Raad van State

201302106/1/A2.
Date of Judgment: 29 January 2014

ADMINISTRATIVE JURISDICTION DIVISION

Judgment on the appeal by:

[appellant A], [appellant B], [appellant C], [appellant D] and [appellant E], appellants,

against the judgment of 's-Hertogenbosch District Court (read: Oost-Brabant District Court) of 1 February 2013 in case no. 12/14453 in the action between:

[appellants]

and

the State of the Netherlands (the Minister of Security and Justice) and the State Secretary for Security and Justice.

Course of the proceedings

In a judgment of 1 February 2013, Oost-Brabant District Court dismissed applications by [appellants] for compensation for damage arising from breach of the 'reasonable time' requirement. This judgment is attached.

The [appellants] appealed against that judgment.

The State Secretary and Minister filed statements of defence.

The case was referred by a multi-judge panel of the Administrative Jurisdiction Division (hereinafter 'the Division') to a grand chamber.

The president of the Division asked State Councillor R.J.G.M. Widdershoven (hereinafter referred to as the State Councillor Advocate General) to write an advisory opinion as referred to in Article 8:12a of the General Administrative Law Act.

The Division dealt with the case at a hearing on 12 September 2013, at which [appellants], represented by M.M. Altena-Staalenhoef, lawyer in Amsterdam, the Minister of Security and Justice, represented by E.C. Pietermaat and F.E. de Bruijn, both lawyers in The Hague, accompanied by A. Dingemanse, an employee of the Ministry of Security and Justice, and F.B.Chr. Creemer, an employee of the Council for the Judiciary, and the State Secretary for Security and Justice, represented by A.L. de Mik, an employee of the Immigration and Naturalisation Service (IND), appeared. The State Councillor Advocate General also submitted questions to the parties at the hearing.

The State Councillor Advocate General delivered his advisory opinion on 23 October 2013 (case no. 201302106/2/A2; www.raadvanstate.nl).

Having been given the opportunity to do so, [appellants], the Minister of Security and Justice and the State Secretary for Security and Justice gave their reactions to the advisory opinion in letters of 6 November 2013.

The inquiry was then closed.

Findings

1. On 1 July 2013, the Act on compensation for loss and damages arising from unlawful decisions [*Wet nadeelcompensatie en schadevergoeding bij onrechtmatige besluiten*] entered into force, in so far as it relates to compensation. By virtue of the transitional law laid down in Article IV, first paragraph, of the act, the law as it applied before the act's entry into force applies to these proceedings.

2. By a form, which was signed on 16 December 2005, [appellant A] submitted an application for a regular residence permit for a specified period, with the restriction "work as a self-employed person". In forms, which were signed on the same date, [appellant B], [appellant C], [appellant A] and [appellant D] submitted applications for regular residence permits for a specified period, with the restriction "family reunification with [appellant E]". By decision of 30 January 2006, the Minister for Immigration and Integration declared that the handling of the applications of [appellants] had been suspended because of the non-payment of the charges that were due. By letter of 30 January 2006, [appellants] objected to that decision. By decision of 14 November 2006, the Minister for Immigration and Integration dismissed the objection by [appellants]. By a form, which was signed on 11 December 2006, [appellants] appealed against that decision. By decision of 30 October 2009, the Minister of Justice revoked the decision of 14 November 2006 and gave notice that a new decision would be made on the objection to the decision of 30 January 2006. [appellants] thereupon withdrew their appeal on 23 November 2009. By decision of 12 March 2010, the Minister of Justice handled the application afresh and again dismissed the objection to the decision of 30 January 2006. In a judgment dated 29 October 2010, The Hague District Court, sitting in Amsterdam, upheld the appeal by [appellants] against the decision of 12 March 2010, set aside that decision and instructed the Minister for Immigration and Asylum to make a new decision on the objection that had been made. By decision of 31 January 2011, the Minister for Immigration and Asylum again dismissed the objection by [appellants] to the decision of 30 January 2006. [appellants] appealed against that decision. By letter of 25 March 2011, [appellants] filed an additional notice of appeal and requested compensation for damage arising from breach of the 'reasonable time' requirement as referred to in Article 6 (1), of the European Convention on Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR). In a judgment dated 20 January 2012, The Hague District Court, sitting in 's-

Hertogenbosch, dismissed the appeal by [appellants] against the decision of 31 January 2011 and ruled that the investigation would be reopened in preparation for a further ruling on the application for damages with respect to the possible failure to observe the reasonable time. No recourse was taken to a legal remedy against this judgment.

3. In a judgment of 1 February 2013, Oost-Brabant District Court rejected the request for compensation, finding that at the time of the judgment of The Hague District Court, sitting in 's-Hertogenbosch, of 20 January 2012, in which the substantive decision was made on the appeal by [appellants], the proceedings had lasted six years. Although in cases like this, consisting of an objection procedure and court proceedings at a single instance, in principle a reasonable period for the total length of the proceedings is a maximum of three years, the Oost-Brabant District Court found that the fact that the appeal was stayed pending the reply by the Court of Justice of the European Communities (now: the Court of Justice) to a request for a preliminary ruling by the Division in a judgment of 11 May 2006 (case no. 200505721/1; www.raadvanstate.nl) justified the lengthy duration of the handling of the appeal. In that context, the court regarded it as important that the proceedings before the Court of Justice concerned the replies to questions that were also relevant in the case before it. In view of that, the Oost-Brabant District Court totally disregarded the period of almost three years for which the proceedings were stayed in determining whether the reasonable time had been exceeded and reached the conclusion that the proceedings, with the exception of the period of the stay, had lasted three years, and that the reasonable time had not been exceeded.

4. [appellants] asserted that Oost-Brabant District Court was wrong to disregard the period taken by the Court of Justice to answer the questions posed by the Division in its request for a preliminary ruling in determining whether the reasonable time had been exceeded. In support of that assertion, they argued that, contrary to what the court had ruled, the answers to the questions were not relevant for the disposal of their case, since the questions referred by the Division related to the issue of whether the levying of charges for the extension of the residence permit of a Turkish worker was compatible with Article 13 of Decision no. 1/80 of the Association Council of 19 September 1980 on the development of the Association (hereinafter: Decision 1/80), while their case was not concerned with the compatibility of levying charges with Decision No. 1/80, but with the question of whether they had been given sufficient opportunity to pay the charges due with respect to an application for a residence permit for a specified period with the restriction work as a self-employed person. [appellants] further argued that in its judgment of 20 January 2012, in which a decision was made on the merits of their appeal, The Hague District Court, sitting in 's-Hertogenbosch, made no further reference to the preliminary ruling procedure and even found that [appellants] no longer had an interest in a ruling on their appeal, since the restriction specified in the application related to a pizzeria that no longer existed. Given the above, according to [appellants] there was no need to await the answers to the questions referred in the preliminary ruling procedure.

4.1. It is established case law of the European Court of Human Rights (including the judgment of 5 October 2000, Maaouia versus France, no. 39652/98, www.echr.coe.int) that procedures concerning the entry, residence and expulsion of aliens are beyond the scope of Article 6 of the ECHR.

Since the dispute about the payment of charges by [appellants] can be traced back to the non-granting of residence permits, the request for compensation for non-pecuniary damage cannot be based on that treaty provision. However, the generally accepted legal principle of legal certainty, which also underlies Article 6 of the ECHR, equally applies, as the Division has previously found (see the judgment of 3 December 2008 in case no. 200704652/1; www.raadvanstate.nl), in the national legal system and separately from that treaty provision. This principle requires that a dispute should be decided within a reasonable period, if necessary after being dealt with by an independent and impartial court. Since this requirement is based on a legal principle underlying Article 6 of the ECHR, the case law of the European Court of Human Rights (including the judgement of 29 March 2006, Riccardi Pizzati versus Italy, no. 62361/00, www.echr.coe.int) on the interpretation of this treaty provision will be followed. It follows from that case law that if a reasonable time is exceeded, barring exceptional circumstances, there is a presumption of anxiety and frustration as grounds for compensation for non-pecuniary damage.

4.2. Up to now, in non-punitive cases in which the question of breach of the reasonable time has been raised, the Division has always adopted the principle that in cases involving an objection procedure and court proceedings at two instances, a maximum of five years is a reasonable period for the entire procedure, including a maximum of one year for the handling of the objection, a maximum of two years for judicial review at first instance and a maximum of two years for an appeal (see, for example, the judgment of 24 December 2008 in case no. 200802629/1; www.raadvanstate.nl). The Administrative Court for Trade and Industry adopts the same principle (see, for example, the judgment of 25 June 2009, ECLI:NL:CBB:2009:BJ2560). These time limits adopted by the Division and the Administrative Court for Trade and Industry differ from the periods adopted by the Central Appeals Court for Public Service and Social Security Matters and the Supreme Court in assessing whether there has been a breach of the reasonable time requirement. The point of departure adopted by the Central Appeals Court for Public Service and Social Security Matters is that, in principle, the reasonable time for proceedings in three instances is not exceeded if the entire proceedings have not taken longer than four years, with a maximum of six months for the handling of the objection, a maximum of eighteen months for review at first instance and a maximum of two years for the appeal (see, for example, the judgment of 14 December 2012, ECLI:NL:CRVB:2012:BY6202). The Supreme Court takes the position that the handling of the objection and the review at first instance should together not take longer than two years and the hearing of the appeal should also not take longer than two years, and that in cases in which the objection

procedure and the judicial review have together taken so long that the reasonable time has been exceeded, the general rule for attributing the breach of the time limit to the administrative body or to the court is that the objection procedure is unreasonably long if it has exceeded six months and the review by the court to the extent that it has taken more than eighteen months (see, for example, the judgments of 22 April 2005, ECLI:NL:HR:2005:AO9006 and 22 March 2013, ECLI:NL:HR:2013:BX6666).

4.3. Given the public interest in the speedy resolution of disputes and the importance of legal uniformity, the Division sees cause to follow the case law of the Central Appeals Court for Public Service and Social Security Matters and the Supreme Court with respect to what should be regarded as a reasonable period in non-punitive cases. This is also the period adopted by all the highest administrative courts in punitive cases and by the criminal courts. The Division therefore now also finds that the point of departure for the hearing of a case in first instance should be that a reasonable time has been exceeded if the court in first instance has not rendered judgment within two years of the commencement of that period. Said period includes the duration of any objection procedure, as referred to in Chapter 7 of the General Administrative Law Act. The point of departure for the hearing of the appeal in a case should be that judgment must be rendered within two years of recourse being made to the legal remedy. In cases where the objection and judicial review phases have together taken so long that the reasonable time has been exceeded, the general rule for attributing the breach of the time limit to the administrative body or to the court is that the objection phase is unreasonably long if it has exceeded six months and the review by the court if it has taken more than eighteen months.

4.3.1. For the application of the periods referred to in 4.3., the Division's established case law that the complexity of the case, the way in which the administrative authorities and the courts have dealt with the case and the conduct of the appellant during the entire proceedings may, under certain circumstances, provide justification for exceeding basic time limits still applies (see, for example, the judgments of the Division of 24 December 2008 in case no.200802629/1, www.raadvanstate.nl; the Administrative Court for Trade and Industry of 25 June 2009, ECLI:NL:CBB:2009:BJ2560; the Central Appeals Court for Public Service and Social Security Matters of 14 December 2012,ECLI:NL:CRVB:2012:BY6202; and the Supreme Court of 22 April 2005, ECLI:NL:HR:2005:AO9006). For example, if an administrative authority or the courts call in an expert witness, it may, under certain circumstances, justify a breach of the maximum period that is, in principle, permitted for the proceedings. In that context, a factor is whether hiring an expert was reasonable and did not take up an unreasonable length of time. The fact that there are a large number of objectors to a decision might also provide justification for exceeding the basic periods. The same applies in cases where, in proceedings concerning a similar problem, it must be regarded as reasonable, given the exceptional circumstances of the case, for the administrative authority or the court to stay the hearing of the case pending the outcome of another case or a small number of other cases in

the interests of procedural efficiency and because there is a reasonable likelihood that the outcome of those other cases will be relevant for the decision in the cases that are stayed. If the case or cases whose outcomes are awaited is or are pending before the national courts, they will have to be heard by them within a reasonable period. When the decision has been made in the case or cases whose outcomes were awaited, the cases that have been stayed pending that decision shall also have to be disposed of propitiously. See, for example, the judgments of the European Court of Human Rights of 19 October 2006 (Arsov versus the former Yugoslav Republic of Macedonia, no. 44208/02), 15 February 2007 (Kirsten versus Germany, no. 19124/02) and 25 September 2008 (Savov et al. versus the former Yugoslav Republic of Macedonia, no. 12582/03) (www.echr.coe.int).

4.4. In his reaction to the advisory opinion of the State Councillor Advocate General, in which the latter concluded that the administrative courts should adopt a uniform period of four years as a reasonable time for disposing of non-punitive cases, the Minister of Security and Justice stated a preference for retaining a reasonable time of five years for the entire proceedings in cases involving an objection procedure and court proceedings at two instances. In that context, he explained that in particular he could not agree with the shortening of the period for the objection procedure to six months, since that would often prove to be too short a period in practice. In support of that opinion, the Minister pointed out that the complexity of cases and the calling in of external advisory committees can lead to a breach of the statutory period for making a decision on an objection. Another situation that could arise is that in some cases a different statutory period would apply for making a decision than the six-month period that is regarded as reasonable. This, in combination with the limited possibilities available to administrative authorities to prompt the court to dispose of a case with the necessary despatch in order to compensate for the breach of a time limit by the administrative authority, means that administrative authorities will be disproportionately affected by a shortening of the reasonable time, according to the Minister.

4.4.1. The Minister of Security and Justice's arguments do not lead to a different decision than that presented in 4.3. First and foremost, a period of six months for the objection procedure corresponds more closely with the periods for making decisions on objections that apply on the grounds of the General Administrative Law Act than the period of one year proposed by the Minister of Security and Justice.

A further consideration is that Article 6 of the ECHR relates to the disposal of a case within a reasonable time by the courts and not by administrative authorities, so that no claim to compensation can be derived from this treaty provision in a situation where the objection procedure has taken too long, but the dispute is not subsequently referred to the courts. Only if an appeal is made against a decision on an objection and the objection and appeal phase together have taken so long that the reasonable time limit has been exceeded, must the court decide, with a view to awarding compensation for non-pecuniary damage thereby caused, how the

period by which the time limit has been exceeded should be attributed to the administrative authority or to the court. Only then is there a need to assess whether the duration of the objection procedure was unreasonable, because it took longer than six months. It should be noted that in a case in which the applicable rules provide for a longer period to make a decision following receipt of the notice of objection, as a rule even then the objection procedure will have been unreasonably lengthy if it exceeded a period of six months.

Finally, it is observed that, as was found in 4.3.1., the complexity of the case, the way in which the administrative authorities and courts dealt with the case and the conduct of the appellant throughout the proceedings may, under certain circumstances, provide grounds for regarding a breach of the basic time limits as justified.

4.5. In cases decided in final instance by the Division and the Administrative Court for Trade and Industry, up to now the courts and administrative authorities have assumed that a maximum of five years for the total length of the proceedings is reasonable in cases that comprise an objection procedure and court proceedings at two instances. In light of that, for practical reasons (so that practitioners can adapt to the change in its case law, for example), the Division sees cause to rule that the periods referred to in 4.3. shall not be applied to objection and appeal procedures following primary decisions that are published before 1 February 2014. The Division takes into account that, as was explained in the State Councillor Advocate General's advisory opinion, the reasonable time of five years adopted up to now for cases comprising an objection procedure and court proceedings at two instances, is probably not contrary to Article 6(1) ECHR and there is therefore no need to regard the periods referred to in 4.3. as immediately applicable to all objection and appeal procedures.

This means that in non-punitive proceedings following primary decisions that are published before 1 February 2014, the point of departure is that the objection procedure and judicial review together may not take longer than three years, and in non-punitive proceedings following primary decisions that are published on or after 1 February 2014, the point of departure is that the objection procedure and judicial review together may not take longer than two years.

4.6. Since the decision on the applications in the case of [appellants] was published before 1 February 2014, it follows from the findings in 4.5. that the law applicable to the handling of the objection and the appeal is the law that applied until that date. For cases like this, which consist of an objection procedure and court proceedings at a single instance, this means that in principle a maximum of three years is reasonable for the total length of the proceedings, with a maximum of one year for the handling of the objection and a maximum of two years for the handling of the appeal, In that context, the factors mentioned in 4.3.1. could, under certain circumstances, give cause to regard exceeding these periods as justified. It is not disputed that at the time of the judgment of The Hague District Court,

sitting in 's-Hertogenbosch, on 20 January 2012 the aforementioned period of three years had been exceeded by almost three years. On appeal, the dispute focused on the question of whether the lengthy proceedings on appeal were justified by the fact that The Hague District Court, sitting in Amsterdam, had stayed the appeal by [appellants] pending a preliminary ruling on questions referred by the Division.

4.7. It is established case law (see, for example, judgments of the Division of 12 December 2012 in case no. 201204809/1/V6, www.raadvanstate.nl; the Administrative Court for Trade and Industry of 25 June 2009, ECLI:NL:CBB:2009:BJ2560; the Central Appeals Court for Public Service and Social Security Matters of 14 December 2012; ECLI:NL:CRVB:2012:BY6202 and the Supreme Court of 9 April 2010; ECLI:NL:HR:2010:BJ8465) that in determining whether there has been a breach of the reasonable time requirement, the time involved in waiting for a decision by the Court of Justice in a preliminary ruling procedure will be disregarded if it was reasonable to await that decision. This applies both in cases in which questions have been referred and in cases where proceedings are stayed pending a preliminary ruling on questions that have been referred in another similar case.

4.7.1. In a case in which a preliminary ruling is requested, the period to be disregarded commences on the day after the transmission of the judgment by the national court in which the question in referred and ends on the day of the publication of the preliminary ruling by the Court of Justice. In a case such as the present one, in which the court has stayed proceedings pending the reply to the questions referred for a preliminary ruling in another, similar case, the period to be disregarded does not commence until such time as the court staying the proceedings has notified the parties in writing of its decision to stay the proceedings in the case pending the preliminary ruling by the Court of Justice.

4.7.2. If, in its written notification of the stay of proceedings, the court does not give the parties an opportunity to express their views about the decision within a certain period, in deciding on an application for compensation for non-pecuniary damage arising from failure to observe the reasonable time requirement, it will have to be determined whether, in light of the status of the proceedings and the case law at the time of the written notification, the decision of that court to stay the proceedings was reasonable. If that question is answered in the affirmative, the period between the moment the court notified the parties in writing of its decision to stay the proceedings and the publication of the preliminary ruling by the Court of Justice must be disregarded in deciding whether the reasonable time has been exceeded. The court is only obliged to address this point in the reasons for its judgment if a party disputes the reasonableness of the decision to stay the proceedings.

4.7.3. In the Division's opinion, the court should, if it notifies the parties of its decision to stay the proceedings, also explicitly give them the opportunity to notify the court in writing of any objections they may have to

the decision within a period specified by the court, as a rule within six weeks of the transmission of the notification. If the parties do not avail of the opportunity offered to them, it can be assumed that they agree with the court's decision to stay the proceedings and the point of departure should be that it was reasonable to await the Court of Justice's preliminary ruling. In these cases, the period between the moment at which the court has notified the parties in writing of its decision to stay the proceedings and the publication of the preliminary ruling by the Court of Justice should, in principle, be disregarded in determining whether the reasonable time limit has been exceeded.

If a party, after being given an opportunity to do so by the court, notifies the court of its objections to the stay of proceedings and the court nevertheless decides to stay them, the findings in 4.7.2. apply mutatis mutandis.

4.7.4. Finally, if a party, whether or not given an opportunity to do so, notifies the court of its objections to the decision to stay proceedings and in response the court refrains from a further stay, the period between the moment that the court notified the parties of its decision to stay the proceedings and its reaction to the objections made to that decision, must be considered in determining whether the reasonable time has been exceeded.

4.8. The Hague District Court, sitting in Amsterdam, informed [appellants] by letter of 6 July 2009 that in a judgment of 11 May 2006 the Division had requested a preliminary ruling by the Court of Justice on a number of questions, the answers to which were relevant for the appeal before it and that therefore the proceedings in the appeal by [appellants] were being stayed. In view of the findings in 4.7.1., this means that in any event the period between the receipt of the notice of appeal by the District Court on 11 December 2006 and the transmission of the letter by The Hague District Court, sitting in Amsterdam, on 6 July 2009 cannot be disregarded, as was done by the Oost-Brabant District Court, in determining whether the reasonable time limit was exceeded. The only remaining question, therefore, is whether the period between the transmission of the letter on 6 July 2009 and the publication by the Court of Justice of the judgment of 17 September 2009, case C-242/06, Sahin (curia.europa.eu), in which the questions referred by the Division were answered, should be disregarded in determining whether there was a breach of the reasonable time requirement. In the letter of 6 July 2009, The Hague District Court, sitting in Amsterdam, neglected to inform [appellants] that they could notify the court of any objections they had to its decision to stay the proceedings in their case within a period stipulated by the court. On the grounds of the findings in 4.7.2. and in view of the dispute on appeal, this means that the Division has to decide whether the aforementioned decision, given the status of the proceedings and the case law at the time of that written notification, was reasonable. That is the case if it has to be found that The Hague District Court, sitting in Amsterdam, at the time that it informed the parties in writing of the stay, could reasonably expect that the preliminary

ruling on the questions referred by the Division would be relevant for the disposal of the appeal by the [appellants] against the decision to suspend the handling of their applications.

4.8.1. The handling of the applications by [appellants] was suspended because of non-payment of the charges due. In the notice of objection of 30 January 2006, [appellants] took the position that they had not been given sufficient opportunity to pay the charges. They repeated this argument in the additional grounds of objection of 20 March 2006 and the additional grounds of appeal of 10 January 2007, adding that the Minister had wrongly applied the so-called 'immediate sanction' policy when they had not been able to pay the charges immediately on arrival at the office of the Immigration and Naturalisation Service. They also argued that the fact that they were not in possession of a provisional residence permit was wrongly used against them, since they had Turkish nationality and that argument was therefore contrary to Article 41 of the additional protocol to the Association Agreement.

4.8.2. The Division's judgment with a request for a preliminary ruling of 11 May 2006 related – in brief – to an alien with Turkish nationality who on expiry of his lawful residence in the Netherlands asked for an extension of the validity of his regular residence permit for a specified period. On the grounds of the law that applied at that time, this application had to be assessed against the requirements that had been laid down for admission for continued residence and not those prescribed for initial entry. The Minister suspended the handling of the application because of the non-payment of the charges owed for the handling of the application. By judgment of 11 May 2006, the Division asked the Court of Justice to decide, by way of a preliminary ruling, on the question, among others, of whether Article 13 of Decision No. 1/80 prevented the suspension of the handling, due to non-payment of the charges, of an application by an alien with Turkish nationality, who had observed the rules for initial entry to the country and had performed legal work as a salaried employee of various employers from 14 December 2000 to 2 October 2002 but had not requested an extension of the term of validity of the residence permit granted to him in time, by reason of which, after expiry of that permit and at the time of the application for its extension, under national law he was not legally resident and was also not permitted to perform work in this country.

4.8.3. Contrary to what [appellants] argue, the fact that in their case the question at issue was, in brief, whether they were given sufficient opportunity to pay the charges due for the handling of their applications for regular residence permits subject, among other things, to the restriction "work as a self-employed person", while in its judgment of 11 May 2006 the Division had asked the Court of Justice whether charges could be levied for handling the application by a Turkish national for a regular residence permit in order to gain access to the Dutch labour market, does not in itself constitute sufficient grounds for the finding that the decision of The Hague District Court, sitting in Amsterdam, to await the answers to the – further reaching – questions referred to the Court of Justice was not reasonable.

The Division thereby takes into account that it can in general be argued that the question of whether the applicant for a regular residence permit has been given sufficient opportunity to pay the charges due is preceded by the question of whether charges are actually due for that application. The Division also takes into account that in its judgment of 21 October 2003, joined cases C-317/01 and C-369/01, Abatay et al., point 70 (curia.europa.eu), the Court of Justice found, briefly stated, that Article 13 of Decision No. 1/80 and Article 41(1) of the Additional Protocol have the same meaning, so that the interpretation of Article 13 of Decision No. 1/80 by the Court of Justice requested by the Division in its judgment of 11 May 2006 is also relevant for the interpretation of Article 41(1) of the Additional Protocol. Finally, the Division takes into account that in its judgment of 20 September 2007, case C-16/05, Tum and Dari, (curia.europa.eu), the Court of Justice declared in law that Article 41 (1), of the Additional Protocol must be interpreted as meaning that from the entry into effect of the protocol the member state concerned is prohibited from imposing new restrictions on the exercise of the freedom of establishment, including those relating to the material and/or procedural conditions for initial entry into the territory of that state for Turkish nationals who intend to independently carry on a professional activity.

4.8.4. In light of the above, it has to be found that The Hague District Court, sitting in Amsterdam could, given the status of the proceedings and the case law at the time of the [appellants] being notified in writing by letter of 6 July 2009 of its decision to stay the proceedings in their case pending the preliminary ruling by the Court of Justice on the questions referred by the Division in its judgment of 11 May 2006, reasonably have expected the preliminary ruling on those questions to be relevant for the disposal of the appeal filed by the [appellants] against the decision to suspend the handling of their applications, and that therefore the decision to stay the proceedings in their case was reasonable. The fact that, as the [appellants] argue, it can be concluded from the judgment of The Hague District Court, sitting in 's-Hertogenbosch, of 20 January 2012, in which a decision was made on the merits of their appeal, that the preliminary ruling on the questions was not relevant for their case does not alter that, since, as was found in 4.7.2., the question to be decided is whether the decision to stay the proceedings was reasonable at the time of the written notification of the decision. The above means that, as regards the period between the transmission of the letter of 6 July 2009 by The Hague District Court, sitting in Amsterdam, and the publication of the judgment in which the Court of Justice gave its preliminary ruling on the questions referred by the Division on 17 September 2009, the district court correctly found that this period should be disregarded in determining whether there had been a breach of the reasonable time requirement.

4.9. At the time of the judgment of The Hague District Court, sitting in 's-Hertogenbosch, of 20 January 2012, almost six years had elapsed since the Minister for Immigration and Integration received the notice of objection of 30 January 2006 from [appellants] to the decision of that date. This means that the period that is generally regarded as reasonable for cases that

consist of an objection procedure and court proceedings at a single instance was exceeded by almost three years. From the findings in 4.8.4., it follows that there are grounds for regarding two months of that period as justified in this case, so the reasonable time was exceeded by a total of two years and just over nine months. Based on a rate of € 500.00 for every six months by which the reasonable time limit is exceeded, whereby the total period is rounded off upwards, this means that each person is entitled to compensation of € 3,000.00.

In attributing the aforementioned breach of the reasonable time limit and the compensation to be awarded, in a case like this, in which the appeal is withdrawn following the revocation of a decision on an objection, and subsequently the setting aside of a second decision on the objection by the district court leads to the objection being handled again and a repeat of the review by the district court, the breach of the reasonable time limit should in principle be attributed entirely to the administrative authority. If, however, in one of the judicial procedures the proceedings at one instance took longer than the period referred to in finding 4.6., it is not the administrative authority but the State that is accountable for the period by which that time limit was exceeded.

At the time of the withdrawal of the appeal against the decision on the objection of 14 November 2006 on 23 November 2009, three years and almost nine months had elapsed since the Minister for Immigration and Integration had received the notice of objection from the [appellants] on 30 January 2006 against the decision of that date, so to that extent the period to be generally regarded as reasonable for the disposal of the initial objection and the appeal together was exceeded by almost nine months. It follows from the findings in 4.8.4. that in this case there are grounds for accepting just over two months of that excessive period as reasonable due to the wait for the preliminary ruling by the Court of Justice on the questions referred by the Division. Accordingly, the reasonable time was exceeded by almost six and a half months. This period is entirely attributable to The Hague District Court, sitting in Amsterdam, since the initial hearing of the objection took less than a year, while the initial disposal of the appeal took more than two years.

The second proceedings before The Hague District Court, sitting in Amsterdam, lasted almost seven months, and the proceedings before The Hague District Court, sitting in 's-Hertogenbosch, almost eleven months, so there are no grounds for otherwise attributing the breach of reasonable time limit to the court. The remaining period by which the time limit was exceeded should therefore be attributed to the State Secretary for Security and Justice.

5. In light of the above, the appeal is well-founded and the other arguments put forward on appeal require no discussion. The challenged judgment must be set aside. Doing what the district court should have done, the Division shall itself decide on the request for compensation arising from breach of the reasonable time requirement. On the basis of a rate of €

500.00 for every six months by which the reasonable time limit was exceeded, whereby the total period is rounded off upwards, on the grounds of Article 8:73 of the General Administrative Law Act, the Division shall order the State Secretary of Security and Justice to pay a sum of € 2,000.00 each to [appellant A], [appellant B], [appellant C], [appellant D] and [appellant E] as compensation for the non-pecuniary damage sustained by them as a result of the breach of the reasonable time requirement in the objection procedure. For the non-pecuniary damage sustained by [appellants] as a result of the breach of the reasonable time limit on appeal, with the application of Article 8:73 of the General Administrative Law Act the Division shall order the Minister of Security and Justice to pay a sum of € 1,000.00 each to [appellant A], [appellant B], [appellant C], [appellant D] and [appellant E].

6. The State Secretary for Security and Justice should be ordered to pay the costs of the proceedings in the manner prescribed below.

Decision

The Administrative Jurisdiction Division of the Council of State:

I. upholds the appeal;

II. sets aside the ruling of the District Court in 's-Hertogenbosch (read: the Oost-Brabant District Court) of 1 February 2013 in case no. 12/14453;

III. orders the State Secretary for Security and Justice to pay [appellant A], [appellant B], [appellant C], [appellant D] and [appellant E] a sum of € 2,000.00 (two thousand euro) per person in non-pecuniary damages;

IV. orders the Minister of Security and Justice to pay [appellant A], [appellant B], [appellant C], [appellant D] and [appellant E] a sum of € 1,000.00 (one thousand euro) per person in non-pecuniary damages;

V. orders the State Secretary for Security and Justice to pay the costs jointly incurred by [appellant A], [appellant B], [appellant C], [appellant D] and [appellant E] in connection with the hearing of the appeal up to a sum of € 1,180.00 (eleven hundred and eighty euro), entirely attributable to professional legal assistance provided by a third party for the appeal;

VI. orders the State Secretary for Security and Justice to reimburse the combined court registry fees paid by [appellant A], [appellant B], [appellant C], [appellant D] and [appellant E] in the amount of € 239.00 (two hundred and thirty nine euro) for the hearing of the appeal.

So decided by mr. J.E.M. Polak, chairman, and mr. P.J.J. van Buuren, mr. T.G.M. Simons, dr. M.W.C. Feteris and mr. R.F.B. van Zutphen, members, in the presence of J. Wieland, Officer of the Council of State.

signed Polak signed Wieland

President Officer of the Council of State

Pronounced in public on 29 January 2014

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