



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

FIRST SECTION

CASE OF TOPP v. DENMARK

(Application no. 25907/02)

JUDGMENT
(Friendly settlement)

STRASBOURG

1 December 2005

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

In the case of Topp v. Denmark,

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

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 10 November 2005

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

PROCEDURE

1. The case originated in an application (no. 25907/02) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Danish national, Mr Søren Topp (“the applicant”), on 24 June 2002.

2. The Danish Government (“the Government”) were represented by their Agent, Mrs Nina Holst-Christensen.

3. The applicant complained under Article 6 § 1 of the Convention about the length of proceedings before the Probate Court.

4. On 30 June 2005, after obtaining the parties’ observations, the Court declared the application admissible.

5. On 20 September 2005 and on 26 September 2005 the applicant and the Agent of the Government respectively submitted formal declarations proposing a friendly settlement of the case.

THE FACTS

6. On 30 August 1989 the applicant made an offer to buy a house in Spain offered by a public receiver assisting the Probate Court in Nykøbing Falster (*Skifteretten i Nykøbing Falster*) in the winding up of the estate from a deceased person. The deceased and his widow had owned the house jointly. For various reasons the sale was never concluded. Instead the creditors of the estate accepted that the value of the deceased’s share of the Spanish property be set at zero and that they renounce ownership to this share. By decision of 6 March 1995 the Probate Court wound up the estate,

which proved insolvent. On the applicant's request, on 28 April 1997 the High Court of Eastern Denmark (*Østre Landsret*) ordered a re-opening of the estate in order that the Probate Court made a decision as to the formal ownership of the deceased's share of the jointly owned property. The Probate Court pronounced its final decision on 28 February 2003 transferring the deceased's share of the house to the widow.

7. On 20 September 2005 the applicant submitted the following declaration to the Court:

"I, Mr Søren Topp, note that the Government of Denmark are prepared to pay me *ex gratia* the sum of 74,500 DKK with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum is to cover any pecuniary and 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 amount 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 Denmark in respect of the facts of this application. I declare that this constitutes a final resolution 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"

8. On 26 September 2005 the Government submitted the following declaration to the Court:

"I, Mrs Nina Holst-Christensen, Agent of the Government, declare that the Government of Denmark offer to pay *ex gratia* 74,500 DKK to Søren Topp with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, and it 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 this sum within the said three-month period, the Government undertake to pay simple interest on it, 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 case.

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

THE LAW

9. 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).

10. 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 1 December 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President