



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

COURT (PLENARY)

**CASES DE WILDE, OOMS AND VERSYP ("VAGRANCY")  
v. BELGIUM**

*(Application no. 2832/66; 2835/66; 2899/66)*

JUDGMENT

STRASBOURG

18 November 1970

**In the De Wilde, Ooms and Versyp cases,**

The European Court of Human Rights, taking its decision in plenary session in accordance with Rule 48 of the Rules of Court, and composed of the following Judges:

Sir Humphrey WALDOCK, *President*  
(Rules 21, paragraph 7, and 48, paragraph 3),  
MM. H. ROLIN,  
R. CASSIN,  
Å.E.V. HOLMBÄCK,  
A. VERDROSS,  
G. MARIDAKIS,  
E. RODENBOURG,  
A.N.C. ROSS,  
T. WOLD,  
G. BALLADORE PALLIERI,  
H. MOSLER,  
M. ZEKIA,  
A. FAVRE,  
J. CREMONA,  
S. BILGE,  
G. WIARDA,  
S. SIGURJÓNSSON,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. J.F. SMYTH, Deputy Registrar,

Decides as follows on the question of procedure raised at the hearing of the afternoon of 17th November 1970:

Whereas, at the hearing on 17th November 1970, Mr. Sørensen, Principal Delegate of the Commission, announced to the Court the intention of the Delegates to avail themselves of the assistance of Me Magnée under Rule 29, paragraph 1, of the Rules of Court; whereas he indicated that Me Magnée, of the Brussels Bar, would furnish to the Court, under the control and responsibility of the Delegates, fuller explanations on certain points relating to the issues arising under Article 7 and Article 6, paragraph (3) (art. 7, art. 6-3), of the Convention; and whereas he informed the Court that on these matters the Delegates were insufficiently informed;

Whereas Mr. De Meyer, Agent for the Belgian Government, objected to the course of action intended by the Commission on the grounds that:

(a) the Commission, in his opinion, must be taken to be sufficiently informed on the points in question, seeing that in July 1969, it had drawn up its final report stating its findings of the facts in the present cases;

(b) since Me Magnée had been counsel for the three individual claimants before the Commission, the application of Rule 29, paragraph 1, intended by the Delegates would defeat the provisions of Article 44 (art. 44) and the

whole spirit of the Convention under which, according to Mr. De Meyer, individuals may not plead before the Court;

Whereas under Article 44 (art. 44) of the Convention "only High Contracting Parties and the Commission shall have the right to bring a case before the Court" ("Seules les Hautes Parties Contractantes et la Commission ont qualité pour se présenter devant la Cour"); whereas it follows that "Contracting States and the Commission are alone empowered to bring a case before the Court or to appear in Court" - comparaître juridiquement - (Lawless Judgment of 14th November 1960, p. 15);

Whereas Rule 29, paragraph 1, of the Rules of Court provides that the Delegates of the Commission "may, if they so desire, have the assistance of any person of their choice"; whereas, furthermore, any person appointed by the Delegates in accordance with Rule 29, paragraph 1, may be called upon to speak in the hearings before the Court (Rule 37 of the Rules of Court);

Whereas Rule 29, paragraph 1, recognises for the Delegates a right which it is for them to exercise "if they so desire", that is to say, by appreciating at each stage of the proceedings before the Court the usefulness of availing themselves of that right;

Whereas Rule 29, paragraph 1, does not place any limit on the freedom of the Delegates in their choice of persons to assist them; and whereas, therefore, it does not preclude them, inter alia, from having the assistance of the lawyer or former lawyer of an individual applicant;

Whereas the Court has previously held in its Lawless Judgment of 7th April 1961, page 24, that nothing precludes the Commission from asking "the applicant to nominate a person to be available to the Commission's Delegates"; and whereas in the same judgment the Court further held that "it did not follow that the person in question has any locus standi in judicio" (ibidem);

Whereas, by the very terms of Rule 29, paragraph 1, the role of such a person consists of assisting the Delegates of the Commission whose main function is to assist the Court (Lawless Judgment of 14th November 1960, page 11);

Whereas, in consequence, the person assisting the Delegates must restrict himself in his statements to presenting to the Court explanations on points indicated to him by the Delegates, and this always subject to the control and responsibility of the Delegates;

Whereas it is the duty of the Delegates to ensure the observance of this fundamental requirement by any person assisting them, in order to avoid any situation inconsistent with Article 44 (art. 44) of the Convention;

Whereas, in any event, it is for the Court, whose President directs the hearings, "to ensure that the Convention is respected and, if need be, to point to any irregularities" (see mutatis mutandis Lawless Judgment of 14th November 1960, page 12);

## FOR THESE REASONS,

Takes note, by sixteen votes against one, of the intention of the Delegates of the Commission to entrust Me Magnée with the task of assisting them at the hearing of 18th November 1970;

Decides to proceed with the examination of the merits of the cases.

Done in English and French, the English text being authentic, at the Human Rights Building, Strasbourg, this eighteenth day of November one thousand nine hundred and seventy.

Sir Humphrey WALDOCK  
President

M.-A. EISSEN  
Registrar

In accordance with Article 51 (2) (art. 51-2) of the Convention and Rule 50 (2) of the Rules of Court the separate concurring opinion of Judge Rolin and the dissenting opinion of Judge Favre are annexed to the present judgment.

H. W.  
M.-A. E.

## SEPARATE CONCURRING OPINION OF JUDGE ROLIN

*(Translation)*

I realise that, in view of its Rules 29 and 37, the Court cannot object to the Commission having the assistance of any person of its choice, in this case the Belgian lawyer Me Magnée, or to his addressing the Court. But I still think it would be unacceptable for Me Magnée, who appeared before the Commission as counsel for the applicants, to address the Court "in the name of the Commission" as Mr. Sørensen, Delegate, appeared to suggest at the hearing on 17th November.

Moreover, I think that to hear counsel for the applicants can only be justified if he confines himself to those new points raised in the written and oral proceedings before the Court on which the Commission considers it was not sufficiently informed previously and with which it therefore could not deal in its report.

DE WILDE, OOMS AND VERSYP ("VAGRANCY")  
v. BELGIUM JUDGMENT  
DISSENTING OPINION OF JUDGE FAVRE  
DISSENTING OPINION OF JUDGE FAVRE

*(Translation)*

The Commission may have the assistance, according to Rule 29 of the Rules of Court, of any person of its choice. It may therefore have the assistance of the applicant's lawyer, which is usually the case.

But Rule 29 needs to be interpreted in the light of Article 44 (art. 44) of the Convention, which provides that only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

The Commission's task is to defend the public interest. It cannot be represented, even partially, by the applicant's lawyer, who acts on the applicant's behalf.

The applicant's lawyer may not speak at the Court's hearing on behalf of the Commission or in order to submit an opinion different from the Commission's.

He could be heard by the Court only under Rule 38 of the Rules of Court, which enables the Court to hear any person whose statements seem likely to assist it in the carrying out of its task. In such case, it is the Court that would say on what facts it desires explanations.

The Court's judgment does not seem compatible with Article 44 (art. 44) of the Convention. It departs from an established practice. I cannot approve it.