Court. In Vitzthum, proceedings lasted for four years and two months, including a period of complete inactivity for more than three years before the Administrative Court. In Schneider, proceedings lasted for four years and eight months, during which time the case was pending for three years before the Administrative Court.

Furthermore, the European Court found in all these cases that the applicants had no effective remedy - either acceleratory nor compensatory - at their disposal.

In the Bartenbach case, proceedings against the applicants concerning illegal employment of foreigners began in July 1997 and September 1998 and ended in May 2003 with the notification of the Administrative Court's judgment

(five years and nearly ten months, and four years and nine months). The case had been pending for three years and two months before the Administrative Court.

The case also concerns the inequality of arms in that the Administrative Court failed to provide proof that it had forwarded the observations of the administrative authority to the applicants (violation of Article 6§1).

In the Gürsoy case, proceedings concerning the applicant's illegal sojourn began on 28/01/1999 and ended on 1/12/2003 (four years and eleven months). The case had been pending before the Administrative Court for more than two years.

The Müller No. 2 case concerned proceedings against the applicant for an offence under the Industrial Safety Act, which began on 31/03/1998 and ended on 19/12/2003 (five years and more than eight months). There was a period of inactivity of one year and eight months before the Administrative Court.

Individual measures: The proceedings are closed in all cases. The European Court awarded just satisfaction in respect of non-pecuniary damage, except in *Jancikova* where no claim had been made to this end.

• *Assessment: no further individual measure is required.*

General measures:

1) Excessive length of proceedings:

a) *before the Administrative Court:* Legislative measures were adopted in 2002 (see case of G.S., judgment of 21/12/1999, Resolution ResDH(2004)77) and further general measures were adopted in the cases of Alge and Schluga (Resolution CM/ResDH (2007)110). The Annual Report 2008 (published in June 2009, available online at <http://www.vwgh.gv.at/Content.Node/de/aktuelles/taetigkeitsbericht/taetigkeitsbericht2008.pdf>) of the Administrative

Court indicates a slight negative trend concerning the average length of proceedings. Furthermore, the absolute number of cases pending for an excessive time (more than 3 years) before the Administrative Court has increased over the last year. Also, the high number of recent complaints means that excessive length of proceedings remains an issue (ibidem, p. 9). Since 2005 the number of new complaints has been exceeding that of judgments/decision taken. To reduce the workload of the Administrative Court, a new Asylum Court, which is dealing with asylum cases, has been set up. Those cases accounted for a considerable part of the workload of the Administrative Court.

• *The information provided by the Austrian authorities on 26/02/2010 is under assessment by the Secretariat.*

b) *before the Independent Administrative Panel:* Only in the *Jancikova* case the European Court underlined two periods of inactivity before the Independent Administrative Panel. The first period of two years seems to be an isolated incident resulting from the particular circumstances of the case. The second lengthy period occurred between the public pronouncement and the written service of the decision. The Court noted that Austrian law did not provide a time-limit for the notification of a decision after its pronouncement.

• *Information would be useful as to whether a possible legislative amendment is envisaged in this respect.*

c) *before the Constitutional Court:* The Constitutional Court's 2008 Activity Report (published on 19/04/2009, available online at http://www.verfassungsgerichtshof.at/cms/vfgh-site/attachments/6/6/3/CH0011/CMS1239888247790/taetigkeitsbericht_2008.pdf) provided statistics showing that the average length of proceedings between 1998 and 2008 was less than 9 months. Therefore the excessive length in the cases of Hauser-Sporn and Stempfer seem to be isolated incidents resulting from the particular circumstances.

The judgments in the *Jancikova*, *Hauser-Sporn*, *Schutte*, *Stempfer* and *Vitzthum* cases were transmitted to the Presidents of the Administrative Court and the Constitutional Court. Furthermore, the judgments have been forwarded to a range of federal and regional public authorities and published on the websites of the Constitutional Service of the Austrian Chancellery (<http://bka.gv.at/DocView.axd?CobId=29401>) and the Austrian Human Rights Institute (www.menschenrechte.ac.at <http://www.menschenrechte.ac.at>).

• *Assessment: no further general measure seems necessary concerning the excessive length before the Constitutional Court.*

2) Violation of equality of arms: The European Court noted in the *Bartenbach* case that it had no reason to doubt that the Administrative Court, as a rule, forwarded observations in order to obtain counterstatements from the concerned parties (§33 of the judgment). Thus, the violation in this case resulted from a single lapse occurring before the Administrative Court. The Court's judgment was published in various legal journals (the *Newsletter* of the Austrian Human Rights Institute, NL 2008, p.78; available online at http://www.menschenrechte.ac.at/docs/08_2/08_2_04); and ÖJZ 2008, p. 503). On 1/04/2008 it has been sent out to the Administrative Court.

• *Assessment: no further general measure seems necessary concerning the violation of equality of arms.*

3) Violation of Article 13:

• *Written information is awaited on existing or envisaged measures to safeguard individuals effectively against lengthy criminal proceedings before administrative courts.*

The Deputies decided to resume consideration of these items at the latest at their 1100th meeting (December 2010) (DH), in the light of the Secretariat's assessment on the information provided and further information to be

provided on general measures.

Latest development

Additional information on general measures has been received from the Austrian authorities on 23/02/2010.

Case name :	STOJAKOVIC v. Austria	Appl N° :	<u>30003/02</u>
Judgment of :	09/11/2006		
Final on :	09/02/2007		
Violation :		Payment status :	Paid outside time limit, short delay
Theme / Domain :			
Next exam :	1100-4.2(30/11/2010)		
Last exam :	1078-4.2(02/03/2010)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

- Case concerning the lack of oral hearing

30003/02 Stojakovic, judgment of 09/11/2006, final on 09/02/2007

The case concerns the lack of an oral hearing before a ministerial Appeals Commission, in October 2000, in disciplinary proceedings to demote the applicant (violation of Article 6§1).

The European Court noted that the applicant was in principle entitled to a hearing before the first and only tribunal, *i.e.* the Appeals Commission. It considered there was no exceptional circumstance to justify dispensing with a hearing in this case, the more so in that the applicant had asked the Appeals Commission to hear a witness in the context of a hearing and later complained to the Constitutional Court that the Appeals Commission had taken its decision after a private hearing.

Individual measures:

• *Information is expected on the current situation of the applicant and in particular whether he may request reopening of the proceedings in question.*

General measures: According to Article 40§1 of the Code of General Administrative Procedure (*Allgemeines Verwaltungsverfahrensgesetz*) which governs hearings before Appeals Commissions, “oral hearings shall be held in the presence of all known parties and the necessary witnesses and experts”. The European Court noted that it was a consistent practice of administrative authorities to hold oral hearings *in camera* unless the law provided otherwise, as it was commonly understood that the principle of publicity did not extend to administrative proceedings.

• *Information is expected on current practice before Appeals Commissions with respect to the right to a hearing and on measures taken or envisaged to adapt it to the European Court's requirements in similar situations.*

A summary of the European Court's judgments and decisions concerning Austria is regularly prepared by the Federal Chancellery and disseminated widely to relevant Austrian authorities as well as Parliament and courts. Furthermore, judgments of the European Court are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice (RIS). Judgments of the European Court concerning Austria are habitually published in a summary version via www.menschenrechte.ac.at together with a link to the European Court's judgments in English.

The Deputies decided to resume consideration of this item at the latest at their 1100th meeting (December 2010) (DH), in the light of further information to be provided on individual and general measures.

Latest development

Additional information has been received on 21/01 and 08/03/2010.

Case name :	DONNER v. Austria	Appl N° :	<u>32407/04</u>
Judgment of :	22/02/2007		
Final on :	22/05/2007		
Violation :		Payment status :	No just satisfaction
Theme / Domain :			
Next exam :	1100-4.2(30/11/2010)		
Last exam :	1086-4.2(01/06/2010)		
First exam :	1007-2(15/10/2007)		

NOTES OF THE AGENDA

32407/04 Donner, judgment of 22/02/2007, final on 22/05/2007

The case concerns the excessive length of certain criminal proceedings (14 years and some 8 months before three levels of jurisdiction) (violation of Article 6§1).

The proceedings began on 27/12/1989 with an investigation on tax evasion by the Salzburg Tax office, followed by criminal investigations of the Public Prosecutor's Office. On 19/08/2004 the Court of Appeal gave its final judgment, rejecting the applicant's appeal and confirming the Regional Court's conviction of the applicant.

The European Court noted that the case was altogether pending for more than six years before the investigating administrative authorities (Salzburg Tax office and Public Prosecutor's Office). Furthermore, while pending before the courts the case was not dealt with from the end of 2000 until 2002. Moreover, the Court found that the Regional Court's judgment, when referring to the excessive length as one factor of four mitigating circumstances for the reduction of the applicant's sentence, failed to afford express and quantifiable redress for the breach of the reasonable time requirement.

The case also concerns the lack of an effective remedy for the applicant to complain about the excessive length (violation of Article 13). The applicant could have made use of section 91 of the Austrian Courts Act during the proceedings before the Regional Court, which could be regarded as an effective remedy. However, the Court's finding of a violation of Article 6 had in particular regard to the substantial delays occurred before the investigating authorities where the applicant had no remedy at his disposal to speed up the proceedings. A hierarchical complaint under Section 37 of the Public Prosecutor's Act, was not considered as an effective remedy by the Court.

Individual measures: The proceedings are over. The European Court made no award of just satisfaction in the absence of a request by the applicant.

- *Assessment: no further individual measure is required.*

General measures:

1) Measures to be taken in respect of the violations of Articles 6§1 and 13:

- *Information on the general measures was provided (15/10/2009) by the authorities. This information is being assessed.*

2) Publication and dissemination: The European Court's judgment was published in the *Newsletter* of the Austrian Human Rights Institute (NL 2007, p.34 (NL 07/1/15), available online at http://www.menschenrechte.ac.at/docs/07_1/07_1_15).

- *Information is still awaited on the dissemination of the judgment.*

The Deputies decided to resume consideration of this item at the latest at their 1100th meeting (December 2010) (DH) meeting in the light of the Secretariat's assessment on the information provided on general measures.

Theme / Domain : Length of proceedings concerning civil rights and obligations before administrative authorities and courts

Case name :	ORTNER v. Austria	Appl N° :	<u>2884/04</u>
Judgment of :	31/05/2007		
Final on :	31/08/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	Length of proceedings concerning civil rights and obligations before administrative authorities and		
Next exam :	1100-4.2(30/11/2010)		
Last exam :	1086-4.2(01/06/2010)		
First exam :	1013-2(03/12/2007)		

NOTES OF THE AGENDA

- 6 cases mainly concerning the length of proceedings concerning civil rights and obligations before administrative authorities and courts and courts/ or the lack of an oral hearing

- 2884/04 Ortner, judgment of 31/05/2007, final on 31/08/2007
- 38032/05 Gierlinger, judgment of 29/11/2007, final on 29/02/2008
- 33928/05 Klug, judgment of 15/01/2009, final on 15/04/2009
- 37040/02 Riepl, judgment of 03/02/2005, final on 03/05/2005
- 4490/06 Richter, judgment of 18/12/2008, final on 18/03/2009
- 25929/05 Strobel, judgment of 04/06/2009, final on 04/09/2009

These cases concern the excessive length of certain proceedings in determination of civil rights and obligations before administrative authorities and courts (violations of Article 6§1).

The Ortner case concerns land consolidation proceedings. The period taken into consideration by the European Court began on 1/03/1999 and the proceedings before the administrative authorities were still pending at the date of the European Court's judgment (having lasted for more than 12 years).

In the Gierlinger case, the period taken into consideration by the European Court began on 4/05/2000, when the applicant filed objections against the enlargement of a canalisation system and ended on 26/04/2005 (almost 5 years for three levels of jurisdiction, but was pending for 4 years before the Administrative Court).

In the Riepl case, the period taken into consideration by the European Court began in August 1994 when the applicant's neighbours appealed against a decision by the Mayor to grant the applicants a building permit and ended in April 2002 with the service of a new building permit (7 years and some 7 months for five levels of jurisdiction). The Court noted in particular the following two lengthy periods attributable to the authorities: some ten months before the Municipal Council, and two years and eight months before the Constitutional Court, before which there was a period of inactivity of almost two years.

Proceedings in the Richter case began on 7/02/2000 when a mayor dismissed the applicant's objection against the amendment of a building permit granted to his neighbour. They ended on 25/07/2005 when the Administrative Court's decision was served on the applicant's counsel (five years and five and a half months for four levels of jurisdiction). The European Court noted in particular two lengthy periods of inactivity before the Administrative Court, namely between September 2001 and March 2003, and between July 2004 and June 2005, amounting to a total delay of two years and five months.

The case also concerns the lack of an oral hearing before the Administrative Court (violation of Article 6§1).

In the Klug case, the period taken into consideration by the European Court began on 20/12/1984, when the applicants' predecessors opposed the provisional transfer of land and ended on 18/03/2005, when the Administrative Court's judgment was served (more than twenty years).

Proceedings in Strobel case began on 16/01/2002, when the Dean of Klagenfurt University dismissed the applicant's claim, the administrative authority's decision being a necessary preliminary step for bringing the dispute before a tribunal and ended on 20/11/2006 when the parties concluded a settlement (four years and ten months).

Individual measures: The European Court awarded just satisfaction in respect of non-pecuniary damage sustained by the applicants in all cases.

Except for the Ortner case, the domestic proceedings are closed.

- *Information is expected on the state of the pending domestic proceedings and measures for acceleration, if needed.*

General measures:

1) Length of proceedings before administrative authorities: The cases present similarities to that of G.S. (Final Resolution ResDH(2004)77) for which the Austrian Parliament adopted the Administrative Reform Act 2001, which entered into force on 20 April 2002 and aims at alleviating the case-load of the Administrative Court and accelerating administrative proceedings. They also present similarities to the Alge case (Final Resolution CM/ResDH(2007)110, which takes stock of further general measures taken after the Resolution ResDH(2004)77 had been adopted, mainly measures aimed at reducing the case-load of the Administrative Court.

- *Information on a positive trend concerning the number of lengthy procedures and on recent measures to further reduce the case-load at the Administrative Court was received in April 2008: for a detailed assessment see the group Jancikova (56483/00, Section 4.2).*
- *The Austrian authorities provided further information on 26/02/2010 regarding recent developments on excessive length of proceedings before administrative courts. This information is being assessed.*

2) Length of proceedings before the Constitutional Court: The Constitutional Court's 2008 Activity Report (published on 19/04/2009, available online at http://www.verfassungsgerichtshof.at/cms/vfgh-site/attachments/6/6/3/CH0011/CMS1239888247790/taetigkeitsbericht_2008.pdf) provided statistics showing that the average length of proceedings between 1998 and 2008 was less than 9 months. Therefore the excessive length in the Riepl case seems to be an isolated incident resulting from the particular circumstances.

- *Assessment: no further general measure seems necessary concerning the excessive length before the Constitutional Court.*

3) Lack of an oral hearing: The Richter case presents similarities with that of Linsbod (Final Resolution ResDH(98)59, adopted on 22/04/1998), closed following the adoption of legislative changes, and with the Alge group of cases (Final Resolution CM/ResDH(2007)110, adopted on 31/10/2007), according to which the payment of just satisfaction out of the Administrative Court's budget would suffice to prevent new, similar violations. As the violation in this occurred after the adoption of these measures, publication and dissemination of the European Court's judgment to the Administrative Court seem to be necessary.

- *Information is awaited in this respect.*
- *The Austrian authorities provided information on 26/02/2010 regarding the lack of oral hearing. This information is being assessed.*

4) Publication and dissemination: Judgments of the European Court are accessible to all judges and state attorneys through the internal database of the Austrian Ministry of Justice (RIS). The Riepl judgment was

published in German in the Austrian law journal ÖJZ 2005/26. The Administrative and the Constitutional Court receive judgments via the Constitutional Law Service of the Austrian Federal Chancellery.

• *Information is expected on the publication of the European Court's judgments in the Ortner and Gierlinger cases and their dissemination to relevant courts and authorities, to raise their awareness of the Convention's requirements as they result from these cases.*

The Deputies decided to resume consideration of these items at the latest at their 1100th meeting (December 2010) (DH) in the light of the assessment of the information provided on general measures, and further information to be provided on individual measures in the Ortner case.

Latest development

Additional information on general measures has been received from the Austrian authorities on 23/02/2010.

Case name :	RUSU v. Austria	Appl N° :	<u>34082/02</u>
Judgment of :	02/10/2008		
Final on :	02/01/2009		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1 st DH meeting 2011-4.2		
Last exam :	1086-4.2(01/06/2010)		
First exam :	1051-2.1(17/03/2009)		

NOTES OF THE AGENDA

34082/02 Rusu, judgment of 2/10/2008, final on 2/01/2009

The case concerns the violation of the right of the applicant, a Romanian national, to be informed promptly of the reasons for her arrest and detention (violation of Article 5§2).

On 25/02/2002 the applicant, who was travelling without a valid passport as hers had been stolen, was returned to Austria by the Hungarian border police and promptly detained. The Neusiedl/See District Administrative Authority noted in the detention order that she had entered Austria illegally, that she lacked sufficient means to stay in Austria and that, if released, she might abscond. This decision was issued to the applicant in German along with two information sheets in Romanian. On 7/03/2002 an interpreter translated the decision into Romanian in the presence of the applicant for the purpose of issuing an expulsion order against her. She was expelled to Romania on 22/03/2002.

The European Court noted that the information given to the applicant in Romanian on the day of her arrest had been incorrect and that it took ten days before the applicant was informed of the specific reasons and correct legal grounds for her detention, namely when she was questioned in the presence of an interpreter who translated the decision of 25/02/2002 for her.

The case also concerns the arbitrary character of the applicant's detention pending expulsion, having regard to the incompleteness of the grounds relied on by the district administrative authority (violation of Article 5§1f). The Court further found it striking that the Austrian authorities had paid no attention to the applicant's situation: she had not apparently intended to stay illegally in Austria or evade expulsion proceedings. It emphasised that to detain an individual is such a serious measure that it is automatically arbitrary unless justified as a measure of last resort.

Individual measures: The European Court awarded just satisfaction in respect of non-pecuniary damage sustained by the applicant.

• *Assessment: No further individual measure seems necessary.*

General measures:

1) Violation of Article 5§2: The European Court noted that the information sheets issued to the applicant in Romanian on the day of her arrest had not contained any specific factual information concerning her detention or arrest and had referred to an out-of-date Aliens Act (see §§ 38-42 of the judgment). The Austrian authorities submit that information sheets for detainees under the 2005 Aliens Act currently applicable have been translated into various languages and are available to police authorities and detention centres via the Intranet site of the Ministry of Interior. This ensures that police officers can issue information to detainees promptly upon their arrest. When foreigners are questioned by the Aliens authorities shortly after their arrest, an interpreter is always present to explain the reason for the detention, any further steps to be taken and answer specific questions. Moreover, foreigners may avail themselves of the services provided by specific organisations with a view to their return (*Rückkehrvorbereitung*). Members of these organisations have the linguistic skills to guarantee effective communication with foreigners. In addition, on the initiative of the Human Rights Advisory Board

(*Menschenrechtsbeirat*) a project is currently being put in place which will provide improved electronic information for download by foreigners in 40 languages (short video demonstrations and information about reasons for arrest and access to legal advice, including an appeal against detention pending expulsion (*Schubhaftbeschwerde*) and the return).

• *Assessment: In these circumstances, no further general measure seems necessary regarding to this violation.*

2) Violation of Article 5§1(f): The violation resulted from the Austrian authorities' negligence in failing to take account of the specific situation of the applicant when ordering her detention with a view to expulsion. Section 66 of the then-applicable Aliens Act 1997 provided less stringent measures, such as residence orders in accommodation designated by the authorities (see also §27 of the judgment).

• *Information is awaited on the legal situation and practice of less intrusive measures than detention, and, if necessary, on measures envisaged or taken in this respect to avoid new, similar violations.*

3) Publication and dissemination: The European Court's judgment was published in the *Newsletter of the Austrian Institute for Human Rights* (NL 2008, p. 276 (NL 08/5/09), available online at http://www.menschenrechte.ac.at/docs/08_5/08_5_09). On 30/10/2008 and 28/07/2009 it was sent out widely to the Constitutional Court, the Administrative Court, the Supreme Court, all Federal Ministries, the Human Rights Advisory Council, the Parliament, the Asylum Court, the Independent Administrative Panels and all Human Rights Co-ordinators in order to avoid similar violations.

The Deputies decided to resume consideration of this item at the latest at their DH meeting in June 2011, in the light of information to be provided on general measures.

Latest development

Additional information on general measures has been received from the Austrian authorities on 24/02/2010.