



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

FIRST SECTION

CASE OF RADOVANOVIC v. AUSTRIA

(Application no. 42703/98)

JUDGMENT
(Just satisfaction)

STRASBOURG

16 December 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Radovanovic v. Austria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 25 November 2004,

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

PROCEDURE

1. The case originated in an application (no. 42703/98) 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 a national of Serbia and Montenegro, Mr Jovo Radovanovic (“the applicant”), on 9 July 1998.

2. In a judgment delivered on 22 April 2004 (“the principal judgment”), the Court held that the imposition of a residence prohibition of unlimited duration on the applicant was in breach of Article 8 of the Convention (*Radovanovic v. Austria*, no. 42703/98).

3. Under Article 41 of the Convention the applicant sought just satisfaction of non-pecuniary damage sustained from the imposition of the residence prohibition and reimbursement of costs and expenses.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (*ibid.*, § 42, and point 2 of the operative provisions).

5. The Government of Serbia and Montenegro, having been informed of their right to intervene (Article 36 § 1 of the Convention and Rule 61 § 2 of the Rules of Court), did not submit observations.

6. The Government and the applicant each filed observations on 22 September and 19 October 2004 respectively. They submitted concurring that, by a decision of 16 August 2004, the Vienna Federal Police Office (*Bundespolizeidirektion*) had lifted the residence prohibition imposed on the applicant. The applicant submitted that he had subsequently

made a request for an unlimited residence permit. To date, no decision has been taken on this request.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

THE LAW

8. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

9. The applicant sought EUR 10,000 as compensation for non-pecuniary damage sustained on account of the imposition of the residence prohibition.

10. The Government contended that the applicant’s claim in respect of non-pecuniary damage was not supported by any evidence.

11. The Court considers that the principal judgment of 22 April 2004 in itself constitutes sufficient just satisfaction in regard to any non-pecuniary damage the applicant may have suffered (see *Mehemi, v. France*, judgment of 26 September 1997, *Reports of Judgments and Decisions* 1997-VI, p. 1971, § 41; *Yildiz v. Austria*, no. 37295/97, § 51, 31 October 2002; and *Jakupovic v. Austria*, no. 36757/97, § 37, 6 February 2003).

B. Costs and expenses

12. The applicant requested reimbursement of costs and expenses incurred in the domestic proceedings and the Convention proceedings in the amount of EUR 11,410.11 including VAT.

13. The Government cast doubts on whether the amounts claimed, in particular in respect of unspecified telephone calls, had been necessary in order to prevent the violation found.

14. The Court has assessed the claim in the light of the principles laid down in its case-law (see for instance, *Kudła v. Poland* [GC], no. 30210/96, § 168, ECHR 2000-XI).

15. Applying the said criteria to the present case, the Court considers it reasonable to award the applicant the sum of EUR 9,000 for his costs and

expenses, less the amount of EUR 685 received by way of legal aid from the Council of Europe, this sum includes the tax that may be charged.

C. Default interest

16. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 8,315 (eight thousand three hundred and fifteen euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President