



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

FIRST SECTION

CASE OF ZEMAN v. AUSTRIA

(Application no. 23960/02)

JUDGMENT
(Just Satisfaction)

STRASBOURG

10 January 2008

FINAL

10/04/2008

*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 Zeman v. Austria,

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

Christos Rozakis, *President*,

Loukis Loucaides,

Françoise Tulkens,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 6 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 23960/02) 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 Walter Zeman (“the applicant”), on 10 June 2002.

2. The applicant was represented by Mr J. Stöhr, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Mr F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. In a judgment delivered on 29 June 2006 (“the principal judgment”), the Court held there has been a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 of the Convention as regards the reduction of the applicant’s survivor’s pension under the 1995 amendment of the Vienna Pension Act (*Zeman v. Austria*, no. 23960/02).

4. Under Article 41 of the Convention the applicant sought just satisfaction in respect of pecuniary damage and reimbursement of costs and expenses.

5. 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.*, § 48 and point 3 of the operative provisions).

6. On 9 October 2007 the Government informed the Court that a settlement had been reached between the competent authorities and the

applicant. They joined the terms of the settlement which provides as follows:

“The Municipality of Vienna,

represented by the Municipal Executive Office – Vienna Utilities Personnel Office
Schottenring 30, 1010 Vienna

and

Mr Walter Zeman,

represented by Dr Johann Stöhr, lawyer
Biberstrasse 8/11, 1010 Vienna

hereby conclude, with reference to the judgment of the European Court of Human Rights (First Section) of 29 June 2006 (application no. 23960/02), which became final on 29 September 2006 (Appendix I), the following

Agreement

1. The entitlement to a survivor’s pension and supplementary allowance equal to 60% of the retirement pension and supplementary allowance which would have been due to Mr Zeman’s spouse, Mrs Roswitha Zeman, who died while in service, is hereby recognised with effect from 1 January 1995.

The pension adjustments for subsequent years up to and including 2006 shall be based on the newly calculated pension amount as at 1 January 1995.

A detailed breakdown of the difference between the applicable amounts and the amounts actually paid is given in the attached table (Appendix 2). For the period from 1 January 1995 to 30 September 2006 the gross amount of this difference is

€55,202.36.

2. For the period from 1 July 1995 to 31 October 2006 interest shall be payable, based on an annual rate of 4%, in the total amount of

€9,401.55.

3. The costs of the proceedings shall be reimbursed as indicated in the written observations of 5 July 2006, with the exception of the amount of €608.23 entered under point 2.a, relating to the appeal of 16 January 1995 against the decision of Vienna Utilities of 2 January 1995. Costs for the entire proceedings therefore total

€10,456.66.

4. From 1 October 2006 a survivor’s pension equal to 60% of the retirement pension which would have been due to Mr Zeman’s deceased spouse shall be paid in the form of a gross monthly pension of

€958.55

and a gross monthly supplementary allowance of

€137.87.

5. Adjustment of the amounts set out under point 4 shall henceforth be made in the amounts and at the times determined by the Municipality of Vienna for adjustments to civil servants' retirement and survivor's pensions.

6. The Municipality hereby undertakes to effect payment on the following basis:

under point 1:

A gross amount of €51,700.96 in respect of the period from 1 January 1995 to 31 December 2005, and a gross amount of €3,501.40 in respect of the current accounting year from 1 January 2006 to 30 September 2006, to be paid into Mr Zeman's pension account on the earliest possible payment date following the signing of this agreement;

under point 2:

Payment within four weeks of signature of this agreement into the account of which details have been provided; any tax liability shall be the responsibility of Mr Zeman;

under point 3:

Payment within four weeks of signature of this agreement into the aforementioned account.

under point 4:

From 1 October 2006, payment into Mr Zeman's pension account on the earliest possible payment date following signature of this agreement.

7. The appendices shall form an integral part of this agreement.

8. This agreement takes full account of the content of the European Court of Human Rights judgment of 29 June 2006. The above payments therefore represent full settlement of the claims submitted by Mr Zeman in respect of his survivor's pension.

Vienna, 28 November 2006

for the Municipality of Vienna

for Mr Walter Zeman

Dr Felix Joklik
Section Manager

Dr Johann Stöhr
Lawyer"

THE LAW

7. Following its principal judgment the Court has been informed that a friendly settlement has been reached between the competent Austrian authorities and the applicant with respect to the latter's claims under Article 41 of the Convention.

8. Having regard to its terms, the Court finds the agreement equitable within the meaning of Rule 75 § 4 of the Rules of Court and that it 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). Consequently, it takes formal note of the agreement and considers it appropriate to strike the case out of the list pursuant to that provision.

9. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the remainder of the application out of its list of cases.

Done in English, and notified in writing on 10 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President