



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

COURT (CHAMBER)

**CASE OF LE COMPTE, VAN LEUVEN AND DE MEYERE v.
BELGIUM (ARTICLE 50)**

(Application no. 6878/75; 7238/75)

JUDGMENT

STRASBOURG

18 October 1982

In the case of Le Compte, Van Leuven and De Meyere,

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 VILHJÁLMSÓN,

Mrs. D. BINDSCHEDLER-ROBERT,

Mr. L. LIESCH,

Mr. F. GÖLCÜKLÜ,

Mr. J. PINHEIRO FARINHA,

Mr. A. VANWELKENHUYZEN, *ad hoc judge*,

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

Having deliberated in private on 21 September 1982,

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 of Le Compte, Van Leuven and De Meyere was referred to the Court by the European Commission of Human Rights ("the Commission") and the Government of the Kingdom of Belgium ("the Government") on 14 March and 23 April 1980, respectively. The case originated in two applications (nos. 6878/75 and 7238/75) against that State introduced in 1974 and 1975 by three Belgian nationals, Dr. Herman Le Compte, Dr. Frans Van Leuven and Dr. Marc De Meyere.

2. On 1 October 1980, 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 23 June 1981, the latter held that there had been a breach of Article 6 § 1 (art. 6-1) of the Convention in that the applicants' case had not been heard publicly by a tribunal competent to determine all the aspects of the matter. 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 Article 11 (art. 11) (Series A no. 43, points 2 and 3 of the operative provisions and paragraphs 54-66 of the reasons, pp. 24-28).

* In this volume, the Rules of Court referred to are those in force at the time proceedings were instituted. These Rules have since been replaced by a revised text that came into operation on 1 January 1983, but only in respect of cases brought before the Court after that date.

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 the pertinent details; for further particulars, reference should be made to paragraphs 8 to 34 of the above-mentioned judgment (*ibid.*, pp. 7-17).

3. At the hearings of 25 November 1980, the applicants' lawyer had asked the Court, in the event of its finding a breach of the Convention, to afford his clients just satisfaction under Article 50 (art. 50). He had, however, stated that he was not yet in a position "to establish the exact amount of any damages, in view of the possibility of compensation, if only partial, being granted under Belgian law".

In its judgment of 23 June 1981, the Court reserved the whole of the question of the application of Article 50 (art. 50) and referred it back to the Chamber under Rule 50 § 4 of the Rules of Court. On the same day, the Chamber invited the Commission to submit, within the next two months, its written observations on the said question, including notification of any friendly settlement at which the Government and the applicants might have arrived (*ibid.*, p. 45).

4. The President granted extensions of this time-limit on 25 August and on 16 October.

On 15 December, the Secretary to the Commission informed the Registrar that the Agent of the Government found it impossible to put forward the slightest proposal on the Article 50 (art. 50) issue. On the instructions of the Delegates - who reserved the right to submit observations at a later date -, the Secretary transmitted to the Court a copy of a note drafted by the applicants' lawyer. The note, dated 18 August 1981, may be summarised as follows:

(a) Claims common to the three applicants

The applicants sought an undertaking from the Government to take measures providing partial reparation in the shape of

(i) the complete and effective expunction of "all the disciplinary and penal sanctions" of which they complained;

(ii) the reimbursement of the legal expenses and fines, the former including the following fees of lawyers practising before the Court of Cassation:

- 25,000 BF for Dr. Le Compte;
- 11,000 BF for Dr. Van Leuven;
- 11,000 BF for Dr. De Meyere.

(b) Claims particular to each applicant

Dr. Le Compte sought

(i) as his principal claim, a provisional award of one Belgian franc, pending the outcome of his second application to the Commission (no.

7496/76, - judgment of 23 June 1981, Series A no. 43, p. 10, § 13 in fine), referred to the Court on 12 March 1982 (the case of Albert and Le Compte);

(ii) in the alternative, an award

- of "a fair proportion" of the 732,608 BF he had paid in legal costs;
- 30,000 BF for travel and subsistence expenses and by way of attendance allowances;
- 20,000,000 BF for pecuniary and non-pecuniary loss.

Dr. Van Leuven claimed

- 50,000 BF for legal costs;
- 30,000 BF for travel and subsistence expenses and by way of attendance allowances;
- 15,000,000 BF for pecuniary and non-pecuniary loss.

Dr. De Meyere claimed

- 60,000 BF for loss of income during the fifteen days' suspension of his right to practise medicine;
- 50,000 BF for legal costs;
- such sum as the Court deemed fit for non-pecuniary loss.

5. By Order of 16 December, the President of the Court directed that the Agent of the Government should have until 1 February 1982 to submit observations, a time-limit which the President subsequently extended to 20 February at the Agent's request.

The Government filed their memorial on 10 February and indicated, on 5 March, that they did not insist that hearings be held.

6. On 31 March, the Secretary to the Commission transmitted to the Registrar the Delegates' memorial, adding that they too considered that no purpose would be served by hearings.

7. On the same day, the President directed that the Agent of the Government should have until 30 April to reply to the Delegates' memorial. On 3 May, he extended this time-limit to 31 May.

The Government's reply was received at the registry on 17 May.

8. Mr. F. Gölcüklü, a substitute judge, took the place of Mr. R. Ryssdal, who was prevented from taking part in the consideration of the case (Rules 22 § 1 and 24 § 1 of the Rules of Court).

FINAL SUBMISSIONS MADE TO THE COURT

9. The Government invited the Court to

"hold that the request for the application of Article 50 (art. 50) in the present case is unfounded".

AS TO THE LAW

I. THE APPLICABILITY OF ARTICLE 50 (ART. 50)

10. 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."

11. In their memorial of 10 February 1982, the Government contested the applicability of this Article (art. 50). They argued that the applicants had not established that the conditions laid down thereby were satisfied, and had not shown in what way there was a causal link between their alleged loss and the breach of Article 6 § 1 (art. 6-1) of the Convention, in other words between the adoption as such or the seriousness of the decisions affecting them and the fact that the disciplinary proceedings were not conducted in public.

12. The Court confines itself at this stage to noting that each of the applicants is clearly an "injured party" - a phrase synonymous with the term "victim" as used in Article 25 (art. 25) - in the sense that they were the persons directly affected by the failure to observe the Convention, which the Court found in its judgment of 23 June 1981 (see the Airey judgment of 6 February 1981, Series A no. 41, pp. 7-8, § 9). In addition, the Government have not suggested that Belgian law allows complete reparation, as that concept is understood in the Court's case-law (see, *inter alia*, the De Wilde, Ooms and Versyp judgment of 10 March 1972, Series A no. 14, pp. 9-10, § 20), to be made for the consequences of that failure. Article 50 (art. 50) is therefore applicable.

II. THE APPLICATION OF ARTICLE 50 (ART. 50)

13. As regards the first of the claims common to the applicants (see paragraph 4 (a) (i) 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 three applicants and the sentences passed on Dr. Le Compte in criminal proceedings (see, *mutatis mutandis*, the Marckx judgment of 13 June 1979, Series A no. 31, p. 25, § 58).

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 § 1 (art. 6-1) of the Convention, cannot, on that account alone,

be regarded as the consequence of that breach. As for the criminal sentences, there is no connection whatsoever between them and the violation of the Convention (see paragraph 15 below).

14. As to the other claims under examination, the Court considers it proper to distinguish here, as in the *Neumeister* and the *Sunday Times* cases (judgments of 7 May 1974 and 6 November 1980, Series A no. 17, pp. 20-21, § 43, and no. 38, p. 9, § 16), between damage caused by a violation of the Convention and the costs necessarily incurred by the applicants.

1. Pecuniary and non-pecuniary loss

15. The Court concurs with the Government's view - which was shared by the Commission's Delegates - that there was no causal link between the violation found in the judgment of 23 June 1981 and the pecuniary loss occasioned by the suspension of the right to practise medicine.

In finding that during the disciplinary proceedings the applicants' case had not been heard publicly, as was required by Article 6 § 1 (art. 6-1) of the Convention, the Court in no way intended to hold that the facts giving rise to the sanctions in question had not been established or did not justify the measures so taken. On the contrary, it rejected the applicants' claim that the Appeals Council of the *Ordre des médecins* (Medical Association) 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 § 1 (art. 6-1), on the one hand, and the disciplinary sanctions and their consequences for the applicants, on the other.

16. As for the non-pecuniary loss alleged by each of the applicants, the Court considers that, by finding a violation of Article 6 § 1 (art. 6-1), its judgment of 23 June 1981 has already furnished sufficient just satisfaction for the purposes of Article 50 (art. 50) (see, *mutatis mutandis*, the *Engel and others* judgment of 23 November 1976, Series A no. 22, p. 69, § 11, and the above-mentioned *Marckx* judgment, Series A no. 31, p. 29, § 68).

2. Costs

17. Although the applicants are no longer entitled to claim just satisfaction for the loss resulting directly from the breach of one of the requirements of Article 6 § 1 (art. 6-1), it does not follow that they cannot seek reimbursement of their costs. In this respect, the finding of such a breach, of itself, in no way provides just satisfaction (see, *inter alia*, the above-mentioned *Sunday Times* judgment, Series A no. 38, pp. 9-10, § 16).

However, costs and expenses will not be awarded under Article 50 (art. 50) unless they were incurred by the applicants in order to try to prevent the violation found by the Court or to obtain redress therefore (see the above-mentioned *Neumeister* judgment, Series A no. 17, pp. 20-21, § 43). Furthermore, it has to be established that the costs and expenses were

actually incurred, were necessarily incurred and were also reasonable as to quantum (see, *inter alia*, the above-mentioned Sunday Times judgment, Series A no. 38, pp. 13-18, §§ 23-42). The costs incurred in Belgium as well as in Strasbourg have to be scrutinised for compliance with these criteria.

(a) Belgian costs

18. As regards the first item, Dr. Le Compte, Dr. Van Leuven and Dr. De Meyere have claimed reimbursement not only of their legal costs and expenses but also of fines of an unspecified amount.

The fines - which were apparently imposed only on Dr. Le Compte (see the judgment of 23 June 1981, Series A no. 43, pp. 8 and 10, §§ 12 and 13) - have to be excluded at the outset. They were no more than a consequence of Dr. Le Compte's failure to comply with the order suspending his right to practise - a measure whose justification is not called into question by the fact that the disciplinary proceedings were not conducted in public (see paragraph 15 above) - and were imposed at the conclusion of criminal proceedings whose conformity with the requirements of the Convention was not contested.

(i) Costs referable to the proceedings before the Provincial Councils and Appeals Council of the Ordre des médecins

19. The object of the proceedings before the Provincial Councils and the Appeals Council of the Ordre des médecins was neither the prevention of the violation subsequently found by the Court nor the obtaining of redress therefore. Accordingly, the legal costs incurred during the course of those proceedings do not fall to be taken into account for the purposes of an award of just satisfaction under Article 50 (art. 50).

(ii) Costs referable to the proceedings before the Court of Cassation

20. On the other hand, the applicants are entitled to reimbursement of the fees paid to lawyers practising before the Court of Cassation, namely 25,000 BF for Dr. Le Compte, 11,000 BF for Dr. Van Leuven and 11,000 BF for Dr. De Meyere (see paragraph 4 (a)(ii) above). For their applications to the Commission to be valid, they had to exhaust domestic remedies and, hence, to appeal on a point of law to the Court of Cassation and to instruct such lawyers, recourse to their services being obligatory in disciplinary matters. Furthermore, the applicants pleaded the Convention in their respective appeals. Besides, the fees in question were reasonable as to quantum, this particular point not, in fact, having been contested by the Government.

To the above should be added legal expenses (fee for service of notice of the appeal, registration fee, fee for copying the judgment) which may be evaluated at 6,000 BF for each applicant.

(b) Strasbourg costs

21. Dr. Le Compte, Dr. Van Leuven and Dr. De Meyere did not have the benefit of free legal aid before the Commission or, after reference of the case to the Court, in their relations with the Commission's Delegates (cf. the Luedicke, Belkacem and Koç judgment of 10 March 1980, Series A no. 36, p. 8, § 15, the Artico judgment of 13 May 1980, Series A no. 37, p. 19, § 40, and the above-mentioned Sunday Times judgment, Series A no. 38, p. 13, § 24). They have claimed reimbursement of their legal costs and their travel and subsistence expenses (see paragraph 4 (b) above).

The Government did not dispute that this expenditure was actually incurred. They confined themselves to arguing, firstly, that the items in question had no connection with the one and only violation of Article 6 § 1 (art. 6-1) found by the Court and, secondly, that for the applicants the positive results of the judgment of 23 June 1981 were very limited when compared with the totality of their claims. At the very least, the Government submitted, there should be no reimbursement of moneys expended by the applicants in advancing complaints held in that judgment to be unfounded.

The proceedings before the Strasbourg institutions resulted in a finding by the Court of a violation of Article 6 (art. 6). It cannot therefore be denied that there was a connection between the costs incurred during those proceedings and the finding in question. However, the applicants' claims were accepted only in part. The Court did not simply reject a number of the arguments put forward; it was also led to find that most of the complaints that had been made were unfounded (cf. the above-mentioned Sunday Times judgment, Series A no. 38, pp. 14-15, §§ 27-28). The Court, deciding on an equitable basis as is provided for by Article 50 (art. 50), accordingly considers that the applicants' legal costs before the Convention institutions should be reimbursed to them only to the extent hereinafter specified.

(i) Legal costs

22. In respect of legal costs, Dr. Leuven and Dr. De Meyere claimed 50,000 BF each and Dr. Le Compte - should the Court consider the matter to be ready for decision - "a fair proportion" of the sum of 732,608 BF (see paragraph 4 (b) above).

In their memorial, the Commission's Delegates left to the Court's discretion the amount to be awarded; however, they suggested that it should be higher than the figure to which the applicants would have been entitled were one to follow the scale adopted by the Commission for the purposes of free legal aid.

23. The Court recognises that no more than reduced fees can be paid under that scale.

On the other hand, the amounts claimed include fees and legal expenses referable to the disciplinary proceedings before the Provincial Councils and the Appeals Council of the Ordre des médecins (see paragraph 19 above).

The sum of 732,608 BF mentioned by Dr. Le Compte (see paragraph 22 above) also concerns criminal proceedings before Belgian courts and even proceedings relating not to the present case but rather to application no. 7496/76 of 6 May 1976, which will be the subject of a future ruling by the Court (see paragraph 4 (b) (i) above). As for the sum of 50,000 BF referred to by Dr. Van Leuven and Dr. De Meyere, it covers the whole of their expenses both before the disciplinary organs and before the Commission and the Court.

The applicants have furnished no evidence to show that there was any difference between the amount of legal costs which each of them incurred in Strasbourg. Accordingly, the same figure should be adopted in each case; making an assessment on an equitable basis as is required by Article 50 (art. 50), the Court fixes the figure at 25,000 BF.

(ii) Travel and subsistence expenses

24. Dr. Le Compte and Dr. Van Leuven - but not Dr. De Meyere - travelled to Strasbourg to attend the hearings before the Commission (12 December 1978) and the Court (25 November 1980). They have both claimed an indemnity of 30,000 BF to cover the expenses entailed by their journeys and to compensate for the loss of earning-power occasioned by four days' cessation of their professional activities (see paragraph 4 (b) above).

25. In a case which was a sequel to disciplinary proceedings - proceedings which of necessity bore on facts and interests of a pre-eminently personal nature -, the presence of the applicants was capable of being of value, before both the Court and the Commission (see the König judgment of 10 March 1980, Series A no. 36, p. 19, § 26, and the above-mentioned Sunday Times judgment, Series A no. 38, pp. 15-16, §§ 31 and 33). Making an assessment, in this context also, on an equitable basis, the Court considers that Dr. Le Compte's and Dr. Van Leuven's actual travel and subsistence expenses should be evaluated at 21,000 BF in each case. It does not see cause to add any sum in respect of loss of earning-power.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the Kingdom of Belgium is to pay to the applicants, in respect of their costs and expenses, the following sums:
 - seventy-seven thousand Belgian francs (77,000 BF) to Dr. Le Compte;
 - sixty-three thousand Belgian francs (63,000 BF) to Dr. Van Leuven;
 - forty-two thousand Belgian francs (42,000 BF) to Dr. De Meyere;
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 eighteenth day of October, one thousand nine hundred and eighty-two.

For the President
Denise BINDSCHEDLER-ROBERT
Judge

Marc-André EISSEN
Registrar