



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

FIRST SECTION

CASE OF INFORMATIONSVEREIN LENTIA v. AUSTRIA

(Application no. 37093/97)

JUDGMENT
(FRIENDLY SETTLEMENT)

STRASBOURG

28 November 2002

This judgment is final but it may be subject to editorial revision.

In the case of Informationsverein Lentia v. Austria,

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 7 November 2002,

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

PROCEDURE

1. The case originated in an application (no. 37093/97) against the Republic of Austria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Informationsverein Lentia (“the applicant”), an association with its seat in Linz (Austria) on 26 May 1997.

2. The applicant was represented by Mr B. Binder, a lawyer practising in Linz. 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.

3. The applicant complained that despite the Court's *Informationsverein Lentia and Others v. Austria* judgment of 24 November 1993 it was still unable to obtain an operating licence for cable broadcasting.

4. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention.

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 29 August 2000 the Court communicated the application to the respondent Government.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

8. On 10 January 2002, having obtained the parties' observations, the Court declared the application admissible in so far as it concerned the

period from 18 August 1994 until 1 August 1996 and declared inadmissible the remainder of the application.

9. On 5 September 2002, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. On 25 September and on 1 October 2002 the Government and the applicant respectively submitted formal declarations accepting a friendly settlement of the case.

THE FACTS

10. The applicant association, whose members are co-proprietors and inhabitants of a large housing project in Linz, has the aim of improving communication between the inhabitants *inter alia* by setting up an internal cable network. In proceedings brought in 1978 and terminated in 1986, it unsuccessfully applied for an operating licence.

11. On 24 November 1993 the European Court of Human Rights gave judgment in the case of *Informationsverein Lentia and Others v. Austria* (Series A no. 276), finding a violation of Article 10 of the Convention as regards *inter alia* the applicant's complaint that it had been unable to set up a television station due to the broadcasting monopoly of the Austrian Broadcasting Corporation.

12. On 18 August 1994 the applicant, referring to the above judgment, filed a new request for an operating licence with the Telecommunications Office for Upper Austria and Salzburg. On 3 May 1995 the latter dismissed the request noting that no legislation allowing it to grant such a licence had been passed as regards cable broadcasting. On 9 November 1995 the Federal Ministry of Public Economy and Transport dismissed the applicant's appeal.

13. On 1 August 1996 the Constitutional Court's judgment of 27 September 1995 took effect, according to which private broadcasters were free to create and transmit their own programmes via cable-net without any conditions being attached.

14. On 1 July 1997 the Cable and Satellite Broadcasting Act entered into force, which lays down the conditions under which private cable broadcasting is allowed.

THE LAW

15. On 25 September and on 1 October 2002 the Court received the following declaration from the Government and from the applicant, respectively:

“Statement of the parties with a view to a friendly settlement

With reference to Article 38 § 1 (b) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the parties in the proceedings concerning application no. 37093/97, lodged by Informationsverein Lentia, declare with a view to a friendly settlement reached with the assistance of the European Court of Human Rights, as follows:

1. The Government of the Republic of Austria will pay the applicant a sum of altogether 12,000 euros (EUR) as compensation in respect of any non-pecuniary damage together with any costs and expenses incurred.

This sum will be payable to the applicant's representative, Mr Bruno Binder in Linz, within three months from the date of delivery of the judgment given by the Court pursuant to Article 39 of the Convention.

2. The applicant declares the application settled.

3. The applicant waives any further claims against the Republic of Austria relating to the facts underlying the present application.

4. The parties undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.”

16. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It further notes that the situation which formed the basis of the applicant's complaints ceased to exist on 1 August 1996 as a result of a change in law. The Court is satisfied that the settlement 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).

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 28 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President