CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 56951/00
by Heinrich LECHNER
against Austria

Application no. 57459/00
by Wolfgang ADAMETZ and Others
against Austria

Application no. 66959/01
by Rudolf ZEIDLER
against Austria

The European Court of Human Rights (First Section), sitting on 25 November 2004 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above applications lodged on 31 March 2000, 10 August 1999 and 23 February 2001, respectively,

Having regard to the decision of 16 January 2003 to join the applications,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The first applicant, Mr Heinrich Lechner, is an Austrian national, who was born in 1955 and lives in Innsbruck. He was represented before the Court by Mr H. Frei, a lawyer practising in Innsbruck.

The second applicant, Mr Wolfgang Adametz was born in 1940 and lives in Klosterneuburg. The third applicant, Mr Alfred Duschanek, born in 1939, the fourth applicant, Mr Martin Mayr, born in 1933, and the fifth applicant, Mr Gottfried Winkler, born in 1939, live in Vienna. The sixth applicant, Mr Klaus Hecke, born in 1937, lives in Linz. The second to sixth applicants are all Austrian nationals and were represented before the Court by Mr C. Schmelz, a lawyer practicing in Vienna.

The seventh applicant, Mr Rudolf Zeidler is an Austrian national, who was born in 1947 and lives in Vienna. He was represented before the Court by Mr G. Zanger, a lawyer practising in Vienna.

The respondent Government were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

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

All applicants are either employees or retired employees of state owned companies or other entities which are subject to scrutiny by the Public Audit Office (*Rechnungshof*). On 15 May 1997 Parliament adopted the Federal Constitutional Act on the Limitation of Emoluments of Public Officials (*Bundesverfassungsgesetz über die Begrenzung von Bezügen öffentlicher Funktionäre*, "the 1997 Constitutional Act"). Its section 8 provided that, every two years, the Public Audit Office has to establish an income report (*Einkommensbericht*) containing the names and incomes of all persons whose gross income per year paid by an entity subject to its scrutiny exceeds a certain amount. It was 100,000 Austrian schillings (approximately 7,270 euros) for 1998 and is adjusted yearly. The entities concerned were obliged to provide the relevant information in the first quarter of every second year.

The said Act entered into force on 1 August 1997. According to the transitory provisions the first income report pursuant to section 8 had to be established for the years 1998 and 1999. Each applicant's gross yearly income earned in the relevant period exceeded the amount laid down in the 1997 Constitutional Act. Accordingly, the applicants' employers were obliged to provide the Public Audit Office with the relevant information by 31 March 2000 at the latest.

The applicants' employers refused to comply with this obligation. The second to sixth applicants' employer relied on a preliminary injunction of the labour courts obtained by some of its employees and prohibiting it to provide the information requested until the termination of the main

proceedings. The other applicants' employers argued that the obligation to provide the information requested was incompatible with Article 8 of the Convention and with the Data Protection Act, respectively.

As the Public Audit Office was confronted with similar reactions from numerous entities subject to its control, it introduced, on 9 June 2000, proceedings with the Constitutional Court against a number of these entities in order to obtain a clarification of its right to have access to income data for the purpose of issuing the income report provided for in Section of the 1997 Constitutional Act.

The Constitutional Court requested the Court of Justice of the European Communities (ECJ) to give a preliminary ruling on the question whether the publication of income data as provided for in the 1997 Constitutional Act would be contrary to EU law, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995.

On 20 May 2003 the ECJ held that Directive 95/46/EC aimed not only at the free movement of personal data but also at the protection of the fundamental rights and freedom of natural persons and in particular at the protection of their private sphere as regards the processing of such data. The transfer of income data at issue fell with in the scope of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. A publication of income data would be contrary to the relevant provisions of Directive 95/46/EC, unless it was established that such a publication was necessary within the meaning of Article 8 of the Convention for the economic well-being of the country, and in particular to secure an efficient use of public means. The latter question was to be assessed by Constitutional Court.

On 28 November 2003 the Constitutional Court issued a lead-case on this subject. It held that, while the Public Audit Office was entitled to have access to income data of the employees of entities subject to its scrutiny, it was not entitled to publish an income report as provided for in Section 8 of the 1997 Constitutional Act, giving the names and gross yearly income of those employees whose income exceeded the amounts fixed in that Act. It found that such a publication would constitute an interference with rights protected by Article 8 of the Convention, which was not necessary, in particular not proportionate to the aim of ensuring an efficient use of public means. The general financial control exercised by the Public Audit Office was sufficient to achieve that aim.

By letter of 18 February 2004 the second to sixth applicants informed the Court that, in the light to the Constitutional Court's judgment, they did not intend to pursue their application. By letters of 4 March and 13 February 2004, respectively, the first and seventh applicants stated that they intended to pursue their applications.

COMPLAINTS

1. The applicants complained under Article 8 alone and taken in conjunction with Article 14 of the Convention. They alleged that they were directly affected by section 8 of the 1997 Constitutional Act, as each applicant's gross yearly income exceeded the amount laid down in that provision. They asserted that the notion of private life encompassed data relating to a person's income. The Public Audit Office's obligation pursuant to section 8 of the 1997 Constitutional Act to publish the names and income of all persons whose gross income per year exceeded a certain amount constituted an interference with their right to respect for their private life. However, the interference was not necessary in the interests of the economic well-being of the country.

2. The seventh applicant alleged a violation of Article 13 as domestic law not provide any remedy in respect of the alleged violation.

THE LAW

The Court notes that following the Constitutional Court's judgment of 28 November 2003 the second to sixth applicants informed the Court they did not wish to pursue their application.

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

> "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 notes that the second to six applicants no longer intend to pursue their application.

The first and seventh applicants however, stated that they wished to pursue their applications. The Court observes that they complained in essence about the possible publication of their names and gross yearly income in the Public Audit Office's income report as initially foreseen in section 8 of the 1997 Constitutional Act. However, the Constitutional Court's judgment of 28 November 2003 has made it clear that the Public Audit Office is not entitled to proceed to such a publication. The Court, therefore, considers that the matter has been resolved.

Finally, 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 second to sixth applicants' case should be struck out of the list in accordance with Article 37 § 1 (a) and (b) of the Convention. The first and seventh applicants' case should be struck out of the list in accordance with Article 37 § 1 (b) alone.

For these reasons, the Court unanimously

Decides to strike the applications out of its list of cases.

Søren NIELSEN
Registrar

Christos ROZAKIS
President