



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

FIRST SECTION

CASE OF HOLDER v. THE NETHERLANDS

(Application no. 33258/96)

JUDGMENT
(friendly settlement)

STRASBOURG

5 June 2001

In the case of Holder v. the Netherlands,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEŒ,
Mr C. BİRSAN,
Mr J. CASADEVALL,
Mr R. MARUSTE, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 15 May 2001,

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

PROCEDURE

1. The case originated in an application (no. 33258/96) against the Kingdom of the Netherlands lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Dutch national, Mr Robby Holder ("the applicant"), on 29 July 1996.

2. The applicant was represented by Ms T.B. Trotman, a lawyer practising in The Hague, the Netherlands. The Government of the Netherlands ("the Government") were represented by their Agent, Mr R. Böcker of the Ministry of Foreign Affairs.

3. The applicant complained that he had been a victim of a violation of Article 6 §§ 1 and 3 (c) of the Convention in that on two occasions the judicial authorities failed to inform him of the date on which a hearing would take place in criminal proceedings against him.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 10 October 2000, having obtained the parties' observations, the Court declared the application admissible.

5. After an exchange of correspondence with the Section Registrar, the parties agreed to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention. The applicant's representative and the Agent of the Government submitted formal declarations to this effect on 7 and 15 March 2001 respectively.

THE FACTS

6. The applicant was charged with assault and summoned to appear on 8 April 1994 before the Regional Court (*Arrondissementsrechtbank*) of Groningen. On 15 February 1994 an attempt was made to serve this summons on the applicant at his place of residence as it was then known to the authorities. As nobody was found at that address and as nobody reacted to the notification left behind stating that a judicial letter had arrived and containing information where and until which date this letter could be collected, the summons was served on 24 March 1994 at the Registry of the Regional Court of Groningen after it had been verified that the applicant's registered address on 15 February 1994 and for five days thereafter was in fact the address where the attempt to serve the summons on him was made. On the same day, the summons was sent to that address by regular mail. Also on 24 March 1994 the applicant's registered address was changed to an address at J. Avenue.

7. By judgment of 8 April 1994, following proceedings *in absentia* as the applicant had failed to appear, the Regional Court convicted the applicant of assault. The official records of the hearing and of the oral delivery of the judgment state that the applicant was then resident at J. Avenue in Groningen.

8. On 2 May 1994, this judgment was served on the applicant in person. The applicant lodged an appeal with the Court of Appeal (*Gerechtshof*) of Leeuwarden the same day. In his notification of the lodging of his appeal, the applicant indicated that he was resident at J. Avenue.

9. On 9 November 1994, the applicant was arrested on suspicion of drugs offences unrelated to the present case and placed in detention on remand in the police station. Until 13 October 1995, the date on which a judgment of the Court of Appeal of Leeuwarden of 23 May 1995 sentencing the applicant to six years' imprisonment for other offences obtained the force of *res iudicata*, the applicant was considered to be in detention on remand.

10. On 23 December 1994, an attempt was made to serve the summons to appear before the Court of Appeal in connection with the applicant's appeal against his conviction of 8 April 1994 on the applicant at the address at J. Avenue. As nobody was found at that address and as nobody reacted to the notification left behind stating that a judicial letter had arrived and containing information where and until which date this letter could be collected, the Procurator General at the Leeuwarden Court of Appeal on 9 January 1995 wrote to the Registry Office inquiring after the applicant's registered address. After verification of the address, the appeal summons was served on 16 January 1995 at the Registry of the Court of Appeal. On the same day, the summons was sent to the applicant's verified official address at J. Avenue by regular mail.

11. The Court of Appeal held a hearing on 10 February 1995. The applicant did not appear. The Court of Appeal proceeded to hear the case in

the applicant's absence. Contained in the Court of Appeal's case-file was an extract from his criminal record dated 14 December 1994 from which it appeared that he was suspected of importing drugs and taking part in a criminal organisation. On 23 February 1995 the Court of Appeal quashed the judgment of 8 April 1994 for technical reasons unrelated to the present application and convicted the applicant of assault. The applicant lodged an appeal on points of law with the Supreme Court (*Hoge Raad*).

12. By judgment of 30 January 1996, the Supreme Court rejected the applicant's appeal on points of law. Insofar as the applicant had complained under Article 6 §§ 1 and 3 (c) of the Convention that his defence rights had been violated in that, at the time the appeal summons was served, he was detained and was unaware of the date and time of the hearing on appeal whereas he had equally been unaware of the hearing in first instance, the Supreme Court held that both the summons for the first-instance hearing and the appeal summons had been served in accordance with the relevant provisions of the Code of Criminal Procedure.

13. As to the applicant's submissions that he had been detained at the time of the appeal summons, the Supreme Court further held that only in a situation where a person was not formally registered and thus had no known address in civil society, the judicial authorities had to indicate that they had made investigations as to whether and, if so, where a suspect was detained at the time of the serving of a summons. In the applicant's case the appeal summons had been sent to his formal address. The Supreme Court added that, where a person lodged an appeal and wished to be heard in adversarial proceedings, it could reasonably be expected that he would take those measures which were normal in civil society in order to prevent the possibility that the summons presented at or sent to the address indicated by him might not reach him. The Supreme Court did not find that the Court of Appeal had acted in violation of Article 6 of the Convention by declaring the applicant in default of appearance and proceeding *in absentia*.

THE LAW

14. The Court received the following declaration from the applicant on 7 March 2001 and from the Government on 15 March 2001:

"The Government of the Netherlands and the applicant, Mr Robby Ronald Holder, have reached the following agreement in full and final settlement of the applicant's claim.

a) The Netherlands Government will pay the applicant NLG 1,000 on an *ex gratia* basis and NLG 4,851.73 in respect of legal costs incurred.

b) The applicant undertakes, following payment of the stated amounts and without being entitled to damages or other payments from the State of the Netherlands, to withdraw his application to the European Court of Human Rights and not to take legal action against the State of the Netherlands on account of the above matter before the courts of the Netherlands or international tribunals.

c) The above settlement is without prejudice to the question of liability under the Convention.

d) The parties further undertake not to request the referral of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment."

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

16. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 5 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President