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

SECOND SECTION

CASE OF WESSELS-BERGERVOET v. THE NETHERLANDS

(Application no. 34462/97)

JUDGMENT

STRASBOURG

4 June 2002

FINAL

04/09/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Wessels-Bergervoet v. the Netherlands,

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

Mr J.-P. COSTA, *President*,
Mr GAUKUR JÖRUNDSSON,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mr T.L. EARLY, *Deputy Section Registrar*,

Having deliberated in private on 14 May 2002,

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

PROCEDURE

1. The case originated in an application (no. 34462/97) 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 Netherlands national, Mrs Rika E.W. Wessels-Bergervoet ("the applicant"), on 11 October 1996.

2. The applicant, who had been granted legal aid, was represented before the Court by Mrs H. Mollema-de Jong, a lawyer practising in Amersfoort. The Netherlands Government ("the Government") were represented by their Agent, Mrs J. Schukking, of the Netherlands Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that her old-age pension had been reduced as a result of discriminatory treatment between married men and married women, contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. On 1 December 1998 the Chamber decided to adjourn its examination of the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, and declared the remainder of the application inadmissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

7. On 3 October 2000, the Chamber declared the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 admissible [*Note by the Registry*. The Court's decision is obtainable from the Registry].

8. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

9. Following the general restructuring of the Court's Sections from 1 November 2001 (Rule 25 § 1), the application was assigned to the newly composed Second Section (Rule 52 § 1).

10. After consulting the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 2 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

11. The applicant and her husband have always lived in the Netherlands. By a decision of 7 August 1984, the applicant's husband was granted a married man's old-age pension under the General Old Age Pensions Act (*Algemene Ouderdomswet*) commencing on 1 August 1984. However, pursuant to the then section 10 of the Act, his pension was reduced by 38% as neither he nor the applicant had been insured under the Act during nine periods between 1 February 1957 and 1 August 1977 when he had worked in Germany and had an old-age insurance under the German social-security legislation. These nine periods amounted in total to nineteen years. No appeal was filed against this decision.

12. After the applicant reached the age of 65 in 1989, the Board of the Social Insurance Bank (*Sociale Verzekeringsbank*), by a decision of 14 February 1989, granted the applicant an old-age pension under the General Old Age Pensions Act commencing on 1 March 1989. As had occurred with her husband's pension, her pension was also reduced by 38%. The applicant filed an appeal with the Arnhem Appeals Tribunal (*Raad van Beroep*), as it was then known, complaining that this reduction in her old-age pension constituted discriminatory treatment.

13. In its decision of 10 January 1990 the Appeals Tribunal noted that, under sections 7 and 9 of the General Old Age Pensions Act, a married person – like the applicant – who had been insured under this Act and had reached the age of 65 was entitled to an old-age pension amounting to 50% of the net minimum wage per month.

14. However, under the terms of section 13 of the Act, this amount could be reduced by 2% for each full year in which the person concerned had not

been insured between the ages of 15 and 65. The Appeals Tribunal further noted that, according to section 6(1) of the Act, those insured were persons between the ages of 15 and 65 who were either resident in the Netherlands or, if not, were liable to payment of salaries tax (*loonbelasting*) in respect of work carried out in the Netherlands under a contract of employment. Under the present subsection 2 of section 6 of the Act, it was possible, by way of an Order in Council (*Algemene Maatregel van Bestuur*), to extend or limit the group of insured persons as an exception to the general rule contained in section 6(1).

15. The Appeals Tribunal referred to the case-law of the Central Appeals Tribunal (*Centrale Raad van Beroep*) to the effect that the question whether or not a person was insured under the General Old Age Pensions Act fell to be determined on the basis of the rules in force at the relevant time.

16. It further noted that, by virtue of five consecutive royal decrees on the extension and limitation of the group of insured persons (*Koninklijke Besluiten Uitbreiding en Beperking van de kring der verzekerden*) that had been issued under section 6(1) of the Act and had remained in force until 1 April 1985, persons residing in the Netherlands but working abroad under a contract of employment and insured under a foreign social-security scheme by virtue of that employment were not insured under the Act. That limitation also applied to a woman married to a person who, pursuant to those royal decrees, was not insured under the Act.

17. The Appeals Tribunal noted that it was not in dispute that, during the relevant periods, the applicant's husband had been working in Germany and had been subject to German social-security legislation in accordance with Ordinance no. 3 of the Council of Ministers of the European Communities (until 1 October 1972) and subsequently Ordinance 1408/71.

18. It found that, in these circumstances, the Social Insurance Bank had correctly concluded that the applicant was not insured under the General Old Age Pensions Act for the period her husband had worked in Germany.

19. However, as regards the question whether that situation was compatible with the principle of equality, in particular the prohibition on discrimination between men and women, the Appeals Tribunal noted that there was a provision in the royal decrees which rendered the insurance of married women under the Act dependent on their husbands being insured, whereas the decrees did not contain a comparable provision in respect of married men.

20. The Appeals Tribunal examined the applicant's situation in the light of Article 26 of the International Covenant on Civil and Political Rights (ICCPR). It referred to the case-law of the Central Appeals Tribunal according to which, from 23 December 1984, this provision was also directly applicable in the Netherlands legal order in the field of social security. The Appeals Tribunal found that this implied that rights could be derived directly from this provision in so far as an application, after

23 December 1984, of statutory rules created a difference in treatment between men and women without any objective and reasonable justification, and led to a more unfavourable result than would have existed had there not been such a difference. It considered that the applicant had found herself in that situation as she had been awarded an old-age pension on 1 March 1989 from which 38% was deducted on the basis of rules which made an unjustified distinction between married men and women.

21. The Appeals Tribunal noted that, from 1 April 1985 onwards, the principle of equal treatment between men and women had been incorporated in the General Old Age Pensions Act, and that this had resulted in the introduction of a system in which the entitlement to full benefits was made solely dependent on the question whether or not the person concerned had personally completed the qualifying years under the Act. It concluded, therefore, that married women, like the applicant, who had fully complied with the conditions for insurance under the Act, could not be regarded as having been uninsured during a certain period solely on grounds of marital status.

22. Consequently, the Appeals Tribunal quashed the decision of 14 February 1989, in so far as the applicant's pension was reduced by 38%, upheld the remainder of the decision and ruled that the applicant was entitled to a full pension under the Act. The Board of the Social Insurance Bank filed an appeal with the Central Appeals Tribunal.

23. In its judgment of 26 November 1993, following a hearing held on 15 October 1993, the Central Appeals Tribunal quashed the decision of 10 January 1990 and dismissed the applicant's appeal as ill-founded.

24. The Central Appeals Tribunal noted at the outset that it was not in dispute between the parties that the applicant did not belong to the group of persons as defined in Article 2 of Directive 79/7/EEC on the gradual implementation of the principle of equal treatment of men and women in the field of social security. It considered that view to be correct and, consequently, held that the question of the reduction in the applicant's pension could not be examined in the light of the prohibition on discrimination set out in Article 4 § 1 of this directive.

25. As regards the question whether the reduction in the applicant's pension was compatible with Article 26 of the ICCPR, the Central Appeals Tribunal considered that, from 23 December 1984 onwards, that provision could also be directly relied on in the field of social security. It also referred to the case-law according to which this implied that Contracting States to the ICCPR were obliged to ensure that their statutory rules were free of any form of discrimination prohibited by that provision. However, it said that a difference in treatment was not contrary to that provision where there were objective and reasonable grounds for the difference.

26. In the light of those considerations, the Central Appeals Tribunal held that Article 26 of the ICCPR could not deprive a national statutory rule

of its effect, according to which the level of benefits under a statutory insurance scheme – like the General Old Age Pensions Act – was made dependent on the question of whether the periods of insurance had been completed. It held that this was no different where it could be established that the disqualification of certain periods of insurance before 23 December 1984 was based on a domestic rule which made a difference in treatment on the basis of sex, as that rule had been in operation during a period in which Article 26 of the ICCPR was not yet directly applicable and could not, therefore, deprive the domestic rule of its earlier effect.

27. The applicant's subsequent appeal on points of law to the Supreme Court (*Hoge Raad*) was dismissed on 29 May 1996. As to the applicant's argument that the Central Appeals Tribunal had failed to examine whether or not there was an objective and reasonable justification for the difference in treatment, the Supreme Court held that the Central Appeals Tribunal had correctly found that, as regards the periods in which the applicant had not been insured under the General Old Age Pensions Act, she could not rely on Article 26 of the ICCPR, as those periods predated the entry into force of that international instrument.

28. In so far as the applicant complained that the Central Appeals Tribunal had unjustly failed to deprive the discriminatory rule at issue of its effect on grounds of incompatibility with the prohibition on discrimination contained in Article 1 of the Constitution (*Grondwet*), the Supreme Court held that the periods during which the applicant had not been insured under the Act predated the entry into force of Article 1 of the Constitution.

29. In so far as the applicant relied on unwritten general principles of law (*algemene rechtsbeginselen*), in particular the principle of equality, the Supreme Court considered that, according to the explanatory memorandum (*Nota van Toelichting*) to the first royal decree on the extension and limitation of the group of insured persons of 20 December 1956, the exclusion was aimed at preventing an undesirable accumulation of benefits. According to the explanatory memorandum, the pension rights accrued by the man abroad were also considered to be intended to benefit his spouse.

30. The Supreme Court held that in view of the social attitudes prevailing at the relevant time, that is to say the periods during which the applicant had not been insured under the General Old Age Pensions Act, the government of the time could have taken the view that in practically all cases it was the man who was the “breadwinner” so that it could, accordingly, exclude married women and did not have to make a separate provision for cases where the woman was the “breadwinner”. The Supreme Court held, therefore, that there was an objective and reasonable justification for the difference in treatment on grounds of sex which the exclusion entailed.

31. The Supreme Court further rejected the applicant's argument based on the principle of equality contained in Article 4 § 1 of Directive 79/7/EEC

on the gradual implementation of the principle of equal treatment of men and women in the field of social security, as the applicant fell outside the scope of Article 2 of the directive, which defined the group of persons to whom the directive applied.

II. RELEVANT DOMESTIC LAW AND PRACTICE

32. The General Old Age Pensions Act establishes a general old-age pension scheme for persons who have attained the age of 65. Under this scheme, all persons between the ages of 15 and 65 who reside in the Netherlands are insured. Contributions to the scheme are paid by all persons who are gainfully employed in the Netherlands.

33. Entitlement to benefits under the General Old Age Pensions Act is not dependent on the level of contributions paid as, contrary to a social-security scheme based on employment (*werknemersverzekering*), it is a general social-security scheme (*volksverzekering*). The level of benefits is, however, linked to the period of insurance under the Act. Pursuant to section 13 (section 10 before 1 April 1985) of the Act, the pension entitlement is reduced by 2% for each year, between the ages of 15 and 65, that the person concerned was not insured under the Act on grounds of, *inter alia*, residence abroad. A person who has been insured under the Act for fifty years is entitled to a full pension.

34. On 19 December 1978 the Council of the European Communities issued Directive 79/7/EEC on the gradual implementation of the principle of equal treatment of men and women in the field of social security, allowing member States a period of six years until 23 December 1984 within which to make any amendments to legislation which might be necessary in order to bring it into conformity with the directive.

35. Until 1 April 1985 a married man was entitled to a pension under the General Old Age Pensions Act for a married couple equal to 100% of the minimum wage in force in the Netherlands. Unmarried persons of either sex were entitled to 70% of the minimum wage. A married woman had no entitlement in her own right. According to the royal decree on the extension and limitation of the group of insured persons, as amended on several occasions, a married woman residing in the Netherlands – whose husband was employed abroad and insured under the social-security system in the foreign country of employment – was not insured under the General Old Age Pensions Act.

36. On 1 April 1985 married women became entitled in their own right to a pension under the General Old Age Pensions Act. Each spouse became entitled to a pension equal to 50% of the minimum wage. The position for unmarried persons remained unchanged. As a result of this change, married women are no longer excluded from insurance under the Act for periods when their husbands were employed abroad, provided that they themselves

have continuously resided in the Netherlands or have paid contributions on the basis of gainful employment in the Netherlands.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

37. The applicant claimed that the reduction in her pension under the General Old Age Pensions Act constituted discrimination on the ground of sex prohibited by Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, in that at the relevant time a married woman was only insured under the Act for periods when her husband was insured, whereas there was no equivalent rule for married men.

38. Article 14 of the Convention reads as follows:

> "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 provides:

> "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 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."

A. Applicability of Article 14 of the Convention

39. The Government submitted that the proceedings in issue did not concern a right guaranteed by Article 1 of Protocol No. 1 and, consequently, fell outside the scope of Article 14 of the Convention. Relying, *inter alia*, on *Gaygusuz v. Austria* (judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1129), the Government argued that benefits under social-insurance schemes characterised by the principle of social solidarity could not be regarded as "possessions" within the meaning of Article 1 of Protocol No. 1 in that, unlike systems under which the level

of benefit was linked to contributions paid, a system based on social solidarity distributed the available resources equally among all claimants.

40. The Government explained that, under the scheme set up by the General Old Age Pensions Act, everyone in gainful employment in the Netherlands contributed funds from which the pensions due under the General Old Age Pensions Act were paid. Persons who had reached the age of 65 or who had little or no income did not contribute to the scheme. Entitlement to a pension under the Act did not depend on whether or not contributions had been paid. Therefore, the group of contributors was different from the group of beneficiaries. Given the absence of a connection between contribution and entitlement under the scheme, the Government considered that a pension under the Act could not, therefore, be regarded as falling within the scope of Article 1 of Protocol No. 1.

41. The applicant, who also relied on the Court's findings in *Gaygusuz*, contested the Government's arguments as to the applicability of Article 1 of Protocol No. 1. She argued that, in that case too, there had been no link between contributions paid and benefits received under the domestic emergency-assistance scheme. She submitted that pecuniary claims on the basis of statutory rules or regulations were closely linked to a person's social security and subsistence and thus of equal weight to other property rights. They therefore had to be considered as falling within the scope of Article 1 of Protocol No. 1.

42. The Court reiterates that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions and to this extent it is autonomous. For Article 14 to become applicable it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 40, ECHR 2000-IV).

43. The Court notes that, in its final decision on admissibility dated 3 October 2000, it held that the applicant's rights to a pension under the General Old Age Pensions Act could be regarded as a “possession” within the meaning of Article 1 of Protocol No. 1 and that, consequently, Article 14 of the Convention was applicable.

B. Compliance with Article 14 of the Convention

1. Arguments before the Court

44. The Government argued that there was an objective and reasonable justification for the difference in treatment complained of, and that the distinction fell within the Contracting States' margin of appreciation. On this point, the Government submitted that, given the prevailing social attitudes at the material time, a married woman's entitlement to insurance under the Act was linked to her husband as the latter was the breadwinner in the vast majority of cases. After social attitudes had changed, the system had been altered with effect from 1 April 1985 and gave married women an independent right to insurance and benefits under the Act. As changes in social attitudes occurred gradually, it was virtually impossible to indicate with precision when a change had taken place in society that eliminated a justification derived from social attitudes. However, the question of whether periods were insured had to be answered on the basis of the provisions that applied at the material time. Finally, arguing that the receipt in full of two or more social-security pensions should be avoided, the Government pointed out that the applicant was receiving a pension from a foreign country as well as a reduced pension under the General Old Age Pensions Act.

45. The applicant submitted that the Government did not deny that the pension rules in force at the relevant time discriminated against married women and considered that there was no reasonable relationship of proportionality between the means employed and the aim sought to be realised, namely to avoid the undesirable accumulation of pension rights. In the applicant's opinion other legislation could have been brought in. As to the point in time when social attitudes had changed, the applicant argued that even in 1957 the principle of equality and the resulting prohibition on discrimination were a general principle of both national and international law. In that connection, she referred to Article 1 of the 1948 Universal Declaration of Human Rights, which stated that “All human beings are born free and equal in dignity and rights”. She further referred, *inter alia*, to Article 14 of the Convention (1950), the Netherlands Act of 14 June 1956 abolishing the legal incapacity of married women, and Article 12 § 4 of the European Social Charter (1961), by which the Contracting States undertook to ensure equal treatment of their own nationals with nationals of other Contracting Parties in respect of social-security rights. The applicant was of the opinion that there were no weighty reasons to confront a small group of women, who did not fall within the scope of Directive 79/7/EEC, for the rest of their lives with the consequences of a discriminatory provision from the past that had been abolished in the meantime.

2. The Court's assessment

46. The Court reiterates that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see *Thlimmenos*, cited above, § 44).

47. The Court notes that, in principle, all persons between the ages of 15 and 65 who reside in the Netherlands are insured under the General Old Age Pensions Act. It further notes that the applicant has always lived in the Netherlands. The only reason for the applicant's exclusion from insurance under the Act for a total period of nineteen years was the fact that she was married to a man who was not insured under the Act during periods of employment abroad. It is undisputed that a married man in the same situation as the applicant would not have been excluded from the insurance scheme in this manner.

48. The Court concludes that the reduction in the applicant's benefits under the Act was therefore based exclusively on the fact that she is a married woman. It has not been argued that the applicant failed to satisfy any of the other statutory conditions for benefits under the Act.

49. The Court considers that very strong reasons would have to be put forward before it could regard a difference in treatment based exclusively on the grounds of sex and marital status as compatible with the Convention.

50. The Government argued that the undesirable accumulation of pension rights is an objective and reasonable justification for the difference in treatment made by the legislature. However, the Court notes in this respect that the legislation did not prevent a married man in the same situation as the applicant from accumulating pension rights.

51. Even assuming that the Government's argument that at the material time social attitudes were different in that most of the breadwinners were married men, so that the difference in treatment was justified, were grounded, the Court considers it relevant that the Convention and Protocol No. 1 had already come into force in the Netherlands by 31 August 1954.

52. Furthermore, when examining whether a difference in treatment can be regarded as justified, the Court does not only have regard to its aim at the time the relevant provisions were enacted, but also to its effects in the concrete case concerned. In the present case, the applicant received an old-age pension from 1 March 1989 onwards which was 38% less than that which a married man in the same situation would have received. In other words, the inequality in treatment inherent in the former legal rules materialised in 1989 when, given the prevailing social attitudes at that time, the aim pursued by the legal provisions concerned could no longer be upheld.

53. In this connection, the Court also takes into account that, when the relevant legal rules were changed in 1985 in order to bring them into

conformity with more modern standards of equality between men and women, no measures were taken to remove the discriminatory effect of the former legal rules.

54. The Court therefore considers that the difference in treatment between married women and married men as regards entitlement to benefits under the General Old Age Pensions Act, of which the applicant was a victim, was not based on any "objective and reasonable justification".

55. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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."

57. For pecuniary damage the applicant claimed:

(i) 31,267.94 euros [68,905.48 Netherlands guilders (NLG)] (EUR) in respect of loss of benefits under the General Old Age Pensions Act between 1 March 1989 and 1 January 2001 as a result of the reduction applied;

(ii) EUR 14,347.70 [NLG 31,618.18] for legal interest on the loss of benefits under the Act between 1 March 1989 and 1 January 2001 as a result of the reduction applied;

and, since under Netherlands law, the Court's finding of a violation of the applicant's rights under the Convention does not constitute a ground for withdrawal of the reduction of the applicant's benefits under the Act,

(iii) EUR 48,560.16 [NLG 107,012.50] for the applicant's future loss of income resulting from the 38% reduction of her benefits under the Act.

58. The Government – pointing out that the applicant is also a beneficiary of a German pension which should be taken into account in the determination of pecuniary damage – submitted that, in the event of a finding of a violation, they would undertake to make good the applicant's financial loss in accordance with the applicable legal rules and policy so it would not be necessary for the Court to make any award for pecuniary damage.

59. The applicant further claimed EUR 4,537.80 [NLG 10,000] for non-pecuniary damage.

60. The Government argued that the applicant had not specifically indicated what kind of damage she had incurred, and that no causal link had been established between the violation of the Convention and the sum claimed.

61. The applicant also claimed EUR 8,326.66 [NLG 18,349.55] for legal costs incurred in both the domestic and the Convention proceedings.

62. The Government submitted that only costs reasonably incurred in the Convention proceedings were eligible for compensation, in so far they were not covered by any legal-aid scheme.

63. The Court reiterates that a judgment in which it finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to such breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (*restitutio in integrum*) (see *Menteş and Others v. Turkey* (Article 50), judgment of 24 July 1998, *Reports* 1998-IV, p. 1695, § 24, and *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 49, ECHR 2000-X); that interest can be claimed from the dates on which each recoverable element of past pecuniary damage accrued (see *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, § 28, 25 July 2000); and that, if it finds a breach of the Convention, it may award the applicant not only costs and expenses incurred before the Convention institutions, but also those incurred before the national courts for the prevention or redress of the violation (see *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63).

64. The Court considers, however, that the question of the application of Article 41 of the Convention is not ready for decision. In particular, as regards the applicant's claim for pecuniary damage, the Government have not indicated in a sufficiently concrete manner how they intend to make good the applicant's financial loss if a violation was found.

65. Accordingly, it is necessary to reserve this question and to fix the further procedure, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

2. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision; accordingly,
   (a) *reserves* the said question in whole;
   (b) *invites* the Government and the applicant to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
   (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 4 June 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence EARLY	Jean-Paul COSTA
Deputy Registrar	President