



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

FIRST SECTION

**CASE OF FREIHEITLICHE LANDESGRUPPE
BURGENLAND v. AUSTRIA**

(Application no. 34320/96)

JUDGMENT
(Friendly settlement)

STRASBOURG

18 July 2002

This judgment is final but it may be subject to editorial revision

In the case of Freiheitliche Landesgruppe Burgenland v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,
Having deliberated in private on 4 July 2002,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34320/96) 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 the Burgenland Regional Branch (*Landesgruppe Burgenland*) of the Freiheitliche Partei Österreichs, an Austrian political party, on 13 September 1996.

2. The applicant was represented by Ms H. Gheneff-Fürst, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department of the Federal Ministry of Foreign Affairs.

3. The applicant alleged that a decision of the Austrian courts by which it had been ordered to pay damages following the publication of a caricature in its periodical, violated its right to freedom of expression.

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 of the Rules of Court

6. By a decision of 25 September 2001 the Court declared the application admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

9. On 6 March 2002, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 27 March 2002 and on 3 June 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

10. The applicant publishes a periodical, "The Burgenland News" (*Burgenländische Nachrichten*). In its issue no. 11/1995 the applicant published an article entitled "Alone against the party-mafia" (*Alleine gegen die Parteimafia*). This article described the political discussions in the Burgenland between the applicant and two other parties - the Austrian Social-democratic Party (*Sozialdemokratische Partei Österreichs* - SPÖ) and the Austrian Peoples' Party (*Österreichische Volkspartei* - ÖVP). It mentioned that the chairman of the applicant, Mr Rauter, had been the victim of attacks launched by Mr Kaplan and Mr Rezar, chairmen of the regional party branch of the ÖVP and SPÖ respectively, who sought to find irregularities in Mr Rauter's political and private life. Further, it was stated that Mr Rauter had given a press conference and had successfully defended his integrity. On page 8 of the periodical the applicant party published a caricature showing two pigs rubbing themselves against the trunk of a tree. The text beneath read as follows:

"Wolfgang Rauter on the unfair attacks by Rezar, Kaplan and Co: how does it bother an oak tree if pigs rub themselves against it?"

11. On 23 June 1995 Mr Kaplan, in a private prosecution, filed an action for insult under Section 115 of the Criminal Code against Mr Rauter and the applicant, requesting the conviction of Mr Rauter and an award of damages.

12. On 16 November 1995 the Vienna Regional Criminal Court acquitted M. Rauter and dismissed the request for damages. It found that the drawing was easily recognisable as a caricature and that the text was in fact a popular proverb which made reference to an oak tree which stands for integrity, the two pigs symbolising, in the present context, the constant rooting for irregularities and insinuations. The caricature was a humoristic

reappraisal of the political debate referred to in the article published on page 7 of the same issue of the periodical. In the court's view a reader of the periodical could not find that Mr Kaplan was insulted by being referred to as a pig.

13. On 3 January 1996 Mr Kaplan appealed. On 13 March 1996 the Vienna Court of Appeal (*Oberlandesgericht*) upheld the acquittal of Mr Rauter. However, it ordered the applicant to pay non-pecuniary damages in the amount of 20,000 ATS as the publication of the caricature, together with the accompanying text, constituted, viewed objectively, an insult under Section 115 of the Criminal Code. In the Court of Appeal's view, Mr Kaplan had been referred to as a pig, an animal which the average reader would consider dirty. This reference showed serious disrespect for the person concerned, particularly when juxtaposed with an oak tree, which is regarded as a noble species.

THE LAW

14. On 27 March 2002 and on 3 June 2002, respectively, the Court received the following declaration from the applicant's representative and from the Government:

“With reference to Article 38 § 1 (b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the parties in the proceedings concerning application no. 34320/96, lodged by DIE FREIHEITLICHE LANDESGRUPPE BURGENLAND declare, with a view to a friendly settlement reached with the assistance of the European Court of Human Rights, as follows:

1. The Government of the Republic of Austria will pay the applicant a sum amounting to altogether 5,500 euro (EUR) as compensation in respect of any possible claims relating to the present application. This sum includes an amount of EUR 2,850 for costs and expenses incurred both in the domestic proceedings and in the Convention proceedings.

This sum will be paid to the applicant's counsel, Mrs Huberta Gheneff-Fürst in Vienna.

2. The applicant declares its application settled.

3. The applicant waives any further claims against the Republic of Austria relating to the present application.

4. The parties undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention.”

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

16. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 18 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President