



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

COURT (PLENARY)

CASE OF FELDBRUGGE v. THE NETHERLANDS (ARTICLE 50)

(Application no. 8562/79)

JUDGMENT

STRASBOURG

27 July 1987

In the Feldbrugge case*,

The European Court of Human Rights, taking its decision in plenary session pursuant to Rule 50 of the Rules of Court and composed of the following judges:

Mr. R. RYSSDAL, *President*,
Mr. G. WIARDA,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. G. LAGERGREN,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Mr. B. WALSH,
Sir Vincent EVANS,
Mr. C. RUSSO,
Mr. R. BERNHARDT,
Mr. J. GERSING,
Mr. A. SPIELMANN,

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

Having deliberated in private on 22 May and 25 June 1987,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court on 13 October 1984 by the European Commission of Human Rights ("the Commission"). It originated in an application (no. 8562/79) against the Kingdom of the Netherlands which had been lodged with the Commission on 16 February 1979 by a national of that State, Mrs. Geziena Hendrika Maria Feldbrugge.

2. In its judgment of 29 May 1986, the Court held that there had been a violation of Article 6 § 1 (art. 6-1) of the Convention for the Protection of

* Note by the Registrar: The case is numbered 8/1984/80/127. 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.

Human Rights and Fundamental Freedoms ("the Convention") in that the applicant did not receive a fair hearing (Series A no. 99, paragraphs 24-47 of the reasons and points 1-2 of the operative provisions, pp. 11-19).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50) in the present case. As regards the facts, the Court will confine itself here to giving the pertinent details; for further particulars, reference should be made to paragraphs 11-20 of the aforementioned judgment (*ibid.*, pp. 7-10).

3. At the hearing on 29 May 1985, the lawyer for the applicant and counsel for the Government had requested the Court, should it find a violation, to defer its ruling on the possible award of just satisfaction.

As the question of the application of Article 50 (art. 50) was therefore not ready for decision, the Court, in its judgment of 29 May 1986, reserved it and invited the Government and the applicant to submit their written comments within the next two months and, in particular, to notify the Court of any agreement reached between them.

4. At the request of Mrs. Feldbrugge's representative, the President granted an extension of time on 30 July 1986 and again on 27 October.

The applicant's memorial reached the registry on 27 February 1987, and the Government's on 13 April.

On 15 May, the Secretary of the Commission forwarded the Delegate's comments to the Registrar.

5. On 25 June 1987, the Court decided that, in the particular circumstances, there was no need to hold oral hearings.

AS TO THE LAW

6. By 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."

The applicant's claims under this provision are for compensation for damage and reimbursement of costs and expenses.

I. DAMAGE

7. Mrs. Feldbrugge asserted that she had suffered damage under two heads - pecuniary and non-pecuniary - by reason of the violation of Article 6 § 1 (art. 6-1) of the Convention, and she claimed financial compensation.

A. Pecuniary damage

8. The applicant sought payment of the benefits to which she would have been entitled if in 1978 she had been deemed unfit for work within the meaning of the Health Insurance Act (*Ziektewet*) and then - two years later - declared disabled for the purposes of the Industrial Disablement Act (*Arbeidsongeschiktheidswet*). The sum claimed - 86,415.01 guilders at 31 December 1986 - therefore corresponds to sickness benefits and an invalidity pension. It was calculated by the "Common Office" (*Gemeenschappelijk Administratiekantoor*) to which the occupational associations have entrusted the administrative work resulting from the application of social-security law (see the judgment of 29 May 1986, Series A no. 99, p. 9, § 15).

In respect of the period after 31 December 1986, Mrs. Feldbrugge sought recognition of her entitlement, on account of her complete unfitness for work, to an invalidity pension, which in the Netherlands amounts to 70% of former salary.

Her claim was based mainly on a report dated 19 February 1987 written at the applicant's request by a psychological counselling bureau.

9. In the Government's submission, no causal link had been established between the breach of the Convention and the alleged pecuniary damage. In particular, nothing showed that the applicant would have been declared unfit for work and consequently entitled to benefits if the procedure before the President of the Haarlem Appeals Board had been adversarial.

The Commission's Delegate likewise considered that no relationship of cause and effect had been proved.

10. The Court cannot speculate on what the outcome of the impugned proceedings would have been if the Convention had not been violated.

As to the possibility that a loss of opportunities was suffered on account of the breach, it is to be noted that the two reports submitted by Mrs. Feldbrugge throw little light on the matter. They were drawn up more than eight years after the events complained of and were made by people practising in very different fields - psychology and orthopaedics. Above all, they contradict each other: according to the first report, the ordeals undergone by the applicant in her private life impaired her health to such a point that from 1978 she was made permanently incapable of pursuing an occupation; according to the second report, on the other hand, a further opinion taken in 1978 would probably not have led to conclusions any different from those in the opinions given at the time by two permanent medical experts attached to the Haarlem Appeals Board - a gynaecologist and an orthopaedic surgeon (see the judgment of 29 May 1986, Series A no. 99, p. 8, § 12).

The Court also notes that the two experts concerned consulted three colleagues - a gynaecologist and two general practitioners, including Mrs.

Feldbrugge's doctor (*ibid.*) -, but do not seem to have sought the opinion of a psychologist.

In short, the evidence before the Court does not prove that, by reason of the possible consequences of the violation found, Mrs. Feldbrugge suffered a loss of opportunities which must be taken into account.

B. Non-pecuniary damage

11. In respect of non-pecuniary damage, the applicant sought compensation in the amount of 20,000 guilders. She stated that for years she had lived under great psychological strain as a result of losing the benefits paid under the Health Insurance and Disablement Acts. She added that she had been forced to change her own and her family's way of life and to economise after payment of benefits under the welfare-insurance legislation had ceased.

12. The Government considered that there was no reason to award any financial compensation, as the finding of a breach of Article 6 § 1 (art. 6-1) afforded Mrs. Feldbrugge sufficient just satisfaction in itself. The Commission's Delegate agreed.

13. The Court notes the information provided by the Government about the action taken following the judgment of 29 May 1986. Firstly, the presidents of the appeals boards had made known that henceforth individuals would in all cases be able to file objections to decisions by the body of first instance. Secondly, a Bill designed to prevent any further breaches of Article 6 § 1 (art. 6-1) by the appeals boards and the Central Appeals Board was being prepared.

The fact remains, however, that the proceedings before the President of the Haarlem Appeals Board were not adversarial - at least during their final, decisive stage - and therefore did not afford to a sufficient degree one of the main safeguards of judicial procedure (see the judgment of 29 May 1986, Series A no. 99, pp. 17-18, § 44). In this respect, Mrs. Feldbrugge must have sustained non-pecuniary damage, and this is not fully compensated for either by the Strasbourg judgment or by the measures taken or contemplated by the authorities of the respondent State.

Assessing the damage on an equitable basis, as required by Article 50 (art. 50) (see, among other authorities, *mutatis mutandis*, the Colozza judgment of 12 February 1985, Series A no. 89, p. 17, § 38), the Court awards the applicant compensation under this head in the amount of 10,000 guilders.

II. COSTS AND EXPENSES

A. Introduction

14. The applicant sought reimbursement for the costs pertaining to various expert opinions and to her lawyer's assistance.

According to the Court's established case-law, to be entitled to an award of costs and expenses under Article 50 (art. 50) the injured party must have incurred them in order to seek, through the domestic legal system, prevention or rectification of a violation, to have the same established by the Commission and later by the Court or to obtain redress therefor (see, among other authorities, the Minelli judgment of 25 March 1983, Series A no. 62, p. 20, § 45). Furthermore, it has to be shown that the costs and expenses were actually incurred, were necessarily incurred and were also reasonable as to quantum (*ibid.*).

B. Costs incurred in the Netherlands

15. Mrs. Feldbrugge did not claim to have incurred expenses in connection with the proceedings before the Haarlem Appeals Board or before the Central Appeals Board.

She did, on the other hand, seek reimbursement for three consultations, namely those with her doctor (27 guilders), with an orthopaedic surgeon (475 guilders) and with a psychological counselling bureau (1,000 guilders).

16. Neither the Agent of the Government nor the Commission's Delegate made any comments on this claim.

17. The Court notes that the consultations in question were all undertaken with the aim of substantiating the claim in respect of pecuniary damage for the purposes of the proceedings regarding the application of Article 50 (art. 50), and that the Government raised no objection. In those circumstances, the applicant should be reimbursed for the fees paid to doctors and psychologists in the amount of 1,502 guilders.

C. Costs incurred at Strasbourg

18. The applicant acknowledged that she had obtained certain sums in free legal aid before the Commission and subsequently the Court. She stated, however, that if the financial position of a person in receipt of legal aid improved as a result of the Strasbourg proceedings or for any other reasons, that person ceased to qualify for legal aid and therefore had to pay his lawyer's fees. Mrs. Feldbrugge accordingly claimed 48,855.25 guilders.

19. The Government considered the claim to be unfounded. In their view, Mrs. Feldbrugge had not established that she had paid her lawyer any

additional fees or was liable to do so. Furthermore, under the Court's case-law, Mr. Schuitemaker could not rely on Article 50 (art. 50) in order to claim just satisfaction on his own account (see the Luedicke, Belkacem and Koç judgment of 10 March 1980 and the Artico judgment of 13 May 1980, Series A nos. 36 and 37); besides, he had accepted of his own free will the conditions (including the scale of fees) applicable to the legal aid granted to his client.

The Commission's Delegate considered that the applicant was entitled to reimbursement for the costs and expenses incurred before the Commission and the Court but that regard had to be had to the decision of 15 October 1982 whereby the Commission had granted Mrs. Feldbrugge legal aid.

20. Like the Government, the Court notes that Mrs. Feldbrugge has not stated, or a fortiori established, that she has paid or is liable to pay her lawyer - who has received from the Council of Europe 12,627 FF in all - any additional fees or expenses for which she would be entitled to claim reimbursement (see, among other authorities, *mutatis mutandis*, the Van Droogenbroeck judgment of 25 April 1983, Series A no. 63, p. 8, § 15).

For the rest, there is no evidence to support the applicant's contention that she had - in a manner of speaking, retrospectively - lost her right to the free assistance of her lawyer. In particular, there is nothing to suggest that her financial position improved significantly during the Strasbourg proceedings, the Court's award of compensation for non-pecuniary damage (see paragraph 13 above) being irrelevant in this context.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the Kingdom of the Netherlands is to pay the applicant 10,000 (ten thousand) Dutch guilders in respect of non-pecuniary damage and to reimburse her for consultation expenses in the amount of 1,502 (one thousand five hundred and two) guilders;
2. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing on 27 July 1987 pursuant to Rule 54 § 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL
President

For the Registrar
Herbert PETZOLD
Deputy Registrar