CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 66273/01
by Joost FALK
against the Netherlands

The European Court of Human Rights (Second Section), sitting on 19 October 2004 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mrs A. MULARONI, *judges*,

and T.L. EARLY, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 28 October 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Joost Falk, is a Netherlands national who was born in 1970 and lives in Noordwijk. The respondent Government are represented by their Agent, Mr R.A.A. Böcker, of the Netherlands Ministry of Foreign Affairs.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

On 10 February 1998, in accordance with Article 5 of the Respect for Traffic Regulations (Administrative Enforcement) Act (*Wet Administratiefrechtelijke Handhaving Verkeersvoorschriften* – "the Act"), an administrative fine of 240 Netherlands guilders (NLG) (108.91 euros) was imposed on the applicant for a traffic offence – namely having failed to give way to a pedestrian who wanted to cross the road at a pedestrian crossing – that had been committed on 20 January 1998 with a car registered in his name.

On 28 September 1998 the applicant filed an appeal against the fine with the public prosecutor of The Hague under Article 6 of the Act. He informed the public prosecutor of the name and address of Mr B., who had been driving his car on 20 January 1998. The applicant further explained that, after he had been declared bankrupt on 1 July 1998, he had become embroiled with Mr B. to such a degree that reclaiming the fine from him was bound to fail.

On 17 November 1998 the public prosecutor of The Hague rejected the applicant's appeal, holding that the applicant, being the registered owner of the car, remained liable under Article 5 of the Act to pay the fine.

On 28 December 1998 the applicant filed an appeal against this decision with the Leiden District Court Judge (*kantonrechter*) under Article 9 of the Act. At a hearing held on 7 June 1999 before the Leiden District Court Judge, the applicant stated that he was the registered owner of the car, but that Mr B. was the actual driver who had committed the offence.

On 8 November 1999 the Leiden District Court Judge rejected the applicant's appeal, holding that the fact that the applicant was not the driver who had committed the traffic offence did not mean that a fine could not be imposed as, in accordance with the Act, the person in whose name the car was registered remained liable.

A subsequent cassation appeal by the applicant was rejected by the Supreme Court (*Hoge Raad*) on 28 November 2000. Referring to the findings in its judgment of 15 July 1993 (*Nederlandse Jurisprudentie* 1994, no. 177), the Supreme Court rejected the applicant's complaint that Article 5 of the Act was incompatible with Article 6 § 2 of the Convention.

B. Relevant domestic law and practice

The Respect for Traffic Regulations (Administrative Enforcement) Act provides for the possibility of imposing an administrative fine – at the relevant time up to a maximum of NLG 750 (340.34 euros) – for defined categories of minor offences against, *inter alia*, the 1994 Road Traffic Act (*Wegenverkeerswet*) where such an offence has not caused injury to persons or damage to goods (Article 2 of the Act).

Where the offence has been committed by a registered motor vehicle and the identity of the actual driver could not be established at the material time, the fine is imposed on the registered owner of the vehicle (Article 5 of the Act), unless the registered owner demonstrates that his or her vehicle was used by another person against his or her will and that he or she was unable to prevent this use, or that the vehicle was commercially hired out for a period not exceeding three months, or that at the material time he or she had already sold the vehicle to another person who had provided a written warranty against liability (Article 8 of the Act).

A fine imposed under the Act for an offence under the 1994 Road Traffic Act is not recorded in the criminal records (*strafregister*) within the meaning of the Judicial Records and Certificates of Good Behaviour Act (*Wet op de Justitiële Documentatie en op de Verklaringen omtrent het Gedrag*), as it does not constitute a crime (*misdrijf*) or a minor offence (*overtreding*) for which a prison sentence not being an alternative to a fine has been imposed.

In a judgment given on 16 February 1993 the Supreme Court rejected the argument that Article 5 of the Act should not be applied in a situation where the identity of the actual driver had not been immediately established and where the registered owner of the car had informed the public prosecutor immediately after the imposition of the fine under Article 5 of the identity of the actual driver. It held in this respect:

> "This conception of Article 5 [of the Act] cannot be accepted as correct. It rests on an unjust understanding [of this provision] ...The explanatory memorandum to the bill which gave rise to the [Act] contains in relation to Article 5 *inter alia* the following (p. 41):
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> 'A large part of the detection of minor offences against traffic regulations takes place with the aid of technical equipment ...There is no direct confrontation between a police officer and an offender in such cases. The same applies to the majority of parking offences. In such cases, where it cannot be immediately established who was the driver of the vehicle with which ... the offence has been committed, the administrative sanction will be imposed on the registration-number holder, pursuant to [Article 5 of the Act].'
>
> On this basis it must be assumed that the expression contained in Article 5 [of the Act] 'if it cannot be immediately established who ... is the driver' relates to those cases in which traffic offences are detected by technical means or otherwise in the absence

of a realistic opportunity for the police – taking into account factors such as road and traffic safety and the factual impossibility of having recourse to continuous surveillance – to stop the driver.

The mere circumstance that the registration-number holder, immediately after having received the decision imposing the administrative sanction, has informed the public prosecution department who the driver was, does not therefore exclude the application of Article 5 [of the Act]."

In a judgment given on 15 July 1993 (*Nederlandse Jurisprudentie* 1994, no. 177), the Supreme Court concluded that Article 5 of the Act was not incompatible with Article 6 § 2 of the Convention. This judgment, insofar as relevant, reads:

"5.3.1. The explanatory memorandum to the bill which gave rise to the [Act] states, *inter alia*, ... 'The bill departs from the idea that the administrative sanction (which is to be understood as a payment to the State of a certain sum of money ...) is imposed, according to Article 5 [of the Act], on the person in whose name a [motor vehicle] licence (*kenteken*) is registered at the material time, if it has been established that the act [in violation of the 1994 Road Traffic Act] has taken place with ... a motor vehicle for which a licence has been issued and where it cannot be established immediately who the driver is. This rule, to which an exception is possible ... (Article 8) ... will have as its consequence that the above-mentioned time-consuming procedures entailing a hearing and the sending out and processing of response coupons, will become defunct.'

5.3.2. The memorandum of reply to the cited bill states, *inter alia*, ...: 'The question whether or how the registered owner wants to reclaim the amount due from the "minor" offender is governed by the rules of civil law.' and 'Our conclusion is that there is a possibility of limiting the strict liability rule for the registered owner, but we consider such a limitation in respect of minor traffic offences, to which this bill relates, neither necessary nor desirable. The person concerned has, after all, other ways of reclaiming the amount of the fine from the user of the car.'

5.3.3. During the oral debate on the bill in the Lower House, the Minister of Justice stated, *inter alia*, ...: 'In an administrative-law system, I consider it more correct to leave it to the registered owner himself to take the necessary action to collect the sum he has lost as a result of the commission of the minor offence. He ought not to be permitted to leave that risk to society.'

5.4 In view of the considerations under 5.3, Article 5 of the [Act] is thus to be understood as meaning that, when imposing an administrative sanction on the basis of this provision on a registered owner [of a motor vehicle], the latter is not reproached for his conduct ... [in violation of the 1994 Road Traffic Act] ... but is merely made liable to pay – for the driver who is guilty of the conduct at issue – the amount of the administrative sanction imposed, and subsequently to reclaim, if so desired, the sum from the [actual driver]. Should the registered owner fail to take the appropriate measures, he runs the risk of his claim being unsuccessful.

5.5. Further taking into account, on the one hand:

a. the extent of motorised traffic, often moving with great speed, and, as a result, the particular frequency of violations of traffic regulations;

b. the limited possibilities for stopping traffic offenders and investigating traffic offences;

c. the undesirability of leaving traffic offences unpunished as well as the interest of society in being able to take action against traffic offences;

and, on the other hand:

d. the circumstance that it may be assumed that in the vast majority of cases – certainly as regards the "private" part of road traffic – the driver of the motor vehicle is also the registered owner;

e. the possibilities given by Articles 8 and 9 of the [Act] to the registered owner to oppose the imposition of the administrative sanction;

f. the possibilities under civil law for the registered owner to reclaim, where he cannot oppose the administrative sanction under Article 8 or Article 9 of the [Act], the sum from the driver; and finally

g. the fact that the imposition of an administrative sanction only concerns a limited financial sanction,

the application of Article 5 of the [Act], understood as set out in 5.3 and 5.4, is not incompatible with the second paragraph of Article 6 of the Convention."

In a judgment delivered on 1 February 2000, the Supreme Court held that, in cases concerning a fine imposed under Article 5 of the Act, courts may as a rule assume that there was no realistic opportunity for the police to stop the driver for the purposes of establishing his or her identity. However, if on this point a defence argument is put forward that there was such an opportunity at the material time, the court should give an explicit decision on that argument (*Verkeersrecht* 2000/104).

In a ruling given on 9 July 2003, the Leeuwarden Court of Appeal held that Article 5 of the Act was to be understood to mean that, if there had been a realistic opportunity of stopping the driver of the vehicle concerned, this provision should not be applied and that the sanction should be imposed on the driver. As, in that case, the case file contained no information from the reporting officer on the question whether there had been an opportunity to stop the driver, the Court of Appeal adjourned the proceedings and ordered the prosecution to submit that information within a period of two months (*Verkeersrecht* 2004/47).

COMPLAINT

The applicant complained that the imposition of the administrative fine on him on the basis of a strict liability rule had violated his rights under Article 6 § 2 of the Convention.

THE LAW

The applicant complained that the imposition of the fine on him had been in violation of the principle of the presumption of innocence laid down in Article 6 § 2 of the Convention, which reads:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Government submitted that the liability rule under Article 5 of the Act was not incompatible with Article 6 § 2 of the Convention. Many Contracting States were confronted with a large number of minor traffic offences and, despite the nature of the offences, consistent punishment of offenders was an absolute necessity in order to ensure road safety. The Act at issue was intended to make this possible, whilst reducing the workload of the police, the prosecution and the judicial authorities as much as possible without, however, barring access to an independent court in order to challenge a fine imposed under the Act.

The Government further submitted that efforts to ensure road safety would be seriously undermined if traffic offences – even if the driver's identity was not immediately known – were to remain unpunished. In this connection, the Government pointed out that a large proportion of traffic offences were detected by technical means, such as radar installations and cameras, and in situations where, like parking offences, there was no direct confrontation between the offender and the police.

Moreover, where a fine was imposed under Article 5 of the Act, the registered car owner was not blamed for committing an offence but was only made liable for the payment of the fine. Any such fine was not entered in the criminal records, and – where the registered car owner was not the actual driver – recovery of the fine from the actual driver was possible, if need be by taking civil proceedings. For these reasons, the Government considered that the system under Article 5 of the Act could not be regarded as contrary to Article 6 § 2 of the Convention.

The applicant, for his part, considered that the system set up under the Act constituted an attempt to remove fines imposed for traffic offences from the requirements of Article 6, including respect for the principle of the presumption of innocence. In his opinion, the Article 6 § 2 requirement obliged the authorities to do everything possible to discover the identity of

the actual offender and their right to sanction offences was forfeited where they failed to do so.

The applicant further submitted that the aim of the Act as described by the Government, namely to improve road safety by imposing sanctions, had not been attained. Since the entry into force of the Act eleven years ago, the number of traffic offences, for the most part detected by technical means, had in fact increased. According to the applicant, only when traffic offenders were actually stopped and lectured about their behaviour would fines imposed for traffic offences regain their effectiveness and their educational value, and thus make an essential and positive contribution to road safety.

The applicant stressed that he did not oppose penalising traffic offenders. However, he objected to the unrestrained raking-in of money at all costs. The applicant further argued that the Government's point that many Contracting States had to contend with a large number of traffic offences could not justify disrespect for the obligation under Article 6 § 2 of the Convention.

As to the Government's contention that fines imposed under the Act were not entered in the criminal records, the applicant submitted that this could not be regarded as decisive as no such entry could in fact be made when the identity of the actual driver was unknown to the authorities. Furthermore, recovery of the fine from the actual offender was impossible in his case as he had been declared bankrupt and thus had no full legal capacity. His receiver had rightly opposed any attempt to seek redress by taking civil proceedings as this would have entailed considerable costs.

The Court reiterates that even a minor traffic offence constitutes a "criminal offence" for the purposes of Article 6 of the Convention (see *Öztürk v. Germany*, judgment of 21 February 1984, Series A no. 73, pp. 17-21, §§ 46-54) and considers that, consequently, proceedings concerning fines imposed for such an offence fall within the scope of Article 6 § 2 of the Convention.

However, a person's right in a criminal case to be presumed innocent and to require the prosecution to bear the onus of proving the allegations against him or her is not absolute, since presumptions of fact or of law operate in every criminal-law system and are not prohibited in principle by the Convention, as long as States remain within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence (see *Salabiaku v. France*, judgment of 7 October 1988, Series A no. 141-A, pp. 15-16, § 28). Thus, in employing presumptions in criminal law, the Contracting States are required to strike a balance between the importance of what is at stake and the rights of the defence; in other words, the means employed have to be reasonably proportionate to the legitimate aim pursued (see *Västberga Taxi Aktiebolag and Vulic v. Sweden*, no. 36985/97, § 113, 23 July 2002).

In assessing whether, in the present case, this principle of proportionality was observed, the Court understands that the impugned liability rule was introduced in order to secure effective road safety by ensuring that traffic offences, detected by technical or other means and committed by a driver whose identity could not be established at the material time, would not go unpunished whilst having due regard to the need to ensure that the prosecution and punishment of such offences would not entail an unacceptable burden on the domestic judicial authorities. It further notes that a person fined under Article 5 of the Act can challenge the fine before a trial court with full competence in the matter and that, in any such proceedings, the person concerned is not left without any means of defence in that he or she can raise arguments based on Article 8 of the Act and/or claim that at the material time the police had a realistic opportunity of stopping the car and establishing the identity of the driver.

In these circumstances, concurring with the Netherlands Supreme Court's considerations as set out under point 5.5 of its judgment of 15 July 1993, the Court cannot find that Article 5 of the Act – which obliges a registered car owner to assume the responsibility for his or her decision to allow another person to use his or her car – is incompatible with Article 6 § 2 of the Convention. The Court is therefore of the opinion that the domestic authorities, in imposing the fine at issue on the applicant, did not fail to respect the presumption of innocence.

It follows that the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President