



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

THIRD SECTION

CASE OF GEERINGS v. THE NETHERLANDS

(Application no. 30810/03)

JUDGMENT
(Just Satisfaction)

STRASBOURG

14 February 2008

FINAL

14/05/2008

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 Geerings v. the Netherlands,

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

Boštjan M. Zupančič, *President*,

Corneliu Bîrsan,

Elisabet Fura-Sandström,

Alvina Gyulumyan,

Egbert Myjer,

David Thór Björgvinsson,

Isabelle Berro-Lefèvre, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 24 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 30810/03) 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”) on 23 September 2003 by a Netherlands national, Mr Gerardus Antonius Marinus Geerings (“the applicant”).

2. In a judgment delivered on 1 March 2007 (“the principal judgment”), the Court held that there had been a violation of Article 6 § 2 of the Convention in that a confiscation order given on 30 March 2001 amounted to a determination of the applicant’s guilt without the applicant having been “found guilty according to law” in so far as it related to assets which were not known to have been in the applicant’s possession and to charges of which the applicant had actually been acquitted.

3. Under Article 41 of the Convention the applicant sought the following by way of just satisfaction: in respect of pecuniary damage, a sum of money corresponding to the sums paid and payable under the confiscation order which the Court had found to be in violation of his rights under the Convention; in respect of non-pecuniary damage, 10,000 euros (EUR); plus reimbursement of his costs and expenses.

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 (§ 59 and point 3 of the operative provisions). The three-month time-limit was later extended by the President to enable proceedings relevant to the issues remaining before the Court to be pursued to a conclusion before a domestic court.

5. The applicant and the Government each filed observations.

6. Appended to the applicant's observations was a copy of a decision given on 27 September 2007 by the Court of Appeal (*gerechtshof*) of 's-Hertogenbosch in which that court, in proceedings introduced by the Advocate General (*advocaat-generaal*), reduced the amount of the confiscation order of 30 March 2001 to EUR 6,257.18. In view of that decision the applicant withdrew his claim in respect of pecuniary damage.

7. The Government, in their observations, undertook to repay to the applicant any sum paid in excess of the above amount of EUR 6,257.18, in compliance with the decision of the Court of Appeal.

THE FACTS

8. On 23 October 2003 the Legal Aid Council (*Raad voor Rechtsbijstand*) made a conditional grant of legal aid in respect of the proceedings before the Court. It is in the following terms:

“The grant of legal aid is conditional. The [Legal Aid Council] will not make any final grant of legal aid if it appears after the termination of legal assistance that [the applicant's] financial means are such that they exceed the limits set by and pursuant to [the Legal Aid Act (*Wet op de rechtsbijstand*)] or the cost of legal assistance is reimbursed by a third party.”

9. Section 12 of the Legal Aid Act, as relevant to the questions remaining before the Court, provides:

“...

2. No legal aid shall be provided if:

...

f. the legal interest at issue is placed before an international body entrusted with jurisdictional tasks by a treaty (*een bij verdrag met rechtspraak belast internationaal college*) or a comparable international body and that body itself provides a claim in respect of legal assistance (*in een aanspraak op vergoeding van rechtsbijstand voorziet*); ...”

THE LAW

10. 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

11. Under this head it only remains for the Court to rule on the applicant's claims in respect of non-pecuniary damage, the matter of pecuniary damage now being resolved.

12. The applicant claimed EUR 10,000 in respect of non-pecuniary damage. The obligation to pay instalments under the confiscation order had made it very difficult for him to start a new life and he and his family had suffered as a result.

13. The Government stated that the applicant had in no way been prevented from working and making a living. In their submission, the Court's judgment offered sufficient satisfaction. In the alternative, they argued that the sum claimed was excessive.

14. The Court considers that the applicant has suffered non-pecuniary damage that cannot be made good solely by the finding of a violation of his rights under the Convention. A monetary award is therefore in order.

15. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

1. Domestic proceedings prior to the application to the Court

16. The applicant submitted an unspecified bill in an amount of EUR 3,675 plus value-added tax (VAT) for legal assistance and office expenses relating to the proceedings before the Netherlands Supreme Court (*Hoge Raad*).

17. The Government argued that the applicant had received legal aid from the domestic authorities for these proceedings.

18. Rule 60 of the Rules of Court, in relevant part, provides as follows:

“1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.

2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the

applicant's observations on the merits unless the President of the Chamber directs otherwise.

3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part. ..."

19. The Court notes that the applicant has failed to submit itemised particulars within the time-limit fixed for that purpose. Having regard to Rule 60 § 3, the Court therefore dismisses the applicant's claim in respect of costs and expenses incurred in the domestic proceedings.

2. Proceedings before the Court

20. The applicant submitted the following claims in respect of costs and expenses incurred in the proceedings in Strasbourg:

(a) For assistance rendered at the merits stage of the proceedings by Ms Spronken, his authorised representative before the Court, a detailed fee note in an amount EUR 5,828.33, plus VAT, for a total of twenty-two hours and twenty-five minutes' work at EUR 260 per hour. This covered the preparation and introduction of the application, the preparation and submission of the applicant's observations, and correspondence until the beginning of December 2005;

(b) For assistance rendered at the merits stage by Mr Lina, who had been the applicant's counsel before the Supreme Court, an unspecified fee note in an amount of EUR 2,500 plus EUR 125 for office expenses, not including VAT;

(c) For the assistance rendered by Ms Spronken after the beginning of December 2005, a detailed fee note in an amount of EUR 1,933.75 for seven hours and five minutes' work at EUR 260 per hour plus 5 % for office expenses, not including VAT. This covered correspondence with the applicant and with Mr Lina from December 2005 onwards and the just-satisfaction proceedings.

21. The Government drew the Court's attention to their award of legal aid intended to cover the Strasbourg proceedings. They also referred to their letter dated 3 February 2004 in the case of *Nakach v. the Netherlands*, (no. 5379/02, 30 June 2005) and to *Visser v. the Netherlands* (no. 26668/95, § 59, 14 February 2002).

22. The Government's letter of 3 February 2004 in the *Nakach* case is not in the file of the present case. It would run counter to principles governing judicial proceedings for the Court to take cognisance of a document submitted by one party of which the other has no knowledge.

23. The next matter to consider is the Government's argument that the applicant enjoyed legal aid under domestic legislation and is therefore not entitled to any award from this Court.

24. In *Visser v. the Netherlands* the Court denied the applicant's claims in respect of costs and expenses incurred at the domestic level, since the

applicant either had or could have obtained State-financed legal aid to an adequate amount. The Court has already declined on different grounds to make an award in respect of the costs and expenses claimed in relation to the domestic proceedings. The *Visser* precedent is therefore of no relevance.

25. It should be observed in addition that the grant of legal aid in respect of the proceedings before this Court (see paragraph 8 above) was made dependent on the state of the applicant's financial means at the close of the present proceedings and on the absence of reimbursement from any other quarter. It would also appear that section 12 of the Legal Aid Act, as pertinent to the case (see paragraph 9 above), dispenses the domestic authorities responsible for providing legal aid from so doing if an award in respect of costs and expenses is made by this Court. That being so, and although for present purposes there seems nothing improper in the domestic legal position, the Court cannot consider itself prevented from making such an award.

26. It remains for the Court to make its award.

27. As regards item (b) above, the Court again notes the lack of itemised particulars. This part of the claim is therefore rejected in accordance with Rule 60 § 3.

28. As regards items (a) and (c), the Court accepts that the expenses claimed were actually and necessarily incurred. However, an hourly rate of EUR 260 exceeds what the Court is prepared to consider reasonable as to quantum.

29. Basing its calculations on the twenty-nine and one half hours of work claimed and specified by Ms Spronken, the Court considers it reasonable to award the applicant EUR 5,250 not including VAT for the costs and expenses incurred in the Strasbourg proceedings.

3. Domestic proceedings following the Court's judgment on the merits

30. After the Court delivered its judgment on the merits, the applicant sought permission to suspend the payments which he was at that time still making under the confiscation order. Later on, the Public Prosecution Service brought proceedings in the 's-Hertogenbosch Court of Appeal for the mitigation of its confiscation order.

31. The applicant submitted claims in respect of costs incurred in this connection. These were based on the following:

(a) an unspecified fee note from Mr Lina in an amount of EUR 2,378.83 for legal assistance "in connection with the suspension of the execution of the judgment of the 's-Hertogenbosch Court of Appeal in connection with the judgment of the European Court of 1 March 2007", plus EUR 118.94 for office expenses, not including VAT;

(b) a fee note with itemised particulars relating to the proceedings for the mitigation of the confiscation order, in an amount of EUR 2,100.85 plus VAT for 10.25 hours of work by his counsel.

32. As regards item (a), the applicant has submitted copies of letters sent by Mr Lina to the Central Judicial Collection Office (*Centraal Justitiële Incasso Bureau*) dated 26 March and 8 May 2007, the latter's replies to these and to some other letters of which copies have not been submitted, and copies of correspondence between Mr Lina and Ms Spronken. The Court has doubts as to whether attempts to obtain the suspension of payments exacted from the applicant before its judgment became final (on 1 June 2007) can properly be said to have been "necessary", the more so since these sums were ultimately repayable. At all events, the Court fails to see how these few letters could justify the amount claimed. Be that as it may, in the absence of itemised particulars the Court considers it appropriate to reject this head of claim under Rule 60 § 3.

33. As regards item (b), it should be noted that the proceedings for mitigation of the confiscation order were nothing more than the means chosen by the respondent Party to acquit itself of its obligations under Article 46 of the Convention; the Court's principal judgment having become final, there could hardly be any uncertainty as to their outcome. Quite apart from any doubts as to whether it is "reasonable" that the applicant should be required to pay for no fewer than 10.25 hours of work in this connection, the Court takes the view that the resulting expense was not necessarily incurred; it therefore rejects this head of claim also.

4. Conclusion as to costs and expenses

34. The Court's total award under the general head of costs and expenses thus comes to EUR 5,250. To that figure should be added any taxes for which the applicant is liable.

C. Default interest

35. 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*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;

(ii) EUR 5,250 (five thousand two hundred and fifty euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(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;

2. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Boštjan M. Zupančič
President