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

COURT (CHAMBER)

**CASE OF PRESSOS COMPANIA NAVIERA S.A.
AND OTHERS v. BELGIUM
(ARTICLE 50)**

(Application no. 17849/91)

JUDGMENT

STRASBOURG

3 July 1997

In the case of Pressos Compania Naviera S.A. and Others v. Belgium[1],

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court A[2] (2), as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr C. RUSSO,
Mr J. DE MEYER,
Mr R. PEKKANEN,
Mr M.A. LOPES ROCHA,
Mr L. WILDHABER,
Mr D. GOTCHEV,
Mr B. REPIK,
Mr U. LOHMUS,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 19 March and 26 June 1997,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") and by the Belgian Government ("the Government") respectively on 9 September and 21 October 1994, within the three-month period laid down by Article 32 para. 1 and Article 47 of the Convention (art. 32-1, art. 47). It originated in an application (no. 17849/91) against the Kingdom of Belgium lodged with the Commission under Article 25 (art. 25) by twenty-six applicants on 4 January 1991 (see the principal judgment of 20 November 1995, Series A no. 332, p. 8, para. 6).

2. In its aforementioned judgment of 20 November 1995 ("the principal judgment"), the Court found that there had been deprivation of property contrary to Article 1 of Protocol No. 1 (P1-1) in that an Act of 30 August 1988 ("the 1988 Act") had retrospectively extinguished without

[1] The case is numbered 38/1994/485/567. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

[2] Rules A apply to all cases referred to the Court before the entry into force of Protocol No. 9 (P9) (1 October 1994) and thereafter only to cases concerning States not bound by that Protocol (P9). They correspond to the Rules that came into force on 1 January 1983, as amended several times subsequently.

consideration any claims for compensation which the applicants may have had against the Belgian State or against private companies offering pilot services for casualties occurring before 17 September 1988 (Series A no. 332, pp. 24 and 26, para. 44 and point 3 of the operative provisions).

3. As the question of the application of Article 50 (art. 50) was not ready for decision, it was reserved in the principal judgment. The Court invited the Government and the applicants to submit, within six months, their observations on the issue and, inter alia, to inform it of any friendly settlement that they might reach (ibid., point 6 of the operative provisions).

4. On 20 May 1996, the Government lodged a memorial, to which the applicants replied on 3 September 1996. On 30 September 1996 the President gave the Government and the applicants leave to lodge an additional memorial, which they did on 5 November and 10 December 1996 respectively. On 10 February 1997, the Government sent to the registry a court decision in the case of one of the applicants, together with their observations; the applicants replied on 6 March 1997. On 18 April 1997 the applicants sent some other decisions of the Belgian courts to the registry with an up-to-date table of the damages claimed. On 30 April 1997, the Government submitted further observations, but the Chamber decided not to include them in the case file as the time-limit for submitting them had expired. On 21 January 1997, the Registrar had received the observations of the Delegate of the Commission.

5. Subsequently Mr B. Repik, substitute judge, replaced Mr Thór Vilhjálmsson, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1 of Rules of Court A).

AS TO THE LAW

6. Article 50 of the Convention (art. 50) provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

7. The applicants claimed 1,547,508,885 Belgian francs (BEF) for pecuniary damage. That sum represented the cumulative total - including interest up to 31 May 1997 - of the claims which they had as a result of the casualties in issue in this case. In addition, they asked the Court "to rule that

the Belgian State must pay each of the applicants, in reparation of the non-pecuniary damage caused to them by the Government's attitude following its judgment of 20 November 1995, a sum that is left to the Court's discretion".

1. The claims of all but the twenty-fifth applicant

8. In its principal judgment, the Court considered that it "[was] ... for the national courts to determine the beneficiaries and amounts of the damages claims generated by the accidents that lay at the origin of the case" (see the aforementioned judgment, p. 25, para. 51).

9. The applicants feared in particular that proceedings in the domestic courts would be excessively long and requested the Court "to appoint one or three experts and to instruct them to determine, on the basis of all the documents and facts of the case, such as the experts' reports that had been obtained and the decisions delivered in the domestic courts, whether the accidents in dispute were the result of the pilots' negligence and if so in what proportion and to assess whether the amounts claimed by the applicants by way of compensation were justified ... and the amounts that should be awarded to them to cover experts', translators' and bailiffs' costs incurred by them in the domestic proceedings". In that regard, the applicants observed that there was a precedent for the Court seeking an expert's report in the case of Papamichalopoulos and Others v. Greece (judgment of 31 October 1995 (Article 50), Series A no. 330-B).

10. The Court notes, however, that in the Papamichalopoulos and Others case it had previously found that each of the applicants had been expropriated in a manner incompatible with their right to the peaceful enjoyment of their possessions (see judgment of 24 June 1993, Series A no. 260-B, pp. 68-71, paras. 35-46, and points 1-2 of the operative provisions). Thus the expert's remit was confined to valuing the disputed land (ibid., point 3 (b) of the operative provisions, and the aforementioned judgment of 31 October 1995, pp. 49-50, paras. 3 and 6).

Here, on the other hand, before damages are assessed, liability for each of the accidents has to be determined and the beneficiaries and the compensation due identified. As the Court has already said (see paragraph 8 above), that is a task for the national courts. The Court, however, reserves to itself the right to verify whether the outcome of the national proceedings - and their length - satisfies Article 50 of the Convention (art. 50) (see, mutatis mutandis, the Guillemin v. France judgment of 21 February 1997, Reports of Judgments and Decisions 1997-I, p. 164, para. 56).

11. In this respect, the Court has taken note of the two court decisions communicated to it by the parties, namely the judgment of the Antwerp Commercial Court of 6 June 1996 concerning the twenty-first applicant (North River Overseas S.A.) and the judgment of the Ghent Court of Appeal

of 31 October 1996 concerning the sixteenth applicant (Merit Holdings Corporation).

By not applying the Act of 30 August 1988 ("the 1988 Act") those courts have, in their decisions, effected the restitutio in integrum to which the sixteenth and twenty-first applicants may lay claim following the Court's principal judgment (see the aforementioned Papamichalopoulos and Others judgment of 31 October 1995, pp. 58-59, para. 34), provided that the decisions become final.

12. Relying on the Court's case-law in relation to Article 1 of Protocol No. 1 (P1-1), the Government maintained that the restitutio in integrum sought in the instant case did not require compensation in full for the damage for which the State or any other organiser of piloting services may be held liable. The Government indicated that on 10 May 1996 they approved a bill, section 2 of which, in the version they had submitted to the Court, provided:

> "para. 1. In section 3 bis (2) of the Act of 3 November 1967 on the piloting of sea-going vessels inserted by the Act of 30 August 1988, the sentence `It shall apply with retrospective effect for a period of thirty years from that date' shall be deleted.
>
> para. 2. There is added to that section a subsection 3, worded as follows:
>
> 'para. 3. With respect to incidents causing damage which occurred before the date referred to in subsection 2, an organiser who is held liable may limit his liability in accordance with Article 6, paragraph 4, of the London Convention of 19 November 1976 on Limitation of Liability for Maritime Claims, approved by the Act of 11 April 1989;
>
> For those same incidents, an agent held liable may limit his liability in accordance with subsection 1 to five hundred thousand francs per incident; in the case of a deliberately tortious act, the agent may not limit his liability.
>
> Organisers are liable for claims which their agents have been ordered to pay, save where the agent has been found liable of a deliberately tortious act.'"

The bill has been submitted for opinion to the Conseil d'Etat. The Court has not been informed of what has become of it since then.

13. It is not the Court's task to rule in abstracto on the compatibility of the provisions of a bill with the Convention (see, as the most recent authority, mutatis mutandis, the Findlay v. the United Kingdom judgment of 25 February 1997, Reports 1997-I, p. 279, para. 67).

It notes, however, that in its Stran Greek Refineries and Stratis Andreadis v. Greece judgment of 9 December 1994, it held: "The principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of the dispute" (Series A, no. 301-B, p. 82, para. 49).

14. In conclusion, it is not appropriate to apply Article 50 (art. 50) to the applicants, with the exception of the twenty-fifth applicant, until the Belgian courts have given a final ruling in the disputes in question. Accordingly, as matters stand, the case concerning the said applicants should be struck out of the list. The Court, however, reserves the power to restore the case to the list if necessary (see, mutatis mutandis, the Rubinat v. Italy judgment of 12 February 1985, Series A, no. 89, p. 23, para. 17).

2. The twenty-fifth applicant

15. The twenty-fifth applicant (Naviera Uralar S.A.) has to be treated differently as its third-party action against the Belgian State has been finally dismissed pursuant to the 1988 Act (see the aforementioned principal judgment, pp. 12 and 14, paras. 6 et 8).

16. The Delegate of the Commission suggested that the Court stay the proceedings pending a decision of the Court of Cassation, to whom the case could be referred by the Minister of Justice under Article 1088 of the Judicial Code.

17. The Court notes that since 20 November 1995, when it delivered its principal judgment, the Minister of Justice has not used his powers under Article 1088 of the Judicial Code (see paragraph 16 above). It therefore follows that, with regard to the twenty-fifth applicant, the consequences of the violation of the Convention have not been eradicated so that the applicant is entitled to just satisfaction under Article 50 (art. 50).

18. The twenty-fifth applicant claimed BEF 9,686,039 for pecuniary damage. That was the amount which on 26 October 1988 the Antwerp Court of Appeal ordered it to pay, pursuant to the 1988 Act, for having caused damage to a jetty in the Antwerp harbour (see the aforementioned principal judgment, pp. 12 and 14, paras. 6 and 8), comprising BEF 5,864,679 plus statutory interest to 31 May 1997.

19. In the Government's submission, it was apparent from the decisions delivered in that case that "even in the absence of the 1988 Act, it is excessive, to say the least, to claim that the third-party claim of the twenty-fifth applicant against the State, based on alleged pilot negligence, would have succeeded". The Government were prepared to pay BEF 150,000 for the applicant's loss of opportunity as a result of the 1988 Act.

20. The amount of the damage is not disputed. However, the apportionment of liability is uncertain. Accordingly, making an assessment on an equitable basis, the Court considers it reasonable for the respondent State to bear one half of the damage resulting from the casualty concerned. Consequently, it awards the twenty-fifth applicant BEF 4,843,019.50 for pecuniary damage, plus statutory interest to run from 31 May 1997 to the date of settlement.

21. As regards any non-pecuniary damage the twenty-fifth applicant may have sustained, the Court holds that the present judgment affords sufficient reparation.

B. Costs and expenses

22. For costs and expenses incurred in the proceedings before the Court since the judgment of 20 November 1995, the applicants claimed a total sum of BEF 3,000,000.

23. Neither the Government nor the Delegate of the Commission expressed a view on this point.

24. The Court notes that, in the light of the conclusions set out at paragraphs 14 and 17 above, only the costs incurred by the twenty-fifth applicant are to be taken into account. In order for such costs to be included in an award under Article 50 (art. 50), it must be established that they were actually and necessarily incurred and reasonable as to quantum. As, however, the twenty-fifth applicant has failed to supply information or supporting documentation on that subject and to indicate what portion of the total sum relates to its representation before the Court, the Court cannot grant its claim (see, mutatis mutandis, the Öztürk v. Germany judgment of 23 October 1984, Series A no. 85, p. 9, para. 9).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Decides, subject to the reservation set out at paragraph 14 above, to strike the case out of the list with respect to all the applicants except the twenty-fifth;

2. Holds that the respondent State is to pay the twenty-fifth applicant (Naviera Uralar S.A.), within three months, 4,843,019 (four million eight hundred and forty-three thousand and nineteen) Belgian francs and 50 (fifty) centimes for pecuniary damage, on which sum statutory interest is payable from 31 May 1997 until settlement;

3. Holds that the present judgment constitutes sufficient just satisfaction in respect of any non-pecuniary damage sustained by the twenty-fifth applicant;

4. Dismisses the remainder of the claim for just satisfaction made by the twenty-fifth applicant.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 3 July 1997.

Rolv RYSSDAL
President

Herbert PETZOLD
Registrar