﻿

AS TO THE ADMISSIBILITY OF

Application No. 18536/91

by H.K.

against the Netherlands

The European Commission of Human Rights sitting in private on 2

December 1991, the following members being present:

MM.C.A. NØRGAARD, President

J.A. FROWEIN

F. ERMACORA

E. BUSUTTIL

A. WEITZEL

J.-C. SOYER

H. DANELIUS

Mrs.G. H. THUNE

SirBasil HALL

Mr.F. MARTINEZ RUIZ

Mrs.J. LIDDY

MM.L. LOUCAIDES

A.V. ALMEIDA RIBEIRO

M.P. PELLONPÄÄ

B. MARXER

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection

of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 March 1991 by

H.K. against the Netherlands and registered on 17 July 1991 under file

No. 18536/91 ;

Having regard to the report provided for in Rule 47 of the Rules

of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a German citizen, born in 1938 and resident

at Mönchengladbach. He is represented before the Commission by

Professor Albert Bleckmann, Münster.

The facts as presented by the applicant are as follows.

In 1978, the applicant bought an old convent with adjoining

land situated at Slenaken in the province of Limburg in the

Netherlands. On 6 September 1979, the convent was partly destroyed

by fire.

The building was insured by the Interpolis insurance company

at Tilburg, and the applicant claimed compensation from Interpolis

according to the insurance. However, Interpolis refused to pay

compensation and in February 1980, the applicant sued Interpolis

before the Regional Court (Arrondissementsrechtbank) of Breda. On

20 January 1981, the Regional Court gave an interlocutory judgment

regarding the evidence to be submitted in the case. The parties

appealed against this judgment to the Court of Appeal (Gerechtshof)

of 's-Hertogenbosch. On 12 May 1982, the Court of Appeal rendered

its judgment in which it ordered Interpolis to pay to the applicant

855.037 guilders immediately and another 855.037 guilders after the

restoration of the convent. Moreover, the Court of Appeal also

ordered Interpolis to pay compensation for damage caused to the

applicant as a result of the delay in the payment of the insurance

sum.

On the basis of this judgment, the applicant claimed

compensation amounting to approximately 2.750.000 guilders. On 29

November 1983, the Court of Appeal determined the amount of

compensation at 38.508 guilders, this being an amount which

Interpolis had accepted to pay.

In the meantime, Interpolis had appealed against the Court of

Appeal's judgment of 12 May 1982. On 3 February 1984, the Supreme

Court (Hoge Raad) quashed the Court of Appeal's judgment on

procedural grounds and referred the case to the Court of Appeal of

Arnhem.

On 19 November 1985, the Court of Appeal of Arnhem gave its

judgment which was essentially similar to the judgment of the Court

of Appeal of 's-Hertogenbosch of 29 November 1983. It ordered

Interpolis to pay to the applicant immediately 855.037 guilders and

the same amount again after the restoration of the building. It

further ordered Interpolis to pay compensation for damage which the

applicant had suffered as a result of the delay in paying the

insurance sum.

In further proceedings before the Court of Appeal of Arnhem,

the applicant claimed compensation of more than 5 million guilders.

In its judgment of 2 August 1988, the Court of Appeal considered that

according to Section 1286 of the Civil Code (Burgerlijk Wetboek)

damage as a result of delayed payment should be considered to be

limited to the interest which according to the law should be paid for

the time of the delay. Consequently, the applicant's compensation

claim was rejected, except as regarded an amount of 38.508 guilders

which Interpolis had agreed to pay.

The applicant appealed to the Supreme Court. He argued, inter

alia, that the right to compensation for delay in payment was not

limited to interest under Section 1286 of the Civil Code. Moreover,

he considered that this point should have been raised by Interpolis

in the main proceedings which ended in the Court of Appeal's judgment

of 19 November 1985 and that in view of the fact that in this

judgment Interpolis had been ordered to compensate the damage he had

suffered, the Court of Appeal was not free, in the subsequent

proceedings which only concerned the determination of the amount of

compensation, to limit the compensation to the mere payment of

interest.

On 2 November 1990, the Supreme Court rejected the appeal. It

confirmed, inter alia, the view that compensation for damage suffered

as a result of delay in payment should under Section 1286 of the

Civil Code be limited to legal interest. As regards the question

whether the Court of Appeal's judgment of 19 November 1985, which had

acquired legal force, had already granted the applicant a right to

compensation beyond the legal interest, the Supreme Court noted that

the judgment of the Court of Appeal of 's-Hertogenbosch of 12 May

1982 did not contain any explicit and unconditional decision to the

effect that the applicant was entitled to obtain compensation beyond

the legal interest and that the reference to that judgment in the

subsequent judgment of the Court of Appeal of Arnhem of 19 November

1985 did not show that the latter Court of Appeal was of a different

opinion on this point. The Supreme Court considered that the

statements of the two courts could not be regarded as being incorrect

in law.

COMPLAINTS

1.The applicant complains of a violation of Article 1 of the

First Protocol in that the Supreme Court, in its judgment of 2

November 1990, did not take into account that he had already, by the

judgments of 12 May 1982 and 19 November 1985, both of which had

acquired legal force, been granted a right to compensation for the

damage he had suffered. That right was to be regarded as a property

right of which he had been deprived by the judgments of 2 August 1988

and 2 November 1990. He further argues that Section 1286 of the

Civil Code, which limits the right to compensation for delay in

payment to legal interest, is contrary to Article 1 of Protocol No.

1.

2. The applicant further considers that Article 14 of the

Convention has been violated in that Dutch law makes a distinction

as regards compensation for damage resulting from, on the one hand,

delay in the payment of money and, on the other hand, delay in the

delivery of goods.

3. The applicant finally alleges a violation of Article 6 para.

1 of the Convention in that the Court of Appeal of Arnhem and the

Supreme Court failed to respect a judgment which had acquired legal

force, thereby denying him a fair trial. In a letter of 23 May 1991,

the applicant adds that he also alleges a violation of Article 6

para. 1 on account of the length of the proceedings.

THE LAW

1. The applicant complains of a violation of Article 1 of Protocol

No. 1 (P1-1) in that the Supreme Court, in its judgment of 2 November

1990, did not take into account that he had already, by the judgments

of 12 May 1982 and 19 November 1985, both of which had acquired legal

force, been granted a right to compensation for the damage he had

suffered. That right was to be regarded as a property right of which

he had been deprived by the judgments of 2 August 1988 and 2 November

1990. He further argues that Section 1286 of the Civil Code, which

limits the right to compensation for delay in payment to legal

interest, is contrary to Article 1 of Protocol No. 1 (P1-1).

Article 1 of Protocol No. 1 (P1-1) reads as follows:

"Every natural or legal person is entitled to the

peaceful enjoyment of his possessions. No one shall be

deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by

the general principles of international law.

The preceding provisions shall not, however, in any way

impair the right of a State to enforce such laws as it

deems necessary to control the use of property in

accordance with the general interest or to secure the

payment of taxes or other contributions or penalties."

The first question which arises is whether the applicant has

exhausted the domestic remedies as required by Article 26 (Art. 26)

of the Convention. In this respect the Commission notes that the

applicant did not invoke Article 1 of Protocol No. 1 (P1-1) in his

appeal to the Supreme Court. However, he did invoke the fact that

the Court of Appeal's judgment of 19 November 1985 was a final

judgment and argued that his right to compensation should therefore

not have been reviewed in the subsequent proceedings before the Court

of Appeal.

The Commission does not find it necessary to determine whether,

in these circumstances, the applicant can be considered to have

complied with Article 26 (Art. 26) of the Convention, since his

complaint relating to Article 1 of Protocol No. 1 (P1-1) is in any

case inadmissible for the following reasons.

In its judgment of 2 November 1990, the Supreme Court examined

the applicant's argument that the Court of Appeal's judgment of 19

November 1985 was an obstacle to a further examination of whether or

not he could claim compensation beyond the legal interest provided

for in Section 1286 of the Civil Code. The Supreme Court noted on

this point that the judgment of the Court of Appeal of

's-Hertogenbosch of 12 May 1982 did not contain any explicit and

unconditional decision to the effect that the applicant was entitled

to obtain compensation beyond the legal interest, and that the

reference to that part of the judgment in the subsequent judgment of

the Court of Appeal of Arnhem of 19 November 1985 did not show that

Court of Appeal was of a different opinion on this point. The

Supreme Court considered that the statements of the two courts could

not be regarded as being incorrect in law.

The Commission finds that the question of whether or not the

applicant could claim compensation beyond the legal interest in the

proceedings before the Court of Appeal of Arnhem after the judgment

of that court of 19 November 1985 must be answered on the basis of

an interpretation of the Dutch judgments and of the principles of

Dutch law. The Supreme Court's finding that the said question had

not been finally and unconditionally decided in the judgment of 19

November 1985 must in principle be accepted by the Commission, and

there is not in the present case any special element which could lead

to a different evaluation.

Consequently, the applicant cannot be considered to have been

deprived of any property right within the meaning of Article 1 of

Protocol No. 1 (P1-1).

Nor does the Commission find that the limitation of the right

to compensation in Section 1286 of the Civil Code could raise an

issue under Article 1 of Protocol No. 1 (P1-1).

It follows that this part of the application is manifestly

ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of

the Convention.

2. The applicant further complains that Dutch law makes a

distinction as regards compensation for damage resulting from, on the

one hand, delay in the payment of money and, on the other hand, delay

in the delivery of goods. He considers this distinction to be in

conflict with Article 14 (Art. 14) of the Convention which prohibits

discrimination in the enjoyment of the rights and freedoms guaranteed

by the Convention.

The Commission is of the opinion that different considerations

apply to the two situations which the applicant compares with each

other and that the legislator may therefore well have chosen to deal

with these situations differently. The rules in Dutch private law

to which the applicant refers cannot therefore, insofar as they have

been applied to the applicant, be considered contrary to Article 14

(Art. 14) of the Convention.

This part of the application is therefore also manifestly

ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of

the Convention.

3. The applicant finally alleges violations of Article 6 para. 1

(Art. 6-1) of the Convention in that, on the one hand, the Court of

Appeal of Arnhem and the Supreme Court denied him a fair trial by

failing to respect a judgment which had acquired legal force and, on

the other hand, the length of the proceedings exceeded a reasonable

time.

As regards the fairness of the proceedings, the Commission

finds no appearance of a violation of Article 6 (Art. 6).

As regards the length of the proceedings, the Commission notes

that the complaint was raised in a letter of 23 May 1991, whereas the

Supreme Court's judgment was given on 2 November 1990. It follows

that in this respect the applicant has not observed the six months

time-limit provided for in Article 26 (Art. 26) of the Convention.

It follows that these complaints must be rejected under Article

27 paras. 2 and 3 (Art. 27-2, 27-3) of the Convention.

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)