CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 10222/02
by Ludwig KAUPER and Karoline RUHM
against Austria

The European Court of Human Rights (First Section), sitting on 14 December 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 24 September 2001,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the formal declarations accepting a friendly settlement of the case,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Ludwig Kauper and Mrs Karoline Ruhm, are Austrian nationals, who were born in 1934 and 1941 respectively and live in Vienna and Murstetten respectively. They are represented before the Court by Mr E. Proksch, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

The facts of the case, as submitted by the parties, may be summarised as follows.

The administrative proceedings at issue in the present case concerned regulation works of the course of the Laabenbach river, whereby adjacent plots of lands were modified and reassigned to the respective owner. They started on 4 August 1978 when the applicants' father and predecessor in the proceedings filed an appeal against the St. Pölten District Authority's decision of 26 April 1978 by which it had found that the regulation works had been carried out in accordance with a water permit granted in 1970. The proceedings are still pending before the Federal Minister for Agriculture and Forestry (*Bundesminister für Land- und Forstwirtschaft*).

COMPLAINTS

The applicants complained under Article 6 of the Convention about the length of the proceedings. They also complained that their rights under Article 1 of Protocol No. 1 were violated as they did not receive compensation although their plots of land had not been reassigned to them after the regulation works.

THE LAW

On 15 November 2004 the Court received the following declaration from the applicants:

> "I note that the Austrian Government offer to pay the applicants the amount of EUR 15,000 on an *ex gratia* basis in respect of the above application pending before the Court. This sum (EUR 15,000) shall cover any pecuniary and non-pecuniary damage as well as costs and expenses. It will be paid, free of any taxes that may be applicable, within three months from the notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. 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 offer and withdraw the application waiving any further claims against Austria in respect of the application. I declare that this constitutes a final settlement of the case."

On 16 November 2004 the Court received the following declaration from the Government:

"I declare that the Government of Austria offer to pay the amount of EUR 15,000 to the applicants in respect of the above application an *ex gratia* basis for the withdrawal of their application pending before the Court. This sum (EUR 15,000) shall cover any pecuniary and non-pecuniary damage as well as costs and expenses. It will be paid, free of any taxes that may be applicable, within three months from the notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. 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. The payment will constitute the final resolution of the case."

The Court reiterates the terms of Article 37 § 1 of the Convention which, so far as relevant, reads as follows:

"1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application;

(b) the matter has been resolved;..

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

The Court takes note of the friendly settlement reached between the parties and considers that the applicants no longer intend to pursue their application and that the matter has been resolved. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued. Accordingly, the application to the case of Article 29 § 3 of the Convention should be discontinued and the case struck out of the list.

For these reasons, the Court unanimously

Decides to discontinue the application of Article 29 § 3 of the Convention and to strike the application out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President