



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

COURT (CHAMBER)

CASE OF BUNKATE v. THE NETHERLANDS

(Application no. 13645/88)

JUDGMENT

STRASBOURG

26 May 1993

In the case of Bunkate v. the Netherlands*,

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 F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mr C. RUSSO,

Mr N. VALTICOS,

Mr S.K. MARTENS,

Sir John FREELAND,

Mr G. MIFSUD BONNICI,

Mr A.B. BAKA,

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

Having deliberated in private on 23 February and 20 April 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the Netherlands Government ("the Government") on 24 July 1992, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13645/88) against the Netherlands lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) on 7 March 1988 by a Netherlands citizen, Mr Johannes Maria Clemens Bunkate. The applicant, who had been referred to in the proceedings before the Commission as J.B., consented to the disclosure of his full name.

The Government's application referred to Articles 44 and 48 (art. 44, art. 48). Its object was to obtain a decision of the Court regarding all questions on which the Commission had formed conclusions, and in particular its reasoning as to Article 6 para. 1 (art. 6-1) of the Convention.

* The case is numbered 26/1992/371/445. 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.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the lawyer who had assisted the applicant in the proceedings before the Commission informed the Registrar that she was unable to establish contact with the applicant.

3. The Chamber to be constituted included ex officio Mr S.K. Martens, the elected judge of Netherlands nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 26 September 1992, the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr F. Gölcüklü, Mr F. Matscher, Mr C. Russo, Mr N. Valticos, Sir John Freeland, Mr G. Mifsud Bonnici and Mr B. Repik (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). With effect from 1 January 1993 Mr A.B. Baka, substitute judge, replaced Mr Repik, whose term of office had come to an end owing to the dissolution of the Czech and Slovak Federal Republic (Articles 38 and 65 para. 3 of the Convention and Rules 22 para. 1 and 24 para. 1) (art. 38, art. 65-3) .

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government and the Delegate of the Commission on the organisation of the procedure.

5. On 5 January 1993 the Government notified the Registrar that in the light of the Court's judgment in the case of *Abdoella v. the Netherlands* (25 November 1992, Series A no. 248-A) they did not wish to proceed with the instant case (Rule 49 para. 1).

By a letter received at the registry the same day, the applicant's lawyer informed the Registrar that she had re-established contact with her client and had been designated as his representative (Rule 30 para. 1).

By letter of 15 January 1993 the Secretary to the Commission informed the Registrar that the Commission was of the opinion that the Court should proceed to give judgment in the case.

On 19 January 1993 the Government indicated to the Registrar that they and the applicant had been unable to reach a friendly settlement. The applicant's claim under Article 50 (art. 50) was received at the registry on 22 January 1993; on 8 February 1993 the Government filed a document in reply.

6. On 23 February 1993 the Chamber decided to dispense with a hearing having satisfied itself that the conditions for such a derogation from the usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

7. The applicant is a Netherlands citizen born in 1949. He lives in The Hague.

8. On 12 September 1983 the applicant was arrested in The Hague on suspicion of having committed forgery. He was placed in detention on remand until 16 December 1983, on which date the Public Prosecutor (Officier van Justitie) ordered his release on the ground of a shortage of cells then existing in the Netherlands.

9. The applicant was tried by the Regional Court (Arrondissementsrechtbank) of The Hague on 22 December 1983. On 5 January 1984 that court sentenced him to one year's imprisonment on two counts of forgery. Both the Public Prosecutor and the applicant filed an appeal the same day. The applicant was allowed to remain at liberty pending the appeal.

10. Two days after the judgment of the Regional Court, on 7 January 1984, the applicant travelled to the Dominican Republic where he stayed for some eleven months. While there he had a death certificate in his own name issued by the competent Dominican authorities; this document was dated 28 April 1984. The applicant's death was registered in The Hague on 18 May 1984.

11. The applicant returned to the Netherlands on 19 November 1984. On 3 December 1984 his mother applied to the Regional Court of The Hague for a court order to delete the entry of his death from the register. On 2 October 1985 such a court order was given and the said entry was deleted on 25 June 1986.

12. The appeal against the judgment of the Regional Court of 5 January 1984 (see paragraph 10 above) was heard by the Court of Appeal (Gerechtshof) of The Hague on 14 May 1985 in the presence of the applicant. On 28 May 1985 the Court of Appeal found the applicant guilty of only one count of forgery and acquitted him of the other; nevertheless, it increased the sentence to one year and four months.

13. The applicant introduced an appeal on points of law to the Supreme Court (Hoge Raad) on 10 June 1985, within the time-limit of two weeks prescribed by Netherlands law, by means of a statement made at the registry of the Hague Court of Appeal. The registry of the Court of Appeal transmitted the case file to the registry of the Supreme Court, which received it on 23 September 1986. The hearing of the Supreme Court was set for 17 February 1987.

The applicant's counsel proposed two grounds of appeal. The first argued that since at the time of the hearing of the Court of Appeal the registration

of the applicant's death had not yet been deleted, the applicant was not then officially alive and the prosecution should therefore have been held inadmissible. The second was a complaint about violation of Article 6 para. 1 (art. 6-1) of the Convention, in that, firstly, the transmission of the case file by the registry of the Court of Appeal to the Supreme Court had taken excessively long and, secondly, the acts for which the applicant was still being prosecuted had been committed nearly five years before. Applicant's counsel claimed to have inquired often as to the date on which the hearing was to take place.

14. In accordance with the advisory opinion filed on 10 March 1987 by the Procurator-General the Supreme Court dismissed the applicant's appeal by judgment of 26 May 1987. It held, firstly, that the registration of the applicant's death did not preclude the Court of Appeal from allowing the prosecution in view of the applicant's presence at the hearing and, secondly, that the lapse of time between the filing of the appeal on points of law and the hearing of the Supreme Court was undesirably long but not unreasonably so for the purpose of Article 6 para. 1 (art. 6-1). The Supreme Court further observed, *inter alia*, that although the applicant's counsel had inquired after the date of the hearing, she had not asked for that date to be brought forward.

15. The applicant served his sentence from 29 August 1990 until 18 May 1991 when he was provisionally released.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. For a survey of the relevant domestic law and practice, reference is made to the judgment in the case of *Abdoella v. the Netherlands* of 25 November 1992, Series A no. 248-A, pp. 10-14, paras. 11-14.

PROCEEDINGS BEFORE THE COMMISSION

17. Mr Bunkate introduced his application to the Commission on 24 November 1987. He complained of the duration of the proceedings against him, especially with regard to the period between the judgment of the Court of Appeal and that of the Supreme Court. He relied on Article 6 para. 1 (art. 6-1) of the Convention.

On 8 July 1991 the Commission declared the application (no. 13645/88) admissible. In its report of 1 April 1992 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1

(art. 6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

AS TO THE LAW

I. AS TO WHETHER THE CASE SHOULD BE STRUCK OUT OF THE LIST

18. By letter of 4 January 1993, the Government, being the party which had brought the case before the Court, notified the Registrar of their intention not to proceed with the case in view of the judgment in the case of *Abdoella v. the Netherlands*.

Pursuant to Rule 49 para. 1 of the Rules of Court, the Court, through the Registrar, consulted the applicant and the Commission on the appropriateness of discontinuing the case.

The applicant did not comment.

The Commission, in its letter of 15 January 1993, expressed the opinion

"... that the Court should proceed to give judgment in the case and to fix the amount of just satisfaction under Article 50 (art. 50) of the Convention. If the case were to be struck off there would be no formal decision in the case and the applicant would not be able to receive any just satisfaction to which, in the Commission's opinion, he is entitled.

..."

19. In the present case there has been no friendly settlement, arrangement or other fact of a kind to provide a solution of the matter, so that Rule 49 para. 2 is inapplicable. As to Rule 49 para. 1, the Court agrees with the Commission that the applicant's entitlement to a formal and binding decision on the merits and as to just satisfaction, if any, overrides any interest the Government may have in discontinuance of the case. Accordingly, the Court decides not to strike the case out of its list.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

20. The applicant claimed that his case had not been decided within a "reasonable time" as required by Article 6 para. 1 (art. 6-1) of the Convention, according to the relevant part of which:

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 248-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

"In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government disputed this view, whereas the Commission subscribed to it.

21. The period to be taken into consideration began on 12 September 1983, the date of the applicant's arrest, and ended on 26 May 1987, the date of the decision of the Supreme Court by which the sentence of sixteen months' imprisonment became final.

However, the period from 7 January 1984 until 19 November 1984, during which the applicant was in the Dominican Republic and thus effectively out of reach of the Netherlands authorities, should be deducted from the overall period (see particularly the *Girolami v. Italy* judgment of 19 February 1991, Series A no. 196-E, p. 55, para. 13).

22. The reasonableness of the length of proceedings is to be assessed with reference to the criteria laid down in the Court's case-law and in the light of the circumstances of the case.

The case was not particularly complex.

The applicant directed no particular complaint against the proceedings before the Regional Court and the Court of Appeal. However, although the applicant filed his appeal on points of law on 10 June 1985, the registry of the Supreme Court did not receive the case file from the Court of Appeal until 23 September 1986. For this lapse of time, spanning fifteen and a half months, the Government have offered no satisfactory explanation.

23. Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of its requirements.

The Court cannot accept a period of total inactivity lasting for fifteen and a half months. There has accordingly been a violation of Article 6 para. 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

24. The applicant sought no reimbursement for costs incurred before the Strasbourg institutions, before which he received legal aid.

However, he claimed non-pecuniary damages in respect of unjust imprisonment to the tune of 150 Dutch guilders (NLG) for each of the 263 days that he served his sentence, that is NLG 39,450.

He also claimed pecuniary damages: firstly, a sum of NLG 1,062.50 in connection with proceedings against the State of the Netherlands for an injunction prohibiting execution of the prison sentence pending the Strasbourg proceedings and, secondly, a sum of NLG 750 for travel expenses incurred during home leave from prison.

His total claim thus came to NLG 41,262.50; this figure he rounded to NLG 40,000 for convenience.

The Government pointed out that the fact that a delay arose in hearing the case did not imply that the applicant was wrongly imprisoned.

25. The applicant's claims are based on the assumption that a finding by the Court that a criminal charge was not decided within a reasonable time automatically results in the extinction of the right to execute the sentence and that consequently, if the sentence has already been executed when the Court gives judgment, such execution becomes unlawful with retroactive effect.

That assumption is, however, incorrect. The Court is unable to discern any other basis for the claims and will therefore dismiss them.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides not to strike the case out of its list of cases;
2. Holds that there has been a violation of Article 6 para. 1 (art. 6-1) of the Convention;
3. Rejects the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 26 May 1993.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar