



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

FIRST SECTION

CASE OF ZUCKERSTÄTTER AND RESCHENHOFER v. AUSTRIA

(Application no. 76718/01)

JUDGMENT
(Friendly settlement)

STRASBOURG

24 February 2005

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

In the case of Zuckerstätter and Reschenhofer v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mrs S. BOTOCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

And Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 1 February 2005.

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 76718/01) 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 two Austrian nationals, Mr Wilhelm Zuckerstätter and Mr Christian Reschenhofer (“the applicants”), on 25 October 2001.

2. The applicants were represented by Mr J. Postlmayr, a lawyer practising in Mattighofen. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. The applicants complained, *inter alia*, under Article 6 § 1 of the Convention about the length of criminal proceedings against them. On 2 September 2004 the application was declared admissible as regards that complaint and inadmissible as regards the remainder.

4. On 10 December 2004 and on 3 January 2005 the applicants and the Government respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

5. The applicants were born in 1970 and 1974 respectively. The first applicant lives in Feldkirchen and the second applicant lives in Neukirchen.

6. On 31 January 1995 the Braunau District Administrative Authority opened administrative criminal proceedings for a traffic offence against the

first applicant. They were terminated on 3 December 2001, when the Administrative Court's decision of 19 October 2001 was served on his counsel.

7. On 24 March 1997 the Braunau District Administrative Authority issued a penal order against the second applicant finding him guilty of a traffic offence. These proceedings were terminated on 3 September 2001, when the Administrative Court's decision of 7 August 2001 was served on the second applicant's counsel.

THE LAW

8. Subsequent to its decision on admissibility, the Court received the following declaration from the Government:

"I, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry for Foreign Affairs, declare that the Government of Austria offer to pay 6,000 euros to Mr Wilhelm Zuckerstätter and 4,000 euros to Mr Christian Reschenhofer with a view to securing a friendly settlement of the above-mentioned cases pending before the European Court of Human Rights.

These sums are to cover any non-pecuniary damage as well as costs and expenses, and they will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. In the event of failure to pay these sums within the said three-month period, the Government undertake to pay simple interest on them, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the cases.

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

9. Furthermore, the Court received the following declaration signed by the applicants' representative:

"I, Mr Johann Postlmayer, counsel for the applicants, note that the Government of Austria are prepared to pay the sum of 6,000 euros to Mr Wilhelm Zuckerstätter and the sum of 4,000 euros to Mr Christian Reschenhofer with a view to securing a friendly settlement of the above-mentioned cases pending before the European Court of Human Rights.

These sums are to cover any non-pecuniary damage as well as costs and expenses and will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

I accept the proposal and waive any further claims against Austria in respect of the facts of these applications. I declare that this constitutes a final resolution of the cases.

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

10. 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).

11. 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 24 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President