CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 2612/03
by Ewald STADLER
against Austria

The European Court of Human Rights (First Section), sitting on 9 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 application lodged on 13 January 2003,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ewald Stadler, is an Austrian national who was born in 1961 and lives in Vienna. He was represented before the Court by Mr M. Rami, a lawyer practising in Vienna. The respondent Government were represented by 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.

On 1 July 2002 the Vienna Court of Appeal (*Oberlandesgericht*) acquitted the applicant of charges of insult brought by Mr R., the editor of the weekly "Profil", in private prosecution proceedings (*Privatanklage-verfahren*).

On 2 July 2002 the applicant requested the Vienna Regional Criminal Court to order the private prosecutor to reimburse his necessary defence costs.

On 25 October 2002 the Vienna Regional Criminal Court ordered the private prosecutor to reimburse 3,195.46 euros (EUR) to the applicant pursuant to Articles 390 § 1, 393 § 4 and 395 § 2 of the Code of Criminal Procedure, which provide that, in case of an acquittal, the private prosecutor has to reimburse the costs of the proceedings and the accused's necessary defence costs.

The private prosecutor lodged an appeal against the costs order which was not served on the applicant.

On 9 December 2002 the Vienna Court of Appeal, sitting in camera, amended the costs order reducing the amount the private prosecutor had to pay to the applicant to EUR 2,469.12. It found that the remainder of the costs claimed by the applicant had not been necessarily incurred.

COMPLAINT

The applicant complained under Article 6 § 1 of the Convention about a violation of the principle of equality of arms in that, in the proceedings on the private prosecutor's appeal against the costs order, he had not been informed of the appeal and had not been given the possibility to react thereto.

THE LAW

On 11 October 2004 the Court received the following declaration from the respondent Government:

> "I, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry for Foreign Affairs, declare that the Government of Austria offer to pay 4,000 euros to Mr Ewald Stadler 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 non-pecuniary damage as well as costs and expenses, and it will be payable within three months from the date of notification of the decision taken by the Court pursuant to 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."

On 6 October 2004 the Court received the following declaration from the applicant:

> "I, Mr Michael Rami, counsel for the applicant, note that the Government of Austria are prepared to pay the sum of 4,000 euros to Mr Ewald Stadler 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 non-pecuniary damage as well as costs and expenses and will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 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 Austria in respect of the facts of this application. I declare that this constitutes a 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:

> "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; or
>
> (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 by the parties and considers that the applicant no longer intends to pursue his application and that the matter has been resolved. The Court 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, the case should be struck out of the Court's list in accordance with Article 37 § 1 (a) and (b) of the Convention.

For these reasons, the Court unanimously

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President