



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

COURT (CHAMBER)

CASE OF SCHOUTEN AND MELDRUM v. THE NETHERLANDS

(Application no. 19005/91; 19006/91)

JUDGMENT

STRASBOURG

09 December 1994

In the cases of Schouten and Meldrum 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 Rules of Court A**, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr R. BERNHARDT,

Mr B. WALSH,

Mr A. SPIELMANN,

Mr S.K. MARTENS,

Mr A.N. LOIZOU,

Mr A.B. BAKA,

Mr P. JAMBREK,

Mr K. JUNGWIERT,

and also of Mr H. PETZOLD, *Acting Registrar*,

Having deliberated in private on 21 June and 22 November 1994,

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

PROCEDURE

1. The cases were referred to the Court by the European Commission of Human Rights ("the Commission") on 9 December 1993 and by the Netherlands Government ("the Government") on 24 February 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. They originated in two applications (nos. 19005/91 and 19006/91) against the Kingdom of the Netherlands lodged with the Commission under Article 25 (art. 25) by two Netherlands nationals, Mr Johannes Schouten, acting in his capacity as sole managing director of Praktijk mevrouw Breevaart B.V., a limited liability company (besloten vennootschap met beperkte aansprakelijkheid) under Netherlands law, and Mr Hendrik Alexander Meldrum, on 4 September 1991.

* The cases are numbered 48/1993/443/522 and 49/1993/444/523 respectively. The first number in each of these sets of numbers is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers in each set 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.

** Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Netherlands recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred to Articles 44 and 48 (art. 44, art. 48). The object of the request and of the application was to obtain a decision as to whether the facts of the cases disclosed a breach by the respondent State of its obligations under Article 6 (art. 6) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of Rules of Court A, the applicants stated that they did not wish to take part in the proceedings.

3. On 13 January 1994 the President of the Court decided, under Rule 21 para. 6 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider both cases.

4. 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 28 January 1994, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr B. Walsh, Mr A. Spielmann, Mr J. De Meyer, Mr A.N. Loizou, Mr P. Jambrek and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently Mr A.B. Baka, substitute judge, replaced Mr De Meyer, who was unable to take part in the further consideration of the cases (Rules 22 para. 1 and 24 para. 1).

5. On 20 April 1994 the Chamber decided that the cases should be joined (Rule 37 para. 3); it also decided to dispense with a hearing in the cases, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

6. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, a document setting out the applicants' claims under Article 50 (art. 50) was received at the registry on 17 May 1994 and the Government's memorial on 19 May. On 31 May the registry received a document filed by the Delegate of the Commission and on 14 June further written observations submitted by the Government.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASES

A. Mr Schouten

7. Mr Schouten is a Netherlands national who lives in Zoetermeer. He made his application in his capacity as sole managing director of *Praktijk mevrouw Breevaart B.V.* ("Breevaart"), a limited liability company under Netherlands law which has its registered office in Hendrik Ido Ambacht. The Government, the Commission and the company Breevaart having apparently accepted that for present purposes Mr Schouten may be identified with the company, the Court will hereinafter generally refer to Mr Schouten only.

8. Breevaart owned a physiotherapy practice, including the practice's premises and equipment. When Breevaart's then sole managing director and shareholder died in 1984, the practice was carried on by three physiotherapists who had been her associates. Mr Schouten, having apparently become managing director of the company, entered into an arrangement with the physiotherapists. Under this arrangement, Mr Schouten concluded contracts with the various health-insurance funds (*ziekenfondsen*) but the physiotherapists themselves invoiced the health-insurance funds. Mr Schouten was entitled to 35% of each fee for making the premises and equipment available to the physiotherapists. The physiotherapists were entitled to separate remuneration for the day-to-day running of the practice; the funds made their payments to Mr Schouten, from whom the physiotherapists received the sums due to them.

In March 1987 the physiotherapists bought the practice, including the premises and the equipment, from the company, and in June of that year they formed a partnership. Both these operations were made retrospectively effective from 1 January 1987. The arrangement with Mr Schouten thus ceased to be valid.

9. In March 1987 the Occupational Association for Health and Mental and Social Well-being (*Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke Belangen* - "the BVG") sent Mr Schouten a demand for payment of contributions in respect of the physiotherapists under the Health Insurance Act (*Ziektewet*), the Medical Assistance Fund Act (*Ziekenfondswet*), the Unemployment Insurance Act (*Werkloosheidswet*) and the Occupational Disability Insurance Act (*Wet op de arbeidsongeschiktheidsverzekering*) for the years 1984, 1985, 1986 and 1987.

10. On 27 March 1987 Mr Schouten lodged an objection to the BVG's demand and requested formal confirmation (voor beroep vatbare beschikking) of its decision, with a view to lodging an appeal.

11. The BVG gave such confirmation on 9 December 1988 with the reasons for its decision.

Basing itself on the circumstances outlined in paragraph 8 above, the BVG took the view that, although the contractual relationship between the physiotherapists and Mr Schouten could not be classified as a contract of employment, it was the "social equivalent" (maatschappelijk gelijkgesteld) of such a contract.

The physiotherapists were thus regarded not as independent practitioners but as employees of Mr Schouten, who consequently was under a legal obligation to pay social-security contributions for them. As to the year 1987, the BVG did not consider itself bound by the retrospective effect of the two agreements.

12. Mr Schouten appealed to the Rotterdam Appeals Tribunal (Raad van Beroep) on 21 December 1988, without setting out any grounds. He asked for an extension of time for submitting such grounds until 1 June 1989; the reasons given were, firstly, that in view of the December holidays it would not be possible to prepare the necessary documents and, secondly, that proceedings in another case pending before the Central Appeals Tribunal (Centrale Raad van Beroep) raised very similar issues and he wished to be able to amend his reasoning in the light of the judgment in that case.

An extension was granted until 15 September 1989.

The BVG withdrew its claims concerning the year 1987 in a letter of 10 July 1989.

13. Mr Schouten supplemented his notice of appeal with a statement of grounds on 11 September 1989. In addition to making submissions relating to the independence of the physiotherapists he argued that the BVG's decision was vitiated because Article 6 (art. 6) of the Convention had been violated: firstly, the lapse of time - one year and nine months - between the request for formal confirmation of the BVG's initial decision and delivery of that confirmation had been longer than could be considered "reasonable", and secondly, the fact that by withholding formal confirmation an occupational association (bedrijfsvereniging) could delay an appellant's access to a tribunal indefinitely constituted a breach of the principle of "fair play".

14. The Appeals Tribunal held a hearing on 13 December 1989 and delivered its judgment on the same day.

It held that, although the contractual relationship between Mr Schouten and the physiotherapists could not be classified as an "employment relationship", it should, under the case-law of the Central Appeals Tribunal, be considered the "social equivalent" of one; the physiotherapists were

therefore to be regarded as Mr Schouten's "employees" for the purposes of the relevant social-security legislation and Mr Schouten was therefore required to pay contributions for them.

As to Mr Schouten's arguments based on Article 6 (art. 6) of the Convention, the Appeals Tribunal held that it was wrong for an administrative authority to withhold formal confirmation without good reason, especially if it did so for a very long time, as the BVG had done in the instant case. Nevertheless, even if Article 6 (art. 6) were applicable and had been violated, the applicant could not derive from it rights which were at variance with binding provisions of Netherlands law (*dwingend recht*).

15. Mr Schouten lodged a notice of appeal with the Central Appeals Tribunal on 15 January 1990, requesting an extension of time for filing his arguments; the reason given for this request was the need to obtain and study a copy of a judgment of the Central Appeals Tribunal itself which had been cited in the judgment of the Appeals Tribunal.

16. Mr Schouten filed his written arguments with the Central Appeals Tribunal on 25 April 1990. He argued, *inter alia*, that the Appeals Tribunal had erred in not considering the case under Article 6 (art. 6); the Convention was directly applicable in the Netherlands, taking precedence over national law, and not only had formal confirmation not been provided within a "reasonable time" but the fact that appellants were subject to strict time-limits to request formal confirmation whereas occupational associations were subject to none for responding resulted in clear procedural inequality. The conduct of the BVG, which was open to criticism, should be sanctioned and the obvious sanction was to quash its decision.

17. The Central Appeals Tribunal gave judgment on 10 July 1991.

It found that at the material time the physiotherapists could properly be treated as "employees" for the purposes of the relevant social-security legislation.

Referring to its previous case-law, it further held that it was unnecessary to address the question of the applicability of Article 6 (art. 6) of the Convention. The wording of the Article (art. 6) was of no help in the matter, and the tribunal was not aware of "any relevant decision of the European Court of Human Rights". In any case, where formal confirmation of a decision had been delayed, the Central Appeals Tribunal had regard primarily to general principles of good governance (*algemene beginselen van behoorlijk bestuur*) and, where necessary, to the principle of "fair play".

The Central Appeals Tribunal agreed with Mr Schouten that it had taken the BVG a very long time to provide formal confirmation of its decision. The excuses advanced by the BVG - an investigation into Mr Schouten's practice, and in general an excessive number of cases involving physiotherapy practices - were not in themselves sufficient; since the Appeals Act (*Beroepswet*) did not provide for interim measures or an appeal in the event of failure to react within a reasonable time, such delay seriously

impeded access to a tribunal. However, it did not appear from the case file that Mr Schouten had sought to obtain the formal confirmation sooner.

Mr Schouten had not in his appeal relied on a general interest in legal certainty or cited a financial interest, namely that the BVG could claim interest (*rente*) on the sums due. In any event, while those sums remained unpaid, any interest payable to the BVG was to some extent offset by the - admittedly lower - interest that Mr Schouten could obtain on the sums in question in the meantime.

The right of access to a tribunal was relevant only in relation to the dispute over the fixing of the social-security contributions. The right in question "could not automatically be transposed" in such a way as to deprive the BVG of the right to fix such contributions. Mr Schouten's application to have the decision in question set aside, despite the fact that the contributions themselves had been fixed in due time, therefore had to be refused.

Finally, the Central Appeals Tribunal found no violation of the principles of "fair play" and "equality of arms", since it did not appear that while the BVG was preparing its decision or in the course of the proceedings Mr Schouten had not had sufficient opportunity to put forward his arguments. The inequality as regards time-limits did not in itself constitute a breach of those principles as in such cases decisions had to be taken with due care.

The appeal was therefore dismissed.

B. Mr Meldrum

18. Mr Meldrum is a Netherlands citizen born in 1947. He lives in Dordrecht where he works as a physiotherapist.

19. Until 1 December 1986 Mr Meldrum had an arrangement with a number of other physiotherapists which in its essentials was identical with that of Mr Schouten (see paragraph 8 above).

On 1 December 1986 a contract of employment between Mr Meldrum and the other physiotherapists entered into force and the above arrangement came to an end.

20. In October 1987 the BVG sent Mr Meldrum a demand for payment of contributions in respect of the other physiotherapists under the Health Insurance Act, the Medical Assistance Fund Act, the Unemployment Insurance Act and the Occupational Disability Insurance Act for the years 1984, 1985 and 1986.

21. In a letter of 4 December 1987 Mr Meldrum lodged an objection to the BVG's demand and requested formal confirmation of its decision, with a view to lodging an appeal.

22. The BVG gave this confirmation on 1 May 1989. Its reasoning did not differ materially from that indicated in the case of Mr Schouten (see paragraph 11 above).

23. Mr Meldrum appealed to the Rotterdam Appeals Tribunal on 18 May 1989, asking to be allowed until 15 September 1989 to supplement his notice of appeal. The reasons he gave were, firstly, that he wished to submit figures calculated by an accountant and to refer to a judgment in a case then pending before the Central Appeals Tribunal in which similar questions were being addressed and, secondly, the approach of the summer holidays. This request was allowed. Mr Meldrum supplemented his notice of appeal on 11 September 1989.

The BVG submitted its reply on 16 November 1989.

24. At the Appeals Tribunal hearing (the date of which is not known) the applicant stated that he expected the case to be taken to the European Court of Human Rights and he requested the tribunal to give as detailed a judgment as possible.

25. The Appeals Tribunal gave judgment on 2 July 1990.

Referring to the Central Appeals Tribunal's case-law, the Appeals Tribunal ruled that under the relevant social-security legislation Mr Meldrum was liable to pay contributions for the other physiotherapists.

The delay in question had not, in the Appeals Tribunal's view, caused Mr Meldrum any prejudice, and the principles of "fair play" and a "fair hearing" had therefore not been violated.

As regards Mr Meldrum's arguments concerning the determination of his rights within a "reasonable time", the Appeals Tribunal inferred that he assumed that under Article 6 (art. 6) time-limits were "absolute". However, the case-law of the European Court indicated that the factual situation was of relevance in deciding whether a given decision had been taken within a reasonable time. Exceeding what might generally be considered a reasonable time in the determination of a dispute could not have the effect that an administrative authority which complied with legal time-limits was deprived of its right to claim social-security contributions. In any case, although a speedier decision would have been preferable, the lapse of time in issue did not go beyond what was reasonable for the purposes of Article 6 (art. 6).

The Appeals Tribunal added that the approach adopted by the BVG in cases of this nature had given rise to an unnecessary number of appeals, partly because of the "persistent attitude of the interested parties", but that it did not appear, in this case or others, that the BVG had made statements or acted in such a way as to create legitimate expectations on the basis of which the Appeals Tribunal could decide that rights to demand payment of social-security contributions over the relevant period had lapsed.

The appeal was accordingly dismissed.

26. Mr Meldrum lodged an appeal with the Central Appeals Tribunal on 26 July 1990.

He contested the assertion that the delay in sending him formal confirmation of the BVG's decision had caused him no prejudice. He

submitted that by the time he was finally allowed access to the Appeals Tribunal, the case-law had already been established and was difficult to change; the case-law in relation to physiotherapists might have developed differently if the right arguments had been adduced at an earlier stage. If he had been one of the first to appeal, the substance of his arguments would have been addressed and would not have met with a standardised response.

Lastly, he reiterated his arguments based on the principle of "fair play". Since an appellant had to observe a time-limit of only two months, whereas the defendant administrative authority could stall proceedings indefinitely, it was possible for the latter to choose "pilot cases" which would then form the basis of a body of case-law favourable to the defendant administrative authority and providing precedent for other cases.

27. Following a hearing on 6 February 1991, at which Mr Meldrum was not represented, the Central Appeals Tribunal gave judgment on 13 March 1991.

It rejected Mr Meldrum's arguments concerning the independence of the other physiotherapists and found that the relationship between them and Mr Meldrum was such as to require him to pay social-security contributions for them.

As to Mr Meldrum's arguments based on Article 6 (art. 6), it left open the question whether the case concerned "civil rights and obligations"; in cases of this nature the reasonable time requirement did not apply to the phase preceding appeal to an administrative tribunal under the Appeals Act. It recognised that procrastination by an administrative authority might possibly hinder an appellant's access to a tribunal but expressed no opinion as to whether such a right of access flowed directly from Article 6 (art. 6).

There was nothing in the file to suggest that the applicant had taken any action to expedite delivery of the formal confirmation. In view, *inter alia*, of the necessity for further investigations and correspondence and the fact that it appeared that the delay was connected with the large number of requests for formal confirmation, the Central Appeals Tribunal came to the conclusion that the BVG, in not providing such formal confirmation until 1 May 1989 - far too long after the applicant's request - could not be said to have actually hindered any attempts by the applicant to obtain access to a tribunal earlier.

As to the argument that the delay in providing formal confirmation had been prejudicial to his procedural position, the Central Appeals Tribunal noted that Mr Meldrum's case raised no issues that had not been addressed in earlier cases.

Furthermore, the BVG's demands for payment of contributions for 1984, 1985 and 1986, based as they were on binding legal provisions, did not violate any general principle of good governance in such a way that the BVG should thereby have divested itself of its legal obligation to make such demands.

The appeal was accordingly dismissed. However, the Appeals Tribunal's judgment had been based on figures which were corrected by the BVG of its own motion in the course of the proceedings before the Central Appeals Tribunal, so that as a matter of form the judgment of the Appeals Tribunal had to be partly set aside.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Occupational associations

28. Pursuant to section 2 of the Social Security (Organisation) Act (*Organisatiewet sociale verzekeringen*) it falls to the occupational associations to implement the Health Insurance Act, the Medical Assistance Fund Act, the Unemployment Insurance Act and the Occupational Disability Insurance Act.

One occupational association exists for each of the various sectors of economic life. An occupational association is an association (*vereniging*) under private law set up by employers' and employees' organisations considered by the Minister of Social Affairs and Employment (*Minister van Sociale Zaken en Werkgelegenheid*) to be sufficiently representative of the sector concerned; its purpose is defined as being to implement the relevant social-security legislation, it must be a non-profit-making body and its statutes must satisfy certain requirements (section 4(1) of the Social Security (Organisation) Act).

An employer is automatically a member of the occupational association corresponding to the sector of the economy to which the work carried out by his employees belongs (section 7(1) of the Social Security (Organisation) Act).

29. The occupational associations are supervised by the Social Security Council (*Sociale Verzekeringsraad*). This body has legal personality under public law (section 35(1) of the Social Security (Organisation) Act). Its president and one-third of its members are appointed directly by the Minister of Social Affairs and Employment for a term of three years; one-third of its members are appointed for the same term by employers' organisations and one-third by employees' organisations, the organisations in both instances being those considered by the Minister to be sufficiently representative (section 35(2)-(6) of the Social Security (Organisation) Act).

The Social Security Council is empowered to adopt regulations for co-ordinating the implementation of the social-security legislation (section 48 of the Social Security (Organisation) Act); it also has the power to recommend to the Minister of Social Affairs and Employment the suspension or annulment of decisions of occupational associations (section

49). It is responsible to the Minister and must follow his instructions (section 41).

30. Employers must provide the occupational associations with information concerning the wages (loon) paid to their employees; the occupational associations then determine the contributions to be paid under the relevant social-security legislation in respect of each employee. These contributions are paid by the employers to their respective occupational association (section 11 of the Social Security (Co-ordination) Act - Coördinatiewet Sociale Verzekeringen). Section 4 of the Social Security (Co-ordination) Act gives the following definition of "wages":

"1. Everything enjoyed under an employer/employee relationship (dienstbetrekking) shall constitute wages.

2. Wages shall include entitlements - whether conditional or coming into existence in the course of time - to one or more benefits or grants (uitkeringen of verstrekkingen), in so far as these are not covered by contributions paid by the employee."

This definition is virtually identical with that given in section 10 of the Wages (Tax Deduction) Act (Wet op de loonbelasting), the only difference being that the latter Act also includes in its definition everything enjoyed under an employer/employee relationship which no longer exists.

31. If, for whatever reason, the employer does not pay the contributions within a time-limit set by the occupational associations, the latter may charge interest on the outstanding amount. This interest is calculated at the statutory rate, which in recent years has fluctuated between 8 and 12% (section 14 of the Social Security (Co-ordination) Act).

According to the case-law of the Central Appeals Tribunal, the interest is to be calculated from the day on which the occupational association fixed the amount to be paid, not the day on which the amount was notified to the employer (judgment of the Central Appeals Tribunal of 5 January 1976, Rechtspraak sociaal verzekeringsrecht, (Social security reports - RSV) 1976, no. 184).

32. At the relevant time, section 5(d) of the Health Insurance Act, section 5(d) of the Unemployment Insurance Act, section 5(d) of the Occupational Disability Insurance Act, and section 3(1) of the Medical Assistance Fund Act taken in conjunction with section 5(d) of the Health Insurance Act empowered the Minister of Social Affairs and Employment to define as work relationships, by delegated legislation, several types of relationship that could be considered the "social equivalent" thereof. In pursuance of these provisions, the Minister defined as a work relationship the relationship involving someone who regularly performs work in person for at least two days a week in return for a gross income exceeding a given proportion of the statutory minimum wage (section 2(1) of the Royal Decree of 14 December 1973, Staatsblad - Official Gazette - 627).

B. Social-security legislation

33. The Health Insurance Act sets up an insurance scheme (verzekering) which is compulsory for all employees (section 20). Under this scheme, the employee has a right to sick-pay (ziekengeld) in the event of inability to perform his or her work due to illness, pregnancy or disability (section 19). The employee may receive sick-pay for a period of up to fifty-two weeks (section 29(2)), or for sixteen weeks (which do not count towards the period of fifty-two weeks) in the case of pregnancy (section 29(7)).

34. The insurance scheme set up by the Medical Assistance Fund Act is compulsory for all employees whose wages do not exceed a certain annual figure (section 3); its benefits are also enjoyed by their spouses and dependants (section 4). To be entitled to the benefits, the employee must apply for registration with a health insurance fund, which is under an obligation to register him (section 5(1)).

The health insurance funds pay for medical assistance provided by medical practitioners, hospitals and some private institutions; for certain medicines prescribed by doctors; and transport by ambulance (sections 8 - 8i), in so far as these costs are not borne by other bodies under other legislation.

35. The insurance scheme set up under the Unemployment Insurance Act, to which people employed in the Netherlands belong as of right, confers an entitlement to unemployment pay on employees who, for a reason not connected with abnormal natural occurrences such as floods or extremes of cold, lose their employment or a significant part of it along with their right to wages in respect of the employment lost and who are available for employment (sections 15, 16 and 18).

36. The Occupational Disability Insurance Act provides compulsory insurance for an employee who, through illness or disability, is wholly or partly unable to earn through work an income comparable to that which a healthy person with similar training and experience might earn at the employee's place of employment or last place of employment or in the vicinity thereof (section 18(1)). The entitlement to disability pay begins fifty-two weeks after the employee becomes disabled (section 19(1)), payments during the intervening period normally being made under the Health Insurance Act (see paragraph 33 above).

37. Contributions to all the above schemes are fixed by and paid to the occupational associations. Although some of the Acts involved lay down that contributions are due in whole or in part by the employee, it is in all cases the employer who is responsible to the occupational association for making the payments (and who must therefore deduct the employee's share from his pay).

C. Procedural provisions

38. At the material time, a common feature of all the above social-security legislation was the rule that an interested party who wished to contest a decision of an occupational association concerning contributions must request formal confirmation in writing. Such formal confirmation, which included the grounds on which the decision was based, was an admissibility requirement for an appeal to a tribunal.

39. None of these Acts specified time-limits for requesting formal confirmation. However, the Central Appeals Tribunal ruled that this should be done within a "reasonable time", which that tribunal construed to mean generally within two months (see, *inter alia*, its judgment of 19 March 1974, RSV 1974, no. 288). An occupational association might declare inadmissible such a request if it was filed too late. A decision of the occupational association declaring a request for formal confirmation inadmissible was itself a decision of which formal confirmation might be requested with a view to an appeal.

There was no statutory time-limit within which formal confirmation had to be given.

40. In a case concerning the Work Centres Act (*Wet op de sociale werkplaatsen*) - an Act which provided that decisions on certain applications should be taken within five weeks - the plaintiff instituted summary proceedings when, two months after the time-limit, the municipality of Amsterdam had still not given a decision. His purpose was to obtain a judgment ordering the municipality to give a decision on his application. The action was eventually dismissed on appeal. The Supreme Court, in its judgment of 21 June 1985, upheld this dismissal, holding that the mere fact of exceeding the time-limit was not sufficient to render the municipality liable in negligence. Furthermore, the municipality was entitled to invoke its financial constraints and inadequate staffing levels as an excuse for its inability to deal with the plaintiff's request.

The author of a commentary on the judgment as reported in *Nederlandse Jurisprudentie* (Netherlands Law Reports - NJ) 1986, 526, Professor M. Scheltema, observed that the Supreme Court had much reduced the effectiveness of summary proceedings as a remedy against failure by a public authority to give a decision in a case in which the Appeals Act applied.

41. When formal confirmation had been given, an appeal lay to the Appeals Tribunal. It had to be lodged within one month (section 83 of the Appeals Act).

From the Appeals Tribunal a further appeal lay to the Central Appeals Tribunal (section 145 of the Appeals Act); it too had to be lodged within one month.

D. Subsequent changes to the applicable procedure

42. On 1 January 1994 the General Administrative Code entered into force (see the *Van de Hurk v. the Netherlands* judgment of 19 April 1994, Series A no. 288, p. 15, para. 39). It lays down new uniform rules of administrative procedure which apply also to cases such as the present one.

Anyone wishing to challenge a decision of an occupational association concerning contributions under social-security schemes may lodge an administrative objection (*bezwaarschrift*) with that body, provided that he or she does so within six weeks (section 6:7).

If the occupational association fails to decide within a reasonable time, or refuses to do so, the party seeking review may lodge an appeal with the Regional Court (*arrondissementsrechtbank*) without waiting any longer for a decision (sections 6:2, 6:12 and 8.1.1.1). It is thus no longer necessary to request formal confirmation of a decision of an occupational association.

A further appeal lies to the Central Appeals Tribunal (section 18 of the Appeals Act).

PROCEEDINGS BEFORE THE COMMISSION

43. Mr Schouten and Mr Meldrum each lodged an application (no. 19005/91 and no. 19006/91 respectively) with the Commission on 4 September 1991. They alleged a violation of Article 6 para. 1 (art. 6-1) of the Convention on two counts. Firstly, they alleged a breach of the principle of "equality of arms" enshrined in Article 6 para. 1 (art. 6-1), since the BVG was able to delay the start of judicial proceedings indefinitely. Secondly, they complained that their cases had not been dealt with within a "reasonable time" in view of the excessive lapse of time before the BVG provided formal confirmation of its decisions.

44. On 9 December 1992 the Commission declared the applications admissible. In its reports of 12 October 1993 (Article 31) (art. 31), it expressed the opinion, by eighteen votes to one in the case of Mr Schouten and unanimously in the case of Mr Meldrum, that the applicants' cases had not been dealt with within a "reasonable time" and, by eleven votes to eight in the case of Mr Schouten and eleven votes to seven in the case of Mr Meldrum, that there had been breaches of the principle of "equality of arms".

The full text of the Commission's opinions in the two cases and of the separate opinions contained in the reports is reproduced as an annex to this judgment*.

FINAL SUBMISSIONS TO THE COURT

45. In their memorials in each of the two cases, the Government concluded that Article 6 para. 1 (art. 6-1) could not be held to apply to the present cases and - should the Court reach a different conclusion - that Article 6 para. 1 (art. 6-1) had not been violated.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 (art. 6) OF THE CONVENTION

46. The applicants submitted that by reason of the BVG's delay in providing formal confirmation of its decisions, their cases had not been dealt with within a "reasonable time". They also alleged that, since the BVG was able to delay the institution of proceedings before a tribunal indefinitely by withholding formal confirmation, they had been deprived of a fair trial. They relied on Article 6 para. 1 (art. 6-1) of the Convention, which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

The Government disputed these contentions but the Commission accepted them.

A. Applicability of Article 6 para. 1 (art. 6-1)

1. Arguments before the Court

47. In its reports in the two cases, the Commission expressed the opinion that the proceedings in question involved the determination of "civil

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 304 of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

rights and obligations" and that Article 6 para. 1 (art. 6-1) was accordingly applicable.

In the light of the Court's case-law, notably the *Feldbrugge v. the Netherlands* judgment of 29 May 1986 (Series A no. 99), the *Salesi v. Italy* judgment of 26 February 1993 (Series A no. 257-E) and the *Schuler-Zraggen v. Switzerland* judgment of 24 June 1993 (Series A no. 263) - in all of which Article 6 (art. 6) had been held to apply in the field of social insurance, including welfare benefits - the Commission considered that Article 6 para. 1 (art. 6-1) was applicable to proceedings concerning the entitlement to benefits under the social-security schemes at issue in the present cases. It was true that the proceedings in the instant cases related to the obligation to pay contributions under these schemes but in its opinion there was no distinction of principle to be drawn between civil "rights" and "obligations" and therefore none either between social-security benefits and contributions. The *Feldbrugge* judgment was particularly relevant, since the private-law features - the "personal and economic" nature of the benefits, their connection with a contract of employment, the affinities of the scheme with private insurance - which in that case led the Court to hold Article 6 (art. 6) applicable to benefits under the Health Insurance Act, also applied, *mutatis mutandis*, to the obligation to pay contributions.

Finally, the Commission referred to the Court's judgment of 26 March 1992 in the case of *Editions Périscope v. France* (Series A no. 234-B), in which the Court had held Article 6 (art. 6) to be applicable to an action whose subject-matter was "pecuniary" in nature and which was founded on an alleged infringement of rights that were likewise pecuniary rights, and to the judgment of 24 October 1989 in the case of *H. v. France* (Series A no. 162-A), in which the Court found that for Article 6 (art. 6) to apply it was sufficient that the outcome of the proceedings should be "decisive for private rights and obligations".

48. The Government, on the other hand, submitted that Article 6 para. 1 (art. 6-1) did not apply to contributions under social-security schemes.

Firstly, the contributions in question were, in their view, akin to taxation and therefore did not come within the concept of "civil rights and obligations". In this connection, moreover, they cited the consistent practice of the Commission according to which proceedings relating to the levying of taxes did not fall within the scope of Article 6 (art. 6). They pointed to similarities between the payment of contributions under social-security schemes and taxation. In particular, they argued that the obligation to pay contributions derived not from any agreement but from law, as did the amount thereof; this obligation was incumbent not only on the potential beneficiary but on a third party (the employer) as well; the obligation was unconnected with the entitlement to benefits, so that even if the employer did not pay the relevant contributions, the employee remained entitled to the benefits; and the rules governing the deduction and payment of

contributions had been brought into line with those concerning the deduction of tax from wages.

They observed, furthermore, that the case-law of the Court, in so far as Article 6 (art. 6) had been held to apply in the field of social security, related to benefits and not to contributions; the fact that Article 6 para. 1 (art. 6-1) was applicable as regards the former did not mean that it was applicable as regards the latter. The decisive consideration for holding Article 6 (art. 6) to be applicable to disputes relating to benefits under social-security schemes was that such disputes had a direct bearing on the beneficiary's means of subsistence; disputes relating to an employer's obligation under these schemes, however, concerned an incidental financial obligation and did not bear directly on his means of subsistence.

Finally, they pointed to differences between the facts in the instant cases and those of the Editions Périscope case, which had concerned a claim for compensation. Nor was the case of *H. v. France* relevant; it was not unusual for the assessment of an underlying question of private law to have a decisive influence on the outcome of taxation disputes, but in their submission this could not support the conclusion that Article 6 (art. 6) was applicable to such disputes.

2. Approach to be adopted

49. This is the first time the Court has had to rule on the applicability of Article 6 para. 1 (art. 6-1) to a dispute concerning contributions under social-security schemes, as distinct from entitlement to benefits under such schemes.

50. The Court agrees with the Government that the approaches to benefits and to contributions are not necessarily the same. In the *Schuler-Zraggen* judgment the Court stated that "as a general rule" Article 6 para. 1 (art. 6-1) applied in the field of social insurance and that State intervention was not sufficient to establish that that provision was inapplicable (*loc. cit.*, p. 17, para. 46). However, it went on to hold that in that case the most important consideration militating in favour of applicability was that the applicant had suffered "an interference with her means of subsistence" and was claiming "an individual, economic right flowing from specific rules laid down in domestic law". The Court's reasoning in the *Salesi* judgment (*loc. cit.*, p. 59, para. 19), which concerned welfare assistance, was similar. Such reasoning cannot automatically be applied to disputes concerning the obligation to pay contributions under social-security schemes.

Nor is it in itself sufficient to show that a dispute is "pecuniary" in nature. There may exist "pecuniary" obligations vis-à-vis the State or its subordinate authorities which, for the purpose of Article 6 para. 1 (art. 6-1), are to be considered as belonging exclusively to the realm of public law and are accordingly not covered by the notion of "civil rights and obligations". Apart from fines imposed by way of "criminal sanction", this will be the

case, in particular, where an obligation which is pecuniary in nature derives from tax legislation or is otherwise part of normal civic duties in a democratic society.

51. In the Court's view, although the Feldbrugge case concerned benefits and not contributions, the method of analysis adopted in that judgment is appropriate in the present cases also. The Court will therefore analyse in turn the various features of public and private law which are undoubtedly contained in the social-security legislation in issue, in order to determine whether the contested "obligation" can be regarded as a "civil" one for the purposes of Article 6 para. 1 (art. 6-1).

The Feldbrugge case concerned only the scheme established by the Health Insurance Act, which is just one of the social-security schemes in issue here. Nevertheless, in view of the essential similarities, as far as contributions are concerned, between that scheme and those set up under the other relevant Acts - the Medical Assistance Fund Act, the Unemployment Insurance Act and the Occupational Disability Insurance Act - it would serve no purpose for the Court to differentiate between them. Hereinafter the Court will therefore refer to the four schemes collectively as "the social-security schemes".

3. Features of public law

52. The first feature of public law to consider is the character of the legislation. In this regard, the following was stated in the Feldbrugge judgment (*loc. cit.*, pp. 13-14, para. 32):

"The legal rules governing social-security benefits in the context of health insurance differ in many respects from the rules which apply to insurance in general and which are part of civil law. The Netherlands State has assumed the responsibility of regulating the framework of the health insurance scheme and of overseeing the operation of that scheme. To this end, it specifies the categories of beneficiaries, defines the limits of the protection afforded, lays down the rates of the contributions and the allowances, etc. ... [S]uch intervention cannot suffice to bring within the sphere of public law the right asserted by the applicant."

Likewise the fact of State intervention is not in itself sufficient to make contributions payable under the social-security schemes fall within the sphere of public law. The Government, moreover, did not so argue.

53. The second feature of relevance is the compulsory nature of the social-security schemes. The Government pointed out that the obligation to contribute to the social-security schemes derived not from an agreement but from the law itself.

In its Feldbrugge judgment (*loc. cit.*, p. 14, para. 33), the Court answered a similar argument as follows:

"Comparable obligations can be found in other fields. Examples are provided by the rules making insurance cover compulsory for the performance of certain activities - such as driving a motor vehicle - or for householders. Yet the entitlement to benefits to

which this kind of insurance contract gives rise cannot be qualified as a public-law right. The Court does not therefore discern why the obligation to belong to a health insurance scheme should change the nature of the corresponding right."

On that reasoning, contributions under the social-security schemes are so similar to premiums for compulsory insurance that the inability of those concerned to avoid paying them does not in itself warrant the conclusion that the obligation concerned is one of public law.

54. The last feature of public law considered by the Court in its Feldbrugge judgment (*loc. cit.*, p. 14, para. 34) was the assumption by the State or by public or semi-public institutions of full or partial responsibility for ensuring social protection. Such an assumption of responsibility is reflected in the fact that the social-security schemes are operated by semi-public institutions (see the Feldbrugge judgment referred to above, p. 9, para. 15): although the occupational associations have legal personality under private law, they are subject to Government approval and are supervised by a public-law body which is subject to instructions from the Government (see paragraphs 28 and 29 above). Such a factor implies, *prima facie*, an extension of the public-law domain.

On the other hand, in the field of contributions as in that of benefits, the social-security schemes have affinities with insurance under private law. Indeed, private insurance covering largely the same risks as those covered by the social-security schemes is available in the Netherlands to those not compulsorily affiliated to, or entitled to benefit from, those schemes, which are primarily intended to benefit those likely to find private insurance beyond their means.

55. As to the fact, relied on by the Government, that the rules governing the deduction and payment of contributions correspond to those governing the deduction of tax from wages, it is in the nature of things that the means resorted to by government agencies to ensure payment of compulsory contributions should bear some resemblance to the levying of taxes. It cannot be concluded from this that those contributions necessarily belong to the domain of public law.

4. Features of private law

56. The Commission laid particular stress on the private-law features which in the Feldbrugge judgment had been found to be inherent in the right to benefits under the Health Insurance Act.

57. The first of these was the alleged "personal and economic nature" of that right. In the Feldbrugge judgment, after stating that Mrs Feldbrugge had suffered an interference with her means of subsistence and was claiming a right flowing from specific rules laid down by the legislation in force, the Court went on to hold (*loc. cit.*, p. 15, para. 37):

"For the individual asserting it, such a right is often of crucial importance; this is especially so in the case of health insurance benefits when the employee who is unable

to work by reason of illness enjoys no other source of income. In short, the right in question was a personal, economic and individual right, a factor that brought it close to the civil sphere."

As noted in paragraph 50 above with reference to the Schuler-Zraggen and Salesi judgments, this reasoning cannot be transposed to the present cases, which concern contributions for whose payment the employer is made responsible and which as a rule are not of crucial importance to his very livelihood. Although the obligations in issue are certainly "personal, economic and individual", the same may be said of all "pecuniary" obligations vis-à-vis the State or its subordinate authorities, even those which must be considered to belong exclusively to the realm of public law. This factor cannot therefore be decisive in this instance.

58. A feature of greater import is the link between the social-insurance schemes and the contract of employment. As the Court held in the Feldbrugge judgment (*loc.cit.*, p. 15, para. 38):

"Whilst it is true that the insurance provisions derived directly from statute and not from an express clause in the contract, these provisions were in a way grafted onto the contract. They thus formed one of the constituents of the relationship between employer and employee."

The same reasoning may be said to apply in the present cases.

59. The final feature of relevance is the similarity between the social-security schemes and private insurance. As was mentioned in the Feldbrugge judgment, the occupational associations use risk-covering techniques and management methods inspired by those current in the private insurance market; they also conduct their dealings in a similar way (*loc. cit.*, p. 15, para. 39).

More significantly, as has already been mentioned (in paragraph 54 above), private insurance is available to cover largely the same risks as those covered by the social-security schemes. For those who participate in these schemes, optional extensions of cover are available privately.

In the Court's opinion, greater weight should be attached to the similarities between the social-security schemes and private insurance than to the difference adverted to by the Government, namely the lack of a direct connection between payment of contributions and entitlement to benefits. It may be that an employer's failure to fulfil his obligations under the social-security schemes does not affect the employee's entitlement to benefits under those schemes. That, however, is a specific feature of social security which follows from its very nature as a special legal relationship; although "grafted onto" the contract of employment, it essentially derives from employees' perceived need of social protection and, consequently, is designed to ensure such protection.

5. Conclusion

60. The foregoing examination of the relative cogency of the features of public and private law present in the instant cases leads the Court to find that the private-law features are of greater significance than those of public law. On balance, the disputes in issue are to be regarded as having involved "the determination of civil rights and obligations" and Article 6 para. 1 (art. 6-1) is therefore applicable.

B. Compliance with Article 6 para. 1 (art. 6-1)

1. Reasonable time

(a) Periods to be taken into consideration

61. The Commission took the view that the periods to be taken into consideration had begun when the applicants requested formal confirmation of the BVG's decision.

The Government, on the other hand, argued that in disputes relating to the determination of "civil rights and obligations" only proceedings before tribunals were to be taken into account. They submitted that in any dispute between two parties concerning a financial claim some time always elapsed between the moment that one party notified his claim to the other and the dispute's being brought before a court; this time was often taken up by negotiations and attempts to reach an out-of-court settlement. In addition, one of the parties might have a legitimate interest in postponing the start of court proceedings.

62. The formal confirmation by the BVG of its decision was an indispensable condition for the institution of proceedings before the Appeals Tribunal (see paragraph 38 above). Although, as the Government pointed out, the emergence of a dispute concerning civil rights and obligations is often not followed immediately by the institution of court proceedings, this is not decisive in the circumstances of the present case. A plaintiff is usually able to decide when to bring a civil action without having to wait for formalities affecting the admissibility of his claim to be completed by his opponent. The delay caused in each case by the BVG's failure, over a significant period, to provide formal confirmation of its decision is consequently relevant to assessing the reasonableness of the length of the proceedings.

The Court therefore agrees with the Commission that in both cases the period to be taken into consideration began when the applicants requested formal confirmation.

In Mr Schouten's case the period ran from 27 March 1987 until 10 July 1991, thus amounting to more than four years and three months. In Mr

Meldrum's case, it ran from 4 December 1987 until 13 March 1991, thus amounting to approximately three years and three months.

(b) Reasonableness of the length of the proceedings

63. The reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case, having regard to the criteria developed in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities.

64. No criticism can be levelled against the national authorities in respect of the proceedings before the Appeals Tribunal and the Central Appeals Tribunal, which took approximately two years and six months in Mr Schouten's case and nearly one year and ten months in Mr Meldrum's case. Moreover, in both cases extensions of time for the filing of documents were granted at the applicants' request.

The Court is thus concerned only with the time which elapsed before the BVG gave formal confirmation of its decision, which was one year, ten months and twelve days in Mr Schouten's case and one year, four months and twenty-seven days in Mr Meldrum's case.

65. The issue involved in both cases was whether the applicants could, for the purposes of the relevant social-security legislation, be equated with "employers" notwithstanding the fact that the terms of their contracts with the other physiotherapists were different from those of a normal contract of employment. This was a problem considered by both the Commission and the Government to be one of some complexity; the Government submitted that it required the BVG to investigate the facts and the persons involved.

In addition, the Government argued that, even after the BVG had informed the applicants that formal confirmation was likely to be delayed for a considerable time, neither applicant had asked the BVG as a matter of urgency to decide sooner or instituted summary proceedings before the President of the Regional Court to obtain a judgment ordering the BVG to provide formal confirmation within a certain time.

Finally, the Government pleaded the BVG's workload. At the time of the events complained of, the BVG was faced with a large number of requests for formal confirmation in cases similar to the applicants'.

66. While the Court, like the Commission and the Government, accepts that the case was of some complexity, it does not consider this sufficient to explain the delays in question.

67. Nor is the Court satisfied that it would have availed the applicants to make urgent requests to the BVG to speed up the formal confirmation; the evidence adduced does not indicate that the BVG would, or even could, have complied with such a request.

As to the possibility of bringing summary proceedings before the President of the Regional Court, the judgment of the Netherlands Supreme Court of 21 June 1985 (NJ 1986, 526), to which the Government themselves

referred, appears for all practical purposes to have deprived this remedy of whatever usefulness it might have had in theory (see paragraph 40 above). That the applicants did not avail themselves of this remedy cannot therefore be held against them.

On the matter of the BVG's workload, it is settled case-law that Article 6 para. 1 (art. 6-1) obliges Contracting States to organise their judicial systems in such a way that their courts can meet each of its requirements (see, as the most recent authority, the *Muti v. Italy* judgment of 23 March 1994, Series A no. 281-C, p. 57, para. 15).

68. Finally, the Court notes that interest was due on the sums claimed by the BVG even for the period before the latter had given formal confirmation of its decision (see paragraph 31 above); moreover, that interest, calculated at the statutory rate, was acknowledged by the domestic tribunals to be higher than that which the applicants could have negotiated on the financial markets (see paragraph 17 above).

69. There has, accordingly, been a violation of Article 6 para. 1 (art. 6-1) in both cases in that the applicants' "civil rights and obligations" were not determined within a "reasonable time".

2. Fairness of the proceedings

70. The applicants further argued that the proceedings had not been "fair", in that the BVG had been able to delay their access to a tribunal for a period determined by the BVG itself. In their submission, the BVG had thus been able to select among the pending cases those which would be brought before the Appeals Tribunal and the Central Appeals Tribunal first; this had given it the opportunity to influence the case-law of those tribunals in a way that was, on the whole, favourable to their position.

The Commission accepted the applicants' contention in substance, whereas the Government denied it.

71. The Court does not find it established that the applicants' position before the tribunals would have been any different had the delays in question not occurred. In so deciding, the Court has had regard to the finding of the Central Appeals Tribunal in Mr Meldrum's case that there were no aspects to his case which had not been addressed in earlier cases (see paragraph 27 above). Nor, in any event, does it appear that the applicants were prevented from presenting whatever arguments they wished. No violation of Article 6 (art. 6) has therefore been made out in this respect.

II. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

72. 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."

A. Pecuniary damage

73. The applicants argued that, had the BVG given formal confirmation of its decisions within a reasonable time, they would have stood a reasonable chance of success in their appeals, and this would have meant that no contributions would have been due over the years 1984-86. In the alternative, the Appeals Tribunal or the Central Appeals Tribunal ought to have annulled the decisions of the BVG on the ground that there had been a violation of Article 6 para. 1 (art. 6-1) in each case; this would have meant that, as a matter of Netherlands law, the contributions under the various social-security schemes would not have been due or, if already paid, would have been paid without cause. In their submission, the sums paid should therefore be refunded.

Mr Schouten paid the contributions claimed from him, amounting to 85,327.47 Netherlands guilders (NLG), on 28 February 1989. He had already paid NLG 12,888.70 in interest (see paragraph 31 above).

Mr Meldrum paid his contributions, totalling NLG 140,496.82, on 26 May 1989.

Both applicants also claimed interest on the contributions paid at the statutory rate, from the date of payment until 1 July 1994. This came to NLG 48,067.80 in the case of Mr Schouten and NLG 75,399.97 in the case of Mr Meldrum.

74. The Commission expressed doubts as to whether the outcome of the proceedings before the national authorities would have been more favourable to the applicants if the violations of the Convention had not taken place. The Government contested the claims for damages in similar terms.

75. As regards the argument that the national tribunals should have held the claims for contributions to be invalid by way of sanction for the delays, the Court notes that it is in principle for the national courts to decide what the appropriate sanction should be under their legal system for a breach attributable to one of the parties of the "reasonable time" requirement of Article 6 para. 1 (art. 6-1).

In the Court's opinion the basis for an award of pecuniary damage can therefore only be the situation that would have obtained in the absence of the violations found. In the present judgment it has been held that the "reasonable time" requirement under Article 6 para. 1 (art. 6-1) was not

complied with as regards the BVG's formal confirmation of its initial decision; it has not been established that, had the BVG confirmed its decisions any sooner, the judgments of the tribunals would have been different. The Court cannot therefore base its decision as to pecuniary damage on the assumption that the contributions were not due. The claims under this head must accordingly be rejected.

B. Costs and expenses

76. The applicants claimed reimbursement of the costs incurred in the proceedings before the national tribunals and in the Strasbourg proceedings. As regards the domestic proceedings, the costs amounted to NLG 4,765 for Mr Schouten and NLG 12,607 for Mr Meldrum. The costs incurred in the Strasbourg proceedings came to NLG 44,795.06 for both applicants jointly, or NLG 22,397.53 each.

77. The Commission considered the applicants' claims excessive, as did the Government, who moreover drew attention to the disparity between the sums claimed in respect of the domestic proceedings and those sought for the Strasbourg proceedings.

78. According to its settled case-law, the Court will award costs and expenses in so far as these relate to the violation found (see, as a recent authority, the *Van de Hurk* judgment previously cited, p. 21, para. 66) and to the extent to which they have been actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, the *Megyeri v. Germany* judgment of 12 May 1992, Series A no. 237-A, pp. 14-15, para. 34).

The case was pleaded before the national courts on the basis of alternative arguments, only one of which concerned the Convention. The applicants cannot therefore be awarded the full costs incurred in the domestic proceedings. As to the Convention proceedings, the Court considers that, especially in view of the fact that the applicants did not take part in the proceedings before it, the costs claimed are unreasonable as to quantum.

Making an assessment on an equitable basis, the Court awards each applicant NLG 10,000 under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that Article 6 para. 1 (art. 6-1) of the Convention is applicable;
2. Holds that there has been a violation of that provision as regards the "reasonable time" requirement;

3. Holds that there has been no violation of that provision as regards "fairness";
4. Holds that the respondent State is to pay to each applicant, within three months, 10,000 (ten thousand) Netherlands guilders in respect of costs and expenses;
5. Dismisses the remainder of the claims for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 December 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar