



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

THIRD SECTION

CASE OF GÖÇER v. THE NETHERLANDS

(Application no. 51392/99)

JUDGMENT

STRASBOURG

3 October 2002

FINAL

21/05/2003

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 Göçer v. the Netherlands,

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

Mr G. RESS, *President*,

Mr L. CAFLISCH,

Mr P. KÜRIS,

Mr R. TÜRMESEN,

Mr J. HEDIGAN,

Mrs W. THOMASSEN,

Mrs H.S. GREVE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 September 2002,

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

PROCEDURE

1. The case originated in application no. 51392/99 against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Turkish nationals, Mr İlyas Göçer and Mrs Gülşen Göçer ("the applicants"), on 25 March 1999.

2. The applicants were represented by Mr M. Cınar, a lawyer practising in Karaman (Turkey). The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the proceedings on the withdrawal of the first applicant's social security benefits had lasted unreasonably long.

4. The application was initially 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 of the Rules of Court.

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

6. By a decision of 17 January 2002 the Court declared the application admissible.

7. Neither the applicants nor the Government filed observations on the merits (Rule 59 § 1).

8. On 19 March 2002, the Turkish Government notified the Court that they wished to exercise their right to intervene (Article 36 § 1 of the Convention and Rule 61 § 2). However, finding that this notification had

been filed four days after the expiry of the time-limit fixed for this purpose, the President decided that the notification could not be taken into consideration.

THE FACTS

9. The applicants were born in 1952 and 1956 respectively. They are a married couple and live in Karaman (Turkey).

10. In 1974, the first applicant moved from Turkey to the Netherlands where he was employed as a dockworker until 24 September 1984, when he stopped working on account of certain mental problems apparently related to his difficulties in coping with the death of his first wife in 1981.

11. After having received sickness benefits for the maximum period, he was granted combined disability benefits as from 21 September 1985 under the General Labour Disablement Benefits Act (*Algemene Arbeidsongeschiktheidswet*; “AAW”) and the Labour Disablement Insurance Act (*Wet op de Arbeidsongeschiktheidsverzekering*; “WAO”) in a decision of 23 September 1985 and on the basis of a finding of being 80-100% incapacitated for work.

12. At an unspecified date in 1986, the applicants and their family returned permanently to Turkey, retaining the first applicant's right to AAW/WAO benefits.

13. In its decision of 3 November 1993, on the basis of medical examinations of the first applicant carried out on 3 August 1993 by an orthopaedic surgeon, and on 4 August 1993 by a social insurance medical specialist and a psychiatrist, the National Institute for Social Insurance (*Landelijk instituut sociale verzekeringen*; “LISV”) withdrew the first applicant's AAW/WAO benefits as from 14 April 1994, on the basis of a finding that his incapacity for work had diminished to less than 25% for the purposes of the AAW and to less than 15% for the purposes of the WAO.

14. On 30 November 1993, the first applicant filed an appeal against this decision with the Hague Regional Court (*arrondissementsrechtbank*). On 23 December 1994, the Regional Court requested the first applicant to submit updated information about his medical condition and the names of the doctors who were treating him.

15. Following a hearing held on 12 July 1995, the Hague Regional Court rejected this appeal on 16 August 1995. The first applicant filed a further appeal with the Central Appeals Tribunal (*Centrale Raad van Beroep*).

16. The first applicant's lawyer submitted the written grounds for appeal to the Central Appeals Tribunal on 22 September 1995. On 2 October 1995 the Central Appeals Tribunal confirmed receipt of the appeal and, on 14 November 1995, informed the first applicant's lawyer that, due to its

heavy workload, it would take some time before the first applicant's appeal could be heard. The LISV submitted its response to the first applicant's grounds of appeal on 13 December 1995.

17. On 8 April 1996, the first applicant's case was added to the Central Appeals Tribunal's list of cases awaiting preparation for a hearing. On 12 June 1997, it was submitted to the presiding judge of the relevant section of the Central Appeals Tribunal for entry on the case-list. On 16 October 1997, the parties were informed that a hearing had been scheduled for 26 November 1997.

18. On 26 November 1997, a hearing was held before the Central Appeals Tribunal. At the beginning of this hearing the first applicant's lawyer, referring to the conclusion reached by the European Commission of Human Rights that there had been a violation of Article 6 § 1 of the Convention on account of the duration of similar proceedings in the case of *Düman v. the Netherlands* (application no. 18266/91, Commission's report of 5 April 1995, unreported), stated to find it incomprehensible that it should take more than four years before the first applicant's case was examined before the Appeals Tribunal. After having noted the parties' submissions and in accordance with a request of the first applicant's lawyer to this effect, the Tribunal suspended the hearing and ordered a reopening of the investigation into the first applicant's capacity for work, finding that this investigation had been incomplete.

19. By letters of 10 and 17 February 1998, the President of the Central Appeals Tribunal put a number of questions to the psychiatrist Dr A.K. who had examined the first applicant on 4 August 1993 upon the request of the former Joint Medical Examination Service (*Gemeenschappelijke Medische Dienst*). Dr A.K. submitted his reply in the form of a report on 5 March 1998. Both the LISV and the first applicant availed themselves of the opportunity to submit comments on this report. The LISV submitted comments on 6 April 1998 and the first applicant on 14 April 1998.

20. By letter of 13 May 1998, the Central Appeals Tribunal put additional questions to Dr A.K., who replied on 7 July 1998.

21. On 14 October 1998, the Central Appeals Tribunal informed the parties that a second hearing had been scheduled for 18 November 1998. The first applicant's lawyer filed further written submissions to the Central Appeals Tribunal on 4 November 1998.

22. On 18 November 1998, a second hearing was held before the Central Appeals Tribunal in the course of which the first applicant complained that, given the duration of the proceedings, the reasonable time requirement under Article 6 § 1 of the Convention had not been respected.

23. In its decision of 16 December 1998, the Central Appeals Tribunal rejected the first applicant's appeal and upheld the decision of 16 August 1995. It agreed with the LISV and the Regional Court that, as regards the first applicant, there were no somatic limitations such that he should be

considered as being unfit to resume his work of dock worker, i.e. the work that he had done before he was declared incapacitated. As to the question whether there were limitations of a psychiatric nature, the Central Appeals Tribunal accepted that the first applicant was suffering from a psychiatric disorder entailing mainly minor limitations in his social functioning. However, given the nature of the first applicant's work, it held that this disorder was not of such nature or gravity that, on that ground, he should be regarded as being unfit for that kind of work.

24. As to the first applicant's complaint that his rights under Article 6 § 1 of the Convention had been disrespected in that the proceedings before the Central Appeals Tribunal had exceeded a reasonable time, the Central Appeals Tribunal held that a failure to respect the reasonable time requirement under this provision cannot result in granting social security claims that are not in accordance with the applicable statutory rules and that a claim for compensation for alleged damages suffered as a result of a failure to respect this requirement under Article 6 § 1 of the Convention should be filed with the civil judge.

THE LAW

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

25. The applicants complained that the proceedings lasted unreasonably long. They relied on Article 6 § 1 of the Convention, which insofar as relevant, reads as follows:

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

26. The applicants maintained that the proceedings on the first applicant's appeal of 30 November 1993 against the decision to withdraw his social security benefits for incapacity for work lasted unreasonably long.

27. The Government contended that the case was complicated in that the question whether the first applicant was unfit for work was not answered unanimously by the doctors and psychiatrists involved in the proceedings. The Government further submitted that the first applicant could have requested expedited proceedings and/or a provisional remedy, but failed to do so. The Government finally argued that, since it was only on 26 November 1997 that the first applicant expressed for the first time objections to the duration of the proceedings, there was no reason for the Central Appeals Tribunal to depart from its customary manner of dealing with cases.

28. Noting that the second applicant's claim to be a victim within the meaning of Article 34 of the Convention and the applicability of Article 6 § 1 of the Convention is not disputed, the Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (cf. *Goc v. Poland*, no. 48001/99, § 33, 16 April 2002, unreported).

29. The present proceedings started on 30 November 1993 and ended on 16 December 1998, thus having lasted in total five years and sixteen days.

30. Having regard to the issue that had to be determined in these proceedings, namely whether or not the first applicant was fit for work and no longer 80-100% incapacitated for work, the Court considers on the one hand that it is neither in the interests of the individual applicant nor in the general public interest in the administration of justice that such decisions be taken hastily, without due regard to all the relevant issues and evidence. On the other hand, the Court has noted two substantial periods of apparent inactivity in the proceedings at issue, i.e. between 30 November 1993, when the first applicant filed his appeal against the withdrawal of his social security benefits, and 23 December 1994, when the Hague Regional Court requested him to submit further information, and between 13 December 1995, when the LISV submitted its response to the first applicant's further appeal to Central Appeals Tribunal, and 26 November 1997, when a first hearing on the first applicant's further appeal was held before the Central Appeals Tribunal.

31. It appears from the information conveyed by the Central Appeals Tribunal to the first applicant's lawyer on 14 November 1995, that the second period of apparent inactivity was caused by this Tribunal's heavy workload, whereas the first period of apparent inactivity has remained unexplained.

32. Recalling that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (cf. the *Vocaturro v. Italy* judgment of 24 May 1991, Series A no. 206-C, p. 32, § 17, and *Spentzouris v. Greece*, no. 47891/99, § 27, 7 May 2002, unreported), the Court considers that there were delays in the proceedings at issue, which are attributable to the national authorities and incompatible with the "reasonable time" requirement under Article 6 § 1.

33. The Court is therefore of the opinion that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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. Damage

35. The applicants claimed a total amount of 2,500,000 euros (EUR) for both pecuniary and non-pecuniary damage. They submitted that the withdrawal of the first applicant's social security benefits had caused their family serious financial problems and moral suffering.

36. The Government contended that the applicants' claim is excessive and that an award of EUR 2,000 would constitute adequate just satisfaction in case the Court would find a violation of Article 6 § 1 of the Convention.

37. Insofar as the applicants' claim for just satisfaction concerns compensation for pecuniary damage, the Court has found no causal link with the violation found. In particular it is not for the Court to speculate what the outcome of the proceedings would be if they were in conformity with the requirements of Article 6 § 1 (cf. the *Werner v. Austria* judgment of 24 November 1997, *Reports of Judgments and Decisions* 1997-VII, p. 2514, § 72). Consequently, no award is made under this head.

38. As regards non-pecuniary damage, the Court, having regard to its case-law, taking into account the importance of the proceedings at issue for the applicants and making an assessment on an equitable basis, awards the applicants EUR 4,000.

B. Costs and expenses

39. The applicants did not seek reimbursement for costs and expenses. Accordingly, the Court does not award any sum in this respect.

C. Default interest

40. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that simple interest at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Vincent BERGER
Registrar

Georg RESS
President