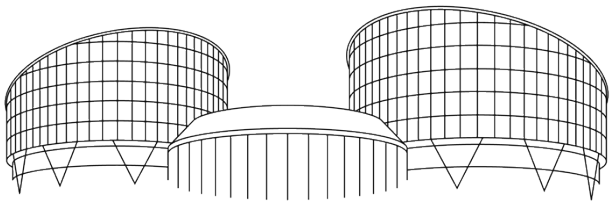

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 15906/08
by Lidwina Geertruida Monica SCHUITEMAKER
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 4 May 2010 as a Chamber composed of:

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges,*

and Stanley Naismith, *Deputy Section Registrar*,

Having regard to the above application lodged on 19 March 2008,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Lidwina Geertruida Monica Schuitemaker, is a Dutch national who was born in 1958 and lives in Groningen.

A. The circumstances of the case

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

The applicant, a philosopher by profession, is currently unemployed and was in receipt of benefits pursuant to the Social Assistance Scheme for the Unemployed (*Rijksgroepregeling werkloze werknemers*) from 1 September 1983. As of 1 August 1996 she received benefits pursuant to the General Welfare Act (*Algemene Bijstandswet*). Both the Social Assistance Scheme and the General Welfare Act stipulated that an unemployed person was eligible for benefits provided he or she attempted to obtain and was willing to accept employment "deemed suitable" (*passende arbeid*) for him or her.

On 1 January 2004, the General Welfare Act was replaced by the Work and Social Assistance Act (*Wet Werk en Bijstand*).

By letter of 4 March 2005 the applicant was informed that, as from 1 April 2005, she had to fulfil the obligations pursuant to this Act, including the obligation to obtain and be willing to take up "generally accepted" employment (*algemeen geaccepteerde arbeid*). Non-compliance would lead to a reduction of the applicant's benefit payments.

On 4 April 2005, the applicant raised an objection against the letter, which was rejected on 12 July 2005 by the Mayor and Aldermen (*Burgemeester en Wethouders*) of Groningen.

By judgment of 1 December 2006 the Groningen Regional Court upheld the applicant's appeal against the decision of the Mayor and Aldermen, but only because it considered that those authorities should have declared the objection against the letter of 4 March 2005 inadmissible since the contents of that letter were not intended to have any legal consequences but served only to inform the applicant – as a recipient of benefits pursuant to the Work and Social Assistance Act – of the obligations she had to comply with; it was therefore not possible to lodge an objection against the letter. Doing what the authorities should have done, the Regional Court declared the objection inadmissible.

The applicant lodged an appeal to the Central Appeals Tribunal (*Centrale Raad van Beroep*). In a decision of 8 January 2008, the Central Appeals Tribunal confirmed the judgment of the Regional Court.

B. Relevant domestic law

The General Welfare Act

Under the General Welfare Act all persons between the ages of 18 and 65 and lawfully residing in the Netherlands were eligible for benefits under this Act if they had no other means of subsistence. General welfare beneficiaries were – apart from certain exceptions – obliged to make demonstrable efforts to obtain and accept suitable employment.

The Work and Social Assistance Act

On 1 January 2004, the General Welfare Act was replaced by the Work and Social Assistance Act. In common with the old Act, persons between the ages of 18 and 65 and lawfully residing in the Netherlands are eligible for benefits under this Act. However, contrary to the contents of the previous Act, general welfare beneficiaries are now obliged to make demonstrable efforts to obtain and take up generally accepted employment. It appears from the Explanatory Memorandum (*Memorie van Toelichting*) to this Act that this new requirement has a much wider scope, as it also includes employment with which the beneficiary has no affinity and only excludes employment which is not generally socially accepted (*algemeen maatschappelijk aanvaard*). Furthermore, the beneficiary is not obliged to obtain or accept work in respect of which he or she has conscientious objections.

COMPLAINT

The applicant complained under Article 4 of the Convention that the Social Assistance Act forced her to obtain and accept any kind of labour, irrespective of the question whether it would be suitable or not, by reducing her benefits if she refused to do so.

THE LAW

The applicant claimed that she was the victim of a violation of paragraph 2 of Article 4 of the Convention, which provision, in so far as relevant, reads as follows:

> "...
>
> 2. No one shall be required to perform forced or compulsory labour.
>
> 3. For the purpose of this article the term 'forced or compulsory labour' shall not include:
>
> (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
>
> (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
>
> (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

The Court would note at the outset that it does not appear that the applicant's benefits have been reduced as a result of her refusing to accept employment. In this context it recalls that, in accordance with Article 34 of the Convention, the Court may receive applications only from persons "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto". However, in the absence of an individual measure of implementation, individuals can contend that a law violates their rights by itself, if they run the risk of being directly affected by it (see, *mutatis mutandis*, *Klass and others v. Germany*, 6 September 1978, § 33, Series A no. 28, and *Marckx v. Belgium*, 13 June 1979, §§ 25-27, Series A no. 31). Such is indeed the reasoning of the applicant, who raises objections to an Act which applies to all recipients of benefits pursuant to that Act.

The Court considers, however, that it is not necessary to determine whether or not the applicant can be considered a "victim" within the meaning of Article 34, or even whether – having regard to the fact that it appears from the decisions of the Groningen Regional Court and the Central Appeals Tribunal that no domestic remedies lay against the contents of the letter of 4 March 2005 – the application was lodged within the six-month time-limit set out in Article 35 § 1, since the case is in any event inadmissible for the following reasons.

It is the applicant's contention that she is forced to seek and take up employment which is deemed "generally accepted" as opposed to "suitable", and that this may result in her having to accept employment unsuitable to her. She submits that the introduction of such a new requirement compels her to perform forced or compulsory labour.

The Court notes that the obligation of which the applicant complains is in effect a condition for the granting of benefits pursuant to the Work and Social Assistance Act. In the view of the Court, it must in general be accepted that where a State has introduced a system of social security, it is fully entitled to lay down conditions which have to be met for a person to be eligible for benefits pursuant to that system. In particular a condition to the effect that a person must make demonstrable efforts in order to obtain and take up generally accepted employment cannot be considered unreasonable in this respect. This is the more so given that Dutch legislation provides that recipients of benefits pursuant to the Work and Social Assistance Act are not required to seek and take up employment which is not generally socially accepted or in respect of which they have conscientious objections. Therefore, the condition at issue cannot be equated with compelling a person to perform forced or compulsory labour within the meaning of Article 4 § 2 of the Convention.

Furthermore, in the present case the applicant complained only of the applicable legislation *in abstracto* and she did not submit or substantiate

anything that could lead the Court to find that what was required of her attained the threshold of what constitutes forced and compulsory labour within the meaning of Article 4.

It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith	Josep Casadevall
Deputy Registrar	President