



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
(Just satisfaction and striking out)

STRASBOURG

12 November 2002

This judgment is final but it may be subject to editorial revision.

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 Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 22 October 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 Dutch national, R.E.W. Wessels-Bergervoet (“the applicant”), on 11 October 1996.

2. In a judgment delivered on 4 June 2002 (“the principal judgment”), the Court held that there was no objective and reasonable justification for the difference in treatment between married women and married men as regards entitlement to benefits under the General Old Age Pension Act (*Algemene Ouderdomswet*; “AOW”) and that, therefore, there had been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (*Wessels-Bergervoet v. the Netherlands*, no. 34462/97, §§ 46-55, ECHR 2002-IV).

3. Under Article 41 of the Convention the applicant sought just satisfaction for pecuniary damage in a total amount of 94,175.80 euros (EUR) for loss of AOW benefits between 1 March 1989 and 1 January 2001. This amount included a claim for legal interest over that period and for future loss of income resulting from the reduction of her AOW pension. The applicant further claimed EUR 4,537.80 for non-pecuniary damage and EUR 8,326.66 for legal costs incurred.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any

agreement they might reach (*ibid.*, § 64 and point 2 of the operative provisions).

5. On 3 September 2002 the Government submitted the following declaration, signed by the parties' representatives:

“The State of the Netherlands ... and <the Social Insurance Bank> SVB ... on the one hand, and Ms Rika Everdina Willemina Wessels-Bergervoet ... on the other:

WHEREAS:

...

– the State and SVB on the one hand, and Wessels-Bergervoet on the other (“the parties”) have held consultations on the extent of the State's liability in connection with the ... reduction <by 38% of the old-age pension (AOW) awarded to Ms Wessels-Bergervoet with effect from 1 March 1989>;

– the State and SVB acknowledge that they are obliged to pay to Wessels-Bergervoet the proportion of her AOW pension that was withheld and the statutory interest on this sum; Wessels-Bergervoet has already received in this connection the sum of €28,683.78 (twenty-eight thousand six hundred and eighty three euros and seventy-eight cents) from SVB by way of a general advance and a sum of €16,356.30 (sixteen thousand three hundred and fifty-six euros and thirty cents) paid into her account in the same way, amounting to a total of €45,040.08 (forty-five thousand and forty euros and eight cents);

– that Wessels-Bergervoet holds that she is also entitled to claim compensation for other losses, including extrajudicial expenses;

– that the parties have reached an amicable agreement concerning the amount payable in compensation, and now wish to arrive at a settlement of the claims (present and future, of any nature or form whatsoever) arising from the reduction made by the State as described above, and that the parties are therefore willing, where necessary departing from the legal relationship that exists between them, to further determine their legal relationship as defined below and each to accept the following rights and obligations:

AGREE AS FOLLOWS

1. SVB shall pay to Wessels-Bergervoet, within fifteen days of the signature of this Agreement, the sum of €23,000 (twenty-three thousand euros) in addition to the payments already made totalling €45,040.08 as mentioned above. ...

2. The sum of money mentioned in point 1 includes taxes or other duties, if payable, as well as interest and other costs (in particular, legal costs).

3. After <the applicant> has received the sum of money mentioned in point 1, the parties will have no more claims against one another in connection with the reductions applied by the State ... in connection with which they grant each other a full discharge.

4. With effect from 1 July 2002, SVB will pay Wessels-Bergervoet a full AOW pension (i.e. without deducting 38% as it did in the past). This means that compensation for any reductions in the future is not applicable.

5. The parties declare that they will waive the option provided for in Article 43 paragraph 1 of the Convention to request that the present case be referred to the Court's Grand Chamber.

6. The parties irrevocably renounce their right to apply for rescission of this Agreement.

7. This Agreement shall be governed by Dutch law.

8. Any disputes arising from this Agreement shall be laid before the competent court in The Hague at first instance."

6. By letter of 12 September 2002, the applicant's representative informed the Court that a settlement had been reached and referred to the text of the agreement as submitted to the Court by the Government. The applicant's representative further informed the Court that the amounts stated in this agreement had been paid.

THE LAW

7. Following its principal judgment the Court has been informed that a friendly settlement has been reached between the Government and the applicant with respect to the latter's claims under Article 41 of the Convention.

Having regard to its terms, the Court finds the agreement equitable within the meaning of Rule 75 § 4 of the Rules of Court and that it 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). Consequently, it takes formal note of the agreement and considers it appropriate to strike the case out of the list pursuant to that provision.

8. Accordingly, the case should be struck out of the list in accordance with Rule 44 § 3 of the Rules of Court.

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 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President