



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

FIRST SECTION

CASE OF WALTER v. AUSTRIA

(Application no. 34994/97)

JUDGMENT
(FRIENDLY SETTLEMENT)

STRASBOURG

28 November 2002

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

In the case of Walter v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr G. BONELLO,

Mr P. LORENZEN,

Mr E. LEVITS,

Mrs S. BOTOCHAROVA,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 7 November 2002;

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34994/97) 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, Mr Ernst G. Walter (“the applicant”), on 7 April 1996.

2. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicant complained, *inter alia*, under Article 6 of the Convention about lack of access to court in proceedings under the Austrian Media Act in that he was prevented from posting his request for publication of a reply by a slow prison administration.

4. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention.

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. On 27 April 2000 the Court communicated the above complaint to the respondent Government and declared the remainder of the application inadmissible.

7. On 9 October 2001, having obtained the parties' observations, the Court declared the application admissible in so far as it had been communicated to the Government.

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 5 September 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 28 September and on 7 October 2002 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

10. The applicant was born in 1947 and lives in Vienna.

11. On 7 July 1997 the weekly magazine “Profil” published an article about the applicant, who had been the manager of a company working in the field of financial consulting, and the criminal proceedings against him relating to charges of aggravated fraud.

12. Thereupon, the applicant introduced proceedings for the publication of a reply under the Media Act.

13. On 3 September 1997, after the Vienna Regional Criminal Court had rejected his first application for publication of a reply on formal grounds, the applicant, who was then imprisoned, drafted another request for the publication of a reply and handed it over to the prison administration on 4 September 1997 indicating that the “matter was subject to a time-limit”.

14. The request was posted on 9 September 1997 and reached the publisher of “Profil” on the following day.

15. On 13 November 1997 the Vienna Regional Criminal Court rejected the applicant's second application for publication of a reply, on the ground that his request had not reached the publisher on 7 September 1997 at the latest, i.e. within the statutory two-months time-limit which had started running with the publication of the article at issue.

16. On 16 March 1998 the Vienna Court of Appeal dismissed the applicant's appeal.

THE LAW

17. On 28 September and on 7 October 2002 the Court received the following declaration from the applicant and from the Government, respectively:

“Statement of the parties with a view to a friendly settlement

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. 34994/97, lodged by Mr Ernst G. Walter, 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 of altogether 7,000 euros (EUR) as compensation in respect of any non-pecuniary damage together with any costs and expenses incurred.

This sum will be payable to the applicant, Mr Ernst G. Walter, in Vienna, within three months from the date of delivery of the judgment given by the Court pursuant to Article 39 of the Convention.

2. The applicant declares the application settled.

3. The applicant waives any further claims against the Republic of Austria relating to the facts underlying 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 after the delivery of the Court's judgment.”

18. 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).

19. 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 28 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos L. ROZAKIS
President