

APPLICATION/REQUÊTE N° 11285/84

Anna CLAES v/BELGIUM

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DECISION of 7 December 1987 on the admissibility of the application

DÉCISION du 7 decembre 1987 sur la recevabilité de la requête

Article 1 of the First Protocol *Does a claim to unemployment benefit constitute a possession within the meaning of this provision when, as in Belgium, the benefit is partly funded by contributions to the Social Security ? (Question unresolved)*

If so, there will not be deprivation of possessions when the person concerned does not satisfy the conditions laid down by domestic law for entitlement to such benefit

Article 1 du Protocole additionnel *Les prétentions a des allocations de chômage constituent-elles un bien protege par cette disposition lorsque, comme en Belgique, ces allocations sont partiellement assurees par des contribunons a la Securite sociale ? (Question non resolue)*

Dans l'affirmative, il ne saurait y avoir privation d'un bien, lorsque l'intéresse ne remplit pas les conditions fixees par le droit interne pour toucher ces allocations

(TRANSLATION)

THE FACTS (Extract)

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

The applicant, a Belgian national born in 1937, was resident in Bree when her application was introduced. Before the Commission, she was represented by J. Haagdorens, a trade union representative.

On 7 July 1978, the applicant, with her employer's consent, voluntarily left the job of machinist which she had held in Heusden since 1966 because, following her

removal from Heusden to Bree where she and her husband had had a house built, her job had to be declared "unsuitable" in that continuing in it entailed a daily absence from the home of more than 13 hours (Articles 42 and 47 of the Ministerial Decree of 4 June 1964 concerning unemployment)

Until she could find another job, the applicant applied for unemployment benefit

In a decision of 5 October 1978, the Regional Director of the National Employment Office in Hasselt decided that the applicant should be denied unemployment benefit for a period of 13 weeks in pursuance of Article 134 of the Royal Decree of 20 December 1963 concerning employment and unemployment. This provision restricts a worker's right to unemployment benefit, *inter alia* in the event of his leaving a job without lawful grounds.

The applicant instituted proceedings against this decision before the Tongres District Industrial Tribunal ("Tribunal de travail de l'arrondissement de Tongres"). She maintained that the sanction was unjustified on the ground that, following her removal, continuing in her job would have obliged her to be away from her home for more than 13 hours. This circumstance, she asserted, allowed her to give up her job in pursuance of Article 47 of the Ministerial Decree of 4 June 1964 which provides that a job may be declared unsuitable if an employee has to leave his place of residence or return there in circumstances and at times which raise serious objections.

By decision of 29 May 1979, the tribunal set aside the Regional Director's decision on the ground that absence from the home totalled more than 13 hours and that the applicant could therefore leave her job in pursuance of the aforementioned Article 47.

When the National Employment Office appealed against this decision, the applicant filed submissions with the Antwerp Court of Appeal in which she relied on the right to the free choice of residence.

In its judgment of 13 January 1983, the Antwerp Court of Appeal confirmed the administrative decision of 5 October 1978 and so ruled that the applicant was not entitled to unemployment benefit for a period of 13 weeks, because she had left her job without lawful grounds. In its judgment, the Court, noting that the applicant had left her job because she had gone to live in another municipality where she had had a house built, held that she should be regarded as a voluntarily unemployed person and that unemployment benefit was not intended to finance a reorganisation of private life. It added that the applicant's argument that she had merely exercised her right to the free choice of her residence was irrelevant since it in no way followed that, as a result of her removal, the applicant was entitled to a periodical payment.

The applicant appealed to the Court of Cassation and complained that the Court of Appeal, in finding that she had left her job in order to move house and in holding

that unemployment benefit was not intended to finance the reorganisation of private life, had based its decision on criteria entirely distinct from those applying to the suitability of the job as laid down in Articles 34 to 62a of the Ministerial Decree of 4 June 1964

In its judgment of 30 January 1984, the Court of Cassation rejected the appeal on the ground that when the Court assessed the lawfulness of a reason for leaving a job, it could take account of factors other than the criteria of job suitability when the issue to be decided lay, as in the present case, outside the scope of those criteria

THE LAW (Extract)

2 The applicant also complains of an infringement of the peaceful enjoyment of her possessions in that for a period of 13 weeks she was not paid unemployment benefit. She relies on Article 1 of Protocol No. 1 which provides that everyone is entitled to the peaceful enjoyment of his possessions, and on Article 14 of the Convention

Article 1 of Protocol No. 1 reads thus

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

Although the applicant did not specifically state before the Court of Cassation the complaint she bases on the violation of Article 1 of Protocol No. 1 taken separately and read in conjunction with Article 14 of the Convention, there is reason to consider that this complaint was submitted in substance to the appeal authorities and hence that domestic remedies have been exhausted with regard to this aspect of the application

As to the application of Article 1 of Protocol No. 1, the Commission has already held that the right to unemployment benefit cannot in itself be considered to constitute a right of property which could be described as “possessions” on the ground that no one held an identifiable and claimable share in joint capital (see No. 10503/83, *Kleine Staarman v Netherlands*, Dec. 16.5.85, D.R. 42 p. 162)

However, when, as in Belgium, the body responsible for paying unemployment benefit is partly financed by the National Social Security Office, to which the applicant paid contributions as a worker, the question may arise whether unemployment benefit could be considered "possessions" within the meaning of Article 1 of Protocol No. 1

Even assuming that the payment of contributions to the National Social Security Office created a right protected by Article 1 of Protocol No. 1, namely the right to receive unemployment benefit, it is still necessary, in order for such a right to be established, that the person concerned should have satisfied domestic legal requirements governing the right to the aforesaid benefit (No. 7459/76, Dec 5.10.77, D.R. 11 p 114)

The applicant was denied unemployment benefit in pursuance of Article 134 of the Royal Decree of 20 December 1963, which makes it possible to restrict the right to unemployment benefit when, as in the present case, a job is left without lawful grounds. It therefore does not appear that denying the applicant unemployment benefit for a period of 13 weeks constitutes deprivation of "possessions" within of the meaning of Article 1 of Protocol No. 1.

Furthermore, in so far as the applicant relies on Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, the Commission considers that the sanction imposed on the applicant is neither arbitrary nor disproportionate. As regards the latter point, it observes that a longer period of denial could have been ordered

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 27 para. 2 of the Convention