



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

SECOND SECTION

CASE OF MEULENDIJKS v. THE NETHERLANDS

(Application no. 34549/97)

JUDGMENT

STRASBOURG

14 May 2002

FINAL

14/08/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Meulendijks v. the Netherlands,

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

Mr J.-P. COSTA, *President*,

Mr L. LOUCAIDES,

Mr C. BÎRSAN,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 March 2000 and 23 April 2002,

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

PROCEDURE

1. The case originated in an application (no. 34549/97) against the Kingdom of the Netherlands lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention by two Netherlands nationals, Mathijs Hendricus Meulendijks and Antonius Wilhelmus Martinus Meulendijks (“the applicants”), on 9 January 1997.

2. The applicants alleged that there had been a violation of their rights under Article 6 § 1 of the Convention, particularly as regards the length of the proceedings in question.

3. On 1 July 1998 the Commission gave a decision adjourning its examination of part of the application and declaring the application inadmissible for the remainder.

4. The applicants were represented before the Court by Mr J.C.B.C. Geerts, a lawyer practising in Rosmalen. The Netherlands Government (“the Government”) were represented by their Agents, Mr R. Böcker and Ms J. Schukking of the Ministry of Foreign Affairs.

5. On 1 November 1998 the competence to examine the application was transferred to the Court (Article 5 § 2 of Protocol No. 11 to the Convention). The Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. On 14 March 2000 the Court gave a decision declaring the remainder of the application admissible.

7. The applicants, but not the Government, filed a memorial. The Government confined themselves to referring to their observations filed at the stage of the examination of the admissibility of the application.

8. After consulting the Agent of the Government and the applicants, the Chamber decided that it was not necessary to hold a hearing (Rule 59 § 2 *in fine*).

9. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants, Netherlands nationals born in 1920 and 1957 respectively, were partners in a timber trading enterprise based in Heeze. They operated as a trading partnership (*vennootschap onder firma*).

11. Mr Mathijs Henricus Meulendijks died in September 2000. The proceedings are being pursued in his stead by his heirs. For convenience, Mr Mathijs Henricus Meulendijks will continue to be referred to hereinafter as an applicant (“the first applicant”) although his heirs now have this status.

A. The criminal investigation and proceedings

12. On 7 December 1988, a preliminary criminal investigation (*gerechtelijk vooronderzoek*) was opened against the applicants’ trading partnership on suspicion of forgery committed for fiscal purposes. On 13 December 1988, in the context of this investigation, the applicants’ business premises were searched and a major part of the office records was seized by the investigating authorities.

13. By letters of 16 and 23 December 1988, the applicants’ lawyer unsuccessfully requested the public prosecutor to return the items seized on 13 December 1988 in order to allow the trading partnership to continue its business activities.

14. At some unspecified date, the applicants’ lawyer was informed by the investigating judge (*rechter-commissaris*) that the seized office records would be returned after a final examination (*slotverhoor*). This examination took place on 28 February 1991.

15. On 19 March 1991, the applicants’ trading partnership, as a separate legal entity, received a formal notification that no further criminal

proceedings would be brought against it (*kennisgeving van niet verdere vervolging*).

16. Since the seized office records had still not been returned, the applicants' lawyer informed the investigating judge by letters of 25 March and 8 April 1991 that, if the office records were not returned by a certain date, a formal complaint (*beklag*) about the continuation of the seizure would be filed with the Regional Court. At some later date part of the seized office records was returned. The return of the remaining part was refused.

17. At some unspecified date, the first applicant was summoned to appear on 23 May 1991 before the Regional Court (*arrondissementsrechtbank*) of 's-Hertogenbosch on charges under Article 225 of the Criminal Code (*Wetboek van Strafrecht*) and Article 68 of the General State Taxation Act (*Algemene Wet inzake Rijksbelastingen*). Criminal proceedings were also brought against the second applicant.

18. In the subsequent criminal proceedings against the first applicant, the Court of Appeal (*gerechtshof*) of 's-Hertogenbosch, in its judgment of 27 April 1994, declared the prosecution inadmissible for non-compliance with the reasonable time requirement contained in Article 6 § 1 of the Convention. The criminal proceedings brought against the second applicant ended with the decision of the Court of Appeal of 27 April 1994 in which the summons against the second applicant was declared null and void, also for failure to respect the reasonable time requirement.

19. The applicants' counsel lodged a request for the return of the office records in July 1994. The applicants state that part of the records were returned in September of that year. The remainder was returned later.

B. The proceedings concerning social-security contributions

20. On 28 March 1989, the Occupational Association for the Timber and Furniture Industry and the Timber Wholesale Trade (*Bedrijfsvereniging voor de Hout- en Meubelindustrie en Groothandel in Hout*, hereinafter referred to as "the Occupational Association") sent the applicants corrected demands (*correctienota's*) for social-security contributions over the years 1985-1987. The Occupational Association considered that the applicants had paid undeclared wages or had been involved in an excessive reimbursement of expenses.

21. By letter of 7 July 1989, the applicants objected to these corrected demands. The applicants denied having paid undeclared wages or having been involved in excessive reimbursement of expenses. In this letter, the applicants requested the Occupational Association to give formal confirmation (*voor beroep vatbare beschikking*) of their demands.

22. It is stated by the Government and not denied by the applicants that the Occupational Association wrote to the applicants on 2 August 1989 asking them to substantiate their objections.

23. On 7 March 1990, the Occupational Association again requested the applicants to substantiate their objections to the demands.

24. On 9 March 1990, the Occupational Association sent the applicants another, similar corrected demand for the year 1988.

25. By letter of 28 March 1990, the applicants also objected to this further demand and requested its formal confirmation. In the same letter they asked to be allowed more time to substantiate their objections, in view of the possibility that a compromise might be reached.

26. The applicants made written submissions in support of their objections on 30 August 1990 and further offered a compromise solution. On 31 October 1990, after part of the seized office records had been returned to them, the applicants submitted additional reasons for their objections.

27. On 7 November 1990, an administrator of the Occupational Association drew up an internal report and, towards the end of March 1991, the administrator presented supplementary recommendations. These were approved on 20 June 1991 by the "Small Commission" (*Kleine Commissie*) of the Occupational Association.

28. On 3 July 1991, the Occupational Association issued the formal confirmation with the reasons for its decision. According to this decision, the applicants had to pay an additional 288,224.28 Netherlands guilders (NLG) for social-security contributions on grounds of an excessive reimbursement of expenses (which were considered as wages by the Occupational Association) and the payment of undeclared wages.

29. The applicants lodged an appeal with the Appeals Tribunal (*Raad van Beroep*) on 29 July 1991 and further substantiated their grounds of appeal on 27 August 1991. On 10 January 1992, the Occupational Association replied in writing to the applicants' submissions on appeal. The applicants responded in writing on 29 June 1992 and the Association's further written reaction was submitted on 18 February 1993.

30. In the course of the restructuring of the Netherlands judiciary, the case was transferred from the Appeals Tribunal to the Regional Court of 's-Hertogenbosch on 1 July 1992.

31. Following a hearing held on 6 April 1993, the Regional Court rejected the applicants' appeal by a judgment of 17 May 1993. The applicants lodged a further appeal with the Central Appeals Tribunal (*Centrale Raad van Beroep*).

32. On 18 June 1993, the applicants submitted their grounds of appeal to the Central Appeals Tribunal, to which the Occupational Association replied on 24 December 1993. On 6 January 1995, the applicants made further submissions to the Central Appeals Tribunal after a part of the office records became available to them. The Occupational Association replied on 20 January, 12 October and 7 November 1995. The applicants submitted further information on 10 May 1996.

33. Following a hearing held on 30 May 1996 during which three witnesses and an expert were heard at the applicants' request, the Central Appeals Tribunal, in its judgment of 11 July 1996, quashed both the decision of 3 July 1991 and the judgment of 17 May 1993. It accepted that the applicants had not paid excessive reimbursements for expenses, but found that the recovery of unpaid social-security contributions for undeclared wages was justified in principle. However, on the latter point, the decision against which appeal had been made, was insufficiently reasoned. It invited the Occupational Association to reconsider its decision rejecting the applicants' proposals for a compromise in order to avoid prolonging the proceedings any further.

34. Insofar as the applicants had complained of the delay between their request for and the issue of the formal confirmation by the Occupational Association, the Central Appeals Tribunal – in the light of the European Court's findings in its *Schouten and Meldrum v. the Netherlands* judgment of 9 December 1994 – noted that, following the applicants' request of 7 July 1989, the Occupational Association had requested the applicants on 7 March 1990 to substantiate their objections and that, after having requested a delay, the applicants replied to this request on 30 August 1990 and further offered a compromise solution. The Central Appeals Tribunal also noted that on 31 October 1990 the applicants had sent additional reasons for their objections, that an internal report had been drafted on 7 November 1990 which had been submitted to the Small Commission of the Occupational Association and that the formal confirmation had been issued on 3 July 1991.

35. Noting the complexity of the case and the contents of the applicants' submissions, the Central Appeals Tribunal held that, although the decision-making process up to the delivery of the formal confirmation had been pursued "with little diligence" (*met weinig voortvarendheid*), the Occupational Association had not acted so slowly that Article 6 of the Convention had been violated.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicants complain of the length of the proceedings concerning social-security contributions. They rely on Article 6 § 1 of the Convention, which provides, in its relevant part:

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

A. Applicability of Article 6 § 1

37. In light of the Court's *Schouten and Meldrum v. the Netherlands* judgment of 9 December 1994 (Series A no. 304, pp. 19-24, §§ 47-60) concerning comparable social-security proceedings, the Government accepted that Article 6 § 1 was applicable to the instant case as concerns civil rights and obligations. The Court sees no reason to reach a different conclusion.

B. Whether Article 6 § 1 has been violated

1. Period to be taken into consideration

38. The period to be taken into consideration began when the applicants requested a formal confirmation (see the above-mentioned *Schouten and Meldrum* judgment, p. 25, § 62), that is on 7 July 1989. It ended on 11 July 1996 when the Central Appeals Tribunal gave its judgment. The total length of time to be considered thus amounts to seven years and four days for two levels of jurisdiction, preceded by prerequisite administrative proceedings.

2. Reasonableness of the length of the proceedings

39. The reasonableness of the length of the 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 (see, among many other authorities, the above-mentioned *Schouten and Meldrum* judgment, p. 25, § 63).

40. The applicants argued that the length of the proceedings in their case compared unfavourably with that in the cases of *Schouten and Meldrum*. In its judgment in the latter cases, the Court had found that an interval of one year, four months and twenty-seven days before the delivery of a formal confirmation violated Article 6 § 1; in contrast, in the instant case, formal confirmation had been given after two years. Moreover, although in the *Schouten and Meldrum* judgment the Court had considered two years and six months an acceptable length of time for proceedings at two instances, in the present case the judicial proceedings had taken twice as long.

41. The respondent Government referred to their observations submitted at the stage of the examination of the admissibility of the application. With regard to the period of two years that had elapsed between the date of the applicants' request for the formal confirmation and the delivery thereof by the Occupational Association, the Government argued, firstly, that the applicants had not substantiated their objections until 30 August 1990. This

period of approximately one year could not be held against the Government. Secondly, the case was complex; separate investigations had been made by the prosecuting authorities, the tax authorities and the Occupational Association. With regard to the proceedings before the administrative tribunals, the Government submitted that these had been protracted but not unreasonably so.

42. The Court, for its part, accepts that the case was of some complexity. However, this does not of itself justify the length of the proceedings.

43. On 7 July 1989 the applicants requested formal confirmation of the decision of the Occupational Association concerning the social-security contributions for the years 1985 to 1987. The Occupational Association reacted on 2 August 1989 and again on 7 March 1990, on both occasions requesting substantiation of the applicants' objections. On 9 March 1990 the Occupational Association made an additional demand, of which the applicants requested formal confirmation on 28 March 1990. The applicants made submissions in support of their objections on 30 August 1990, and again on 31 October 1991 after they had been able to study their office records. Formal confirmation was eventually delivered on 3 July 1991.

44. The Court notes that a request for formal confirmation was not a legal remedy; no legislative provision required the Occupational Association to invite the applicants to substantiate their objections, or the applicants to act on such invitation. However, an appeal to a tribunal was barred if a formal confirmation had not been given. In these circumstances, delays in the issue of that confirmation are, in principle, imputable to the respondent Party (see the above-mentioned *Schouten and Meldrum v. the Netherlands* judgment, p. 25, § 62).

45. The Court notes, in addition, that the proceedings concerned not only the corrected demands of 28 March 1989 but also that of 9 March 1990. It is therefore not convinced that the proceedings would have been concluded significantly sooner had the applicants reacted to the Occupational Association's letter of 2 August 1989.

46. The Court accepts, however, that there was a period of inaction lasting some five months – from the end of March 1990 until 30 August 1990 – for which the applicants were themselves largely responsible. Even so, while it may well be that the applicants' objections and proposals for a compromise, submitted on 30 August 1990, needed to be considered, the length of time involved in this consideration – ten months – seems excessive. In the present case, the periods imputable to the respondent Party up until the delivery of formal confirmation thus total nineteen months.

47. The judicial proceedings began on 29 July 1991, when the applicants lodged their appeal with the Appeals Tribunal. They ended nearly five years later, on 11 July 1996, when the Central Appeals Tribunal gave judgment.

On the face of it, such a length of time to decide a social-security dispute at two instances appears excessive.

48. The Government have not sought to argue that the applicants themselves contributed to any delay in the proceedings before the administrative tribunals. From the applicants' perspective, moreover, the proceedings were dogged by their inability to refer to their office records, which until late 1994 were held by the prosecuting authorities. Thus, the applicants' failure until 6 January 1995 to reply to the Occupational Association's submissions of 24 December 1993 can partly be explained by the fact that relevant information only became available to them in September 1994, after the conclusion of the criminal proceedings against the second applicant. Furthermore, it is noteworthy that the parallel criminal proceedings against the applicants, which delayed the return of their office records, were discontinued by domestic court findings that the "reasonable time" had been exceeded.

49. The Court cannot but consider that the overall length of the proceedings here at issue, namely seven years and four days, was excessive.

50. In conclusion, there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

52. The applicants alleged that as a result of the various sets of proceedings they had been prevented from investing in the expansion of their enterprise. In particular, the seizure of all the assets of the registered partnership and the office records had frightened off financial backers, preventing the applicants from purchasing a modern wood processor and putting it to use already in 1989. Only in 1994 had their financial situation improved sufficiently for them to countenance the purchase of the wood processor. However, the machine they purchased, and which they started using in October 1994, was second-hand and had neither the capacity nor the reliability of a new machine. Only in July 1997 were the applicants able to purchase a new wood processor which met their standards. Until then, the enterprise had therefore had much less earning power than it would have had if the various Netherlands authorities had left it alone.

53. The applicants estimated their resulting loss, from the spring of 1989 until July 1997, at NLG 1,291,000 or 585,830 euros (EUR). In the alternative, assuming that the proceedings could and should reasonably have been brought to an end no later than January 1992, and starting from that date, the applicants estimated their loss until July 1997 at NLG 788,800 (EUR 357,942).

54. In addition, having lost the confidence of their suppliers, they had had to pay them cash, which had resulted in their having to resort to expensive borrowing from banks. This had involved additional expense of some NLG 25,000 (EUR 11,344.50). Finally, they claimed an unspecified amount in respect of the loss of their own time dealing with the matter. Their claim in respect of pecuniary damage, in so far as it was specified, thus came to NLG 1,316,000 (EUR 597,175).

55. The Government was of the opinion that these claims were unrelated to the applicants' complaints regarding the length of the proceedings concerning the social-security contributions.

56. The Court notes that the violation it has found relates solely to the length of the proceedings before the Occupational Association and the competent tribunals. However, the applicants' claims for compensation of pecuniary damage relate to the consequences of the seizure, in different proceedings, of the assets of their registered partnership and the office records. In these circumstances, no causal link has been established between the violation found and the damage alleged. The applicants' claims under this head must therefore be rejected.

B. Non-pecuniary damage

57. The applicants stated that they had suffered emotional damage due to the prolonged uncertainty as to the outcome of the proceedings. In particular, the first applicant's health had been affected: he had had a cerebral haemorrhage after the Central Appeals Tribunal gave judgment and, since the admissibility decision of this Court, there had been a further decline. Moreover, the applicants had to undergo the distress of an investigation by the tax authorities, criminal prosecutions and damage to their reputations. The applicants claimed NLG 30,000 (EUR 13,613.40) each for non-pecuniary damage. They referred to the Court's *A and Others v. Denmark* judgment of 8 February 1996 (*Reports of Judgments and Decisions* 1996-I), and its *Pafitis and Others v. Greece* judgment of 26 February 1998 (*Reports* 1998-I), in which violations of the "reasonable time" requirement enshrined in Article 6 § 1 had been found. The length of the proceedings concerned in those judgments had been comparable to that in the present case, and the awards in respect of non-pecuniary damage had been similar to the sums claimed by the applicants.

58. The Government were of the opinion that the heirs of the first applicant were not entitled to compensation for non-pecuniary damage. Moreover, there was no causal link between the length of the proceedings concerning social-security contributions and the distress claimed.

59. The Court notes that the Government's contention that the heirs of a deceased applicant are not entitled to compensation for non-pecuniary damage is not supported by the Court's case-law (see, for example, the *Vocaturio v. Italy* judgment of 24 May 1991, Series A no. 206-C; more recently, the *Janssen v. Germany* judgment of 20 December 2001 (Section I), no. 23959/94).

60. The Court cannot find it established that the length of the proceedings contributed to the deterioration of the health of the first applicant, who was born in 1920 and was seventy-nine years old at the time of his death in 2000. In fact, the first applicant's health seems to have declined after the domestic proceedings were terminated. The distress caused by the tax investigation and the criminal prosecution, and the resulting damage to the applicants' reputation, are unrelated to the violation found in the present case.

61. As regards the case-law cited by the applicants, the Court is of the opinion that it cannot serve as precedent in the present case. In the cases of *A and Others v. Denmark*, the Danish courts were found to have neglected a duty to act with exceptional diligence, the plaintiffs all suffering from AIDS (*loc. cit.*, p. 108, § 81). In the *Pafitis and Others* cases, violations were found in respect of two separate sets of proceedings, one of which had lasted for over ten years (*loc. cit.*, p.460, § 100, and p. 461, § 104).

62. However, the Court accepts that the applicants suffered some distress that could have been avoided had the proceedings been brought to an end within a reasonable time. Deciding on an equitable basis, the Court awards the applicants jointly EUR 3,000 in respect of non-pecuniary damage.

C. Costs and expenses

63. The Court observes that, according to its case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, as a recent authority, the *Boultif v. Switzerland* judgment of 2 August 2001 (Section II), no. 54273/00, to be published in ECHR 2001, § 61).

64. As regards the domestic proceedings, the applicants made claims only in respect of the proceedings before the Central Appeals Tribunal, the remainder of the costs and expenses which they had incurred in the

domestic proceedings having been paid under a settlement by the Occupational Association. The legal costs involved in the proceedings before the Central Appeals Tribunal came to a total of NLG 58,841.50 (EUR 26,701.10). In addition the applicants sought reimbursement of their accountants' fees, in so far as they related to the proceedings against the Occupational Association, to an amount of NLG 123,300 (EUR 55,951.10). The claim for costs and expenses incurred in the domestic proceedings thus came to a total of NLG 182,141.50 (EUR 82,652.20).

65. The applicants claimed a total of NLG 26,340 (EUR 11,952.60), not including value-added tax, in respect of the proceedings before the Commission and the Court. Of this sum, NLG 9,622 (EUR 4,366.27) related to the proceedings before the Commission. The remainder, totalling NLG 21,140 (EUR 9,592.91), related to the proceedings before the Court.

66. The Government argued that the sums claimed in respect of the domestic proceedings were unrelated to the length of the proceedings. As to the sums claimed in respect of the Convention proceedings, the Government were of the opinion that, since the Commission had declared the application partly inadmissible, these costs could not all relate to any violation that might be found. Moreover, apart from the application, the letters sent by the applicants' representative had concerned only the claim for just satisfaction.

67. The Court notes that the invoice sent to the applicants by their counsel on 7 July 1995 shows that some research of Convention case-law was done, although it does not specify any amount referable to the length of the proceedings before the domestic authorities. In addition, the Court's case file, in particular the judgment of the Central Appeals Tribunal, reflects the fact that the applicants did in fact raise complaints before that Tribunal about the length of the proceedings and referred to Article 6 of the Convention. In these circumstances, the Court cannot accept the Government's position that the applicants' claim under this head should be rejected in its entirety.

68. The Court agrees with the Government that the sum claimed in respect of the proceedings before the Commission does not wholly relate to the violation found. It also agrees with the Government that the sum claimed in respect of the proceedings before the Court is not reasonable as to quantum.

69. Making an assessment on an equitable basis, the Court awards the applicants a global sum of EUR 4,000 in respect of costs and expenses.

C. Default interest

70. 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 7% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the heirs of the first applicant have standing to continue the present proceedings in his stead;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage; and
 - (ii) EUR 4,000 (four thousand euros) in respect of costs and expenses;
 - (b) that simple interest at an annual rate of 7% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 14 May 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. Dollé
Registrar

J.-P. Costa
President