CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

Application no. 33838/04
by Bent LYNGE
against Denmark

The European Court of Human Rights (Fifth Section), sitting on 3 April 2007 as a Chamber composed of:

Mrs S. BOTOUCHAROVA, *President*,
Mr P. LORENZEN,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having regard to the above application lodged on 17 September 2004,

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 friendly settlement declarations submitted by the respondent Government and the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Bent Lynge, is a Danish national who was born in 1958 and lives in Helsinge. He is represented before the Court by Mr Tyge Trier, a lawyer practising in Copenhagen. The Danish Government ("the Government") were represented by their Agent, Mr Jørgen Steen Sørensen, of the Ministry of Justice.

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

In 1989 the applicant took out a policy with an insurance company. In February 1990 he was involved in a car accident and sustained injuries to his neck and back resulting in him being partly disabled. Subsequently, a dispute arose between the applicant and the insurance company. The applicant brought the case before the Insurance Complaint Board (*Ankenævnet for Forsikring*), which held against him on 23 August 1993. On 27 February 1995 the case was brought before the High Court of Eastern Denmark (*Østre Landsret*), which by judgment of 11 October 2000 found against the applicant. On appeal, by judgment of 29 March 2004 the Supreme Court (*Højesteret*) confirmed the High Court's judgment.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention that his dispute with the insurance company was not determined within a reasonable time.

THE LAW

On 7 March 2007 the Government submitted the following declaration to the Court:

> "I, Mr Jørgen Steen Sørensen, Agent of the Government of Denmark, declare that the Government of Denmark offer to pay *ex gratia* 58,000 Danish kroner (DKK) to Mr Bent Lynge with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.
>
> The Government of Denmark regret the length of the proceedings before the domestic courts. This statement does not, however, constitute a recognition of the alleged violation of Article 6 § 1 and Article 13 of the Convention.
>
> This sum, which is to cover any pecuniary and non-pecuniary damage, will be free of any taxes that may be applicable and will be payable within three months from the date of notification of the decision taken by the Court pursuant to the Article 37 § 1 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.
>
> As part of this friendly settlement, it is agreed that the issue of costs and expenses related to the submission and conducting of this application before the European Court of Human Rights is to be resolved finally by the Civil Affairs Agency *(Civilstyrelsen*) taking into account that the Civil Affairs Agency already has issued a decision according to which the applicant has been granted legal aid for an amount up to DKK 40,000.

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

On 5 March 2007 the applicant's representative submitted the following declaration to the Court:

"I, Mr Bent Lynge, note that the Government of Denmark are prepared to pay me *ex gratia* the sum of DKK 58,000 with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

I furthermore note that the Government of Denmark regrets the length of the proceedings before the domestic courts. This statement does not, however, constitute a recognition of the alleged violation of Article 6 § 1 and Article 13 of the Convention.

This sum, which is to cover any pecuniary and non-pecuniary damage, will be free of any taxes that may be applicable and will be payable within three months from the date of notification of the decision taken by the Court pursuant to the Article 37 § 1 of the European Convention on Human Right. 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.

As part of this friendly settlement, I agree to the fact that the issue of costs and expenses related to the submission and conducting of this application before the European Court of Human Rights is to be resolved finally by the Civil Affairs Agency taking into account that the Civil Affairs Agency already has issued a decision according to which I have been granted legal aid for an amount up to DKK 40,000. The applicant understands the wording in the declaration signed by the Government regarding the Civil Affairs Agency as a general reference to the mandate of the said Agency to decide under legal aid rules outlined in the Legal Aid Act (*Lov 1999-12-20 nr. 940 om retshjælp til indgivelse og førelse af klagesager for internationale klageorganer I henhold til menneskerettighedskonventioner*). The applicant has been granted free legal aid for the lodging of the complaint and the procedure before international institutions under human rights conventions. The applicant will present a detailed explanation to the Agency which will then decide regarding the appropriate amount to be awarded to the applicant's counsel for the time consuming case handling including preparation and filing of the detailed complaint, handling of the case, settlement negotiations, ongoing briefing of and discussion with the applicant etc.

I accept the proposal and waive any further claims against Denmark in respect of the facts giving rise to this application. I declare that this constitutes a final resolution of the case before the European Court. A possible future filing at domestic level for a re-opening of the applicant's domestic case against the insurance company is not covered by this settlement.

This declaration is made in the context of a friendly settlement which the Government and I have reached. I and my counsel, Tyge Trier, 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. "

The Court takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1

in fine of the Convention). Accordingly, Article 29 § 3 of the Convention should no longer apply to the case and it should be struck out of the list.

For these reasons, the Court unanimously

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

Claudia WESTERDIEK
Registrar

Snejana BOTOUCHAROVA
President