



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

THIRD SECTION

CASE OF WINTERSBERGER v. AUSTRIA

(Application no. 57448/00)

JUDGMENT
(Friendly settlement)

STRASBOURG

5 February 2004

In the case of Wintersberger v. Austria,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr P. KÜRIS,
Mr R. TÜRMESEN,
Mr J. HEDIGAN,
Mrs H.S. GREVE,
Mrs E. STEINER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 15 January 2004,

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

PROCEDURE

1. The case originated in an application (no. 57448/00) 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 Dieter Wintersberger (“the applicant”), on 6 March 2000.

2. The applicant was represented by Mr Schmautzer, 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, *inter alia*, under Article 6 § 1 of the Convention about the length of civil proceedings.

4. On 27 May 2003, having obtained the parties' observations, the Court declared the application concerning the complaint about the length of the proceedings admissible.

5. On 17 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 21 November 2003 and on 17 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 1938 and lives in Mödling (Austria).

7. As from 1977 the applicant was the director of the Central Mint Office (*Hauptmünzamt*). On 10 May 1988 the Federal Ministry of Finance (*Bundesministerium für Finanzen*) dismissed the applicant without notice (*fristlose Entlassung*) and ordered him to return to his former working place at the Ministry of Finance as a civil servant.

8. On 21 June 1988 the applicant instituted civil proceedings against the Ministry of Finance and the Münze Austria AG, the legal successor of the Central Mint Office which had to enter as a party into all work contracts of the latter.

9. On 3 September 1992 the Vienna Labour and Social Court (*Arbeits- und Sozialgericht*) partly allowed the applicant's claim. On 28 May 1993 the Vienna Court of Appeal (*Oberlandesgericht*) dismissed the applicant's appeal and allowed the defendants' appeal. On 10 December 1993 the Supreme Court allowed the applicant's further appeal. It considered that the applicant qualified as a favoured disabled person (*begünstigter Behinderter*) since 1 February 1988. Such employees may not be dismissed without the consent of the Federal Social Office. However, the Ministry of Finance had not requested such an authorisation.

10. Subsequently, the applicant instituted civil proceedings, claiming the remuneration resulting from these valid work contracts. However, these proceedings were suspended and finally not reopened due to the following administrative proceedings.

11. On 30 April 1994 the Ministry of Finance filed an application with the Disabled Persons Committee at the Federal Social Office (*Behindertenausschuss beim Bundessozialamt*) to grant a retroactive authorisation in respect of the applicant's dismissal as provided under the Disabled Persons Employment Act.

12. On 12 December 1994 the Federal Social Office, after having held a hearing on 31 May 1994, dismissed the Ministry of Finance's application. On 20 April 1995 the Appeals Commission at the Federal Ministry of Labour and Social Affairs (*Berufungskommission beim Bundesministerium für Arbeit und Soziales*) allowed the appeal and granted the retroactive authorisation for the applicant's dismissal. On 23 September 1996 the Constitutional Court refused to deal with the applicant's complaint of 20 July 1995 for lack of prospects of success. On 21 September 1999 the Administrative Court dismissed the applicant's complaint. It considered that the authorisation for the applicant's dismissal given by the Appeals Commission was lawful.

THE LAW

13. On 17 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 11,000 to Dieter Wintersberger. 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.”

14. On 21 November 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 11,000 covering pecuniary and non-pecuniary damage and costs 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.”

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 5 February 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President