



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

COURT (CHAMBER)

**CASE OF BARTHOLD v. GERMANY (ARTICLE 50)**

*(Application no. 8734/79)*

JUDGMENT

STRASBOURG

31 January 1986

**In the Barthold case\*,**

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. Thór VILHJÁLMSSON,  
Mrs. D. BINDSCHEDLER-ROBERT,  
Mr. L.-E. PETTITI,  
Mr. C. RUSSO,  
Mr. R. BERNHARDT,  
Mr. J. GERSING,

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

Having deliberated in private on 24 January 1986,

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 case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 October 1983. The case originated in an application (no. 8734/79) against the Federal Republic of Germany lodged with the Commission on 13 July 1979 by a national of that State, Dr. Sigurd Barthold, a veterinary surgeon.

2. By its judgment of 25 March 1985, the Court found that a court order restraining the applicant from repeating certain statements in the general press gave rise to a violation of Article 10 (art. 10) of the Convention (Series A no. 90, pp. 21-26, paragraphs 43-59 of the reasons and point 1 of the operative provisions, p. 28).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. Accordingly, as regards the facts, the Court will confine itself here to giving pertinent details; for further particulars, reference should be made to paragraphs 10 to 32 of the above-cited judgment (*ibid.*, pp. 8-18).

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\* Note by the Registrar: The case is numbered 10/1983/66/101. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases (and of originating applications to the Commission) referred to the Court since its creation.

3. In his memorial of 21 February 1984, Dr. Barthold had made several comments as to an award of just satisfaction, but at the hearings on 23 October 1984 his lawyer had asked the Court to reserve the question. The respondent Government ("the Government") had stated that they did not intend to make any statement on the subject in the absence of specific claims put forward by the Commission.

In its judgment of 25 March 1985, the Court reserved the whole of the question. It invited the applicant to submit his written observations on the subject within two months and, in particular, to notify it of any agreement which he might reach with the Government (paragraphs 62-63 of the reasoning and point 3 of the operative provisions, *ibid.*, pp. 27-28).

4. After several extensions of time granted by the President of the Chamber, the registry received

- on 25 July 1985, the applicant's claims and then on 28 August and 7 October supplementary observations of his lawyer;
- on 16 December, the Government's comments;
- on 10 January 1986, a letter from the Secretary to the Commission acting on behalf of the Delegate.

5. On 16 December 1985, the applicant's counsel lodged in the registry the text of a "partial settlement" (Teilvergleich) which reads as follows (translation from German):

"Partial Settlement in Barthold v. Federal Republic of Germany (10/1983/66/101) between the Government of the Federal Republic of Germany, represented by its Agent, Mrs. Irene Maier, Ministerialdirigentin, and Dr. Sigurd Barthold, Farnstrasse 41, 2000 Hamburg 63, represented by Dr. Eberhard Eyl, Richard-Wagner Strasse 109, 7640 Kehl

#### Introduction

The European Court of Human Rights found in its judgment of 25 March 1985 (10/1983/66/101) that the rights guaranteed to the applicant by Article 10 (art. 10) of the European Convention on Human Rights had been violated. The Court reserved its decision on the application of Article 50 (art. 50) of the Convention and called on the applicant to inform it of any agreement reached between himself and the Federal Government. Through Dr. Eyl, the applicant has informed the Court of his compensation claims in his memorials of 25 July, 26 August and 1 October 1985.

The Federal Government and the applicant have reached the following partial settlement as regards compensation:

#### Article 1

The Government of the Federal Republic of Germany will ensure that the Free Hanseatic City of Hamburg, represented by its Ministry of Justice, pays Dr. Sigurd Barthold, the applicant, 28,000 DM (twenty-eight thousand Marks) by way of compensation. Payment of this compensation shall not be interpreted as a recognition of a legal obligation. The date for payment is fixed as 31 January 1986.

## Article 2

The present partial settlement satisfies all possible claims submitted in the instant case by Dr. Barthold in Dr. Eyl's memorial of 25 July 1985.

The present settlement does not cover the claims for compensation which the applicant made through Dr. Eyl in his memorials of 26 August and 1 October 1985. The European Court of Human Rights will determine these claims in the light of the parties' submissions.

## Article 3

Dr. Barthold undertakes to inform the Registrar of the European Court of European Rights of this partial agreement without delay and in due course to confirm to him receipt of the payment.

## Article 4

The applicant also declares that - subject to final payment of the sum of 28,000 DM agreed in Article 1 - he will not bring before a German court or an international institution against the Federal Republic of Germany or the Free Hanseatic City of Hamburg any claims the subject of the present proceedings in the European Commission or Court of Human Rights.

## Article 5

The above-written partial settlement shall be deemed retrospectively null if the European Court of Human Rights should refuse to endorse it in whole or in part."

6. Having regard to the respective attitudes of the Government, the applicant and the Commission, the Court decided on 24 January 1986 not to hold a hearing.

## AS TO THE LAW

7. Under Article 50 (art. 50) of the Convention,

"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."

8. Since delivering its judgment of 25 March 1985 on the merits of the case, the Court has been informed of a partial friendly settlement concluded between the Government and the applicant. This settlement concerns the claims for fees and expenses and for loss of earnings which the applicant had put forward in his memorial of 25 July 1985 (see paragraph 5 above)

and which totalled DM 27,491.96, plus interest. Having regard to the terms of the settlement and to the absence of any objection on the part of the Delegate, the Court finds that the agreement is of an "equitable nature", within the meaning of Rule 53 para. 4 of the Rules of Court. Accordingly, the Court takes note of the agreement and considers it appropriate to strike the case out of the list as far as those claims are concerned.

9. The applicant also sought compensation for the non-pecuniary damage which he alleged he had suffered as a result of the proceedings taken against him before the domestic courts, the public discussion of those proceedings, a heart attack brought about by these circumstances as a whole and the manner in which the proceedings were conducted before the Convention institutions. On 28 August, he stated that he left the amount of the compensation to the discretion of the Court, but added that it should not be less than DM 1. On 7 October, he specified that he was nevertheless not seeking purely token satisfaction; he evaluated the damage he had suffered at about DM 50,000.

The Government, whilst contending that these claims should be rejected as ill-founded, first raised the issue of their admissibility: Mr. Barthold had put forward these claims after 25 July 1985, the time-limit set by the President; and, furthermore, he had neither sought an extension of this time-limit nor reserved the right to supplement his pleadings on this point.

The Delegate of the Commission did not express any opinion.

10. The Court does not deem it necessary to rule on the admissibility of the applicant's claims: in any event, there is no evidence that his heart attack was attributable to the breach of Article 10 (art. 10) found by the judgment of 25 March 1985; whilst the proceedings conducted before the national courts and subsequently before the Commission and the Court may have caused Mr. Barthold a certain degree of non-material damage, in the particular circumstances of the case the above-mentioned judgment has already afforded him sufficient just satisfaction under this head for the purposes of Article 50 (art. 50) (see, *mutatis mutandis*, the *Abdulaziz, Cabales and Balkandali* judgment of 28 May 1985, Series A no. 94, p. 44, para. 96).

#### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides to strike the case out of the list as far as the claims filed by the applicant on 25 July 1985 are concerned;
2. Holds that, as regards the remainder of the applicant's claims, the judgment of 25 March 1985 constitutes of itself sufficient just satisfaction for the purposes of Article 50 (art. 50).

Done in English and in French, and notified in writing under Rule 54 § 2, second sub-paragraph, of the Rules of Court, on 31 January 1986.

Gérard WIARDA  
President

Marc-André EISSEN  
Registrar