



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32321/03
by Victor Christiaan DÉNU
against the Netherlands

The European Court of Human Rights (Third Section), sitting on
4 May 2006 as a Chamber composed of:

Mr J. HEDIGAN, *President*,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 2 October 2003,

Having regard to the decision to apply Article 29 § 3 of the Convention
and examine the admissibility and merits of the case together.

Having regard to the parties' submissions,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Victor Christiaan Dénu, is a Netherlands national who was born in 1949 and lives in Haarlem. He is represented before the Court by Ms T. Breton-de Munck, a lawyer practising in Lisse. The respondent Government are represented by their Agent, Mrs J. Schukking, of the Netherlands Ministry of Foreign Affairs.

A. The circumstances of the case

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

On 28 March 1996, the Haarlem Rent Board (*huurcommissie*) gave its decision on a request filed by the applicant on an unspecified date to determine a rent dispute between him and his landlord.

On 11 July 1996, disagreeing with the Rent Board's decision, the applicant applied to the Haarlem District Court Judge (*kantonrechter*) for a binding ruling about the fairness of the rent to be paid by him. The applicant claimed that, on account of soil pollution, his rent should be considerably reduced. On 26 September 1996, a first hearing was held before the District Court Judge in the course of which the parties agreed to have a soil inspection carried out by an expert to be appointed by mutual agreement.

On 8 November 1996, the Haarlem Rent Board gave its decision on a different request filed by the applicant on an unspecified date to determine another dispute between him and his landlord about the amount of service costs to be paid by the applicant.

On 7 February 1997, disagreeing with the Rent Board's decision of 8 November 1996, the applicant applied to the Haarlem District Court Judge for a binding ruling on the service costs to be paid by him.

On 2 October 2000, a hearing in both set of proceedings was held before the District Court Judge. As regards the rent dispute, both parties requested the judge to appoint an expert to carry out the soil inspection as they were unable to agree on one. The District Court Judge closed the hearing and announced that he would give a decision on 30 October 2000. As regards the dispute about the service costs, the District Court Judge – after having heard the parties' arguments – closed the hearing and announced that he would hand down a decision on 30 October 2000.

On 21 February 2002, the District Court Judge gave an interim decision in both sets of proceedings. In these interim decisions, he stated that what had happened further in both cases was unclear. In any event, they had unfortunately been neglected and the result was that an extremely long period of time had elapsed since the last hearing. The parties were therefore given until 19 March 2002 to file further written submissions in both sets of proceedings.

Having been informed on an unspecified date that a hearing before the District Court Judge in both sets of proceedings had been scheduled for Friday 21 March 2003, the applicant requested the Registry of the District Court on Monday 17 March 2003 to consult the case file. He was informed that this was not possible as the District Court Judge had taken the case file home in order to prepare the hearing and would not return to the District Court before Friday 21 March 2003. Apparently no copy of the case file had been made.

On 21 March 2003, a hearing in both sets of proceedings was held before the District Court Judge. After having heard the arguments of the parties – neither of whom mentioned the issue of the appointment of an expert –, the judge announced that he would give a decision on both cases on 4 April 2003.

On 4 April 2003, the District Court Judge gave his decision in both sets of proceedings. No further appeal lay against these decisions.

B. Relevant domestic law and practice

An overview of the relevant domestic law and practice is set out in the Court's judgment in the case of *Terra Woningen B.V. v. the Netherlands* (judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2113-2115, §§ 19-28).

COMPLAINTS

The applicant complained that the proceedings before the District Court Judge exceeded a reasonable time within the meaning of Article 6 § 1 of the Convention. He further complained under Article 6 § 3 of the Convention that he was not provided with adequate time and facilities for the preparation of his defence in that he was not given an opportunity to consult the case file before the hearing of 21 March 2003.

THE LAW

The applicant complained under Article 6 § 1 of the Convention that the proceedings before the District Court Judge exceeded a reasonable time. He further complained under Article 6 § 3 that, in these proceedings, his defence rights were not respected.

Article 6, in so far as relevant, provides as follows:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

...”

The Court notes at the outset that the proceedings complained of concerned two disputes between the applicant and his landlord and did not

concern a determination of any criminal charge brought against the applicant. Consequently, the facts of the case fall outside the scope of Article 6 § 3 and this part of the application must therefore be rejected for being incompatible *ratione materiae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

As regards the remaining complaint under Article 6 § 1 of the Convention, the Court has noted that, in their letter of 26 October 2005, the Government informed the Court that the applicant had rejected proposals by the Government to settle the case. This letter reads in its relevant part:

“... securing a friendly settlement in this case has remained unsuccessful. That being so, the Government hereby wishes to express – by way of a unilateral declaration – its acknowledgement 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 to a maximum of € 2,500 which it considers to be reasonable in the light of the Court’s case-law. Furthermore, the Government is willing to pay, to a reasonable amount, specified legal costs and expenses made in the procedure before the Court.

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 § 1c of the Convention.”

The Court further notes that, in his letter of 17 November 2005, the applicant informed the Court that the legal costs incurred by him in the proceedings before the Court amounted to 64 euros (EUR), and that he made further submissions on the merits of the application from which the Court understands that he opposed the Government’s request.

The Court lastly notes that, on 1 December 2005, the Government informed the Court that they were prepared to reimburse the legal costs incurred by the applicant in the procedure before the Court.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings 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 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* states :

“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.”

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* (preliminary objection) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; and also *Haran v. Turkey* (striking out),

no. 25754/94, 26 March 2002; *Akman v. Turkey* (striking out), no. 37453/97, ECHR 2001-VI; *Meriakri v. Moldova* (striking out), no. 53487/99, 1 March 2005; and *Van Houten v. the Netherlands* (striking out), no. 25149/03, 29 September 2005).

The Government's declaration contains an acknowledgement that the length of the domestic proceedings in the applicant's case exceeded a reasonable time within the meaning of Article 6 § 1. 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", and finds the Government's admission to be in keeping with the applicable jurisprudential standards.

The Court understands the Government's acceptance of the applicant's claims in respect of non-pecuniary damage up to a maximum of EUR 2,500 and EUR 64 in respect of legal costs incurred 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 2,500 in respect of non-pecuniary damage to be an acceptable sum in this case (see (*Scordino v. Italy* [GC], no. 36813/97, 29 March 2006; *Riccardi Pizzati v. Italy* [GC], no. 62361/00, 29 March 2006; *Musci v. Italy* [GC], no. 64699/01, 29 March 2006; *Giuseppe Mostacciuolo v. Italy* (nos. 1 and 2) [GC], nos. 64705/01 and 65102/01, 29 March 2006; *Cocchiarella v. Italy* [GC], no. 64886/01, 29 March 2006; *Apicella v. Italy* [GC], no. 64890/01, 29 March 2006; *Ernestina Zullo v. Italy* [GC], no. 64897/01, 29 March 2006; and *Guisseppina and Orestina Procaccini v. Italy* [GC], no. 65075/01, 29 March 2006) and has found no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the examination of the applicant's complaint under Article 6 § 1 by virtue of Article 37 § 1 *in fine*.

Accordingly, the Court considers that the application to the case of Article 29 § 3 of the Convention should be discontinued and that it is no longer justified to continue the examination of the remainder of the application (Article 37 § 1 (c)).

For these reasons, the Court unanimously

Declares inadmissible the applicant's complaint under Article 6 § 3 (b) of the Convention;

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

Vincent BERGER
Registrar

John HEDIGAN
President