



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

COURT (CHAMBER)

CASE OF VIDAL v. BELGIUM (ARTICLE 50)

(Application no. 12351/86)

JUDGMENT

STRASBOURG

28 October 1992

In the case of Vidal v. Belgium*,

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 R. RYSSDAL, *President*,

Mr R. BERNHARDT,

Mr Thór VILHJÁLMSSON,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr L.-E. PETTITI,

Mr C. RUSSO,

Mr J. DE MEYER,

Mrs E. PALM, ,

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

Having deliberated in private on 27 October 1992,

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") on 8 March 1991, and by the Government of the Kingdom of Belgium ("the Government") on 6 May 1991. It originated in an application (no. 12351/86) against Belgium lodged with the Commission by a Belgian national, Mr Frans Vidal, on 7 July 1986.

2. For the facts of the case reference should be made to the principal judgment of 22 April 1992 (Series A no. 235-B, pp. 21-30, paras. 7-27). In that judgment the Court held there had been a breach of Article 6 (art. 6) of the Convention, as the Brussels Court of Appeal, ruling on 11 December 1985 after the case had been remitted to it by the Court of Cassation, had without giving reasons and merely implicitly refused an application by Mr Vidal's defence counsel that four witnesses should be called; basing its decision solely on the case-file and the defendant's oral statements, it had

* The case is numbered 14/1991/266/337. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of protocol No. 8 (P8-11), which came into force on 1 January 1990.

increased the sentence passed by the Liège Court of Appeal on 26 October 1984, after the applicant's acquittal for want of evidence by the Namur Criminal Court on 9 August 1984; and the Court of Cassation had on 12 February 1986 dismissed Mr Vidal's second appeal (*ibid.*, pp. 31-34, paras. 30-35 of the judgment and point 1 of the operative provisions).

3. Mr Vidal claimed, as "just satisfaction", compensation for damage and reimbursement of costs and expenses, but requested the Court to hold that the question of the application of Article 50 (art. 50) was not ready for decision, in view of the possibilities which Belgian internal law might offer for remedying the consequences of the violation and of the prospect of a friendly settlement.

The Court accordingly reserved the said question. It invited the Government and the applicant to submit to it in writing within three months their observations on the point and in particular to communicate to it any agreement which they might reach (*ibid.*, pp. 33-34, paras. 36-37 of the judgment and point 2 of the operative provisions).

4. The registry received the applicant's written observations on 17 July 1992, the Government's on 27 July, and those of the Delegate of the Commission on 11 September. These showed among other things that the applicant and the Government had been unable to agree on a figure and that recourse had not been had to Article 441 of the Code of Criminal Procedure (cf. the *Piersack v. Belgium* judgment of 26 October 1984, Series A no. 85, pp. 13-15, paras. 5-6, and the *De Cubber v. Belgium* judgment of 14 September 1987, Series A no. 124-B, pp. 14-15, paras. 5-7).

5. The Court decided not to hold a hearing.

AS TO THE LAW

6. Under Article 50 (art. 50),

"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."

7. Mr Vidal claimed:

(a) under the heading "non-pecuniary damage", 2,000,000 Belgian francs (BEF)

(i) for having been "automatically and without notice as from the evening of 2 January 1983 deprived of office" as a warder at Saint-Gilles Prison by a ministerial decision of 3 March 1983;

(ii) for having been detained on remand from 7 February to 18 October 1983;

(iii) for not having been able to find employment except from 2 July 1984 to 11 December 1985;

(iv) for having lost his job because of the Brussels Court of Appeal's judgment of the latter date and for not having found work again till 17 May 1988;

(v) for the "further term of imprisonment" of fourteen months and nine days which he had had to serve as a result of the said judgment (3 April 1986 to 12 June 1987);

(vi) for the "distress resulting from the length of the proceedings" in Belgium (February 1983 to 12 February 1986) and before the Commission and Court (7 July 1986 to 22 April 1992), and from the "lack of adequate compensation" in that, notwithstanding the finding that there had been a breach of Article 6 (art. 6), he remained "under the burden of 'lawfully decided' guilt" and this was tantamount to "an irreversible mutilation, a sentence of banishment, the amputation of a fundamental attribute of personality";

(b) under the heading "pecuniary damage", BEF 548,242, broken down as follows:

(i) the fine and costs he had been ordered to pay by the Brussels Court of Appeal (BEF 65,186);

(ii) lawyer's fees (BEF 30,000) and registry fees (BEF 150) paid by him in respect of the second set of cassation proceedings;

(iii) fees and expenses consequential on the Strasbourg proceedings (BEF 452,906).

8. An award of just satisfaction in the present case can only be based on the fact that the applicant did not have the benefit of all the guarantees of Article 6 (art. 6) in the Brussels Court of Appeal proceedings.

Consequently, the claims specified in paragraph 7 (a) (i) to (iii) above cannot be taken into account, as they relate to events that preceded the impugned judgment of 11 December 1985.

9. The Court cannot speculate as to what the outcome of the proceedings would have been if the Brussels Court of Appeal had agreed to call the four defence witnesses suggested by the defence; as the Government have pointed out, no causal link between the violation of Article 6 (art. 6) and the alleged damage has been shown to exist, at any rate with respect to paragraph 7 (a) (iv) and (v) and paragraph 7 (b) (i).

On the other hand, the applicant suffered non-pecuniary damage (see paragraph 7 (a) (vi)) and it appears not unreasonable to regard him as also having suffered a loss of real opportunities (see, among other authorities and *mutatis mutandis*, the *Delta v. France* judgment of 19 December 1990, Series A no. 191-A, pp. 17-18, para. 43). The Court considers it equitable to award him BEF 250,000 under this head.

10. There remain the costs and expenses incurred by the applicant in endeavouring in Belgium to have the Brussels Court of Appeal's judgment

quashed and in seeking to have his rights upheld at Strasbourg (see paragraph 7 (b) (ii) and (iii)).

The Government left it to the Court to decide on this point. The Court considers the sum claimed for costs and fees relating to the cassation proceedings to be reasonable, but regards as excessive the claim relating to the proceedings before the Convention institutions; it awards the applicant the inclusive sum of BEF 300,000 recommended by the Delegate of the Commission.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the respondent State is to pay to the applicant, within three months, BEF 250,000 (two hundred and fifty thousand Belgian francs) in respect of damage and BEF 300,000 (three hundred thousand Belgian francs) for costs and expenses;
2. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 28 October 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar