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

CASE OF JERUSALEM v. AUSTRIA

(Application no. 26958/95)

JUDGMENT

STRASBOURG

27 February 2001

In the case of Jerusalem v. Austria,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 3 October 2000 and 30 January 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 26958/95) against the Republic of Austria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mrs Susanne Jerusalem ("the applicant"), on 2 March 1995.

2. The applicant was represented by Mr T. Prader, a lawyer practising in Vienna (Austria).

3. The applicant alleged that an injunction prohibiting her from repeating certain statements she had made in the course of a debate in the Vienna Municipal Council violated her right to freedom of expression. Furthermore, she alleges that the court proceedings leading to the injunction had been unfair.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 27 June 2000 the Chamber declared the application partly admissible [*Note by the Registry.* The Court's decision is obtainable from the Registry].

7. The Austrian Government ("the Government"), but not the applicant, filed observations on the merits (Rule 59 § 1).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 October 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*
Mr H. WINKLER, Head of the International Law Department at the Federal Ministry of Foreign Affairs, *Agent*,
Mrs B. OHMS, Federal Chancellery, *Adviser,*
Mr G. LUKASSER, Federal Ministry of Justice, *Adviser*;

(b) *for the applicant*
Mr D. ENNÖCKL, *Counsel*.

The Court heard addresses by Mr Ennöckl and Mr Winkler.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant is an Austrian citizen, residing in Vienna. At the relevant time she was a member of the Vienna Municipal Council (*Gemeinderat*), which also acts as the Regional Parliament (*Landtag*).

10. On 11 June 1992, in the course of a session of the Vienna Municipal Council, the applicant, in her function as member of the Municipal Council, gave a speech. The debate related to the granting of subsidies by the municipality to an association which assists parents whose children had become involved in sects. In this context the applicant made the following statement:

> "Like everyone else, I know that today a sect no longer means a small group that breaks away from a big church ..., but a psycho-sect.
>
> These psycho-sects also exist in Vienna. They have common features. One aspect they have in common is their totalitarian character. Moreover, in their ideology, they show fascist tendencies and often have hierarchical structures. In general, a person who gets involved with such a sect loses his identity and submits to the group ..."

After having commented on the activities of an association she considered a sect, the applicant continued as follows:

> "...the sect IPM [*Institut zur Förderung der Psychologischen Menschenkenntnis* – Institute for a Better Understanding of Human Psychology], which has not long been in existence in Austria but which has existed for several years in Switzerland, where it is called the VPM [*Verein zur Förderung der Psychologischen Menschenkenntnis* –

> Association for a Better Understanding of Human Psychology] has had a certain influence on the drugs policy of the Austrian People's Party."

11. The applicant then stated that the Austrian People's Party had issued a publication on drugs policy in cooperation with the IPM, and had organised information activities involving public discussions together with the IPM. The applicant then requested a resolution by the Municipal Council that, before granting subsidies to an association, the question whether that association was a sect should be examined.

12. The debate in the Municipal Council then turned to the drugs policy and the applicant, in a further speech, criticised the cooperation between the Austrian People's Party and the IPM, and made further statements on the nature and activities of the IPM.

13. On 27 October 1992 the IPM, an association established under Austrian law, and the VPM, an association established under Swiss law, filed a civil-law action under Article 1330 of the Austrian Civil Code against the applicant with the Vienna Regional Court for Civil Matters (*Landesgericht für Zivilrechtssachen*). The associations requested the court to issue an injunction against the applicant prohibiting her from repeating the statement that the IPM was a sect, ordering her to retract this statement and directing the publication of the applicant's retraction in several Austrian newspapers.

14. On 2 February 1993 the applicant commented on the action. She submitted that the term "sect" used by her was a value judgment and not a statement of fact. It had been used in the context of a political debate. If the court, however, was of the opinion that the term "sect" was a statement of fact, she was willing to prove that this statement was true, and proposed documentary evidence and the hearing of witnesses to confirm that the plaintiffs were sects. As documentary evidence, the applicant proposed a decision by a German court and seven articles from newspapers and periodicals on the internal structure and activities of the plaintiffs. She proposed that four witnesses be heard. She also requested that the court obtain an expert report.

15. On 16 February 1993 the IPM and the VPM altered their injunction claim to include the following statement made by the applicant on 11 June 1992:

> "One aspect they have in common is their totalitarian character. Moreover, in their ideology, they show fascist tendencies and often have hierarchical structures. In general, a person who gets involved with such a sect loses his identity and submits to the group ..."

16. On 18 February 1993 the applicant confirmed that she had received the plaintiffs' amended claim. She submitted a transcript of the session of the Vienna Municipal Council of 11 June 1992, and argued that the modification of the action merely referred to a general explanation of the

term "psycho-sect" and had no direct relation to the plaintiffs. She further referred to her previous statements and the evidence proposed therein.

17. On 22 February 1993 a hearing took place before the Regional Court. The court accepted several documents submitted by the parties, closed the taking of evidence and rejected all requests for the taking of other evidence as irrelevant because the documents submitted had clarified the issues sufficiently.

18. On 8 April 1993 the Regional Court granted the injunction. It ordered the applicant not to repeat her statements that the IPM and the VPM were sects of a totalitarian character. Furthermore, the court ordered the applicant to retract these statements, the retraction to be published in several newspapers. The Regional Court found that, contrary to the applicant's opinion, her statements were not value judgments, but statements of fact. Having regard to the statutes of the associations and other evidence before it, the Regional Court considered that the applicant's statements had proved to be untrue. The applicant had disseminated unfounded assumptions as proven fact and had therefore acted negligently. As the damage to the plaintiff associations' earnings and livelihood was manifest, the Court granted the requested injunction under Article 1330 § 2 of the Civil Code.

19. On 12 July 1993 the applicant appealed. She submitted that the Regional Court had failed to take the evidence requested by her. She contended in particular that the real activities of the plaintiffs and their (totalitarian) methods could not be seen from their statutes. In particular, the internal organisational structure (hierarchical structure), their conduct against critics (exhibiting a totalitarian character and an ideology with fascist features) and the effect on the personality of the persons concerned (loss of identity and submission to the group) should have been examined. Only a report by an expert using sociological and psychological methods, or interviews with the persons affected, could have clarified these issues. In any event, the applicant's statements were value judgments made in the context of a political debate and not statements of fact. The injunction therefore violated her right to freedom of expression under Article 10 of the Convention.

20. On 16 November 1993 the Vienna Court of Appeal (*Oberlandesgericht*) upheld the Regional Court's decision in so far as it concerned the prohibition on repetition, but quashed the order for a retraction and its publication.

21. It confirmed the Regional Court's view that the applicant's allegations were statements of fact. Contrary to the opinion of the Regional Court, the Court of Appeal considered that the applicant's allegations amounted to an insult and fell not only within the scope of the second but also within the scope of the first paragraph of Article 1330 of the Civil Code. In that case, the applicant had to prove the truth of her allegations.

22. With regard to the applicant's complaint that the Regional Court had refused to take the evidence she had proposed in order to prove that the plaintiffs were sects, the Court of Appeal found that such evidence was irrelevant to the proceedings. According to the Court of Appeal's legal point of view, the applicant's statements had to be seen as a whole. Thus, the use of the term "sect" was not decisive, but the allegation of fascist tendencies was of primary importance. This latter statement amounted to an insult going beyond justified criticism. Since the applicant had not offered any evidence with regard to this definition of a psycho-sect, but only with regard to the question whether the plaintiffs were sects, she had failed to prove its truth, as required by Article 1330 § 1 of the Civil Code. The Court of Appeal also found that the request for a retraction of the statement and its publication in several newspapers had to be dismissed because the plaintiffs had failed to specify the addressees of the retraction, even though the applicant's statements had been reported in the newspapers.

23. On 18 August 1994 the Supreme Court (*Oberster Gerichtshof*) rejected as inadmissible the applicant's further appeal on points of law (*Revision*). It confirmed, however, that the statements such as "fascist tendencies" or "totalitarian character" were statements of fact which the applicant had failed to prove. Referring to its previous case-law, it stated that disparagement by means of untrue statements, even though it was made in the course of a political debate, went beyond acceptable political criticism and could not be justified by a weighing of interests or by the right to freedom of expression.

II. RELEVANT DOMESTIC LAW

24. Article 1330 of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*) provides as follows:

> "(1) Everyone who has suffered material damage or loss of profit because of an insult may claim compensation.
>
> (2) The same applies if anyone disseminates statements of fact which jeopardise another person's credit, income or livelihood and if the untruth of the statement was known or must have been known to him. In such a case the public retraction of the statement may also be requested ..."

25. Members of the Vienna Municipal Council enjoy a limited parliamentary immunity. They are exempt from legal proceedings for anything said by them in the course of debates in the Municipal Council in so far as the Municipal Council sits as the Parliament of a *Land* (Articles 57, 58 and 96 of the Federal Constitution). However, this privilege does not extend to sessions of the Municipal Council sitting as the local council. The reason is that Vienna, under the Austrian Constitution, has a dual function,

being at the same time a *Land* and a local council (Article 108 of the Federal Constitution).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

26. The applicant alleged a breach of Article 10 of the Convention, which reads as follows:

> “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others ...”

27. The applicant contests the necessity of the interference with her right to freedom of expression. The incriminated statements had been made in the course of a session of the Vienna Municipal Council and concerned a political issue, namely the granting of public subsidies to associations and, in particular, an association of parents whose children had become involved with sects. In this context the applicant had pointed out that sects were gaining influence in politics and had cited the plaintiff associations as examples because of their cooperation with the Austrian People’s Party. The applicant had not been involved in a direct dispute with the VPM (*Verein zur Förderung der Psychologischen Menschenkenntnis* – Association for a Better Understanding of Human Psychology) or the IPM (*Institut zur Förderung der Psychologischen Menschenkenntnis* – Institute for a Better Understanding of Human Psychology). Rather, her statements were a critical comment on the drug policy of another political party, and could not be understood as an attack on the plaintiffs’ reputation. In any event, the IPM itself had repeatedly made public statements on AIDS prevention as well as on drug policy, and the applicant was therefore entitled to comment on that. Finally, the applicant submitted that the statements at issue were value judgments. This opinion was not shared by the Austrian courts, which qualified them as statements of fact, the truth of which had to be proved. Nevertheless, she had offered evidence to prove their truth, but the Austrian courts had refused it. Thus, it was not her fault that she had not succeeded in proving the truth of her statements.

28. The Government accept that the injunction interfered with the applicant’s right to freedom of expression. However, in their view, the

measure at issue was justified under paragraph 2 of Article 10 as it was "prescribed by law", namely Article 1330 of the Civil Code, and pursued the legitimate aim of protecting the reputation and rights of others. Moreover, it was necessary in a democratic society in the interests of that aim. In this respect the Government submit that the limits of acceptable criticism are wider in respect of a politician than in respect of a private individual. In the present case, however, the applicant had not attacked a politician but had raised serious accusations against private bodies, whose political function, if any, was merely a consultative one. In her capacity as member of the Municipal Council, the applicant had attacked the associations in circumstances which prevented them from defending themselves in the same way, at the same place and before the same audience. Moreover, the interference was not disproportionate since the impugned judicial proceedings were not instituted *ex officio* by the State but by private organisations, and the proceedings were not criminal in nature but civil.

29. The Government submit further that the Austrian courts had correctly qualified the applicant's remarks as statements of fact. Thus, the applicant had the opportunity to prove the truth of her statements, which she failed to do.

30. The Court notes that it was common ground between the parties that the injunction constituted an interference with the applicant's right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. Furthermore, there was no dispute that the interference was prescribed by law and pursued a legitimate aim, namely the protection of the reputation or rights of others, within the meaning of Article 10 § 2. The Court endorses this assessment.

31. The dispute in the case relates to the question whether the interference was "necessary in a democratic society".

32. According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for individual self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

33. The test of "necessity in a democratic society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify

it are relevant and sufficient (see The Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 38, § 62). In assessing whether such a "need" exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10 (see, among many other authorities, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

34. The Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their power of appreciation (ibid.).

35. In examining the particular circumstances of the case, the Court will take the following elements into account: the position of the applicant, the position of the associations which instituted the injunction proceedings and their activities, and the subject matter of the debate before the Vienna Municipal Council.

36. As regards the applicant's position, the Court observes that she was an elected politician sitting as a member of the Vienna Municipal Council. As such, the applicant enjoyed limited parliamentary immunity (see paragraph 25 above). However, the session of the Municipal Council during which the applicant made her speech was one of the local council and not the *Land* Parliament. In the latter instance, any statement made by the applicant would have been protected by parliamentary immunity and an action for an injunction would have been impossible. In this respect the Court recalls that while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament, like the applicant, call for the closest scrutiny on the part of the Court (see *Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, pp. 22-23, § 42).

37. As regards the position of the IPM and the VPM, the applicant's opponents in the injunction proceedings, the Government submitted that the associations were private bodies and could not, for the purposes of Article 10, be compared with politicians.

38. The Court recalls that the limits of acceptable criticism are wider with regard to politicians acting in their public capacity than in relation to private individuals, as the former inevitably and knowingly lay themselves open to close scrutiny of word and deed by both journalists and the public at large. Politicians must display a greater degree of tolerance, especially when they themselves make public statements that are susceptible to criticism.

However, private individuals or associations lay themselves open to scrutiny when they enter the arena of public debate. In the case of *Nilsen and Johnsen*, cited above, § 52, the Court found that Mr Bratholm, a government expert involved in a dispute with Mr Nilsen and Mr Johnsen, could not, on account of that position, be compared to a politician who had to display a greater degree of tolerance. However, the Court found that Mr Bratholm's participation in a public debate was a relevant factor.

39. In the present case the Court observes that the IPM and the VPM were associations active in a field of public concern, namely drug policy. They participated in public discussions on this matter and, as the Government conceded, cooperated with a political party. Since the associations were active in this manner in the public domain, they ought to have shown a higher degree of tolerance to criticism when opponents considered their aims as well as to the means employed in that debate.

40. As regards the impugned statements of the applicant, the Court observes that they were made in the course of a political debate within the Vienna Municipal Council. It is not decisive that this debate occurred before the Vienna Municipal Council sitting as the local council and not as the *Land* Parliament. Irrespective of whether the applicant's statements were covered by parliamentary immunity, the Court finds that they were made in a forum which was at least comparable to Parliament as concerns the public interest in protecting the participants' freedom of public expression. In a democracy, Parliament or such comparable bodies are the essential fora for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein.

41. The debate in the Municipal Council related to the granting of public subsidies to associations and the applicant commented on one particular item on the agenda, namely the granting of subsidies to an association which assisted parents whose children had become involved in sects (*der Selbsthilfegruppen von Sektenopfern)*. The purpose of the applicant's speech was to emphasise the necessity for such assistance by describing the dangers of groups which, with a connotation quite distinct from that attaching to the words in past religious controversies, were commonly referred to as sects. In this context – in which the IPM and the VPM were not mentioned – she explained the term "sect" and expressed the opinion that one aspect which these sects have in common is their totalitarian character. Her further elaboration of the point was fully in line with general definitions of totalitarianism. It was only later in her speech that the applicant criticised connections between the Austrian People's Party and the IPM and the VPM.

42. In the present case, the Austrian courts qualified the applicant's statements as statements of fact. Accordingly, the applicant was obliged to prove their truth in order to avoid an injunction. In this respect the Court recalls that in the cases of *Lingens v. Austria* (judgment of 8 July 1986, Series A no. 103, p. 28, § 46), and *Oberschlick v. Austria (no. 1)* (judgment

of 23 May 1991, Series A no. 204, pp. 27-28, § 63), the Court has distinguished between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10.

43. However, the Court further recalls that, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 236, § 47, and *Oberschlick v. Austria (no. 2)*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1276, § 33).

44. The Court finds that, contrary to the view of the Austrian Courts, the impugned statements in the present case, reflecting as they did fair comment on matters of public interest by an elected member of the Municipal Council, are to be regarded as value judgments rather than statements of fact (see *Lingens*, cited above, p. 28, § 46, and *Wabl v. Austria*, no. 24773/94, § 36, 21 March 2000, unreported).

45. The question remains whether there existed a sufficient factual basis for such value judgments. In this regard, the Court notes that the applicant offered documentary evidence, especially articles from newspapers and magazines, on the internal structure and the activities of the plaintiffs, as well as a German court judgment on this matter. In the Court's view, such material may have been relevant to show a prima facie case that the value judgment expressed by the applicant was fair comment. Apart from that documentary evidence, which was accepted by the Regional Court, the applicant also proposed the evidence of four witnesses and suggested that an expert opinion be sought. Nevertheless, the Regional Court refused to take this evidence because, as the Court of Appeal explained, it merely related to the term "sect" and not to that term as explained by the applicant in her speech, namely a body having a totalitarian character, showing fascist tendencies and having hierarchical structures with a resultant adverse impact on the psychological situation of its members or followers. Such evidence was therefore deemed irrelevant. No comment was made as to its availability.

However, the Court considers that the distinction drawn between the term "sect" and "psycho-sect showing totalitarian features" was artificial and disregarded the true nature of the debate in which the applicant was involved. It is struck by the inconsistent approach of the domestic courts on the one hand requiring proof of a statement and on the other hand refusing to consider all available evidence.

46. The Court finds that, in requiring the applicant to prove the truth of her statements, while at the same time depriving her of an effective opportunity to adduce evidence to support her statements and thereby show that they constituted fair comment, the Austrian courts overstepped their margin of appreciation and that the injunction granted against the applicant amounted to a disproportionate interference with her freedom of expression.

47. Accordingly there has been a breach of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

48. Article 6 § 1, so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

49. The applicant also complains under Article 6 of the Convention that the Austrian courts refused to take the evidence proposed by her, in particular to hear witnesses on whether the associations were sects.

50. This is contested by the Government, who argue that the Austrian courts correctly dismissed the applicant's request.

51. Having regard to its above considerations under Article 10 of the Convention, the Court does not find it necessary to examine the applicant's complaint under Article 6 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

53. Under the head of non-pecuniary damage the applicant claims 200,000 Austrian schillings (ATS). The Government did not comment on the claim.

54. The Court does not exclude that the applicant may have sustained non-pecuniary prejudice as a result of the breach of Article 10, on account of the anxiety and uncertainty occasioned by the injunction proceedings. It considers, however, that in the circumstances of the case the finding of a violation in itself constitutes sufficient just satisfaction (see *Oberschlick (no. 1)*, cited above, p. 29, § 69, and *News Verlags GmbH & CoKG v. Austria*, no. 31457/96, § 66, ECHR 2000-I).

B. Costs and expenses

55. The applicant claimed ATS 101,531.40 as costs and expenses incurred in the domestic proceedings and ATS 178,906.20 for the Convention proceedings. She further claimed ATS 11,594.70 for the travel expenses of her counsel participating at the hearing before the Court.

56. The Government did not comment on these claims.

57. The Court recalls that, according to its case-law, it has to consider whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 80, ECHR 1999-III). The Court considers that these conditions are met as regards the costs and expenses incurred in the domestic proceedings and, consequently, awards the sum of ATS 101,531.40.

As to the costs of the Convention proceedings, the Court finds the claim excessive. In this respect the Court notes that for costs and expenses related to the hearing alone the applicant claims ATS 113,837.10. Therefore the Court, having regard to sums granted in comparable cases (for example, *Labita v. Italy* [GC], no. 26772/95, § 210, ECHR 2000-IV), and making an assessment on an equitable basis, awards the applicant ATS 110,000 for costs and expenses incurred in the Convention proceedings.

C. Default interest

58. According to the information available to the Court, the statutory rate of interest applicable in Austria at the date of adoption of the present judgment is 4% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 10 of the Convention;

2. *Holds* that it is not necessary to examine separately whether there has been a violation of Article 6 of the Convention;

3. *Holds* that the finding of a violation in itself constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) ATS 101,531.40 (one hundred and one thousand five hundred and thirty-one Austrian schillings forty groschen) for costs and expenses incurred in the domestic proceedings, and

(ii) ATS 110,000 (one hundred and ten thousand Austrian schillings) for costs and expenses incurred in the proceedings before the Convention organs;

(b) that simple interest at an annual rate of 4 % shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 February 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA
Registrar President