



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

**CASE OF CLOOTH v. BELGIUM**

**(ARTICLE 50)**

JUDGMENT

STRASBOURG

5 March 1998

The present judgment is subject to editorial revision before its reproduction in final form in *Reports of Judgments and Decisions* 1998. These reports are obtainable from the publisher Carl Heymanns Verlag KG (Luxemburger Straße 449, D-50939 Köln), who will also arrange for their distribution in association with the agents for certain countries as listed overleaf.

### List of Agents

Belgium: Etablissements Emile Bruylant (rue de la Régence 67,  
B-1000 Bruxelles)

Luxembourg: Librairie Promoculture (14, rue Duchscher  
(place de Paris), B.P. 1142, L-1011 Luxembourg-Gare)

The Netherlands: B.V. Juridische Boekhandel & Antiquariaat  
A. Jongbloed & Zoon (Noordeinde 39, NL-2514 GC 's-Gravenhage)

SUMMARY<sup>1</sup>

Judgment delivered by a Chamber

*Belgium – claim for just satisfaction by an applicant whom Court had held in earlier judgment to be victim of a violation of Article 5 § 3 of the Convention*

ARTICLE 50 OF THE CONVENTION

Recapitulation of case-law: Article 50 empowers Court to afford injured party such satisfaction as appears to it to be appropriate if national law does not allow – or allows only partial – reparation to be made for consequences of breach found by Court.

Provided that it became final, judgment of Brussels Court of Appeal of 7 November 1997 made just reparation for consequences of violation found in principal judgment.

*Conclusion:* claim dismissed (unanimously).

COURT'S CASE-LAW REFERRED TO

12.12.1991, Clooth v. Belgium; 31.10.1995, Papamichalopoulos and Others v. Greece (Article 50)

---

1. This summary by the registry does not bind the Court.

**In the case of Clooth v. Belgium<sup>1</sup>,**

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court A<sup>2</sup>, as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,  
Mrs D. BINDSCHIEDLER-ROBERT,  
Mr F. GÖLCÜKLÜ,  
Mr B. WALSH,  
Mr C. RUSSO,  
Mr A. SPIELMANN,  
Mr J. DE MEYER,  
Mr A.N. LOIZOU,  
Mr J.M. MORENILLA,

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

Having deliberated in private on 28 February 1998,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights (“the Commission”) on 12 October 1990, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 12718/87) against the Kingdom of Belgium lodged with the Commission under Article 25 by a Belgian national, Mr Serge Clooth, on 12 February 1987.

2. The facts of the case are to be found in the principal judgment delivered on 12 December 1991 (Series A no. 225, pp. 7–12, §§ 7–31). In that judgment the Court held that the length of the applicant’s detention on remand had exceeded the reasonable time referred to in Article 5 § 3 of the Convention.

3. As just satisfaction Mr Clooth sought compensation for damage and reimbursement of costs and expenses. Having regard to the circumstances of

---

### *Notes by the Registrar*

1. The case is numbered 49/1990/240/311. 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 A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol. They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

the case, the Court decided to take into account the compensation that Mr Clooth might obtain under domestic law. Section 27(1) of an Act of 13 March 1973 provided: “Everyone deprived of his liberty in circumstances incompatible with the provisions of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms ... shall be entitled to compensation.”

4. The Court accordingly reserved the whole of the question and invited the Government and the applicant to submit, within three months, their written observations on the matter and, in particular, to notify the Court of any agreement they might reach (*ibid.*, p. 17, §§ 50–52, and point 2 of the operative provisions).

5. Subsequently Mr R. Bernhardt, the Vice-President of the Court and substitute judge in the Chamber, replaced Mr R. Ryssdal, who was unable to take part in the further consideration of the case, as President of the Chamber, and Mr B. Walsh, substitute judge, replaced Mrs Palm, who was likewise unable to take part in the further consideration of the case (Rules 21 § 6, second sub-paragraph, and 22 § 1 of Rules of Court A).

6. After the failure of an attempt to reach a friendly settlement, the applicant and the Government brought Mr Clooth’s claim before the Brussels *tribunal de première instance* by means of an application to appear voluntarily that was filed on 8 April 1992. The applicant sought 1,758,000 Belgian francs (BEF) in respect of non-pecuniary damage, BEF 698,150 in respect of pecuniary damage and BEF 1,283,698 for the costs of his defence, plus compensatory interest. The Belgian State requested the court to declare that its offer to pay the applicant the sum of BEF 300,000, covering all heads of compensation, was “sufficient”.

On 20 January 1995 the *tribunal de première instance* ordered the Belgian State to pay the applicant BEF 100,000 in respect of non-pecuniary damage and BEF 500,000 for the costs of his defence.

7. On 13 February 1995 Mr Clooth asked the Court to rule on the application of Article 50. On 24 March 1995 he lodged an appeal with the Brussels Court of Appeal against the judgment of 20 January 1995. On 31 March and 4 April 1995 respectively the Government and the Delegate of the Commission submitted observations. On 3 May 1995 the Court decided that as the case was still before the Belgian courts and that there was no reason to suppose that their final decision would be long in coming, it did not have to rule for the time being on the application of Article 50.

8. On 7 November 1997 the Brussels Court of Appeal delivered a judgment in which it increased the compensation for non-pecuniary damage to BEF 125,000, inclusive of compensatory interest, and upheld the judgment of 20 January 1995 as to the remainder.

9. In the light of that judgment, the Delegate of the Commission, the applicant and the Government submitted observations on the application of Article 50 on 12 and 13 February 1998.

## AS TO THE LAW

10. Article 50 of the Convention provides:

“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. Arguments of those taking part in the proceedings

11. Mr Clooth maintained that in awarding him 125,000 and 500,000 Belgian francs (BEF) respectively for non-pecuniary damage and for the costs of being represented in the national courts and at Strasbourg, the Brussels Court of Appeal had made only partial reparation for the consequences of the detention on remand he had undergone in breach of Article 5 § 3 of the Convention.

The applicant considered that his detention contrary to Article 5 § 3 had lasted from 21 June 1985 to 17 November 1987, that is to say 879 days. In respect of non-pecuniary damage, he sought BEF 2,000 per day, making a total of BEF 1,758,000.

He also stated that he had been prevented from carrying on any occupation during his detention. Taking as a basis the net wages of an unskilled worker, he sought BEF 698,150 in compensation for the pecuniary damage thus sustained.

As to the BEF 500,000 awarded by the national courts under the head of his defence costs, Mr Clooth described the amount as derisory. He stressed the complexity of the case, which he said justified retaining three lawyers. These had shown proper moderation in assessing their fees, fixed at BEF 262,500 for Ms Moerman, BEF 250,000 for Mr de Quévy and BEF 771,198 for Mr de Gratie, a total of BEF 1,283,698. That Mr Clooth had not actually paid those fees made no difference to the fact that he owed them to his lawyers and was thus entitled to seek reimbursement of them.

Lastly, the applicant sought payment of compensatory interest on those sums, in addition to the interest due with effect from the issue of the compensation proceedings and expenses.

12. Relying on the Brussels Court of Appeal's analysis of the principal judgment of 12 December 1991, the Government stated that the applicant's detention on remand had breached Article 5 § 3 of the Convention only from 13 December 1985 to 28 September 1987, that is to say for 625 days. The Court of Appeal had rightly assessed non-pecuniary damage at BEF 200 per day on an equitable basis, that is to say BEF 125,000 in all, including compensatory interest.

The Government considered that no pecuniary damage had been made out. Given that Mr Clooth had had no occupation or vocational training when he was detained on remand, he could not rely on hypothetical remuneration.

As to the defence costs sought by the applicant, the Government agreed with the assessment made on an equitable basis by the Brussels *tribunal de première instance* and Court of Appeal, that is to say BEF 200,000 for the proceedings in the national courts and BEF 300,000 for those before the Convention institutions, the latter sum being awarded without its being necessary to deduct the BEF 77,943 paid in legal aid. The Government pointed out in this connection that the applicant had never paid the fees for which he was now seeking reimbursement.

As regards Mr Clooth's claim for interest, the Government indicated that as soon as the *tribunal de première instance* had delivered the judgment in which it awarded compensation to the applicant, the funds had been lodged with the Bank for Official Deposits; furthermore, the State had authorised the release of part of those funds. At all events, no interest could be awarded on amounts which might be due – though in fact they were not – in respect of defence costs, since the applicant had not incurred any expenditure on them.

13. The Delegate of the Commission pointed out that in his observations of 3 April 1995 he had taken the view that the sums awarded in the judgment of the *tribunal de première instance* of 20 January 1995 seemed fair, regard being had to the particular circumstances of the case. Inasmuch as the amounts awarded in the Court of Appeal's judgment of 7 November 1997 were larger than those awarded at first instance, he considered that the Court could find that the compensation secured by the applicant under domestic law afforded him sufficient just satisfaction.

## **B. The Court's decision**

14. The Court reiterates that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States that are parties to a case are in principle free to choose

the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 50 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see the *Papamichalopoulos and Others v. Greece* judgment of 31 October 1995 (*Article 50*), Series A no. 330-B, p. 59, § 34).

15. In the principal judgment the Court indicated that it wished to take into account the compensation that Mr Clooth might obtain under domestic law (p. 17, § 52). It takes note of the two court decisions communicated to it by the parties: the judgment of the Brussels *tribunal de première instance* of 20 January 1995 and the Brussels Court of Appeal's judgment of 7 November 1997 (see paragraphs 6 and 8 above). Making its assessment on an equitable basis, the Brussels Court of Appeal awarded Mr Clooth BEF 125,000 in compensation for non-pecuniary damage and BEF 500,000 by way of reimbursement of his defence costs in the domestic courts (BEF 200,000) and before the Convention institutions (BEF 300,000) and dismissed the claim for compensation for pecuniary damage as having not been made out.

16. Having regard to all the aspects of the case, the Court holds that the Brussels Court of Appeal's judgment of 7 November 1997, provided that it becomes final, makes just reparation for the consequences of the violation found in the principal judgment. Accordingly, as matters stand, the applicant's claim should be dismissed.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

*Dismisses* the applicant's claim for just satisfaction.

Done in English and in French, and notified in writing on 5 March 1998 pursuant to Rule 55 § 2, second sub-paragraph, of Rules of Court A.

*Signed:* Rudolf BERNHARDT  
President

*Signed:* Herbert PETZOLD  
Registrar