



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

SECOND SECTION

CASE OF BEUMER v. THE NETHERLANDS

(Application no. 48086/99)

JUDGMENT

STRASBOURG

29 July 2003

FINAL

29/10/2003

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 Beumer v. the Netherlands,

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

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

Mr A.B. BAKA,

Mr GAUKUR JÖRUNÐSSON,

Mr L. LOUCAIDES,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 7 May 2002 and 8 July 2003,

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

PROCEDURE

1. The case originated in an application (no. 48086/99) 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 a Netherlands national, Robertus A.H. Beumer (“the applicant”), on 10 March 1999.

2. The applicant was represented by Mr A.C.R. Molenaar, a lawyer practising in Amstelveen. The Netherlands Government (“the Government”) were represented by their Agent, Mrs J. Schukking, of the Netherlands Ministry of Foreign Affairs.

3. The applicant alleged that the proceedings on his request for labour incapacity benefits exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention.

4. The application was allocated to the Second 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.

5. On 7 May 2002 the Court declared the application admissible.

6. Neither party availed itself of the possibility to file further observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. On 16 August 1994 the applicant applied for benefits under the General Labour Disability Act (*Algemene Arbeidsongeschiktheidswet* – “AAW”) for incapacity to work since birth. On 16 February 1995, the New General Occupational Association (*Nieuwe algemene bedrijfsvereniging* – “NAB”) rejected his request. On 17 March 1995 the applicant’s lawyer filed an appeal with the Administrative Law Division of the Utrecht Regional Court (*arrondissementsrechtbank*).

8. On 27 April 1995 the Registrar to the Utrecht Regional Court informed the applicant’s lawyer that the appeal could only be examined after payment of registration fees amounting to 50 Netherlands Guilders (NLG). On 12 May 1995 the applicant paid these fees, which were received by the Regional Court on 19 May 1995.

9. On 11 August 1995 the Utrecht Regional Court requested the NAB to submit its response to the applicant’s appeal, as well as documents relating to the case. It sent a reminder to the NAB on 12 September 1995.

10. On 14 September 1995, not having heard anything from the Regional Court since 27 April 1995, the applicant’s lawyer requested information from the Regional Court about the state of affairs. On the same day the Regional Court granted a request filed by the NAB to be allowed more time for the submission of the documents which the court had requested.

11. On 5 October 1995 the applicant submitted to the Regional Court a report from a psychiatrist, Mr M., according to which the applicant was incapacitated for work and that the reasons for his incapacity had existed since birth.

12. On 13 October 1995 the NAB filed a second request with the Regional Court for a postponement of the submission of the documents requested. The court granted this request. The NAB filed a third request for postponement on 14 November 1995.

13. As he had still received no reply from the Regional Court, the applicant’s lawyer sent a further request for information on 30 November 1995.

14. On 15 December 1995 the NAB filed a fourth request for postponement with the Regional Court. On 18 December 1995, the court informed the NAB that a postponement of four weeks had been granted, but that no further extension would be granted. In the absence of any submissions from the NAB, the Regional Court would proceed with the examination of the applicant’s case.

15. On 8 January 1996 the NAB submitted its response to the applicant's appeal as well as a number of documents. The Regional Court transmitted these submissions to the applicant's lawyer on 11 January 1996.

16. On 24 January 1996 the Regional Court commenced its examination. On the basis of preliminary conclusions reached, it requested the NAB on 20 June 1996 to provide further information and submissions on the merits of the case. On 16 July 1996, the NAB requested a postponement for these submissions.

17. On 18 July 1996 the Regional Court transmitted a copy of the report of Mr M. to the NAB. On 12 August 1996, the NAB submitted further documents to the Regional Court as well as a reaction to Mr M.'s report from a social security medical officer. These submissions were transmitted to the applicant on 28 August 1996. The applicant replied on 13 September 1996. His response was transmitted to the NAB on 3 October 1996.

18. On 2 December 1996 the Regional Court requested the NAB to explain why it had considered itself competent to determine the applicant's request of 7 September 1994 rather than transmit it to the Occupational Association for the Consumer Meat Industry (*Bedrijfsvereniging voor het Slagers- en Vleeswarenbedrijf, de Groothandel in Vlees en de Pluimveeslachterijen*). The NAB was requested to submit its answer within four weeks. On 20 December 1996, the NAB requested an extension of that time-limit.

19. On 16 January 1997 the applicant filed further documents with the Regional Court. These were transmitted to the NAB on 21 January 1997.

20. On 30 January 1997 the NAB informed the Regional Court that, although this could not be determined with certainty, it was very likely that the applicant had in fact been insured under the AAW with the Occupational Association for the Consumer Meat Industry and that it could no longer be traced why his request for AAW benefits had not been transmitted to this Occupational Association. The NAB noted in addition that in the decision of 16 February 1995 no adequate reply had been given to the applicant's request for benefits, in that the applicant claimed to have been incapacitated as from birth, whereas the decision of 16 February 1995 only concerned a period starting on 29 May 1986.

21. On 4 February 1997 the Regional Court transmitted the further submissions of the NAB to the applicant's lawyer.

22. On 24 February 1997, the Regional Court informed the applicant's lawyer that its preliminary examination had now been completed and that, in the court's view, the case was now ready for decision. The Regional Court asked whether the parties could agree to a determination of the appeal without a hearing, in accordance with Article 8:57 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*).

23. On 25 February 1997 the applicant's lawyer informed the Regional Court that he wished to have a hearing. The applicant's lawyer further drew

the court's attention to the fact that the case had now been pending for two years before the Regional Court and, referring to the case-law of the Convention organs under Article 6 § 1 of the Convention, argued that it was unlikely that such a duration, for a mere jurisdictional decision, was compatible with the "reasonable time" requirement of that Convention provision.

24. On 1 March 1997 the National Social Insurance Institute (*Landelijk Instituut Sociale Verzekeringen* – "LISV") replaced the NAB.

25. On 8 April 1997 the Regional Court informed the applicant's lawyer that a hearing had been scheduled for 6 May 1997 at 11.10 a.m. On 9 April 1997 the applicant's lawyer requested a postponement of the hearing as he had to appear before a different Regional Court in another case on the same day at around the same time.

26. Confirming an agreement reached over the telephone on 14 April 1997, the Regional Court informed the applicant's representative on 25 April 1997 that the hearing scheduled for 6 May 1997 would proceed as planned. On 1 May 1997, the applicant's lawyer informed the Regional Court of the name of a colleague who would represent the applicant at the hearing. The hearing before the Regional Court in the applicant's case was held on 6 May 1997.

27. In its decision of 13 June 1997, the Regional Court held that the decision of 16 February 1995 failed to give an adequate reply to the applicant's request for AAW benefits on grounds of an incapacity to work from birth, as the decision was based on an incapacity to work as from 29 May 1986. It further held that the NAB had not been competent to determine the applicant's request. This should have been done by the Occupational Association for the Consumer Meat Industry. Consequently, the Regional Court quashed the decision of 16 February 1995, ordered the LISV to take a new decision and to reimburse the registration fees paid by the applicant to it. Costs were also ordered against the LISV.

28. On 16 July 1997 the applicant filed an appeal with the Central Appeals Tribunal (*Centrale Raad van Beroep*), requesting the Central Appeals Tribunal to quash the decision of 13 June 1997 and to award him, as from 1 October 1976, social security benefits on the basis of an 80-100% incapacity to work.

29. On 18 July 1997 the LISV also filed an appeal against the decision of 13 June 1997 with the Central Appeals Tribunal. However, by letter of 27 August 1997, the LISV informed the applicant's lawyer that it had decided to withdraw its appeal and that the applicant's case-file had been transmitted to the Occupational Association for the Consumer Meat Industry for a new decision on the applicant's request for benefits for his incapacity to work.

30. On 18 September 1997 the Central Appeals Tribunal informed the applicant's lawyer that, to date, he had not submitted any grounds for the appeal that he had lodged. He was invited to remedy this within four weeks.

31. On 14 October 1997 the applicant's lawyer submitted his grounds of appeal to the Central Appeals Tribunal, including a reference to a letter of 26 September 1997 in which the Occupational Association for the Consumer Meat Industry had stated that it could not be excluded that it would conclude that it was not competent to determine the applicant's request for AAW benefits. These grounds of appeal were transmitted to the LISV on 3 November 1997.

32. On 24 December 1997 the LISV submitted its response to the applicant's appeal, which was transmitted to the applicant's lawyer on 7 January 1998.

33. On 17 March 1998, the applicant's lawyer requested information from the administration of the Occupational Association for the Consumer Meat Industry about the applicant's request for benefits. On 5 May 1998 the administration office informed the applicant's lawyer that, given the appeal apparently lodged against the decision of 13 June 1997 and pending the outcome of that appeal, it was unable to take a new decision on the applicant's request. On 13 May 1998 the applicant's lawyer transmitted a copy of that letter to the Central Appeals Tribunal, requesting that it be included in the case-file.

34. On 22 September 1998 the Central Appeals Tribunal informed the parties that a hearing had been scheduled for 28 October 1998. In its decision of 25 November 1998, following the hearing on 28 October 1998, the Central Appeals Tribunal upheld the decision of 13 June 1997. It did, however, partially amend the reasoning to the effect that the LISV should first determine which organ was in fact competent to decide on the applicant's request. On this point, it held:

"In the preparation of the new decision to be taken, [the LISV] must consider, on the basis of *inter alia* the exact employment history of the applicant, which social security implementation agency (*uitvoeringsinstelling*) must take that decision on behalf of [the LISV] by virtue of the LISV Mandate Order (*Mandaatsbesluit*) of 3 March 1997... On the basis of the information currently available [the Central Appeals Tribunal considers that], differing from the Regional Court, this is still unclear."

35. On 26 May 1999, with reference to a previous letter of 21 December 1997, the LISV informed the applicant's lawyer that, after an investigation, the competent organ to determine the applicant's request had been identified, namely the Joint Administration Office (*Gemeenschappelijk Administratiekantoor* – "GAK") Nederland BV.

36. By decision of 21 July 1999, GAK Nederland BV granted the applicant, as from 16 August 1993, benefits on the basis of an 80-100% incapacity to work, the arrears amounting to a net sum of NLG 64,333.47 (29,193.26 euros (EUR)). On 20 September 1999, the applicant was awarded a further amount of NLG 23,484.74 (EUR 10,656.91) in statutory interest on the arrears.

II. RELEVANT DOMESTIC LAW AND PRACTICE

37. The AAW, which entered into force on 1 October 1976, provided for a general labour disability insurance scheme under which all persons residing in the Netherlands between the ages of 18 and 65 were guaranteed benefits for labour incapacity. As, since 1967, employees were already insured for labour incapacity under the Labour Disablement Insurance Act (*Wet op de Arbeidsongeschiktheidsverzekering* – “WAO”), the AAW was primarily of importance for those groups who up until then had been ineligible for WAO benefits, namely the self-employed and those who were disabled as from birth or who had become disabled before having completed their education.

38. The level of AAW benefits was linked to the level of incapacity. Entitlement to benefits started where the level of incapacity exceeded 25%. Full incapacity for work entailed entitlement to AAW benefits equal to 70% of the minimum wage in force in the Netherlands.

39. The AAW was repealed on 1 January 1998 and replaced, as regards persons not employed by others, by the Self-employed Persons Disablement Benefits Act (*Wet Arbeidsongeschiktheidsverzekering Zelfstandigen*) and the Disablement Assistance Act for Handicapped Young Persons (*Wet Arbeidsongeschiktheidsverzekering voor jonggehandicapten*). Employees remained insured for incapacity for work under the WAO.

40. Between 1 October 1976 and 1 March 1997 and pursuant to Article 60 of the AAW, the occupational associations were responsible for the implementation of the AAW and for determining requests for AAW benefits. Articles 61-63 of the AAW governed the division of responsibilities. Article 61 § 1 of the AAW determined which category of unemployed persons was insured by which occupational association, i.e. to which occupational association a claimant should address an application for AAW benefits. Unemployed persons were divided into six groups as claimants, each group being assigned to an occupational association.

41. On 1 March 1997 the Social Security (Organisation) Act (*Organisatiewet Sociale Verzekeringen* – “OSV”) entered into force. Under the OSV, the occupational associations and the Provisional Institute for Coordination and Harmonisation (*Tijdelijk Instituut voor Coördinatie en Afstemming*) were subsumed into the National Social Insurance Institute (LISV). Pursuant to Article 41 § 1 of the OSV and in so far as the LISV was

competent to do so, the LISV would mandate one of the – in total five – social security implementation agencies (*uitvoeringsinstellingen*) recognised under Article 59 of the OSV, to take all measures for the preparation and implementation of its decisions. The annex to the 1997 Mandate Order (*Mandaatsbesluit*) sets out which social security implementation agencies were responsible for which sectors of industry.

THE LAW

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

42. The applicant complained that the length of the proceedings on his request for AAW benefits exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention which, in its relevant part, reads:

“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

43. The Court notes that the applicability of Article 6 § 1 of the Convention was not in dispute between the parties and it has found no reason to hold otherwise.

B. Period to be taken into consideration

44. The proceedings lasted from 16 August 1994, when the applicant applied for AAW benefits, until 21 July 1999 when he was awarded them. They thus lasted four years, eleven months and five days for three levels of jurisdiction.

C. Reasonableness of the length of the proceedings

45. 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 dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

46. The applicant submitted that, after the proceedings before the Regional Court had lasted nearly two years and three months, with various delays having occurred as a result of repeated adjournments at the request of the NAB, the Regional Court concluded that the applicant's request for benefits should have been determined by the Occupational Association for the Consumer Meat Industry instead of the NAB, and failed to deal with the question whether the applicant was entitled to benefits. Furthermore, in the subsequent appeal proceedings, the Central Appeals Tribunal agreed with the applicant that the Regional Court had incorrectly concluded that the Occupational Association for the Consumer Meat Industry was competent in the matter. Thus, 45 months after the decision of 16 February 1995 in which his request for benefits was rejected by the NAB, there was still no determination of the merits of his entitlement to AAW benefits. The applicant considered that this situation was incompatible with the reasonable time requirement under Article 6 § 1 of the Convention.

47. The Government submitted that the NAB and the LISV repeatedly requested a postponement in the proceedings before the Utrecht Regional Court because the documents requested could not be made available within the time-limits set, partly because the question which of the several social security agencies was responsible for implementing the AAW in the applicant's case was a very complex one at the time. The Government further argued that the applicant was in part responsible for the duration of the proceedings. Firstly, he requested that a hearing be held before the Regional Court although it had indicated that such a hearing was unnecessary. Secondly, the applicant lodged an appeal against the Regional Court's ruling with the Central Appeals Tribunal although he concurred with the Regional Court's conclusion but merely disagreed with the reasons it gave in reaching its conclusion. The Government were therefore of the opinion that, although the total duration of the proceedings seemed longer than customary, the applicant's conduct had caused unnecessary delays. Moreover, he had failed to avail himself of the possibility to request a provisional remedy in the form of an advance payment of benefits.

48. The Court notes that the applicant's appeal to the Regional Court against the negative decision of 16 February 1995 on his request for AAW benefits gave rise to a preliminary issue of apparent complexity, namely the question which social security body was competent to deal with the applicant's request. After proceedings had lasted about two years and three months, the Regional Court concluded that the decision of 16 February 1995 had not been taken by the competent body and identified, in its view, the competent social security organ. Following the applicant's appeal against this ruling, the Central Appeals Tribunal found, contrary to the Regional Court, that the information available did not yet allow a determination of the competent social security organ.

49. The Court considers at the outset that it is a striking feature that, more than four years and three months after the applicant had filed his request for AAW benefits and after proceedings before two judicial instances concerning this request, the basic question which social security organ was in fact competent to deal with the case remained unresolved. The Court has found no other explanation for this situation than the apparent complexity of the then applicable social security regulations for which the applicant cannot be held responsible, but which does engage the responsibility of the respondent State.

50. As to the conduct of the parties, the Court cannot find that, in the proceedings before the Regional Court, there were significant delays attributable to the applicant. The fact that the applicant insisted on an oral hearing before the Regional Court does not alter this finding, as this hearing was held two months and nine days after he had expressed this wish. Furthermore, the Court does not find convincing the Government's argument that the applicant's appeal to the Central Appeals Tribunal was unnecessary. Although the Regional Court had identified the Occupational Association for the Consumer Meat Industry as being competent in the matter, the applicant pointed out in his grounds of appeal that, after the Regional Court's ruling, this social security body had expressed doubts regarding its competence in the applicant's case. The existence of these doubts were in fact confirmed by the Central Appeals Tribunal, which held that the information available did not allow the identification of the social security organ competent to deal with the applicant's request. In these circumstances, the Court does not find it necessary to examine whether it would have been possible for the applicant to seek interim relief.

51. The Court does, however, find that the repeated adjournments of the proceedings before the Regional Court at the request of the social security authorities did affect the duration of the proceedings. No other explanation for these requests has been given other than the unavailability of documents and information from the social security authorities within the prescribed time-limits, partly because the question which of the several social security agencies responsible for implementing the AAW in the applicant's case was a very complex one at the time. In these circumstances and as the social security authorities form part of the domestic public administration, the Court is of the opinion that the respondent Government may be held responsible for the periods of inactivity in the proceedings thus caused. The Court has found no indication of any significant periods of inactivity in the other parts of the proceedings at issue.

52. In the light of the above considerations and bearing in mind that the outcome of the proceedings were of great importance for the applicant's subsistence, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention was not complied with in the present case. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed an amount of NLG 2,500 (EUR 1,134.45) for having had to sell a long-case clock in order to pay part of his debts before he received an advance payment of the AAW benefits granted. He further claimed an amount of NLG 60,206.67 (EUR 30,497.06) for the loss of income of his spouse who had to give up her work on 7 February 1996 due to illness resulting from the stress within the family during these proceedings. The applicant argued that, under normal circumstances, she would have been able to continue her employment.

55. The Government considered that, as the applicant had failed to establish a causal link between the wife’s alleged loss of income and the established violation of the Convention, this part of the claim is not eligible for compensation. In so far as the applicant claimed damage for the sale of a clock, the Government submitted that the applicant’s benefit arrears were paid in full, including the statutory interest for that amount. They therefore considered that there were no reasons to award further compensation for any material damage suffered.

56. The Court agrees with the Government that there is no causal link between the pecuniary damage alleged by the applicant and the violation of Article 6 § 1 of the Convention which has been found. Consequently, it makes no award under this head.

B. Non-pecuniary damage

57. The applicant claimed an amount of NLG 26,250 (EUR 11,911.73) for non-pecuniary damage for a loss of enjoyment in life (*verlies van levensvreugde*) for himself and his whole family between 16 August 1993 and 21 July 1999 when the AAW benefits were unjustly withheld.

58. The Government asserted that there was no causal link between the amount claimed under this head and the established violation of the Convention and submitted that, in case the Court would find a violation of the Convention, such a finding would constitute sufficient just satisfaction.

59. The Court accepts that the applicant suffered damage of a non-pecuniary nature as a result of the length of the proceedings at issue. Making its assessment on an equitable basis and taking into account the

importance of the proceedings at issue for the applicant, the Court awards the applicant an amount of EUR 2,500 for non-pecuniary damage.

C. Costs and expenses

60. In respect of costs and expenses incurred in the domestic proceedings, the applicant claimed an amount of NLG 18,737.87 (EUR 8,502.87), and for costs and expenses incurred in the Convention proceedings an amount of EUR 5,801.25.

61. The Government submitted that, as the applicant did not demonstrate that the amount claimed for domestic costs and expenses was in fact incurred in order to prevent the alleged violation or ensued from that violation, this part of his claim was not eligible for reimbursement. As regards the claim for costs and expenses incurred in the Convention proceedings, the Government considered that the time billed by the applicant's lawyer, as well as the total amount claimed, were excessive. Under the Netherlands legal aid scheme, a case like the present one would have been dealt with in 16½ hours at a rate of EUR 79.73 per hour, making a total of to EUR 1,315.55

However, the Court reiterates that it does not regard itself bound by domestic scales and practices, although it may derive some assistance from them. It further recalls that such costs and expenses must have been incurred to seek the prevention or rectification of the violation of the Convention established by the Court. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see *Venema v. the Netherlands*, no. 35731/97, § 116-117, ECHR 2002-X).

62. As to the costs in the domestic proceedings, the Court considers that only those incurred in an attempt to accelerate the proceedings can be regarded as having been necessary to prevent the violation found. In this connection, the Court notes that the two bills for fees submitted by the applicant do not contain any claim in this respect. Nevertheless, the Court cannot exclude that the excessive duration of the proceedings increased the overall costs incurred (see *Wiesinger v. Austria*, judgment of 30 October 1991, Series A no. 213, p. 30, § 88, *Bouilly v. France*, no. 38952/97, § 33, 7 December 1999, unreported, and *Wiesinger v. Austria*, cited above, p. 30, § 88). Thus, the Court finds it appropriate to award the applicant EUR 500 under this head.

63. Finally, as to the costs incurred in the Convention proceedings, the Court finds the applicant's claim excessive. According to the bill for fees submitted, the applicant's lawyer would have worked a total of 32½ hours on the applicant's case at a rate of EUR 150 per hour. Having regard to the nature of the case and making an assessment on an equitable basis, the Court awards EUR 2,500 for costs and expenses incurred in the Convention proceedings.

D. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added 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 applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 2,500 (two thousand and five hundred euros) in respect of non-pecuniary damage and EUR 3,000 (three thousand euros) in respect of and costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 July 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President