

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

THIRD SECTION

DECISION

Application no. 66005/09
by Ingrid Theodora Maria VAN GASTEL
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 31 May 2011 as a Committee composed of:

Luis López Guerra, *President,*
Egbert Myjer,
Mihai Poalelungi, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 December 2009,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Ingrid Theodora Maria van Gastel, is a Dutch national who was born in 1961 and lives in Curaçao. She was represented before the Court by Mr D.A.A. Boersema, a lawyer practising in Curaçao. The Dutch Government ("the Government") were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

The applicant complained under Article 1 of Protocol No. 1 that she was unlawfully deprived of a possession – namely, the right to medical insurance for her same-sex spouse under the Regulation on the reimbursement of costs of treatment and care of public servants (*Regeling vergoeding behandelings- en verplegingskosten overheidsdienaren*).

She complained under the same Article, this time taken together with Article 14 of the Convention, and under Article 1 of Protocol No. 12 that the refusal to register her spouse as co-insured under the medical insurance

scheme set up by the Regulation constituted discrimination on the ground of sex.

On 25 May 2010 the Court decided to give notice to the Government of the applicant's complaints detailed above.

On 26 October 2010 the Government informed the Court that the applicant, after the end of the administrative proceedings, had lodged civil proceedings against her employer dealing with the same legal question. In the latter proceedings, both the Court of First Instance of the Dutch Antilles (*Gerecht in eerste aanleg van de Nederlandse Antillen*), on 25 January 2010, and the Joint Court of Justice of the Netherlands Antilles and Aruba (*Gemeenschappelijk Hof van Justitie van de Nederlandse Antillen en Aruba*), on 28 September 2010, had ruled in favour of the applicant. As at that time the judgment was not yet final – the parties still having the possibility to lodge an appeal in cassation to the Supreme Court (*Hoge Raad*), the Government, with the applicant's agreement, requested the Court to adjourn the case.

On 23 November 2010 the Court decided to adjourn the proceedings until 15 January 2011.

On 26 January 2011 the Government informed the Court that the judgment of 28 September 2010 of the Joint Court of Justice had become final, as no appeal to the Supreme Court had been lodged by either party. The judgment of the Joint Court of Justice had affirmed the applicant's claim that her same-sex marriage should be treated equally to the marriage between a man and a woman with respect to the right to have her spouse included in her health insurance. The Joint Court of Justice had ordered her employer to include the applicant's spouse and her child in her health insurance and had also awarded the applicant compensation for the paid insurance premium. It therefore appeared to the Government that the grounds underlying the application had ceased to exist and that any damage had been compensated for.

Invited to inform the Court whether she was of the same view, the applicant's representative wrote on 21 February 2011 that the applicant agreed to the application being struck out of the Court's list of cases on the ground that the matter had been resolved.

THE LAW

In the light of the foregoing, and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention or its Protocols, the Court finds no reasons to justify a continued examination of the application (Article 37 § 1 (b) and *in fine* of the Convention).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

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

Marialena Tsirli
Deputy Registrar

Luis López Guerra
President