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

COURT (PLENARY)

CASE OF ENGEL AND OTHERS v. THE NETHERLANDS
(ARTICLE 50)

(Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72)

JUDGMENT

STRASBOURG

23 November 1976

In the case of Engel and others,

The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court and composed of the following Judges:

MM. H. MOSLER, *President*,
A. VERDROSS,
M. ZEKIA,
J. CREMONA,
G. WIARDA,
P. O'DONOGHUE,
Mrs. H. PEDERSEN,
MM. T. VILHJÁLMSSON,
S. PETREN,
A. BOZER,
W. GANSHOF VAN DER MEERSCH,
Mrs. D. BINDSCHEDLER-ROBERT,
M. D. EVRIGENIS,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 1 and 2 November 1976,

Delivers the following judgment, adopted on the last-mentioned date, on the application in the present case of Article 50 (art. 50) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"):

PROCEDURE

1. The case of Engel and others was referred to the Court by the European Commission of Human Rights (hereinafter referred to as "the Commission") on 8 October 1974 and then by the Government of the Kingdom of the Netherlands (hereinafter referred to as "the Government") on 17 December of the same year. The case originated in five applications against the Netherlands which were lodged with the Commission in 1971 by Cornelis J.M. Engel, Peter van der Wiel, Gerrit Jan de Wit, Johannes C. Dona and Willem A.C. Schul, all Netherlands nationals. They complained about various disciplinary penalties and measures imposed on them when they were carrying out their compulsory military service.

2. On 8 June 1976 the Court, while rejecting the applicants' other complaints, found

- that the whole period of Mr. Engel's provisional strict arrest from 20 to 22 March 1971 had violated Article 5 para. 1 (art. 5-1) of the Convention

since no justification for it was to be found in any sub-paragraph of this provision (item 4 of the operative provisions and paragraph 69 of the reasons, Series A no. 22, pp. 45 and 28-29);

- that apart from that it had infringed Article 5 para. 1 (art. 5-1) insofar as it had exceeded the period of twenty-four hours stipulated by Article 45 of the Netherlands Military Discipline Act of 27 April 1903 (item 5 of the operative provisions and paragraph 69 of the reasons, ibid., pp. 45 and 29);

- that there had been a breach of the requirements of Article 6 para. 1 (art. 6-1) in the case of Mr. de Wit, Mr. Dona and Mr. Schul insofar as the hearings before the Netherlands Supreme Military Court had taken place in camera (item 11 of the operative provisions and paragraph 89 of the reasons, ibid., pp. 45 and 37).

In addition the Court reserved the whole of the question of the application of Article 50 (art. 50) of the Convention as it arose for those four applicants. It invited the Commission's delegates to present in writing, within one month from the delivery of the judgment, their observations on the said question and decided that the Government should have the right to reply thereto in writing within a month of the Registrar's communication of those observations to the Government. It reserved the further procedure to be followed on that aspect of the case (items 21 and 22 of the operative provisions and paragraphs 109-111 of the reasons, ibid., pp. 46 and 43-44).

3. The observations of the Commission's delegates and of the Government were received at the Registry on 8 July and 6 August 1976 respectively. The former were accompanied by a letter that Mr. van der Schans, the lawyer of Mr. Engel, Mr. de Wit, Mr. Dona and Mr. Schul, had sent on 17 June to the Secretary of the Commission.

4. After consulting, through the Registrar, the Commission's delegates and the Agent of the Government, the Court thinks that it is not appropriate either to prolong the written procedure or to envisage hearings in the presence of the parties; it considers itself in a position to give a decision forthwith.

AS TO THE FACTS

5. The only question remaining to be settled is that of the application of Article 50 (art. 50) in the present case. Thus, as regards the facts, the Court can refer for the main points to paragraphs 12 to 53 of its judgment of 8 June 1976 (ibid., pp. 6-23), confining itself here to giving some brief details.

6. Mr. Engel, Mr. de Wit, Mr. Dona and Mr. Schul do not allege that they have suffered any material damage, loss of income, legal expenses or other disbursements, but each of them claims a "purely symbolic" sum of one thousand French francs (1,000 FF), presumably for moral damage.

7. The Commission's delegates think that financial compensation "is due to Mr. Engel for the breach of Article 5 para. 1 (art. 5-1) as such"; they "suggest to the Court that it should follow in this respect the method of calculation adopted in the Ringeisen case" (judgment of 22 June 1972, Series A no. 15). On the other hand, the breach of Article 6 para. 1 (art. 6-1) is said to have caused Mr. de Wit, Mr. Dona and Mr. Schul no "special damage", with the result that "the decision referred to in item 11" of the operative provisions of the judgment of 8 June 1976 would for these applications amount, "in itself", to "just satisfaction within the meaning of Article 50 (art. 50)".

8. The Government ask the Court to "fix the compensation, if any, on a purely symbolic sum" in the case of Mr. Engel. They agree with the delegates as regards Mr. de Wit, Mr. Dona and Mr. Schul.

AS TO THE LAW

9. As appears from paragraph 6 above, the Court's task here is solely to examine, within the limits set by items 21 and 22 of the operative provisions of the judgment of 8 June 1976, whether there are grounds for granting just satisfaction for moral damage.

10. Mr. Engel was deprived of his liberty in conditions at variance with Article 5 para. 1 (art. 5-1) of the Convention and furthermore incompatible, to the extent of between twenty-two and thirty hours (judgment of 8 June 1976, Series A no. 22, p. 29, para. 69, sixth sub-paragraph), with Article 45 of the above-mentioned Act of 27 April 1903. During this period he encountered the disagreeable effects of the regime of strict arrest. He thus suffered moral damage.

In evaluating this damage, the Court cannot overlook the brevity of Mr. Engel's detention. Moreover, he was to a large extent compensated for the damage. In fact, after having been found guilty of the disciplinary offence which had led to his arrest on 20 March 1971, he did not have to serve the two days' strict arrest awarded shortly afterwards for that offence (ibid., pp. 15-16, paras. 34 in fine, 35 and 36). On 5 April 1971, his provisional arrest was set off against this penalty by a decision of the complaints officer which the Supreme Military Court confirmed on 23 June 1971 (ibid., pp. 15-16, paras. 35 in fine and 36). Whilst this does not constitute restitutio in integrum, it is nevertheless relevant in the context of Article 50 (art. 50) (Ringeisen judgment of 22 June 1972, Series A no. 15, p. 8, para. 21, and p. 10, para. 26; Neumeister judgment of 7 May 1974, Series A no. 17, pp. 18-19, paras. 40-41; Engel and others judgment of 8 June 1976, Series A no. 22, p. 29, para. 69).

Taking these various factors into account, the Court considers that Mr. Engel, in addition to the satisfaction resulting from items 4 and 5 of the operative provisions of the judgment of 8 June 1976, should be afforded a token indemnity of one hundred Dutch guilders (Hfl. 100).

11. The case of Mr. de Wit, Mr. Dona and Mr. Schul is different. The only violation of which they were victims arose from the fact that the Supreme Military Court heard their case in camera (Article 6 para. 1 of the Convention) (art. 6-1); it has already been pointed out in the judgment of 8 June 1976 that they "do not seem to have suffered on that account" and that "indeed the said Court improved the lot of two of their number, namely Mr. Schul and, to an even greater extent, Mr. de Wit" (Series A no. 22, p. 37, para. 89, as amplified on pp. 17-18, para. 41, and p. 20, para. 49).

Since then, these three applicants have not put forward any argument capable of disturbing this provisional conclusion. Admittedly, their lawyer, in his letter of 17 June 1976 (paragraph 3 above), expresses the opinion that "as for Mr. Schul and Mr. Dona ... a comparison could be made between the [respective] outcome of the disciplinary proceedings instituted against them" and of criminal proceedings, taken against other servicemen for offences of the same kind, which he mentioned in his address to the Court on 28 October 1975. He claimed that the criminal proceedings generally resulted, after a public hearing, in the imposition solely of a fine of between one hundred and two hundred and fifty guilders, a penalty that was "far more favourable" than the sentence passed on Mr. Dona and Mr. Schul in the context of the disciplinary proceedings.

The Court cannot accept this proposition. It ruled in its judgment of 8 June 1976 that the Convention did not compel the competent Netherlands authorities to prosecute Mr. Dona and Mr. Schul – or Mr. de Wit - "under the Military Penal Code before a court martial" (Series A no. 22, p. 36, para. 85 in fine). Consequently, the comparison made by the applicants' lawyer provides no argument relevant to Article 50 (art. 50). Above all, there is nothing to show the existence of any kind of causal link between the fact that the hearings before the Supreme Military Court were not public and the severity of the punishment inflicted on Mr. Dona and Mr. Schul.

Accordingly, the Court, like the Commission and the Government, considers that item 11 of the operative provisions of its judgment of 8 June 1976 amounts for Mr. de Wit, Mr. Dona and Mr. Schul to adequate just satisfaction under Article 50 (art. 50).

FOR THESE REASONS, THE COURT

1. Holds unanimously that the Kingdom of the Netherlands is to pay to Mr. Cornelis J.M. Engel the sum of one hundred Dutch guilders;

2. Holds unanimously that item 11 of the operative provisions of its judgment of 8 June 1976 amounts for Mr. Gerrit Jan de Wit, Mr. Johannes C. Dona and Mr. Willem A.C. Schul to adequate just satisfaction under Article 50 (art. 50).

Done in French and English, the French text being authentic, at the Human Rights Building, Strasbourg, this twenty-third day of November, one thousand nine hundred and seventy-six.

Hermann MOSLER
President

Marc-André EISSEN
Registrar

In addition to a declaration by Judges Cremona, O'Donoghue, Pedersen, Thór Vilhjálmsson and Evrigenis, the separate opinions of the following Judges are annexed to the present judgment (Article 51 para. 2 of the Convention and Rule 50 para. 2 of the Rules of Court) (art. 51-2):

- Mr. Ganshof van der Meersch and Mr. Evrigenis;

- Mrs. Bindschedler-Robert.

H.M.
M.-A.E.

DECLARATION BY JUDGES CREMONA, O'DONOGHUE, PEDERSEN, THÓR VILHJÁLMSSON AND EVRIGENIS

In separate opinions annexed to the Court's judgment of 8 June 1976 we have expressed different points of view not accepted by the majority of the Court.

After that judgment and for the purposes of the present one we feel bound to accept the findings of the majority of the Court, and we have therefore proceeded on this basis.

SEPARATE OPINION OF JUDGES GANSHOF VAN DER MEERSCH AND EVRIGENIS

(Translation)

Since we are of the view that Mr. de Wit, Mr. Dona and Mr. Schul should not be afforded "just satisfaction" within the meaning of Article 50 (art. 50) of the Convention, we have voted for item 2 of the operative provisions of the judgment. Nevertheless, we have some difficulty in concurring with the reasoning by which the Court arrived at that result. Our reasons are as follows:

According to Article 50 (art. 50) of the Convention, the Court shall afford, on the conditions laid down in that provision, "just satisfaction" to the injured party if it finds a breach of the Convention. It seems difficult to accept the proposition that the finding by the Court of a breach of the substantive provisions of the Convention, whilst constituting a condition for the application of Article 50 (art. 50), can at the same time be the consequence in law following from that same provision.

SEPARATE OPINION OF JUDGE BINDSCHEDLER-ROBERT

(Translation)

The view, expressed in my separate opinion, that the reckoning of detention on remand as part of the sentence had amounted to complete redress expunging the responsibility of the State was based on the premise that the breach had consisted solely of the prolongation of the detention on remand beyond the period of twenty-four hours allowed by Netherlands law. The Court has held that the detention on remand was unlawful on two grounds and amounted in its entirety to a breach of the Convention. Accordingly, viewing the matter in this other way and also bearing in mind the point of time at which the detention occurred (a few days before the examinations that Mr. Engel had to take), I readily concede that the reckoning did not amount to full redress and that, in addition to the finding of the violation of the Convention of which he was victim, Mr. Engel should therefore be afforded an indemnity by way of satisfaction for the moral damage suffered.