



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

COURT (CHAMBER)

CASE OF VERMEIRE v. BELGIUM (ARTICLE 50)

(Application no. 12849/87)

JUDGMENT

STRASBOURG

04 October 1993

In the case of Vermeire 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*,
Mrs D. BINDSCHEDLER-ROBERT,
Mr B. WALSH,
Mr R. MACDONALD,
Mr A. SPIELMANN,
Mr J. DE MEYER,
Mr S.K. MARTENS,
Mr A.N. LOIZOU,
Mr J.M. MORENILLA,

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

Having deliberated in private on 23 June and 24 September 1993,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 11 July 1990, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12849/87) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by a Belgian national, Mrs Astrid Vermeire, on 1 April 1987.

2. For the facts of the case, reference should be made to the judgment given on the merits on 29 November 1991 (Series A no. 214-C, pp. 78-80, paras. 8-18). The applicant had complained that she had been excluded from inheritance rights in the estates of her paternal grandparents (Irma Van den Berghe and Camiel Vermeire) on account of the "illegitimate" nature of the kinship between her and them. The Court found that the Belgian State was not obliged to reopen her grandmother's succession but that there had been

* The case is numbered 44/1990/235/301. 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.

a breach of Article 14 of the Convention taken together with Article 8 (art. 14+8) in respect of her grandfather's succession.

3. By way of "just satisfaction", Mrs Vermeire sought compensation for damage and reimbursement of costs and expenses. The Court held that she had sustained pecuniary damage, but noted that the Belgian Government ("the Government") disputed the information she had supplied; furthermore, some of the costs claimed appeared liable to revision in the light of the judgment on the merits.

The Court therefore reserved the question in whole and invited the Government and the applicant to submit to it in writing within three months their observations on the question and in particular to communicate to it any agreement which they might reach (*ibid.*, p. 84, paras. 31-32 and point 3 of the operative provisions).

4. Attempts to reach a friendly settlement having failed, and in accordance with the foregoing invitation and with the President's directions, observations on the Article 50 (art. 50) claims were filed by Mrs Vermeire on 12 March, 6 July and 10 September 1992, by the Government on 27 May and 28 August 1992 and by the Delegate of the Commission on 1 July 1992.

5. On 23 June 1993 the Court decided not to hold a hearing. Subsequently Mr R. Macdonald, substitute judge, replaced Mr Thór Vilhjálmsson, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

RELEVANT DOMESTIC LAW

6. The relevant Belgian Civil Code provisions applicable at the material time read as follows:

Article 745

"Children or their issue shall inherit from their father and mother, grandfathers, grandmothers or other ancestors, irrespective of sex or primogeniture, and even if they are born of different marriages.

..."

Article 843

"Any heir, even one whose liability for the deceased's debts is limited to the amount of his inheritance, must bring into account anything he may have received from the deceased by gift *inter vivos*, directly or indirectly; he may not retain gifts or claim legacies made to him by the deceased unless such gifts and legacies have been made to him expressly in addition to his share of the estate or with exemption from bringing into account."

Article 844

"Even where a gift or legacy has been made in addition to a share of the estate or with exemption from bringing into account, an heir claiming his share may retain it only up to the amount of the disposable portion; the excess is subject to hotchpot."

Article 913

"Gifts, whether inter vivos or testamentary, may not exceed one-half of the donor's assets if at his death he leaves only one legitimate child, one-third if he leaves two children or one-quarter if he leaves three or more children."

Article 914

"In the preceding Article 'children' shall also include descendants of any degree; such descendants shall, however, count only in respect of the child they represent in the donor's succession."

Article 920

"Dispositions, whether inter vivos or testamentary, which exceed the amount of the disposable portion shall be reducible to that amount when the succession takes effect."

Article 922

"The reduction is determined by bringing together all the assets existing at the time of the donor's or testator's death. This shall notionally include those that have been disposed of by gifts inter vivos, according to their state at the time of the gifts and their value at the time of the donor's death. The disposable portion is calculated from all these assets, having regard to the status of the heirs, once the debts have been deducted."

7. Article 239 of the Income Tax Code provides in its first paragraph:

"Taxpayers' returns concerning income tax on natural persons, companies or non-residents shall be capable of being raised against them for the purposes of determining compensation or damages they claim from the State, provinces, conurbations, federations of municipalities, municipalities and other Belgian public bodies or institutions, in any court where the amount of such compensation or damages depends directly or indirectly on the amount of their profits or incomes."

AS TO THE LAW

8. Under Article 50 (art. 50) of the Convention,

"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."

A. Pecuniary damage

9. In its judgment of 29 November 1991 the Court held that Mrs Vermeire had suffered pecuniary damage, the amount of which was equivalent to the share of her grandfather's estate which she would have obtained had she been his "legitimate" granddaughter; it added that inheritance taxes and interest due would have to be taken into account in calculating the compensation (Series A no. 214-C, p. 84, para. 31).

10. In the light of the parties' observations, the Court notes the following.

(a) The declarations of inheritance relating to the estate of Camiel Vermeire are not disputed; together they cover a sum of 17,698,610 Belgian francs (BEF).

(b) The applicant mentions a loan of BEF 100,000 that her grandfather had granted to a Mr Jacques Lannoye and which he repaid to Francine and Michel Vermeire after Camiel Vermeire's death. The Government submitted firstly that the absence of any indication of the date of the transaction suggested that it was concluded in the lifetime of Mr and Mrs Camiel Vermeire, who were married under a regime of community of after-acquired property; and secondly that even supposing that the loan had been made after the wife's death, it could have been an application of joint funds, to which the sum involved duly reverted. Consequently only BEF 50,000 could be taken into account.

It seems reasonable to accept the Government's submission on this point.

(c) The applicant further alleged that the deceased had assets abroad; according to the documents adduced in evidence, they amounted to BEF 13,645,952.

In the Government's view, Mrs Vermeire had not established that she never inherited any of these sums or that her grandfather had been the sole owner of them. Moreover, they had never been taxed in Belgium in Camiel Vermeire's lifetime; Article 239 of the Income Tax Code (see paragraph 7 above) thus prevented them from being added to the estate. In the alternative, the Government said that if the heirs had declared them at the grandfather's death, they would have been subject to tax and would have given rise to a fine, which together would have amounted to at least BEF 4,500,000.

The Court notes that under the Belgian law of succession the assets in question formed part of the estate to be distributed. However, having regard to the matrimonial regime of Mr and Mrs Camiel Vermeire and for want of better particulars, only half of them fall to be assigned to the grandfather's estate, that is BEF 6,822,976. Article 239 of the Belgian Income Tax Code

cannot be raised to defeat a claim based solely on Article 50 (art. 50) of the Convention, under which the Court takes its decision on equitable principles. On the other hand, the taxes and fines that would have been payable by the heirs at the deceased's death in respect of the sums on which he evaded tax must be deducted. Adopting the figure put forward by the Government, which was not disputed by the applicant, the Court therefore assesses Camiel Vermeire's assets abroad at BEF 4,572,976.

(d) The applicant submitted, lastly, that her grandparents' gifts to their son Robert had to be taken into account. These gifts were of land, buildings and a business, with a total value of BEF 6,613,500; the share to be included in Camiel Vermeire's estate amounted to BEF 3,306,750.

The Court notes firstly, like the Government, that according to the documentary evidence the land and buildings given were expressly stated to be not subject to hotchpot; since also the applicant's reserved portion was unaffected (Articles 843, 844, 913, 914, 920 and 922 of the Civil Code - see paragraph 6 above), they therefore did not have to be included in the estate. As to the business, it does not seem unreasonable to suppose that it was transferred gratuitously. The Court determines its value at BEF 500,000, half of which - as those who appeared before the Court agreed - forms part of the estate of Camiel Vermeire.

11. In all, that estate therefore amounts to BEF 22,571,586. That being so, the applicant's share comes to BEF 11,285,793 (Article 745 of the Civil Code - see paragraph 6 above).

12. Inheritance tax of BEF 1,358,590 must be deducted from that sum. The remainder thus amounts to BEF 9,927,203, to which must be added BEF 12,265,308 in statutory interest, calculated at the various rates applicable between 22 July 1980, the date of Camiel Vermeire's death, and 30 September 1993.

13. Making its assessment on an equitable basis, the Court consequently awards Mrs Vermeire BEF 22,192,511 in respect of pecuniary damage, plus statutory interest from 1 October 1993.

B. Costs and expenses

14. The applicant also sought reimbursement of costs and expenses in the amount of BEF 3,648,354, including BEF 3,160,086 for Mr Van Hoecke's fees.

15. The Government considered that half of the claim - relating, they said, to Irma Van den Berghe's estate and not Camiel Vermeire's - should be discounted. As to the balance, they submitted that it covered costs and fees relating to the realisation proceedings, which were unconnected with the breach of the Convention. At all events, many of the expenses were not justified and others should be borne by the estate.

16. The Court examined the question in the light of the principles which emerge from its case-law.

It notes that the applicant's rights in respect of the two estates in issue were determined in a single set of proceedings (judgment on the merits, p. 78, paras. 9-12). The whole of the costs and expenses incurred by the applicant must therefore be taken into account.

The Court does, however, consider the fees excessive, having regard in particular to the sum awarded in respect of the pecuniary damage.

Making its assessment on an equitable basis, it awards BEF 2,000,000 in respect of costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Belgium is to pay the applicant within three months 22,192,511 (twenty-two million one hundred and ninety-two thousand five hundred and eleven) Belgian francs in respect of damage, plus statutory interest from 1 October 1993, plus 2,000,000 (two million) Belgian francs in respect of costs and expenses;
2. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French and notified in writing on 4 October 1993 pursuant to Rule 55 para. 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar