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

THIRD SECTION

DECISION

Application no. 13143/08
Robert Jan VAN GALEN and others
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 17 September 2013 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 March 2008,

Having regard to the unilateral declaration submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The first applicant, Mr Robert Jan van Galen, is a lawyer practising in Amsterdam. The other applicants, Interforce Holding B.V., Interforce Properties B.V. and Interforce Property Development B.V. ("the applicant companies"), are limited liability companies (*besloten vennootschappen met beperkte aansprakelijkheid*, "B.V.") with legal personality under Netherlands law.

2. Interforce Holding B.V. and Interforce Properties B.V. were declared bankrupt on 17 November 1992, as was Interforce Property Development B.V. on 15 June 1993. A receiver (*curator*) was appointed; the first applicant succeeded him in that capacity on 18 December 1996.

3. The applicants are represented by Mr G.J. Oosterhoff, a lawyer practising in Amsterdam.

A. The circumstances of the case

4. The facts of the case, as submitted by the applicants, may be summarised as follows.

1. Background to the case

5. The three applicant companies were part of a conglomerate also including, amongst others, four other limited liability companies, namely S. B.V., I. B.V., M. B.V. and W. B.V. The shares and voting rights in the latter companies were held, variously, by one or more of the applicant companies.

6. On various dates in 1989 and 1990 a bank, S. (hereafter "the Bank"), granted loans to companies of the conglomerate.

7. Financial difficulties led the Bank and the various companies of the conglomerate to enter into an agreement, called the Restructuring Agreement, under which the various debts were renegotiated whereas the shares in I. B.V. and the voting rights in I. B.V., M. B.V. and W. B.V. were transferred variously to the Bank and to an entity under its control.

8. After the three applicant companies were declared bankrupt, the then receiver made a statement aimed at reversing the Restructuring Agreement so as to prevent the removal of their assets into the control of the Bank.

2. Initiation of the main proceedings

9. On 22 March 1994 the then receiver of the three corporate applicants, claiming also to act in the name of I. B.V., M. B.V. and W. B.V., summoned the Bank (including the entity under its control) before the Rotterdam Regional Court (*arrondissementsrechtbank*) seeking confirmation of the nullity of the Restructuring Agreement and damages.

10. The Bank, which took the position that it had validly appointed the management of I. B.V., M. B.V. and W. B.V., contested these claims.

3. The incident of procedure

11. A dispute arose as to which party could validly claim control over I. B.V., M. B.V. and W. B.V. and hence the right to appoint their procedural representative or *procurator litis* (*procureur*) before the civil courts.

12. On 13 June 1996 the Regional Court gave judgment finding that the receiver had not validly annulled the Restructuring Agreement.

13. The receiver – by this time the first applicant – lodged an appeal against this judgment with the Court of Appeal (*gerechtshof*) of The Hague.

14. The Court of Appeal delivered interlocutory judgments on 10 January 2002, 20 September 2007 and 10 July 2008.

15. On 29 December 2009 the Court of Appeal handed down its final judgment. It held, as relevant to the case before the Court, that the *procurator litis* appointed by the applicants had not validly represented I. B.V., M. B.V. and W. B.V., so that his actions were null and void, but that the transfer of certain shares to the Bank was invalid on other grounds. This judgment was allowed to become final.

4. Subsequent developments

16. A settlement was reached on 12 April 2011 under which the Bank paid a sum of money into the bankruptcy estates of the applicant companies.

COMPLAINTS

17. The applicants complained under Article 6 § 1 of the Convention about the length of the proceedings. They also complained under Article 13 of the Convention that there was no preventive or compensatory remedy which offered reasonable prospects of success.

THE LAW

A. The Government's unilateral declaration and the applicants' reply

18. After the failure of attempts to reach a friendly settlement, by a letter of 23 May 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

19. The Government's unilateral declaration reads as follows:

> "Since the applicants are not prepared to accept a friendly settlement on the terms proposed by the Court and accepted by the Government, the Government hereby wishes to express – by way of unilateral declaration – its acknowledgement that the requirements of the Convention were violated in respect of the applicant[s].
>
> Consequently, the Government is prepared to pay the applicant[s] an amount of € 26,000 for any pecuniary and non-pecuniary damage incurred and an amount of € 4,000 for costs and expenses, plus any tax that may be chargeable to the applicants."

20. On 14 June 2013 the applicants submitted a reply in which they requested the Court to reject the Government's unilateral declaration and proceed to an examination of the merits of the case.

B. The Court's decision

21. 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) in particular empowers the Court 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."

22. The Court reiterates that, in certain circumstances, it may strike out an application or part of an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued (see, as a recent authority among many others, *Tabagari v. Georgia* (dec.), nos. 70820/10 and 60870/11, 18 June 2013). To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z.o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

23. Turning to the Government's declaration, the Court notes that the Government have explicitly acknowledged that the requirements of the Convention were violated in respect of the applicants. In this connection, it reiterates that there already exists an abundance of well-established case-law on the permissible length of civil proceedings and the legal remedies required by Article 13 to be made available to those claiming violations of Article 6 § 1 in this regard (see, among many other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 177, 182-189 and 224, ECHR 2006-V).

24. In the circumstances of the present case, the Court is disposed to accept the Government's unilateral declaration and find that it is no longer justified to continue the examination of the application.

25. The sums specified in the Government's declaration shall be paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

26. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see, among other authorities, *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Gordon v. the United Kingdom* (dec.), no. 10671/10, § 16, 26 March 2013).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaints communicated under Articles 6 § 1 and 13 of the Convention (concerning the length of proceedings as well as the absence of an effective domestic remedy), and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President