



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

THIRD SECTION

CASE OF VAN HOUTEN v. THE NETHERLANDS

(Application no. 25149/03)

JUDGMENT
(Striking out)

STRASBOURG

29 September 2005

FINAL

29/12/2005

In the case of Van Houten v. the Netherlands,

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

Mr B. ZUPANČIČ, *President*,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 8 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 25149/03) 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, Mr Laurens Josephus van Houten (“the applicant”), on 8 November 2001.

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 Agents, Mr R.A.A. Böcker and Ms J. Schukking, both of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been the victim of a violation of Article 6 § 1 of the Convention in that proceedings relating to a social security claim had not been brought to a close within a “reasonable time”.

4. The application was allocated to the Third 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. By a decision of 24 February 2005, the Court declared the application partly admissible.

6. Neither the applicant nor the Government filed observations on the merits. The applicant lodged a claim for just satisfaction under Article 41 of the Convention on 20 May 2005 (Rule 60 §§ 1 and 2).

7. On 7 July 2005 the Government submitted the unilateral declaration reproduced below (see paragraph 31).

THE FACTS

8. The applicant was born in 1949 and lives in Haarlem.

A. Proceedings against the New General Occupational Association

9. The applicant worked as a freelance photographer from the mid-1970s until the early or mid-1980s, but developed pulmonary and psychiatric problems. On 15 December 1988 he applied to the New General Occupational Association (*Nieuwe algemene bedrijfsvereniging* – “the NAB”) for a disability pension under the General Labour Disability Act (*Algemene Arbeidsongeschiktheidswet* – “the AAW”).

10. On 20 November 1989 the NAB gave a decision refusing the applicant such a pension on the ground that he had not at any time been unfit for work for fifty-two consecutive weeks, his disability having continued beyond such a period. The decision was signed on behalf of the NAB by the managing director of the Haarlem district branch of the Joint Administration Office (*Gemeenschappelijk Administratiekantoor*), *per procurationem*.

11. On 18 December 1989 the applicant appealed to the Appeals Tribunal (*Raad van Beroep*), the administrative tribunal competent in social security cases at the time. During the course of the proceedings, he was subjected to various medical examinations.

12. On 12 November 1991 the Appeals Tribunal dismissed the applicant's appeal on the ground that he had been sufficiently fit for alternative work.

13. On 22 November 1991 the applicant lodged a further appeal with the Central Appeals Tribunal (*Centrale Raad van Beroep*). He submitted his grounds of appeal on 18 May 1992.

14. It seems that on 29 July 1993 the President of the Central Appeals Tribunal wrote to the management board of the NAB, asking whether the applicant, as a freelance photographer, was properly insured with their occupational association.

15. On 9 December 1993 the NAB management board replied, acknowledging responsibility for the applicant from 1 November 1983 onwards but suggesting that from 1 September 1982 until 1 November 1983 the competent occupational association might have been the Occupational Association for the Banking and Insurance Sector, Wholesale Trade and Professions (*Bedrijfsvereniging voor Bank- en Verzekeringswezen, Groothandel en Vrije Beroepen* – “the OA Banks and Professions”).

16. On 1 March 1994 the Central Appeals Tribunal quashed the NAB's decision on the ground that, in so far as it had included an assessment of the applicant's fitness for work between 1 September 1982 and 1 November 1983, it had been taken unlawfully; the competent occupational association

during this period had been the OA Banks and Professions. The NAB was ordered to give a new decision taking this fact into account.

17. The NAB never considered the case again.

B. Proceedings against the Occupational Association for the Banking and Insurance Sector, Wholesale Trade and Professions

18. Even before the Central Appeals Tribunal's decision, on 14 January 1994 the OA Banks and Professions wrote to the applicant informing him that it was assuming responsibility for his social insurance for the period from 1 November 1975 until 1 November 1983. By a decision of the same date, it refused the applicant an AAW pension on the ground that he had not been unfit for work for fifty-two consecutive weeks between 1 November 1975 and 1 November 1983. This decision, like the NAB's decision of 20 November 1989, was signed *per procurationem* by the managing director of the Haarlem district branch of the Joint Administration Office.

19. The applicant appealed to the Administrative Law Division of the Haarlem Regional Court – the regional courts having by then succeeded the appeals tribunals as the competent first-instance tribunals in social security matters – on 14 February 1994.

20. The Regional Court held a hearing on 10 April 1997. The applicant's opponent was now the National Social Insurance Institute (*Landelijk Instituut Sociale Verzekeringen* – “the LISV”), which, following a reorganisation of the social security implementing system earlier that year, had replaced the multitude of occupational associations.

21. On 12 May 1997 the Regional Court gave a decision allowing the appeal and quashing the decision of 14 January 1994. It found that the OA Banks and Professions had acted *ultra vires* in considering the period before 1 September 1982. It ordered the LISV to give a fresh decision, and enjoined it now to show “some diligence” (“*thans met enige voortvarendheid*”).

22. On 31 July 1997 the LISV informed the applicant that it would not appeal against the Regional Court's decision. It gave a new decision refusing the applicant an AAW pension on the ground that he had not at any time after 1 September 1982 been unfit for work for a consecutive period of fifty-two weeks and had remained unfit for work thereafter. This decision too was signed *per procurationem* by the managing director of the Haarlem district branch of the Joint Administration Office.

C. Proceedings against the National Social Insurance Institute

23. In conformity with a new procedure introduced in 1994 by the General Administrative Law Act (*Algemene Wet Bestuursrecht*), the applicant lodged an objection with the LISV (care of the Haarlem district

branch of the Joint Administration Office) on 9 September 1997. The applicant's notice of objection contained the grounds on which it was based.

24. The LISV gave a decision dismissing the objection on 30 December 1997. The decision was signed, on behalf of the LISV, by the head of the Objections and Appeals Department of the Haarlem district branch of the Joint Administration Office.

25. On 29 January 1998 the applicant lodged an appeal with the Administrative Law Division of the Haarlem Regional Court, submitting grounds of appeal at the same time.

26. The Regional Court held a hearing on 25 March 1999. On 19 April 1999 it gave its decision. Finding that the LISV had failed to undertake any medical examination of the applicant itself, it quashed the decision of 30 December 1997 and ordered the LISV to give a fresh decision.

27. The LISV, represented by the head of the Objections and Appeals Department of the Haarlem district branch of the Joint Administration Office, appealed to the Central Appeals Tribunal on 4 May 1999.

28. The Central Appeals Tribunal held a hearing on 24 April 2001. On 29 May 2001 it gave its decision. It gave a summary of the prior proceedings, going back as far as the applicant's first application for an AAW pension on 15 December 1988 and encompassing the decisions of the NAB, the OA Banks and Professions and the LISV as well as the legal remedies applied against these. It went on to quash the decision given by the Regional Court on 19 April 1999 and to declare the applicant's appeal against the LISV's decision of 30 December 1997 unfounded.

THE LAW

WHETHER THE CASE SHOULD BE STRUCK OUT OF THE LIST

29. The applicant complained of the length of the proceedings following his request for AAW benefits. He relied on Article 6 § 1 of the Convention, the relevant part of which provides as follows:

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

30. The applicant claimed just satisfaction under Article 41 of the Convention, which provides as follows:

“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.”

He claimed 17,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

A. The Government's unilateral declaration

31. On 7 July 2005 the Government submitted a written statement in the following terms:

“...

Direct contacts between the parties in the past weeks with a view to securing a friendly settlement of the matter have remained unsuccessful. That being the case, the Government hereby wishes to express – by way of unilateral declaration – its acknowledgment of the unreasonable duration of the domestic proceedings in which the applicant was involved.

Consequently, the Government is prepared to accept the applicant's claims for immaterial damage [*sic*] to a maximum of EUR 5,000, which it considers to be reasonable in the light of the Court's case-law. The Government is furthermore prepared to accept the costs of proceedings as requested by the applicant, i.e. to the amount of EUR 1,000.

The Government would suggest that the above information might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.

...”

B. The Court's decision

32. Article 37 of the Convention provides that the Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if

“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

Article 37 § 1 *in fine* includes the following proviso:

“However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

33. In deciding whether or not it should strike the present case out of its list, the Court will have regard to the criteria emerging from its case-law (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *Haran v. Turkey* (striking out), no. 25754/94, 26 March 2002; *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI; and *Meriakri v. Moldova* (striking out), no. 53487/99, 1 March 2005).

34. The Government's declaration contains an acknowledgment that the length of the domestic proceedings in the applicant's case has gone beyond what can be considered "reasonable". The Court has specified in a large number of judgments and decisions the nature and extent of the obligations which arise for the respondent State as regards the determination of "civil rights and obligations" within a "reasonable time"; it finds the Government's admission to be in keeping with the applicable jurisprudential standards.

35. The Court understands the Government's acceptance of the applicant's claims in respect of non-pecuniary damage up to a maximum of EUR 5,000, and in respect of costs and expenses in the amount claimed (EUR 1,000), as an undertaking to pay those sums to the applicant in the event of the Court's striking the case out of its list. For its part, the Court considers EUR 5,000 in respect of non-pecuniary damage to be an acceptable sum in this case.

36. Accordingly, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

37. Given the rather unusual course taken by the domestic proceedings in the case, the reorganisation of the social security implementing system introduced in 1997 (see paragraph 20 above) which makes the recurrence of similar cases unlikely, and above all the clear and very extensive case-law on the Convention issue concerned, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

38. In accordance with Rule 43 § 3 of the Rules of Court, the present judgment will be forwarded to the Committee of Ministers to allow the latter to supervise the execution of the Government's undertakings. In the event that the Government fail to pay the sums set out in paragraph 35 above – namely EUR 5,000 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses – within three months of the date of delivery of the present judgment, simple interest will be payable at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Takes note* of the terms of the Government's declaration and of the modalities for ensuring compliance with the undertakings referred to therein (Rule 43 § 3 of the Rules of Court);

2. *Decides* to strike the application out of the list in accordance with Article 37 § 1 (c) of the Convention.

Done in English, and notified in writing on 29 September 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan ZUPANČIČ
President