



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

COURT (CHAMBER)

CASE OF BOUAMAR v. BELGIUM (ARTICLE 50)

(Application no. 9106/80)

JUDGMENT

STRASBOURG

27 June 1988

In the Bouamar 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. R. RYSSDAL, *President*,

Mr. Thór VILHJÁLMSSON,

Mr. B. WALSH,

Sir Vincent EVANS,

Mr. R. MACDONALD,

Mr. C. RUSSO,

Mr. J. DE MEYER,

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

Having deliberated in private on 23 June 1988,

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

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 16 October 1986. It originated in an application (no. 9106/80) against the Kingdom of Belgium lodged with the Commission by Mr. Naïm Bouamar, a Moroccan national, in 1980.

2. In a judgment of 29 February 1988, the Court held that the applicant's successive placements in a remand prison, by way of interim custody measure, amounted to unlawful detention under Article 5 § 1 (art. 5-1) and that he had not been able to take any proceedings satisfying the requirements of Article 5 § 4 (art. 5-4) in order to challenge their lawfulness; on the other hand, the Court concluded that there had been no breach of Article 14 taken together with Article 5 (art. 14+5) and that it was not necessary to examine the case under Article 13 (art. 13) (Series A no. 129, paragraphs 41-67 of the reasons and points 1 to 4 of the operative provisions).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50). As to the facts of the case, reference is made to paragraphs 7-38 of the aforementioned judgment.

* Note by the Registrar: The case is numbered 22/1986/120/169. 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. The applicant sought compensation in the amount of 150,000 Belgian francs (BF) in respect of damage allegedly suffered by him.

At the hearing on 22 September 1987, the main submission of the Belgian Government ("the Government") was that the Act of 20 April 1874 on detention pending trial, as amended by the Act of 13 March 1973, allowed full reparation to be made, if appropriate, for the consequences of the disputed measures; section 27 thereof confers on "any person who has been deprived of his liberty in circumstances incompatible with ... Article 5 (art. 5) of the Convention" "a right to compensation", to be asserted "before the ordinary courts".

4. As the question of the application of Article 50 (art. 50) was therefore not ready for decision, the Court, in its judgment of 29 February 1988, reserved it and invited the Government to submit their written comments within two months of the date thereof and, in particular, to notify the Court of any agreement reached between themselves and the applicant (paragraph 70 of the reasons and point 5 of the operative provisions).

On 30 April 1988, the President extended the above-mentioned time-limit.

5. By a message received on 1 June 1988, the Government informed the Registrar that they agreed to pay to Mr. Naïm Bouamar the sum of 150,000 BF; at the same time they produced copies of two letters which they had sent to the two counsel for the applicant on 30 May 1988. They read as follows:

"I am directed to advise you that the Belgian Government, in the context of the application of Article 50 (art. 50) of the European Convention on Human Rights, agree to pay to the applicant the sum of 150,000 BF.

I would be grateful if you would let me know the number of the account into which this amount is to be paid. I draw your attention to the fact that the administrative formalities leading to the payment of such sums take about three months. ..."

6. On 2 June, one of the counsel for the applicant wrote to the Registrar in the following terms:

"...

I confirm that my client agrees with the payment to him of the sum of 150,000 BF, under Article 50 (art. 50) of the Convention.

..."

7. The Commission's Delegate, when consulted, made it known on 9 June 1988 that he had no objections.

AS TO THE LAW

8. Article 50 (art. 50) of the Convention provides 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."

Since its judgment of 29 February 1988 on the main issues in this case, the Court has been notified of a friendly settlement reached between the Government and the applicant in respect of the latter's claim under Article 50 (art. 50). Having regard to the nature of the terms agreed and to the absence of objections by the Commission's Delegate, the Court finds that the settlement reached is "equitable" within the meaning of Rule 53 § 4 of the Rules of Court. Accordingly, the Court takes formal note of the settlement and concludes that it is appropriate to strike the case out of its list pursuant to that Rule.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of its list.

Done in English and in French, and notified in writing under Rule 54 § 2, second sub-paragraph, of the Rules of Court on 27 June 1988.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar