



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

COURT (PLENARY)

CASE OF KOSTOVSKI v. THE NETHERLANDS (ARTICLE 50)

(Application no. 11454/85)

JUDGMENT

STRASBOURG

29 March 1990

In the Kostovski case*,

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

Mr R. RYSSDAL, *President*,
Mr J. CREMONA,
Mr Thór VILHJÁLMSSON,
Mrs D. BINDSCHEDLER-ROBERT,
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 A. SPIELMANN,
Mr J. DE MEYER,
Mr S.K. MARTENS,

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

Having deliberated in private on 26 March 1990,

Delivers the following judgment, which was adopted on that date:

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Netherlands Government ("the Government") on 18 July and 15 September 1988 respectively. It originated in an application (no. 11454/85) against the Kingdom of the Netherlands lodged with the Commission by Mr Slobodan Kostovski, a Yugoslav citizen, in 1985.

2. By judgment of 20 November 1989 ("the principal judgment"), the Court held that the applicant's conviction for armed robbery, which had been based to a decisive extent on the reports of statements by two anonymous witnesses, had given rise to a violation of paragraph 3 (d), taken

* Note by the Registrar: The case is numbered 10/1988/154/208. 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.

together with paragraph 1, of Article 6 (art. 6-3-d, art. 6-1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") (Series A no. 166, paragraphs 37-45 of the reasons and point 1 of the operative provisions, pp. 19-21 and 23).

The only outstanding matter to be settled is the question of the application of Article 50 (art. 50). As to the facts of the case, reference is made to paragraphs 9 to 34 of the principal judgment (*ibid.*, pp. 8-18).

3. On his submission that the Court's finding of a violation would mean that he should have been acquitted for lack of evidence, the applicant claimed compensation of 150,000 Dutch guilders for the non-pecuniary damage represented by his unjustified detention in the Netherlands following his conviction.

In the principal judgment the Court stated that it was unable to accept the Government's plea as to the absence of a sufficient causal link between the alleged damage and the violation found. However, it considered that the question of the application of Article 50 (art. 50) was not ready for decision, since it had been provided by those appearing before it with no information as to whether and, if so, to what extent Netherlands law allowed reparation to be made for the consequences of that violation. It therefore reserved the whole of the said question and invited the Government and the applicant to submit, within the next three months, their written comments thereon and, in particular, to notify it of any agreement reached between them (paragraph 48 of the reasons and point 2 of the operative provisions, pp. 22 and 23).

4. On 19 February 1990 the Registrar received from the Agent of the Government a letter dated 14 February which read:

"With reference to the judgment of the Court in the Kostovski case, the Government of the Kingdom of the Netherlands submits the following observations on the question of the application of Article 50 (art. 50) of the Convention in this case.

The Government is prepared to pay the sum of FL 150,000 (hundred and fifty thousand Dutch guilders), in conformity with the claim of Mr Kostovski as mentioned in paragraph 47 of the said judgment, as just satisfaction for the non-pecuniary damage represented by his detention in the Netherlands."

A copy of this letter was sent to the applicant's lawyer, from whom the Registrar received on 16 March a reply dated 13 March in the following terms:

"With reference to your letter of 22 February 1990 I want to let you know on behalf of Mr Kostovski, that he is willing to accept the offer made by the Dutch Government to pay the sum of FL 150,000 as satisfaction for the non-pecuniary damage represented by his detention in the Netherlands."

On 23 and 26 March respectively, the applicant's lawyer and the Agent of the Government confirmed to the Registrar that these two letters were to

be treated as setting out the terms of a friendly settlement of the applicant's claims under Article 50 (art. 50).

5. The Delegate of the Commission was consulted and indicated on 26 March 1990 that he had no objections.

6. On the same day the Court decided to dispense with a hearing in this case.

AS TO THE LAW

7. Article 50 (art. 50) of the Convention provides 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 ... 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."

Since delivering the principal judgment, the Court has been notified of a friendly settlement reached between the Government and the applicant in respect of the latter's claim under Article 50 (art. 50) (see paragraph 4 above). Having regard to the nature of the terms agreed and to the absence of objections by the Commission's Delegate, the Court finds that the settlement reached is "equitable" within the meaning of Rule 53 § 4 of the Rules of Court. Accordingly, the Court takes formal note of the settlement and concludes that it is appropriate to strike the case out of its list pursuant to that Rule.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of its list.

Done in English and in French, and notified in writing under Rule 54 § 2, second sub-paragraph, of the Rules of Court on 29 March 1990.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar