



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

FIRST SECTION

CASE OF LOTTER AND LOTTER v. BULGARIA

(Application no. 39015/97)

JUDGMENT
(Friendly settlement)

STRASBOURG

19 May 2004

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

In the case of Lotter and Lotter v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
 Mr P. LORENZEN,
 Mrs F. TULKENS,
 Mrs S. BOTOUCHAROVA,
 Mr A. KOVLER,
 Mr V. ZAGREBELSKY,
 Mr K. HAJIYEV, *judges*,
 Mrs E. STEINER, *substitute judge*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 29 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 39015/97) against the Republic of Bulgaria 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 two Austrian nationals, Mr Alfred Lotter and Ms Edith Lotter (Bernhart) (“the applicants”), on 5 November 1997.

2. The applicants were represented by Mr A. Garay, a lawyer practising in Paris and, at a later stage, by Mr R. Kohlhofer, a lawyer practising in Vienna. The Bulgarian Government (“the Government”) were represented by their agents, Ms G. Samaras, Ms M. Dimova and Ms M. Kotzeva, of the Ministry of Justice.

3. The applicants complained, relying on Articles 9 and 14 of the Convention, that the Bulgarian authorities had acted arbitrarily and unlawfully and had ordered them to leave Bulgaria for the sole reason that they were Jehovah’s Witnesses.

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. On 6 February 2003, having obtained the parties’ observations, the Court declared the application admissible.

6. On 16 October 2003 and on 3 November 2003 the Government and the applicants respectively stated that they had reached a friendly settlement and submitted its text.

7. On 24 February 2004 the friendly settlement agreement was approved by the Bulgarian Council of Ministers.

THE FACTS

8. The applicants, Mr Alfred Lotter and Ms Edith Lotter (Bernhart), are Austrian nationals who were born in 1956 and 1962 respectively. At the relevant time they were married together. The applicants are Jehovah's Witnesses.

9. The applicants visited Bulgaria for the first time in December 1992. They entered Bulgaria again on 1 March 1993 and remained in the country for the following several years. In 1993 they obtained temporary residence permits valid until 6 November 1995.

10. On 22 April 1993 the investigation authorities opened a criminal investigation into the activities of Jehovah's Witnesses. In April and July 1993 the first applicant and other followers of Jehovah's Witnesses were questioned.

11. In June 1994, following a legislative amendment requiring religious associations to re-register, by decision of the Council of Ministers a number of such associations, including the Jehovah's Witnesses' organisation in Bulgaria, were refused re-registration (see *Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria*, no. 28626/98, Commission's decision of 3 July 1997, Decisions and Reports (DR) 90, p. 77). Although the applicants were not members of the dissolved association, it was an established administrative practice in Bulgaria to consider that the Council of Ministers' decision of June 1994 rendered unlawful all religious activity related to the Jehovah's Witnesses' cult.

12. On 1 December 1995, acting on the recommendation of the Plovdiv security service, the police withdrew the applicants' residence permits and ordered them to leave Bulgaria by 29 December 1995. The police decisions only stated that they were based on section 31(1) of the Aliens (Residence in Bulgaria) Act, which provided that an alien could be refused the right to reside in Bulgaria if he or she has endangered the security or the interests of the State or his or her activities could pose a threat in this respect. No reasons were provided.

13. The applicants appealed to the Plovdiv Regional Court. In a decision of 15 March 1996 that court held that it had no jurisdiction to examine the appeal as under section 34(1) of the Administrative Procedure Act measures relating to the national security were excluded from judicial review.

14. The applicants appealed to the Supreme Court. On 6 May 1997 the Supreme Court, which had in the meanwhile become the Supreme Administrative Court, dismissed the appeals.

15. The first applicant left Bulgaria at the end of 1997. It appears that the applicants divorced. The second applicant married a Bulgarian citizen and stayed in Bulgaria.

16. Following several months of negotiations, in February 1998 the Bulgarian Government and persons representing the dissolved association of Jehovah's Witnesses signed a friendly settlement in the proceedings before the former Commission (see *Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria*, no. 28626/95, Commission's report of 9 March 1998, DR 92, p. 44). Since October 1998 Jehovah's Witnesses in Bulgaria enjoy the status of a religious denomination.

THE LAW

17. On 26 October 2003 the Court received a friendly settlement agreement, signed by the representatives of the parties on 6 August 2003 in Sofia, in the presence of the Director of Religious Denominations at the Bulgarian Council of Ministers. The agreement was approved by a decision of the Bulgarian Council of Ministers of 24 February 2004. The text of the agreement reads, insofar as relevant:

"Whereas Article 9 of the [Convention, the Court's case-law and the Bulgarian Constitution protect freedom of religion and religious pluralism, including as far as Jehovah's Witnesses are concerned], ...

Whereas on 9 March 1988 Bulgaria and Jehovah's Witnesses reached a friendly settlement ... in application no. 28626/95 under the supervision of the European Commission of Human Rights, stating that Jehovah's Witnesses would be officially registered as a religion,

Whereas in its preamble the new Religious Denominations Act [of December 2002] confirms the right of every individual to freedom of ... religion ... [and prohibits persecution on the basis of religious belief],

Whereas [Jehovah's Witnesses' cult is registered as a religious denomination in Bulgaria],

Whereas on 6 February 2003 the European Court [of Human Rights] declared [this] application admissible,

The parties hereby agree:

1. That the respondent Government shall pay the applicants Alfred Lotter and Edith Bernhart Euro 3,000 (three thousand euro) for non-pecuniary damages (Euro 1,500 each) and Euro 5,000 for costs and expenses.

2. That the respondent Government shall cancel orders nos. 1759 and 1761 of December 1, 1995, issued by the Director of the Regional Directorate of the Ministry of the Interior in Plovdiv, whereby the applicants['] residence permits were withdrawn,

3. That the respondent Government shall submit before [the] Court ... additional observations reflecting the legal and administrative changes in Bulgaria concerning Jehovah's Witnesses.

4. Due to the fact that the Bulgarian Government fully agrees to the conditions listed above in points 1, 2 and 3 and the applicants agree to withdraw their appeals against Bulgaria, filed with the European Court of Human Rights."

18. On 23 March 2004 the Government made the following declaration:

"Further to the friendly settlement between the applicants and the Government ... the Bulgarian Government undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

On 29 March 2004 the applicants made the following declaration:

"[F]urther to the friendly settlement between the applicants and the Government ... the applicants undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

19. 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).

20. 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 19 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President