



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

FOURTH SECTION

CASE OF POKORNY v. AUSTRIA

(Application no. 57080/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

16 December 2003

FINAL

16/03/2004

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

In the case of Pokorny v. Austria,

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

Sir Nicolas BRATZA, *President*,

Mrs V. STRÁŽNICKÁ,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr R. MARUSTE,

Mrs E. STEINER,

Mr L. GARLICKI, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 25 November 2003,

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

PROCEDURE

1. The case originated in an application (no. 57080/00) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mr Karl Pokorny ("the applicant"), on 20 March 2000.

2. The applicant was represented by Mr K. Bernhauser, a lawyer practising in Vienna (Austria). 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 under Article 6 § 1 of the Convention about the length of a set of criminal proceedings.

4. On 3 June 2003, having obtained the parties' observations, the Court declared the application admissible.

5. On 30 September 2003, 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 6 October 2003 and on 28 October 2003 the applicant and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

6. The applicant was born in 1946 and lives in Gerasdorf-Seyring (Austria).

7. On 2 October 1992 the Vienna Customs Office (*Zollamt*) opened investigations against a number of suspects under the Tax Offences Act (*Finanzstrafgesetz*) concerning charges of smuggling. Subsequently, these investigations were also directed against the applicant.

8. On 30 September 1993 the Customs Office transmitted the final investigations report concerning the applicant and seven other suspects to the Vienna Public Prosecutor's Office (*Staatsanwaltschaft*).

9. On 1 July 1999, after the investigating judge conducted further investigations, the Public Prosecutor preferred the indictment on charges of smuggling against the applicant and two co-accused.

10. On 30 November 1999 the Vienna Regional Criminal Court acquitted the applicant.

11. On 12 September 2000 the Supreme Court dismissed the pleas of nullity and the appeal against sentence. The decision was served on the applicant on 5 October 2000.

THE LAW

12. On 28 October 2003 the Court received the following declaration from the Government:

“I declare that, with a view to securing a friendly settlement of the above-mentioned case, the Government of Austria offer to pay EUR 6,800 to Karl Pokorny. This sum is to cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable within three months from the date of delivery of the judgment by the Court pursuant to the Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay, until settlement, simple interest on the amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

13. On 6 October 2003 the Court received the following declaration signed by the applicant's representative:

“I note that the Government of Austria are prepared to pay me the sum of EUR 6,800 covering pecuniary and non-pecuniary damage and costs to Karl Pokorny

with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

I accept the proposal and waive any further claims against Austria in respect of the facts of this application. I declare that this constitutes a final settlement of the case.

This declaration is made in the context of a friendly settlement which the Government and I have reached.

I further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment."

14. 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).

15. 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 16 December 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President