

## **Van Raalte v Netherlands, (Application no. 20060/92)**

### **1) Reference Details**

Jurisdiction: European Court of Human Rights

Date of decision: 21 February 1997

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695908&portal=hbkm&source=externalbydocnumber&table=1132746FF1FF2A468ACCBDCD1763D4D8149>

### **2) Facts**

The applicant, a national of the Netherlands, had never married nor had children. He paid contributions under the General Child Care Benefits Act of 1962, which provided that any person under the age of 65 who was either a Netherlands resident or subject to the Wages (Tax Deduction) Act in respect of work carried out in the Netherlands under a contract of employment was required to make payments. These payments went towards a scheme which entitled any person who was either a Netherlands resident or subject to the Wages (Tax Deduction) Act in respect of work carried out in the Netherlands under a contract of employment to gain benefits for children for whose maintenance he or she was financially responsible. Unmarried childless women over 45 years were exempted from having to make contributions by royal decree. Men of the same age were not similarly exempt.

The applicant claimed that having to pay contributions under the General Child Care Benefits Act when unmarried childless women of 45 years or over were exempted amounted to discrimination on the basis of gender.

### **3) Law**

#### *International Law*

- Article 14 (right to non-discrimination) of the European Convention on Human Rights (the Convention) in conjunction with Article 1 of Protocol No. 1 (right to property) of the Convention.

### **4) Legal Arguments**

#### *The Applicant*

The applicant argued that the levying of contributions under the General Child Care Benefits Act from him, an unmarried childless man over 45 years of age, constituted discrimination on the ground of gender prohibited by Article 14 of the Convention taken together with Article 1 of Protocol No. 1. This was due to the fact that at the time of the events no similar contributions were exacted from unmarried childless women of that age. He submitted that differences in treatment based on sex were already unacceptable when s. 25 of the General Child Care Benefits Act was enacted in 1962, and that the wording of Article 14 of the Convention showed that such had been the prevailing view as early as 1950. He also argued that legal and social developments showed a clear trend towards equality between men and women, drawing attention to the Court's *Abdulaziz, Cabales and Balkandali v United Kingdom* judgment of 28 May 1985 which stated explicitly that "the advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe"

and that "very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention" (loc. cit., p. 38, paragraph 78). He further submitted that the Netherlands legislature had in fact recognised the unacceptable nature of the distinction in question by enacting, in 1988, legislation abolishing it.

### *The State*

The State argued that there had not been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1, on the basis that there had not been a difference in treatment between persons in similar situations. It submitted that women aged 45 or over differed fundamentally from men of the same age because for biological reasons they were much less likely to be able to have children, and that this in itself constituted a sufficient objective and reasonable justification.

The State further argued that when the rule in question had been enacted it had been justified by the social attitudes prevailing at the time in that it was assumed that women who had no children, and who in all probability never would, suffered thereby it was therefore considered wrong to impose on such women the additional emotional burden of having to pay contributions under a child care benefits scheme. The State highlighted that the exemption in question had been abolished with effect from 1 January 1989, essentially in response to a change in social attitudes towards unmarried childless women, but submitted that it was inevitable that social legislation should to some extent lag behind developments in society and that allowances had to be made. The State also argued that it was allowed a wide margin of appreciation in the application of Article 1 of Protocol No. 1.

### **5) Decision**

The Court found that the facts of the case fell within the ambit of Article 1 of Protocol No. 1 and that therefore Article 14 applied. The Court recalled that, for the purposes of Article 14, a difference of treatment is discriminatory if it has no objective and reasonable justification, if it does not pursue a legitimate aim, or if the means are not proportionate to the aim sought to be realised. The Court acknowledged that States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment, but considered that for a difference in treatment based exclusively on the ground of sex there would need to be very weighty reasons. On this basis the Court considered that the justifications offered by the State were not sufficient, and unanimously found that there has been a violation of Article 14 of the Convention, taken together with Article 1 of Protocol No. 1.