



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

COURT (CHAMBER)

CASE OF VAN RAALTE v. THE NETHERLANDS

(Application no. 20060/92)

JUDGMENT

STRASBOURG

21 February 1997

In the case of Van Raalte v. the Netherlands¹,

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 B², as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr C. RUSSO,

Mr N. VALTICOS,

Mrs E. PALM,

Mr I. FOIGHEL,

Mr A.B. BAKA,

Mr J. MAKARCZYK,

Mr K. JUNGWIERT,

Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 24 September 1996 and 28 January 1997,

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 December 1995 and by the Government of the Kingdom of the Netherlands ("the Government") on 15 February 1996, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 20060/92) against the Netherlands lodged with the Commission under Article 25 (art. 25) on 23 April 1992 by a Netherlands national, Mr Anton Gerard van Raalte.

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 Article 48 (art. 48). The object of the request and of the

¹ The case is numbered 108/1995/614/702. 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.

² Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning the States bound by Protocol No. 9 (P9).

application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1).

2. In response to the enquiry made in accordance with Rule 35 para. 3 (d) of Rules of Court B, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 31). Having initially been referred to by the initials A.G.V.R., the applicant subsequently agreed to the disclosure of his identity.

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. 4 (b)). On 8 February 1996, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr C. Russo, Mr N. Valticos, Mrs E. Palm, Mr I. Foighel, Mr A.B. Baka, Mr J. Makarczyk and Mr K. Jungwiert (Article 43 in fine of the Convention and Rule 21 para. 5) (art. 43). Subsequently Mr P. van Dijk, who had been elected judge in respect of the Netherlands on 25 June 1996, replaced Mr Martens, who had resigned.

4. As President of the Chamber (Rule 21 para. 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 39 para. 1 and 40). Pursuant to the order made in consequence, the Registrar received the applicant's memorial on 16 July 1996 and the Government's memorial on 17 July.

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 23 September 1996. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr H. von HEBEL, Assistant Legal Adviser,

Ministry of Foreign Affairs,

Agent,

Ms M.J.F.M. VIJGHEN, Ministry of Justice,

Adviser;

(b) for the Commission

Mr H.G. SCHERMERS,

Delegate;

(c) for the applicant

Mr M.W.C. FETERIS, Professor,

Counsel.

The Court heard addresses by Mr Schermers, Mr Feteris and Mr von Hebel.

AS TO THE FACTS

I. PARTICULAR CIRCUMSTANCES OF THE CASE

6. The applicant is a Netherlands national born in 1924 and resident in Amstelveen. He has never been married and has no children.

7. On 30 September 1987 the Inspector of Direct Taxes sent the applicant an assessment of his contributions for the year 1985 under various social security schemes, including the General Child Care Benefits Act (*Algemene kinderbijslagwet*, see paragraph 21 below).

8. The applicant filed an objection (*bezwaarschrift* - see paragraph 27 below) to this assessment on 21 October 1987. He based his argument on section 25 (2) of the General Child Care Benefits Act and on the royal decree of 27 February 1980 (*Staatsblad* (Official Gazette) no. 89 ("the royal decree")) - see paragraph 23 below), by virtue of which unmarried childless women of 45 years or over were exempted from the obligation to pay contributions under the General Child Care Benefits Act; in his view the prohibition of discrimination such as was contained in Article 1 of the Netherlands Constitution (see paragraph 18 below) and Article 26 of the International Covenant on Civil and Political Rights (see paragraph 20 below) implied that this exemption should be extended to men in the same situation.

9. The applicant later received similar assessments for the years 1986, 1987 and 1988, against which he likewise filed objections. The Inspector reserved his decision on these, pending the outcome of the proceedings relating to the 1985 assessment.

10. On 25 November 1987 the Inspector issued a decision declaring the first objection unfounded on the ground that "under national legislation the application of section 25 (2) of the General Child Care Benefits Act is not possible since the person by whom the contributions are due is not female".

11. The applicant appealed to the Amsterdam Court of Appeal (see paragraph 27 below) on 29 December 1987. Relying on Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1) and Article 26 of the International Covenant on Civil and Political Rights, he claimed that the provisions of the royal decree should be given a "gender neutral" construction. Section 25 (2) of the General Child Care Benefits Act and the royal decree were in his view discriminatory.

The Inspector lodged a written defence. Thereafter the applicant filed a reply, and the Inspector a rejoinder.

12. The exemption enjoyed by unmarried childless women of 45 or over from the obligation to pay contributions under the General Child Care Benefits Act was abolished by the Act of 21 December 1988 (*Staatsblad* 1988, no. 631), with effect from 1 January 1989.

13. The Amsterdam Court of Appeal gave its judgment on 6 October 1989, dismissing the applicant's appeal and confirming the Inspector's decision. Its reasoning included the following:

"5.4. Neither the wording of the impugned provision nor its drafting history indicates that the legislature intended to discriminate or has caused discrimination. In particular, it cannot be said that the legislator wished to discriminate against unmarried men who had reached the age of 45 before the beginning of the calendar year and were not entitled to child care benefits under the General Child Care Benefits Act vis-à-vis comparable women.

5.5. By means of the provision set out in section 25 (2) of the General Child Care Benefits Act, the legislature merely wished to take due account of the difference in factual situation between women over 45 and men over 45 with regard to having (begetting or raising) children.

5.6. The fact, as stated by [the applicant], that it appears from statistical data that older men only rarely beget children makes no difference to what is considered in paragraph 5.5 above. The legislature has assessed the factual situation of the group of women referred to in section 25 (2) of the General Child Care Benefits Act differently on the basis of the possibility of their having children and not on the basis of the reality of their having children.

Older men's possibilities of procreating are fundamentally different from those of older women, in the sense that this difference is considerable irrespective of these statistical data.

5.7. The difference in treatment opposed by [the applicant] is therefore not based on a difference in sex, but on a difference in factual situation.

This conclusion is not altered by the fact that this difference (partly) coincides with the difference between the sexes. The impugned provision does not therefore contravene the prohibition of discrimination.

5.8. It cannot be excluded in principle that the fairness and acceptability of the General Child Care Benefits Act benefit by taking account of these differences in factual situation.

It not being for the Court of Appeal to rule on the intrinsic value of a statute, the Court cannot consider whether the differences in factual situation entirely justify the exemption in question.

5.9. Even if it were correct, contrary to what is set out above, that the impugned provision contravenes the prohibition of discrimination, this would not benefit [the applicant].

The Court of Appeal would not be at liberty to extend the exemption in question to one or more groups of individuals for whom the legislature definitely did not intend it.

If the argument based on prohibition of discrimination should have to be accepted in principle, this could only lead to a finding that the impugned provision had no binding force.

This would not be in [the applicant's] interest."

14. The applicant filed an appeal on points of law (beroep in cassatie - see paragraph 27 below) to the Supreme Court (Hoge Raad) on 7 December 1989. In so far as is relevant here, he challenged the above reasoning of the Court of Appeal relying on Article 14 of the Convention (art. 14) and Article 26 of the International Covenant on Civil and Political Rights of 1966.

The Inspector responded in writing.

15. The Supreme Court dismissed the appeal on 11 December 1991. Its reasoning included the following:

"3.4. The third ground of appeal [middel] argues that the principle set out in section 25 (2) of the General Child Care Benefits Act violates Article 26 of the International Covenant on Civil and Political Rights and Article 14 of the Convention (art. 14). To the extent that the ground of appeal relies on the latter provision (art. 14), it must fail as the present case does not relate to any of the rights and freedoms enumerated in the Convention.

...

3.6. In view of, inter alia, the drafting history of the provision in question the limitation of the exemption set out in section 25 (2) of the General Child Care Benefits Act to women of 45 and over was inspired by the idea that it would not be reasonable to levy contributions under the General Child Care Benefits Act from these women, since it had to be assumed that a great number of them would never have children and were prevented by social and - unlike men - biological factors from ever bearing children.

The Supreme Court need not consider the question of whether the above-mentioned fact constitutes an objective and reasonable justification for exempting only women of 45 and over from paying contributions under the General Child Care Benefits Act.

Since this difference in treatment between (unmarried) women and men, which in any case, given their biological differences, cannot be said to lack all reasonable ground, has been removed with effect from 1 January 1989 by the abolition of the exemption by the Act of 21 December 1988 (Staatsblad 1988, no. 631) there is no reason for a court to intervene by declaring the exemption applicable, for the year in question, to unmarried men of 45 and over.

..."

16. After the delivery of this judgment the Inspector issued decisions dismissing the applicant's objections to the assessments for the years 1986, 1987 and 1988 (see paragraph 9 above).

17. According to figures published by the Netherlands Central Bureau for Statistics (Centraal Bureau voor de Statistiek), the number of

"legitimate" children born alive in the Netherlands to fathers aged 45 or over in 1985 was 2,341, or approximately 1,43 % of the total number of "legitimate" children born that year (163,370).

The corresponding figure for mothers aged 45 or over was 177, or approximately 1 per thousand.

No figures are available for children born out of wedlock.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

18. Article 1 of the 1983 Constitution provides:

"All persons present in the Netherlands shall be treated in the same way in similar situations. Discrimination on the ground of religion, philosophical convictions, political leanings, race, sex, or any other ground whatsoever shall not be allowed."

19. Under Netherlands constitutional law, courts may not review the constitutionality of statutes. Article 120 reads:

"The courts shall not rule on the constitutionality [grondwettigheid] of statutes and treaties."

Delegated legislation, on the other hand, may be examined to determine whether it conforms with the Constitution and even with unwritten general principles of law (see the judgment of the Supreme Court of 1 December 1993, *Beslissingen in Belastingzaken* (Reports of Decisions in Taxation Cases - "BNB") 1994, no. 64).

20. Article 93 of the Constitution provides that provisions of international treaties and decisions of international (intergovernmental) organisations which, according to their content, may be binding on anyone shall have binding force after they have been published.

With regard to the prohibition of discrimination, the Netherlands is a party to, inter alia, the International Covenant on Civil and Political Rights of 1966 ("the Covenant"), Article 26 of which provides as follows:

"All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

B. The General Child Care Benefits Act

21. The General Child Care Benefits Act was enacted in 1962.

Until 1 January 1989 (see paragraph 28 below), section 25 of the General Child Care Benefits Act provided as follows:

"1. Contributions are due by:

(a) every person by whom contributions are due by way of assessment under the General Old Age Pensions Act (Algemene ouderdomswet);

(b) ...

2. The first paragraph, under (a), may be derogated from by royal decree, subject to conditions and limitations if need be, in respect of unmarried women who have reached the age of 45.

3. ..."

Persons referred to in sub-paragraph (a) were all those who had not yet reached the age of 65 and who were either Netherlands residents or, if not Netherlands residents, subject to the Wages (Tax Deduction) Act (Wet op de loonbelasting) in respect of work carried out in the Netherlands under a contract of employment (section 6 (1) of the General Old Age Pensions Act).

22. Any person who was either a Netherlands resident or subject to the Wages (Tax Deduction) Act in respect of work carried out in the Netherlands under a contract of employment was entitled to benefits under the General Child Care Benefits Act for children for whose maintenance he or she was financially responsible, whether they were his or her own by birth or marriage or foster children (sections 6 and 7 of the General Child Care Benefits Act). Such entitlement was not subject to the condition that the person concerned had contributed to the scheme.

C. The royal decree

23. At the time of the events complained of, the derogation from the general rule made possible by section 25 (2) was provided for by the royal decree of 27 February 1980 (Staatsblad no. 89). Section 1 provided:

"In derogation from section 25 (1) (a) of the General Child Care Benefits Act, no contributions shall be due by an unmarried woman who has reached the age of 45 before the beginning of the calendar year and who is not entitled to child care benefits under that Act."

D. Relevant domestic case-law

1. Supreme Court

24. The Supreme Court recognised in its judgment of 2 February 1982 (Nederlandse Jurisprudentie (Netherlands Law Reports - "NJ") 1982, no. 424 (corrected in NJ 1982, no. 475)) that Article 26 of the Covenant is a provision of an international treaty which, according to its content, may be

binding on anyone, and must therefore in principle be applied directly by the Netherlands courts (see paragraph 20 above).

However, in a number of judgments it has declined to construe Article 26 of the Covenant in such a way as to deprive national legislation of its effect even if it considered that a given measure constituted illegal discrimination between men and women, holding that, where various options were open to the national authorities to remove such discrimination, the choice should be left to the legislature in view of the social and legal implications attending each possible course of action (see the judgments of the Supreme Court of 12 October 1984, NJ 1985, no. 230, and 23 October 1988, NJ 1989, no. 740).

In its judgment of 16 November 1990 (NJ 1991, no. 475), cited in the European Court of Human Rights *Kroon and Others v. the Netherlands* judgment of 27 October 1994 (Series A no. 297-C), the Supreme Court came to a similar finding with regard to Article 14 of the Convention taken together with Article 8 (art. 14+8) (*loc. cit.*, p. 50, para. 14).

2. Central Appeals Tribunal

25. The Central Appeals Tribunal (Centrale Raad van Beroep) - the administrative tribunal competent to decide most types of social-security disputes but not, *inter alia*, disputes relating to contributions due under the General Child Care Benefits Act - has held that Article 26 of the Covenant is in principle directly applicable in the field of social security.

Thus, in its judgment of 14 May 1987 (Rechtspraak Sociaal Verzekeringsrecht (Social Security Law Reports - "RSV") 1987, no. 246), the Central Appeals Tribunal considered discriminatory the rule that to qualify for benefits under the Victims of Persecution (1940-1945) Benefits Act (Wet uitkering vervolgingsslachtoffers 1940-1945) a married woman had to be a "breadwinner" whereas no such requirement applied to married men. In three judgments delivered on 5 January 1988 (Nederlandse Jurisprudentie - Administratiefrechtelijke Beslissingen (Netherlands Administrative Law Reports - "AB") 1988, nos. 252-54), it came to a similar finding with regard to the General Disability Act (Algemene arbeidsongeschiktheidswet), but only with effect from 1 January 1980 - the date on which legislation entered into force that was intended to remove discrimination but which had failed to do so adequately.

Similarly, in its judgments of 7 December 1988 (NJCM-Bulletin 1989, no. 14, p. 71, and AB 1989, no. 10), it recognised the right of a widower to claim a widow's pension (*weduwenpensioen*) under the General Widows and Orphans Act (*Algemene weduwen- en wezenwet*).

E. Levying of contributions; procedural provisions

26. Contributions under the General Child Care Benefits Act and certain other social-security schemes were levied by the Tax Inspector in the same way as income tax (sections 21 and 22 of the General Exceptional Medical Expenses Act (*Algemene wet bijzondere ziektekosten*), declared applicable by analogy under section 26 of the General Child Care Benefits Act).

27. It was possible to file an objection against an assessment with the Inspector (section 23 (1) of the State Taxes (General Provisions) Act - *Algemene wet inzake rijksbelastingen*).

An appeal against the Inspector's decision lay to the Court of Appeal (sections 2 and 26 (1) of the State Taxes (General Provisions) Act). A further appeal could be filed on points of law to the Supreme Court (section 95 of the Judicial Organisation Act - *Wet op de rechterlijke organisatie*).

F. The Act of 21 December 1988

28. As noted above (see paragraph 12), the possibility provided for under section 25 (2) came to an end when the Act of 21 December 1988 (*Staatsblad* 1988, no. 631) came into effect on 1 January 1989. Accordingly, on that date men and women became equally liable to pay contributions under the General Child Care Benefits Act whatever their age and whether or not they were married or had children.

PROCEEDINGS BEFORE THE COMMISSION

29. Mr van Raalte applied to the Commission on 23 April 1992. He relied on Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1), alleging that he had been the victim of discriminatory treatment with regard to the obligation to pay contributions under the General Child Care Benefits Act.

30. The Commission declared the application (no. 20060/92) admissible on 10 April 1995. In its report of 17 October 1995 (Article 31) (art. 31), it expressed the opinion that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1) (twenty-three votes to five). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment³.

³ Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (in Reports of Judgments and Decisions 1997-I), but a copy of the Commission's report is obtainable from the registry.

FINAL SUBMISSIONS TO THE COURT BY THE GOVERNMENT

31. The Government concluded their memorial by expressing the opinion that there had not been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1).

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL No. 1 (art. 14+P1-1)

32. The applicant claimed that the levying of contributions under the General Child Care Benefits Act (see paragraph 21 above) from him, an unmarried childless man over 45 years of age, constituted discrimination on the ground of gender prohibited by Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1), given the fact that at the time of the events complained of no similar contributions were exacted from unmarried childless women of that age (see paragraphs 21 and 23 above).

Article 14 of the Convention (art. 14) and Article 1 of Protocol No. 1 (P1-1) provide as follows:

Article 14 of the Convention (art. 14)

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1 (P1-1)

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

The preceding provisions (P1-1) shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission agreed with the applicant that such violation had taken place. The Government contested this.

A. Whether Article 14 of the Convention (art. 14) is applicable

33. As the Court has consistently held, Article 14 of the Convention (art. 14) complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 (art. 14) does not presuppose a breach of those provisions - and to this extent it is autonomous -, there can be no room for its application unless the facts in issue fall within the ambit of one or more of the latter (see, among many other authorities, the *Karlheinz Schmidt v. Germany* judgment of 18 July 1994, Series A no. 291-B, p. 32, para. 22).

34. The applicant and the Commission both considered that the case concerned the right of the State to "secure the payment of taxes or other contributions" and therefore came within the ambit of Article 1 of Protocol No. 1 (P1-1). The Government did not contest this.

35. The Court sees no reason to hold otherwise, and accordingly finds that Article 14 (art. 14) is applicable.

B. Arguments before the Court

1. The applicant

36. In the applicant's submission, differences in treatment based on sex were already unacceptable when section 25 of the General Child Care Benefits Act was enacted in 1962. The wording of Article 14 of the Convention (art. 14) showed that such had been the prevailing view as early as 1950.

Moreover, legal and social developments showed a clear trend towards equality between men and women. The applicant drew attention to, inter alia, the Court's *Abdulaziz, Cabales and Balkandali v. the United Kingdom* judgment of 28 May 1985 (Series A no. 94), which stated explicitly that "the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe" and that "very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention" (*loc. cit.*, p. 38, para. 78).

The Netherlands legislature had in fact recognised the unacceptable nature of the distinction in question by enacting, in 1988, legislation abolishing it.

In any case, statistics showed that very few men aged 45 or over fathered children; on the other hand, women aged over 45 were still able to have children and in many cases did so, thus invalidating the justification of any distinction based on the theoretical possibility of procreating.

Lastly, the right to claim benefits under the General Child Care Benefits Act was in no way related to the payment of contributions.

2. The Government

37. The Government denied that there had been a difference in treatment between persons in similar situations. Women aged 45 or over differed fundamentally from men of the same age in that for biological reasons they were much less likely to be able to have children.

To the extent that it had to be assumed that there had been a difference in treatment between persons in similar situations, the biological difference referred to constituted in itself sufficient objective and reasonable justification. In addition, when the rule in question had been enacted it had been justified by the social attitudes prevailing at the time: it was assumed that women who had no children, and who in all probability never would, suffered thereby and it was considered wrong to impose on such women the additional emotional burden of having to pay contributions under a child care benefits scheme.

Admittedly, the exemption in question had been abolished with effect from 1 January 1989, essentially in response to a change in social attitudes towards unmarried childless women. It was, however, inevitable that social legislation should to some extent lag behind developments in society and allowances had to be made.

More generally, the Government referred to the wide margin of appreciation which in their view Article 1 of Protocol No. 1 (P1-1) allowed the State in "enforcing such laws as it deems necessary ... to secure the payment of taxes or other contributions or penalties".

3. The Commission

38. The Commission was of the opinion that there had been a difference in treatment based on gender and that this difference was not justified.

Moreover, it considered that the social attitudes relied on by the Government had been overtaken by developments well before 1985. It referred, inter alia, to the Court's finding of a violation of Article 14 taken together with Article 4 para. 3 (d) (art. 14+4-3-d) in its above-mentioned *Karlheinz Schmidt* judgment, the financial contribution in that case having been imposed in 1982.

C. The Court's assessment

1. Applicable principles

39. For the purposes of Article 14 (art. 14) a difference of treatment is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see, among other authorities, the above-mentioned *Karlheinz Schmidt* judgment, pp. 32-33, para. 24).

However, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of sex as compatible with the Convention (see, among other authorities, the above-mentioned *Karlheinz Schmidt* judgment, *ibid.*).

2. Whether there has been a difference in treatment between persons in similar situations

40. At the time of the events complained of contributions under the General Child Care Benefits Act were levied from unmarried childless men aged 45 or over but not from unmarried childless women of the same age (see paragraphs 21 and 23 above). This undoubtedly constitutes a "difference in treatment" between persons in similar situations, based on gender.

The factual difference between the two categories relied on by the Government, namely their respective biological possibilities to procreate, does not lead the Court to a different conclusion. It is precisely this distinction which is at the heart of the question whether the difference in treatment complained of can be justified.

3. Whether there is objective and reasonable justification

41. The Court notes that the General Child Care Benefits Act set up a social-security scheme to which, in principle, the entire adult population was subject, both as contributors and as potential beneficiaries.

A key feature of this scheme was that the obligation to pay contributions did not depend on any potential entitlement to benefits that the individual might have (see paragraph 21 above). Accordingly the exemption in the present case ran counter to the underlying character of the scheme.

42. While Contracting States enjoy a certain margin of appreciation under the Convention as regards the introduction of exemptions to such contributory obligations, Article 14 (art. 14) requires that any such measure,

in principle, applies even-handedly to both men and women unless compelling reasons have been adduced to justify a difference in treatment.

43. In the present case the Court is not persuaded that such reasons exist.

In this context it must be borne in mind that just as women over 45 may give birth to children (see paragraph 17 above), there are on the other hand men of 45 or younger who may be unable to procreate.

The Court further observes that an unmarried childless woman aged 45 or over may well become eligible for benefits under the Act in question; she may, for example, marry a man who already has children from a previous marriage.

In addition, the argument that to levy contributions under a child care benefits scheme from unmarried childless women would impose an unfair emotional burden on them might equally well apply to unmarried childless men or to childless couples.

44. Accordingly, irrespective of whether the desire to spare the feelings of childless women of a certain age can be regarded as a legitimate aim, such an objective cannot provide a justification for the gender-based difference of treatment in the present case.

4. Conclusion

45. There has been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1).

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

46. Article 50 of the Convention (art. 50) provides as follows:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicant claimed damages as well as reimbursement of costs and expenses.

A. Damages

47. Mr van Raalte asked the Court to award him compensation for pecuniary damage in the amount of the contributions which he had paid under the General Child Care Benefits Act in 1985 through 1988. These totalled 1,959 Netherlands guilders (NLG). He also asked the Court to award him interest over these sums at the statutory rate.

He also claimed NLG 4,740 for non-pecuniary damage. He stated that it had been "very painful" for him as an unmarried childless man to have to pay contributions under the General Child Care Benefits Act.

48. The Government stated that had there not been the difference in treatment complained of, men and women would have been equally liable to pay contributions under the General Child Care Benefits Act, so that the applicant would have had to pay them in any case.

The applicant's claim for non-pecuniary damage was in their view incompatible with the applicant's argument that such feelings, if suffered by women, could not justify extending the exemption only to them.

49. The Delegate of the Commission assumed that the applicant would be in a position to recover the contributions paid under domestic law and also considered that the applicant was entitled to some compensation for non-pecuniary damage.

50. The Court notes that the finding of a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1) does not entitle the applicant to retrospective exemption from contributions under the scheme in question. Accordingly the applicant's claim for pecuniary damage has not been substantiated.

As regards the applicant's claim for non-pecuniary damage, the Court considers that the present judgment in itself constitutes sufficient just satisfaction.

B. Costs and expenses

51. The applicant asked the Court to award him NLG 7,836.75 for costs and expenses incurred in the domestic proceedings, NLG 6,768 for costs and expenses incurred in the proceedings before the Commission and NLG 8,666.25 for costs and expenses incurred before the Court.

The Government did not comment. The Delegate of the Commission considered that the applicant was entitled to the sums sought.

52. The Court has no reason to doubt that these costs and expenses were actually incurred. It also accepts that they were necessarily incurred by the applicant in his attempts to prevent the violation found and later to obtain redress therefor. Finally, it finds them reasonable as to quantum.

The applicant's claims under this head, which total NLG 23,271, are therefore accepted in their entirety.

C. Default interest

53. According to the information available to the Court, the statutory rate of interest applicable in the Netherlands at the date of adoption of the present judgment is 5% per annum.

FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1);
2. Dismisses by eight votes to one the applicant's claims for pecuniary damage;
3. Holds unanimously that the present judgment in itself constitutes sufficient just satisfaction in respect of any non-pecuniary damage sustained;
4. Holds unanimously that the respondent State is to pay to the applicant, within three months, 23,271 (twenty-three thousand two hundred and seventy-one) Netherlands guilders in respect of costs and expenses, and that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 21 February 1997.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar

In accordance with Article 51 para. 2 of the Convention (art. 51-2) and Rule 55 para. 2 of Rules of Court B, the partly dissenting opinion of Mr Foighel is annexed to this judgment.

R. R.
H. P.

PARTLY DISSENTING OPINION OF JUDGE FOIGHHEL

I am in complete agreement with the majority of the Court as regards its finding of a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1) in this case. However I am in disagreement with the view of the majority that the applicant's claim for pecuniary damage should be dismissed. The Court has found the applicant to be the victim of discrimination as regards the requirement that he make contributions to a child care benefits scheme. Since this is damage which he has sustained as a result of the violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (art. 14+P1-1) he should, as a matter of fairness, be entitled under Article 50 of the Convention (art. 50) to recover the contributions that he had made to the scheme. I note, moreover, that this was the view taken by the Court in its *Karlheinz Schmidt v. Germany* judgment of 18 July 1994 (Series A no. 291-B, p. 34, para. 33).