



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

COURT (CHAMBER)

**CASE OF LUEDICKE, BELKACEM AND KOÇ v. GERMANY
(ARTICLE 50)**

(Application no. 6210/73; 6877/75; 7132/75)

JUDGMENT

STRASBOURG

10 March 1980

In the case of Luedicke, Belkacem and Koç,

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. H. MOSLER,
 Mrs. D. BINDSCHEDLER-ROBERT,
 Mr. W. GANSHOF VAN DER MEERSCH,
 replacing the late Mrs. H. PEDERSEN,
 Mr. D. EVRIGENIS,
 Mr. P.-H. TEITGEN,
 Mr. G. LAGERGREN,

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

Having deliberated in private on 23 October 1979 and on 26 February 1980,

Delivers the following judgment, which was adopted on the last-mentioned date, on the application of Article 50 (art. 50) of the Convention in the present case:

PROCEDURE AND FACTS

1. The case of Luedicke, Belkacem and Koç was referred to the Court in October 1977, firstly by the Government of the Federal Republic of Germany ("the Government") and then by the European Commission of Human Rights ("the Commission"). The case originated in three applications against the Federal Republic of Germany lodged with the Commission by Mr. Gerhard W. Luedicke, a United Kingdom citizen, Mr. Mohammed Belkacem, an Algerian citizen, and Mr. Arif Koç, a Turkish citizen. The Commission ordered the joinder of the applications on 4 October 1976. The applicants claimed to be victims of a violation of Article 6 par. 3 (e) (art. 6-3-e) of the Convention in that they had been ordered by the German courts to bear interpretation costs. Mr. Luedicke and Mr. Belkacem also alleged discrimination by reason of the fact that a foreigner not speaking German was in a less favourable position than a German person.

2. By judgment of 28 November 1978, the Court found that there had been breach of Article 6 par. 3 (e) (art. 6-3-e) and held that there was no necessity to examine the case under Article 14 (art. 14) (points 2 and 3 of

the operative provisions and paragraphs 48-50 and 53 of the reasons. Series A no. 29, pp. 23 and 20-21).

The Court also decided that the Federal Republic of Germany must reimburse Mr. Luedicke for the interpretation costs that he had paid. It reserved the question of the application of Article 50 (art. 50) as regards the applicants' other claims and invited those appearing before the Court to notify it, within three months from the delivery of the judgment, of any settlement at which the Government and the applicants might arrive in connection therewith; the further procedure on this question was reserved (point 5 of the operative provisions and paragraph 57 of the reasons, *ibid.*, p. 23).

3. On 23 February 1979, the Agent of the Government furnished a report on her negotiations with the representatives of the three applicants and requested a three months' extension of the time-limit; this was granted by the President on 1 March.

4. As she had not received in due time the written proof she considered necessary, the Agent of the Government submitted on 5 June an application for a further extension until 20 June. The President consented thereto on 8 June.

5. Supplementary observations by the Government were filed at the registry on 20 June. They may be summarised as follows.

In the case of Mr. Luedicke, the Legal Aid Section of the British Army of the Rhine had confirmed, in a letter of 26 March 1979 to the Minister of Justice for the Land of North Rhine-Westphalia that, with the recovery of the amount of the costs, the matter was regarded as settled.

Concerning Mr. Belkacem, the Government assumed from the failure of his lawyer, Mr. Moser, to reply to letters sent by the Agent on 27 February and 22 March that no reimbursement of costs was claimed. They further noted that the applicant had had the benefit of legal aid before the Commission and subsequently before the Court and that his lawyer had received under this head the sum of FF 4,520.

The Government accordingly invited the Court, as regards Mr. Luedicke and Mr. Belkacem, to strike the case out of its list under Rule 47 par. 2 of the Rules of Court.

As for Mr. Koç, the only outstanding matters were the fees which his lawyer, Mr. Pawlik, might charge him under the terms of their contract, these being fees whose reimbursement he could then claim under Article 50 (art. 50). In this connection, Mr. Pawlik put forward the figures of DM 4,833.60 for the proceedings before the Convention institutions and DM 356.35 for the constitutional complaint of 1 July 1975 (Series A no. 29, pp. 11-12, par. 26); Mr. Koç had made an advance payment of DM 670 in respect of these fees. The Government found the first figure excessive: they maintained that account should be taken solely of the costs calculated in accordance with the Federal Scale of Lawyers' Fees

(Bundesgebührenordnung für Rechtsanwälte, hereinafter referred to as BRAGO), which they assessed at DM 1,717.20. The fees concerning the proceedings before the Federal Constitutional Court were evaluated by the Government - "after a slight correction" - at DM 347.10, the following observation being added:

"The Federal Government and the Minister of Justice for the Land of North Rhine-Westphalia, who is competent in the matter, are prepared to recognise this amount as a necessary personal expense of the applicant and to reimburse it to him as compensation under Article 50 (art. 50) of the Convention."

However, the Government pointed out that they did not know the applicant's address and entertained a few doubts about the validity of the power of attorney submitted by Mr. Pawlik. They had therefore offered him payment into his hands of the two amounts mentioned above subject to the following conditions:

- Mr. Pawlik would declare in writing that he personally assumed liability towards his client for any claims concerning the application and the earlier proceedings and that he released both the Federal Republic of Germany and the Land of North Rhine-Westphalia from any such liability;
- Mr. Pawlik would further undertake that, should he trace or be contracted by the applicant, he would refund to the latter, without raising the defence of statutory limitation, the advance payment made in respect of his fees.

6. On 11 July 1979, the Government informed the Court that Mr. Pawlik had accepted their offer; they accordingly requested the Court to strike the case out of its list as regards Mr. Koç.

7. On 13 September, the President of the Chamber invited the Commission's Delegates to submit not later than 10 October their observations - of which notice had been given in a letter of 27 July - on the possible striking of the case out of the list.

8. In a memorandum filed at the registry on 10 October, the Delegates indicated that they would agree to such a course as far as Mr. Luedicke and Mr. Koç were concerned.

As for Mr. Belkacem, the Delegates stated that, by letter of 29 September, his lawyer had claimed, in respect of the proceedings before the Convention institutions, additional fees of DM 2,171.33: the lawyer considered that "the time during which he had been engaged on the case, the work done and the importance of the matter" justified the award of the full costs provided for in both sub-paragraph 1 and sub-paragraph 2 of Article 118 par. 1 of BRAGO. The Delegates left to the Court's discretion the assessment of the amount to be paid to the applicant.

9. On 12 October, the President of the Chamber invited the Agent of the Government to file not later than 5 November her observations on the Delegates' memorandum.

10. In a letter dated 16 October, the Agent of the Government stated that she had rejected the claims made by Mr. Belkacem's lawyer but had offered to pay to him the difference between the FF 922 allowed by the Council of Europe for subsistence expenses and the DM 590 claimed by Mr. Moser, together with value added tax of 6 per cent. She added that, having met with a refusal, she would make no further attempts to arrive at a friendly settlement and requested the Court to rule on the matter by determining the amount and the basis of computation of the lawyer's fees.

11. On 17 October, the Secretary to the Commission transmitted to the Court a copy of a letter dated 2 October from the headquarters of the United Kingdom Land Forces confirming that the Luedicke case was regarded as settled.

12. In view of the concurring statements of the Agent of the Government and of the Delegates of the Commission (see paragraphs 5, 6, 8 and 10 above), there is no call to continue the written procedure or to hold hearings.

AS TO THE LAW

I. THE REQUEST FOR STRIKING OUT OF THE LIST AS REGARDS MR. LUEDICKE AND MR. KOÇ

13. The Court observes that since its judgment of 28 November 1978 it has been informed of agreements reached between the Federal Republic of Germany and the respective representatives of Mr. Luedicke and Mr. Koç (see paragraphs 5, 6 and 11 above). As required by Rule 50 par. 5 of its Rules, the Court has verified the "equitable nature" of these agreements and, having regard to the opinion expressed by the Commission's Delegates (see paragraph 8 above), it entertains no doubts on the matter. Accordingly, striking the case out of the list proves to be justified as regards these two applicants (see, *mutatis mutandis*, Rule 47 par. 2 of the Rules of Court).

II. THE REQUEST MADE IN MR. BELKACEM'S NAME FOR REIMBURSEMENT OF COSTS

14. No issue arises concerning the interpretation costs which Mr. Belkacem was ordered to pay or the costs incurred in the exercise of the domestic remedies.

The relevant Berlin authorities had suspended recovery of the interpretation costs pending clarification by the Court of the meaning of Article 6 par. 3 (e) (art. 6-3-e) of the Convention (Series A no. 29, p. 10, par. 23). On 28 February 1979, the Government informed the Court that the

cancellation of this claim for costs had been directed on 15 January by the President of the Berlin-Tiergarten District Court (Amtsgericht) who had advised Mr. Moser accordingly.

Reimbursement of the costs referable to the domestic remedies has not been claimed by the applicant.

15. What remain are the additional fees of DM 2,171.33 claimed by Mr. Belkacem's lawyer.

Mr. Belkacem had the benefit of free legal aid before the Commission and then, after reference of the case to the Court, in his relations with the Delegates (addendum to the Commission's Rules of Procedure) and he does not maintain that he paid or is liable to pay to his lawyer additional fees for which he might seek reimbursement.

It follows that, in this respect, Mr. Belkacem has borne no costs himself and has suffered no loss capable of being compensated under Article 50 (art. 50) of the Convention.

In the circumstances it is Mr. Belkacem alone who has the status of "injured party" for the purposes of Article 50 (art. 50). Mr. Moser cannot rely on Article 50 (art. 50) to seek just satisfaction on his own account; besides, he accepted of his own free will the conditions, including the scale of fees, applicable to the legal aid granted to his client.

Should any point be taken as to the dangers accompanying too modest a remuneration of lawyers, in particular the risk that they may hesitate to act for certain applicants, the Court would observe that this is a problem lying within the competence of the organs of the Council of Europe. Under Article 58 (art. 58) of the Convention, it is for the Council to provide the Commission with funds to cover its expenses which should include such amounts as may be necessary for the payment of adequate fees to lawyers acting under the legal aid scheme.

16. Accordingly, the request made in Mr. Belkacem's name is not well-founded.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides to strike the case out of its list as regards the applicants Luedicke and Koç;
2. Rejects the request made in the name of the applicant Belkacem.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this tenth day of March, one thousand nine hundred and eighty.

For the President
Léon LIESCH
Judge

Marc-André EISSEN
Registrar