



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

COURT (CHAMBER)

**CASE OF VAN DROOGENBROECK v. BELGIUM (ARTICLE 50)**

*(Application no. 7906/77)*

JUDGMENT

STRASBOURG

25 April 1983

**In the Van Droogenbroeck 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. J. CREMONA,  
Mr. W. GANSHOF VAN DER MEERSCH,  
Mr. F. GÖLCÜKLÜ,  
Mr. J. PINHEIRO FARINHA,  
Mr. B. WALSH,  
Mr. C. RUSSO,

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

Having deliberated in private on 25 March 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 in December 1980 by the European Commission of Human Rights ("the Commission") and in January 1981 by the Government of the Kingdom of Belgium ("the Government"). The case originated in an application (no. 7906/77) against that State lodged with the Commission on 16 April 1977 by Mr. Valery Van Droogenbroeck, a Belgian national.

2. On 23 November 1981, 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 24 June 1982, the latter held that when Mr. Van Droogenbroeck was detained pursuant to section 25 of the Social Protection Act of 1 July 1964, he had not been able to take any proceedings satisfying the requirements of paragraph 4 of Article 5 (art. 5-4) of the Convention; on the other hand, the Court concluded that there had been no violation of paragraph 1 of Article 5 (art. 5-1) or of Article 4 (art. 4) (Series A no. 50, points 1 to 3 of the operative provisions and paragraphs 33-60 of the reasons, pp. 18-33).

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

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\* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules of Court 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 9 to 29 of the above-mentioned judgment (*ibid.*, pp. 9-17).

3. At the hearings of 20 October 1981, Mr. J. Van Damme who, as the applicant's lawyer and together with Mr. S. Beuselinck, was assisting the Commission's Delegate had requested the Court, should it find a violation, to afford his client just satisfaction under Article 50 (art. 50). He had declared that he would leave the item of "pecuniary and non-pecuniary damage" to the Court's discretion; as regards "fees and expenses", he had listed these shortly afterwards in a note dated 11 November 1981, which the Secretary to the Commission transmitted to the Registrar on 14 December. The Government had not taken a stand on the matter.

In its judgment of 24 June 1982, the Court reserved the whole of this question and referred it back to the Chamber under Rule 50 § 4 of the Rules of Court (*ibid.*, §§ 61-62 of the reasons and point 4 of the operative provisions, pp. 33-34). 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 and the applicant might have arrived (Series A no. 50, p. 35).

4. After two extensions of the above-mentioned time-limit by the President of the Chamber, and in accordance with his Orders and directions, the Registrar received:

- on 25 October 1982, the observations of the Commission's Delegate, accompanied by a memorial dated 19 August in which Mr. Van Droogenbroeck himself set out his claims;
- on 3 December 1982 and 10 February 1983, the comments of the Government.

These documents revealed that no friendly settlement had been arrived at.

5. In addition, the applicant sent directly to the Registrar numerous letters asking to be supplied with a series of documents and items of information. In several of those letters he stated that he had denied Mr. Van Damme and Mr. Beuselinck the right to act for him; in the last, which was dated 16 March 1983, he asked to be allowed time to enable him to reply to certain of those documents and to instruct a new legal adviser.

6. Mr. J. Pinheiro Farinha and Mr. C. Russo, substitute judges, took the place of Mrs. D. Bindschedler-Robert and Mr. D. Evrigenis, whom the President had exempted from sitting on the case (Rule 24 § 4 of the Rules of Court).

7. After consulting, through the Registrar, the Agent of the Government and the Delegate of the Commission, the Chamber decided on 25 March 1983 that there was no call to hold hearings. It also resolved, since the case was ready for decision, not to defer adoption of its judgment.

## AS TO THE LAW

### 8. Article 50 (art. 50) of the Convention 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 present 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."

9. The Court will examine firstly the claims made by the applicant in person and then the list of fees and expenses drawn up by Mr. Van Damme.

### I. CLAIMS MADE BY THE APPLICANT IN PERSON FOR PECUNIARY AND NON-PECUNIARY LOSS

10. In his memorial of 19 August 1982, Mr. Van Droogenbroeck calculated that the number of days allegedly spent by him in conditions that were contrary to Article 5 § 4 (art. 5-4) amounted to 1,899 (18 June - 8 August 1972, 3 October 1972 - 25 July 1973, 16 January - 11 July 1975, 21 January 1976 - 1 June 1977 and 21 December 1977 - 18 March 1980). For each of these days he claimed 6,000 BF as compensation for his pecuniary and non-pecuniary loss that is a total of 11,394,000 BF, together with interest. He also asserted that he was presently suffering from a 20% incapacity for work attributable to "nervous disorder" said to have been caused by the aforesaid "long months of illegal detention"; he sought the appointment of a medical expert to assess the percentage of permanent incapacity and the payment, under this head, of a provisional sum of 100,000 BF, again together with interest.

11. The judgment of 24 June 1982 concerned only the applicant's detention from 21 January 1976 to 1 June 1977 and from 21 December 1977 to 18 March 1980 (*loc. cit.*, p. 19, § 34 in fine). In addition and above all, the judgment concluded that these instances of detention were compatible with paragraph 1 of Article 5 (art. 5-1) since they had occurred "after conviction by a competent court", were "lawful" and had been effected "in accordance with a procedure prescribed by law" (*ibid.*, pp. 18-22, §§ 34-42). The sole violation found by the Court resulted from the absence of entitlement to take proceedings, as required by paragraph 4 (art. 5-4).

Accordingly, for the present purposes no account can be taken of any loss which was not occasioned by this deficiency but was caused by the deprivation of liberty complained of, as such.

12. As regards the sole violation found by the judgment of 24 June 1982, there is nothing to suggest that Mr. Van Droogenbroeck would have been released earlier if he had had the benefit of the guarantees contained in Article 5 § 4 (art. 5-4) (see the *De Wilde, Ooms and Versyp* judgment of 10

March 1972, Series A no. 14, p. 11, § 24). Any allegation of pecuniary loss must therefore be rejected.

13. On the other hand, the Court considers that the applicant must have suffered, by reason of the absence of those guarantees, some non-pecuniary loss for which compensation has not been provided solely by the judgment of 24 June 1982 (see, *mutatis mutandis*, the *X v. the United Kingdom* judgment of 18 October 1982, Series A no. 55, p. 16, §§ 17-19). Having regard to Article 5 § 5 (art. 5-5) of the Convention - a rule of substance to be taken into account in the exercise of the competence conferred by Article 50 (art. 50) (see the *Neumeister* judgment of 7 May 1974, Series A no. 17, p. 13, penultimate sub-paragraph in fine) -, the Court, as was suggested by the Commission's Delegate, awards satisfaction to Mr. Van Droogenbroeck under this head; deciding on an equitable basis, it fixes the amount thereof at 20,000 BF.

## II. LIST OF FEES AND EXPENSES DRAWN UP BY MR. VAN DAMME

14. The fees and expenses listed by Mr. Van Damme in his note of 11 November 1981 (see paragraph 3 above) total 381,750 BF, that is to say 186,750 BF for the two applications, filed in Belgium under section 26 of the Act of 1 July 1964, for the release of Mr. Van Droogenbroeck from the effects of the measure affecting him (see the above-mentioned judgment of 24 June 1982, Series A no. 50, pp. 11, 12-13 and 16, §§ 14, 18 and 23) and 195,000 BF for the proceedings before the Commission and the Court.

15. As the Government pointed out, there is an initial difficulty in the way of these claims, in that they were made not by the applicant - who alone has the status of "injured party" for the purposes of Article 50 (art. 50) (see the *Airey* judgment of 6 February 1981, Series A no. 41, p. 9, § 13) - but by a lawyer whose right to act for him the applicant has denied for more than a year (see paragraph 5 above). Mr. Van Droogenbroeck did not include the claims in question in his memorial of 19 August 1982 and, although he mentioned them in some of his letters to the Registrar, he did not indicate whether he wished to disavow, to withdraw or to endorse them.

Moreover, the information supplied by the Government in February 1983 disclosed that Mr. Van Droogenbroeck did not have to meet, in Belgium, any legal expenses properly so-called on the occasion of the examination of either of his applications for release from the effects of the measure affecting him; these were applications in which he relied on the Convention, including Article 5 § 4 (art. 5-4), and the second of them led to his being set free. The Government were unable to ascertain whether Mr. Deheselle, the lawyer who at the time represented the applicant before the Ghent Court of Appeal, had been appointed "pro Deo" (official appointment as the representative of an indigent person under Article 455 of the Judicial Code);

however, this appears probable and, in any event, there is no evidence to the contrary in the material before the Court.

As regards the Strasbourg proceedings, the applicant had the benefit of free legal aid before the Commission and, after reference of the case to the Court, in his relations with the Commission's Delegate (addendum to the Commission's Rules of Procedure). He has not claimed, or a fortiori established, that he paid or is liable to pay to his lawyers - who received from the Council of Europe a total sum of 5,559 FF - additional fees or expenses for which he might seek reimbursement (see the above-mentioned Airey judgment, Series A no. 41, p. 9, § 13).

16. Accordingly, the claims set out in the note of 11 November 1981 fall to be rejected in their entirety.

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the Kingdom of Belgium is to pay to the applicant twenty thousand Belgian francs (20,000 BF) in respect of non-pecuniary loss;
2. Rejects the remainder of the claim for just satisfaction.

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

Gérard WIARDA  
President

Marc-André EISSEN  
Registrar