



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

FIRST SECTION

CASE OF VAN NUS v. THE NETHERLANDS

(Application no. 37538/97)

JUDGMENT
(Friendly Settlement)

STRASBOURG

24 July 2001

This judgment may be subject to editorial revision.

In the case of Van Nus v. the Netherlands,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs E. PALM, *President*,
Mr L. FERRARI BRAVO,
Mr GAUKUR JÖRUNÐSSON,
Mr R. TÜRMEŒ,
Mr C. BÎRSAN,
Mr T. PANŢÎRU,
Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 10 July 2001,

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

PROCEDURE

1. The case originated in an application (no. 37538/97) against the Kingdom of the Netherlands lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Dutch national, Mr D.J. van Nus ("the applicant"), on 8 July 1997.

2. The applicant was represented before the Court by Mr J. Roijers, a lawyer practising in Rotterdam. The Dutch Government ("the Government") were represented by their Agent, Mrs J. Schukking, of the Netherlands Ministry of Foreign Affairs.

3. The applicant complained, *inter alia*, under Article 6 § 1 of the Convention about the length of a set of administrative proceedings.

4. The application was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention.

5. On 16 January 2001, after obtaining the parties' observations, the Court declared the application admissible in so far as this complaint is concerned. Further complaints of the applicant were declared inadmissible on 28 September 1999 and 16 January 2001, respectively.

6. On 31 May 2001, the Court received a formal declaration, dated 23 May 2001, from the applicant's representative accepting a friendly settlement of the case. On 5 June 2001, the Court also received the Netherlands Government's formal declaration, dated 21 May 2001,

accepting a friendly settlement of the case. On 10 July 2001, the Court was informed by the Netherlands Government that they had no objections against the replacement of the national judge, who was unable to sit, by another member of the Chamber.

THE FACTS

7. The applicant owns a small house in a rural outer part of the municipality of Anloo in the province of Drenthe which he used for recreational purposes. In 1991, he wished to permanently live there. However, extensive building was required to make the house fit for permanent habitation.

8. In early 1992, the applicant submitted a plan for extensive modifications to the municipal authorities of Anloo who, after having given their provisional approval, transmitted the plan on 1 June 1992 to the Provincial Executive (*Gedeputeerde Staten*) of Drenthe for approval.

9. On 16 July 1992, the Provincial Executive informed the applicant and the municipal authorities that they had decided to withhold approval. The applicant filed an objection (*bezwaarschrift*) against this decision on 11 August 1992.

10. In the summer of 1992, while the objection proceedings against the refusal of the first plan were still pending, the applicant submitted a second plan.

11. Also in the summer of 1992 the applicant submitted a third plan to the municipal authorities. The municipal authorities gave their provisional approval and forwarded the third plan to the Provincial Executive, which likewise gave its approval. However, this plan was never carried out as the applicant found that it was not feasible for financial reasons. It was, however, never formally withdrawn either.

12. After discussions with provincial officials, the applicant submitted a fourth and a fifth plan in 1993. These were apparently not formally decided on, the Provincial Executive taking the view that to do so was undesirable as long as the proceedings relating to the first plan had not been brought to a conclusion. In any case, they did not meet the standards set by the Provincial Executive's local area development plan (*streekplan*).

13. On 28 September 1992 the applicant wrote to the Provincial Executive, stating that he was living with his family in rented housing the lease of which was due to expire towards the end of the year. He asked for his objection to be dealt with as a matter of urgency.

14. On 10 December 1992, after a hearing held on 9 November 1992, the Provincial Executive issued a decision on the applicant's objection filed on 11 August 1992.

15. On 7 January 1993 the applicant lodged two separate appeals to the Judicial Division (*Afdeling Rechtspraak*) of the Council of State (*Raad van State*). One appeal was directed against the rejection by the Provincial Executive of his first plan. The second appeal was directed against the implied rejection by the Provincial Executive of his second plan.

16. At some point in time, after it had appeared that both appeals were in fact directed against the decision of 10 December 1992, the two appeals were joined.

17. On 1 January 1994 the General Administrative Law Act (*Algemene Wet Bestuursrecht*) entered into force. The functions of the Judicial Division, which thereby became defunct, were vested in a new division of the Council of State, the Administrative Jurisdiction Division (*Afdeling bestuursrechtspraak*).

18. On 11 February 1997, following a hearing held on 13 May 1996, the Administrative Jurisdiction Division rejected the applicant's appeal.

THE LAW

19. On 5 June 2001 the Court received the following declaration, dated 21 May 2001, from the Government:

"I declare that the Government of the Netherlands offer to pay, on an *ex gratia* basis, 6,302.75 Netherlands Guilders to Mr Dirk Jan van Nus with a view to securing a friendly settlement of the application registered under no. 37538/97. This sum shall cover any pecuniary and non-pecuniary damage as well as costs, and it will be payable immediately after the notification of the judgment delivered by the Court pursuant to the Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention."

20. On 31 May 2001 the Court received the following declaration, dated 23 May 2001, from the applicant's representative:

"I note that the Government of the Netherlands are prepared to pay, on an *ex gratia* basis, a sum totalling 6,302.75 Netherlands Guilders covering both pecuniary and non-pecuniary damage and costs to Mr Dirk Jan van Nus with a view to securing a friendly settlement of application no. 37538/97 pending before the Court.

I accept the proposal and waive any further claims in respect of the Netherlands relating to the facts of this application. I declare that the case is definitely settled.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

21. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

22. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 24 July 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President