



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

COURT (CHAMBER)

CASE OF ALBERT AND LE COMPTE v. BELGIUM (ARTICLE 50)

(Application no. 7299/75; 7496/76)

JUDGMENT

STRASBOURG

24 October 1983

In the case of Albert and Le Compte,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court*, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. J. CREMONA,
Mr. W. GANSHOF VAN DER MEERSCH,
Mr. D. EVRIGENIS,
Mr. J. PINHEIRO FARINHA,
Sir Vincent EVANS,
Mr. R. MACDONALD,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 September 1983,

Delivers the following judgment, which was adopted on that date, on the application in the present case of Article 50 (art. 50) of the Convention:

PROCEDURE AND FACTS

1. The present case was referred to the Court on 12 March 1982 by the European Commission of Human Rights ("the Commission"). The case originated in two applications (nos. 7299/75 and 7496/76) against Belgium lodged with the Commission in 1975 and 1976 by two Belgian nationals, Dr. Alfred Albert and Dr. Herman Le Compte.

2. On 28 May 1982, the Chamber constituted to examine the case relinquished jurisdiction in favour of the plenary Court (Rule 48 of the Rules of Court). By a judgment of 10 February 1983, the latter held that there had been a breach of Article 6 para. 1 (art. 6-1) of the Convention in that the Appeals Council of the Ordre des médecins (Medical Association) had not heard the applicants' cases (in French: "causes") publicly and had not pronounced its judgment publicly. It found, on the other hand, that there had been no violation of that Article (art. 6-1) as regards the applicants' other complaints, and no violation of Articles 3 and 11 (art. 3, art. 11) with respect to Dr. Le Compte (Series A no. 58, paras. 21-22 and 31-44 of the reasons and points 1, 3 and 4 of the operative provisions, pp. 13 and 17-22).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as

* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

regards the facts, the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 8 to 17 of the above-mentioned judgment (*ibid.*, pp. 9-11).

3. At the hearings of 27 September 1982, counsel for Dr. Le Compte had asked the Court, in the event of its finding a breach of the Convention, to afford his client just satisfaction under Article 50 (art. 50). He had, however, expressed the view that the question was not yet ready for decision. The Commission's Delegates, for their part, had requested the Court to defer ruling on this point in the absence of any indication from Dr. Albert or his counsel.

In its judgment of 10 February 1983, the Court reserved the question and referred it back to the Chamber under Rule 50 para. 4 of the Rules of Court (*ibid.*, paras. 45-46 of the reasons and point 5 of the operative provisions, p. 22). On the same day, the Chamber invited the Commission to submit, within the coming two months, its written observations, including notification of any friendly settlement at which the Government of the Kingdom of Belgium ("the Government") and the applicants might have arrived (Series A no. 58, p. 29).

4. On 12 April 1983, the President granted an extension of this time-limit until 10 May.

On 19 May, the Secretary to the Commission, acting on the Delegates' instructions, transmitted to the Registrar a copy of a note drafted by Dr. Le Compte's lawyer. The note, which was dated 28 April 1983 and referred to a similar document filed in the case of Le Compte, Van Leuven and De Meyere (judgment of 18 October 1982, Series A no. 54, pp. 5-6, para. 4), contained two series of claims.

(a) First, Dr. Le Compte sought the adoption by the Government of measures providing partial reparation in the form of

(i) "the complete and effective expunction of all the sanctions imposed on him, both disciplinary and penal";

(ii) the withdrawal of a circular issued by the Minister of Justice, prohibiting all dispensing chemists in Belgium from making up prescriptions written by the applicant on and after 26 December 1975.

(b) Second, Dr. Le Compte claimed

(i) "as compensation for the prejudice suffered", an award of 10,000,000 BF per annum since the striking of his name from the register of the Ordre;

(ii) reimbursement of the costs incurred before the Court of Cassation and the Convention organs, to be calculated by applying "the same criteria and scales as those utilised in the European Court's judgment of 18 October 1982, the amounts remaining the same" (Series A no. 54, pp. 9 and 11, paras. 20, 23 and 25).

The Delegates, for their part, confined themselves to referring to their memorial of 30 March 1982 in the case of Le Compte, Van Leuven and De Meyere and to the judgment of 18 October 1982 in that case. They left it to

the Court's discretion to afford just satisfaction, on the basis of those documents.

5. By Order of 20 May 1983, the President directed that the Agent of the Government should have until 20 June 1983 to submit his observations. At the Agent's request, he extended this time-limit until 20 July.

The Government's reply was received at the registry on 29 June.

6. On 1 June 1983, the Deputy Secretary to the Commission informed the Registrar that Dr. Albert was claiming no more than a token award of one Belgian franc for non-pecuniary damage.

AS TO THE LAW

7. Article 50 (art. 50) of the Convention, the applicability of which was not contested in the present case, reads as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

I. DR. ALBERT'S CLAIM

8. With respect to the non-pecuniary damage alleged by Dr. Albert, the Court considers that, by finding a violation of Article 6 para. 1 (art. 6-1), its judgment of 10 February 1983 has already furnished sufficient just satisfaction for the purposes of Article 50 (art. 50) (see, *mutatis mutandis*, the above-mentioned *Le Compte, Van Leuven and De Meyere* judgment, Series A no. 54, p. 8, para. 16).

II. DR. LE COMPTE'S CLAIMS

9. As regards Dr. Le Compte's first series of claims (see paragraph 4 (a) above), the Court would recall that it is not empowered under the Convention to direct the Belgian State - even supposing that the latter could itself comply with such a direction - to annul the disciplinary sanctions imposed on the applicant or the sentences passed on him in criminal proceedings (*ibid.*, p. 7, para. 13).

Furthermore, the disciplinary sanctions, which were the outcome of proceedings found by the Court not to have complied with one of the rules of Article 6 para. 1 (art. 6-1) of the Convention, cannot, on that account alone, be regarded as the consequences of that breach. As for the criminal

sentences, there is no connection whatsoever between them and the violation of the Convention.

Similar remarks apply to the Minister of Justice's circular prohibiting all dispensing chemists from making up Dr. Le Compte's prescriptions (see paragraph 4 (a) (ii) above).

10. As for the applicant's second series of claims (see paragraph 4 (b) above), the Court considers it proper to distinguish here, as in the case of *Le Compte, Van Leuven and De Meyere* (see the above-mentioned judgment, *ibid.*, p. 7, para. 14), between damage caused by a violation of the Convention and the costs incurred by the applicant.

1. Damage

11. The Court concurs with the view of the Commission's Delegates - which was shared by the Government - that there was no causal link between the violation found in the judgment of 10 February 1983 and the damage occasioned by the withdrawal of the right to practise medicine.

In finding that during the disciplinary proceedings the applicant's case had not been heard publicly, as was required by Article 6 para. 1 (art. 6-1) of the Convention, the Court in no way intended to hold that the facts giving rise to the sanction in question had not been established or did not justify the measure so taken. On the contrary, it rejected the applicant's claim that the Appeals Council of the *Ordre des médecins* did not constitute an independent and impartial tribunal established by law. Accordingly, no causal link has been shown to exist between the breach of Article 6 para. 1 (art. 6-1), on the one hand, and the disciplinary sanction and its consequences for the applicant, on the other. Moreover, the applicant has not alleged that he suffered any damage, pecuniary or non-pecuniary, specifically as a result of the violation of Article 6 para. 1 (art. 6-1) found in the present case.

2. Costs

12. Dr. Le Compte sought a sum identical to that awarded in the judgment of 18 October 1982 (see paragraph 4 (b) (ii) above), namely 77,000 BF.

This request, whose merits the Commission's Delegates left it to the Court to assess and which the Government "did not think they should contest", is granted by the Court. It has no cause to doubt that the applicant's claims satisfy the various criteria which emerge from its case-law on the subject, as regards both the purpose for which the costs in question were incurred and the requirements that they be actually incurred, necessarily incurred and reasonable as to quantum (see, as the most recent authority, the *Zimmermann and Steiner* judgment of 13 July 1983, Series A no. 66, p. 14, para. 36).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the Kingdom of Belgium is to pay to Dr. Le Compte seventy-seven thousand Belgian francs (77,000 BF) in respect of costs and expenses;
2. Rejects the remainder of the claims for just satisfaction.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-fourth day of October, one thousand nine hundred and eighty-three.

Gérard WIARDA
President

Marc-André EISSEN
Registrar