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

FOURTH SECTION

DECISION

Application no. 1443/19
Cedric Anakha DE KOK
against the Netherlands

The European Court of Human Rights (Fourth Section), sitting on 26 April 2022 as a Committee composed of:

Armen Harutyunyan, *President,*
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 1443/19) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 December 2018 by a Dutch national, Mr Cedric Anakha de Kok, born in 1995 and living in Rotterdam ("the applicant"), who was represented before the Court by Mr P.J. de Bruin, a lawyer practising in Rotterdam;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The main issue in the present case is the compatibility with the Convention of an obligation to take out basic (*basispakket*) health insurance and the enforcement of that obligation through the imposition of an administrative fine and the taking out of such insurance on the applicant's behalf. This basic health insurance covers, *inter alia*, medical care by general practitioners, medical specialists, hospitalisation, conventional medication, and medical aids. Supplemental health insurance (*aanvullende ziektekostenverzekering*) may be taken out on a voluntary basis.

2. On 14 July 2015 the applicant received an administrative fine from the National Healthcare Institute (*Zorginstituut Nederland* – "the ZIN") because he had not complied with the obligation to take out basic health insurance as

required by section 2(1) of the Healthcare Insurance Act (*Zorgverzekeringswet*).

3. On 4 September 2015 the ZIN dismissed an objection by the applicant to the fine. It referred to, *inter alia*, the relevant legislative history and domestic case-law in which it was emphasised that the principle of solidarity – expressed by an obligation of insurance for citizens and an obligation of acceptance for health insurers – lay at the foundation of the basic health insurance system and that individuals with a conscientious objection to all forms of insurance may pay additional tax in lieu of premium. The ZIN noted that the applicant did not have such conscientious objection.

4. On 22 February 2016, following the imposition of a second administrative fine, the ZIN took out, in accordance with sections 9a to 9d of the Healthcare Insurance Act, basic health insurance on behalf of the applicant, with a legally defined premium (*bestuursrechtelijke premie*) of 122.33 euros (EUR) per month. No appeal lay against that decision.

5. On 22 April 2016 the Zeeland-West-Brabant Regional Court dismissed an appeal by the applicant against the ZIN's dismissal of his objection (see paragraph 3 above). In its reasoning, the court referred and subscribed to the judgment given by the Central Appeals Tribunal on 25 September 2015 (ECLI:NL:CRVB:2015:3135) in which the latter, after examining the aim and legislative history of the Healthcare Insurance Act, found that the obligation to take out basic health insurance did not violate the claimants' rights under Article 8 of the Convention, Article 1 of Protocol No. 1 or, in so far as applicable, Article 9 of the Convention.

6. On 20 June 2018 the Central Appeals Tribunal (ECLI:NL:CRVB:2018:1857) dismissed the applicant's further appeal. With respect to the applicant's complaints under Articles 8 and 9 of the Convention and Article 1 of Protocol No. 1, the tribunal subscribed to the reasoning set out in its judgment of 25 September 2015 (see paragraph 5 above).

7. In his application to the Court, the applicant complained under various Articles of the Convention about the obligation to take out basic health insurance. Relying on Article 8, he complained that he had to participate in a system of collective responsibility even though he preferred to shoulder only the responsibility for his own health and to pay for the costs of homeopathic treatment himself, and that contrary to his wishes, basic health insurance had been taken out on his behalf. Under Article 9, the applicant complained that the obligation to take out basic health insurance forced upon him a belief that was contrary to his own, and that the exemption on the grounds of conscientious objection to health insurance had required that he be opposed to health insurance *per se*, which he was not. The applicant complained under Article 1 of Protocol No. 1 that the obligation in question constituted an unjustified interference with his right to dispose of his possessions in such a manner as he saw fit.

8. The applicant also complained under Article 6 of the Convention of a lack of impartiality and independence of the judges in the domestic proceedings and of the domestic courts' refusal to engage with arguments about alleged malpractice in regular medicine and the pharmaceutical industry. Lastly, the applicant complained under several provisions of the Charter of Fundamental Rights of the European Union and the Treaty on the Functioning of the European Union.

THE COURT'S ASSESSMENT

9. In line with the applicant's complaints and the approach taken by the domestic courts, the Court notes that the first administrative fine – against which the applicant objected, appealed and further appealed – and the taking out of insurance on his behalf – against which no legal remedy was available – were intrinsically connected to the obligation to take out basic health insurance. In these circumstances, the Court considers that the complaints are directed against the obligation to take out such insurance and the consequences for the applicant of non-compliance with that obligation (see, *mutatis mutandis*, *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, §§ 258-60, 8 April 2021).

A. Alleged violation of Article 8 of the Convention

10. In so far as Article 8 is applicable, and thus proceeding on the basis that it should be assumed that both the obligation for the applicant to take out basic health insurance and the taking out of such insurance on his behalf in accordance with sections 9a to 9d of the Healthcare Insurance Act constituted an interference with his right to private life, the Court considers the following.

11. No issue arises as to the lawfulness of the measure at issue; the interference was "in accordance with the law" (see paragraphs 2 and 4).

12. Furthermore, the objectives of the relevant legislation, as follows from the legislative history to which the domestic courts referred (see paragraphs 3 and 5 above), are to provide and maintain a well-functioning healthcare system in which everyone concerned is encouraged to make appropriate use of medical facilities, and to prevent people from being uninsured. These objectives correspond to the aims of the protection of health and the protection of the rights of others, both recognised by Article 8.

13. As regards the question of whether an interference with the right to respect for private life is "necessary in a democratic society", the Court notes that in the Netherlands the compulsory basic health insurance scheme represents the answer of the domestic authorities to the pressing social need to ensure affordable and accessible healthcare for the population. As is shown by the decisions of the domestic authorities and the legislative history of the Healthcare Insurance Act (see paragraphs 3 and 5 above), the scheme both

expresses and serves social or collective solidarity. Thus, to keep healthcare affordable and accessible for all, it was deemed a requirement that everyone take out a basic health insurance so that the overall cost of healthcare would be shared by all, including those who do not want or need to make use of (certain forms of) the treatments covered. The importance of social or collective solidarity in matters of public health has been recognised by the Court in several cases (see, for instance, *Vavřička and Others*, cited above, §§ 279 and 306, and, albeit in the context of Article 1 of Protocol No. 1, *Geotech Kancev GmbH v. Germany*, no. 23646/09, § 70, 2 June 2016).

14. The Court further notes that no specific medical treatment was refused to (contrast *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 116, ECHR 2012 (extracts)) or imposed on the applicant and that he had the possibility of opting for supplementary health insurance (*aanvullende zorgverzekering*) that covered the homeopathic treatment preferred by him, albeit at an additional cost. It is not in itself contrary to the requirements of Article 8 for the State to regulate important aspects of the applicant's private life without making provision for the weighing of competing interests in the circumstances of his individual case (see *S.H. and Others v. Austria* [GC], no. 57813/00, § 110, ECHR 2011).

15. Considering the above in the light of the wide margin of appreciation a State has as regards the rules it lays down with a view to achieving a balance between competing public and private interests (see *Vavřička and Others*, cited above, § 275), the Court concludes that the obligation to take out basic health insurance and the ZIN's taking out of insurance on the applicant's behalf did not fall foul of Article 8.

16. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 9 of the Convention

17. The applicant's objections to the collective healthcare system in place stemmed from his distrust in the efficacy of conventional medical treatment covered by the basic insurance and his unwillingness to contribute to that system through insurance premiums. Such a critical opinion is not a conviction or belief of sufficient cogency, seriousness, cohesion and importance to fall within the scope of Article 9 (see, *mutatis mutandis*, *Vavřička and Others*, cited above, §§ 333 and 335). Moreover, the applicant did not regard himself as a conscientious objector to health insurance (see paragraphs 3 and 7 above). It follows that this complaint is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 1 of Protocol No. 1 to the Convention

18. The obligation to pay health insurance premiums pursuant to the Healthcare Insurance Act amounted to an interference with the applicant's right to the peaceful enjoyment of his possessions and, consequently, Article 1 of Protocol No. 1 is applicable in the present case (see, *mutatis mutandis*, *Geotech Kancev GmbH*, cited above, § 66).

19. The Court's general approach to the question of whether an interference with a person's possessions is compatible with Article 1 of Protocol No. 1 in the context at issue in the present case has been set out in, *inter alia*, *Geotech Kancev GmbH* (cited above, § 65).

20. The obligation to take out basic health insurance had a legal basis in domestic law (see paragraph 2 above) and, considering the legitimate aim which it served for the purposes of Article 8 of the Convention (see paragraph 12 above), the Court sees no reason to find that the interference with the applicant's property rights did not also pursue a legitimate aim "in accordance with the general interest" for the purposes of Article 1 of Protocol No. 1.

21. The Court reiterates that in the implementation of social and economic policies, the State enjoys a wide margin of appreciation when it comes to balancing the general interests of the community and the requirements of the protection of the individual's fundamental rights (see *Geotech Kancev GmbH*, cited above, §§ 69 and 73). In view of the underlying principle of solidarity (see paragraph 3 above), the cost of the health insurance premium in question (see paragraph 4 above), the possibility to take out supplementary health insurance to cover homeopathic medicine (see paragraph 14 above) and the possibility for individuals with a modest income to apply for a means-tested contribution towards the costs of compulsory health insurance (*zorgtoeslag*), the interference was proportionate to the legitimate aim pursued.

22. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Remaining complaints

23. The applicant also complained under Article 6 of the Convention (see paragraph 8 above). The Court has examined this part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto and that the admissibility criteria set out in Articles 34 and 35 of the Convention have not been met.

24. The complaints raised by the applicant with reference to European Union law (see paragraph 8 above) are incompatible *ratione materiae* with the provisions of the Convention (see, among other authorities, *Wind Telecomunicazioni S.P.A.* (dec.), no. 5159/14, § 33, 8 September 2015) and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 May 2022.

Ilse Freiwirth Deputy Registrar	Armen Harutyunyan President