



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

SECOND SECTION

CASE OF DEL LATTE v. THE NETHERLANDS

(Application no. 44760/98)

JUDGMENT

STRASBOURG

9 November 2004

FINAL

09/02/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Del Latte and Del Latte v. the Netherlands,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr L. LOUCAIDES,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

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

Having Deliberated in private on 7 October 2003 and 19 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 44760/98) 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”) by two Netherlands nationals, Messrs Vincenzo Del Latte and Angelo Del Latte (“the applicants”), on 9 November 1998.

2. The applicants were represented by Mr G. Meijers, a lawyer practising in Amsterdam. The Netherlands Government (“the Government”) were represented by their Agent, Mrs J. Schukking of the Ministry of Foreign Affairs.

3. The applicants complained, under Article 6 § 2 of the Convention, that the reasoning of the Court of Appeal's decisions refusing them compensation for the time spent in pre-trial detention reflected a finding that they were guilty of a crime without their guilt having been established according to law.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. The Court began its examination of the admissibility of the application on 17 December 2002 and decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government and that the Government should be invited to submit written observations on the application.

6. The Government filed observations on the admissibility and the merits of the case. The applicants submitted written observations in reply.

7. By a decision of 7 October 2003, the Court declared the application admissible.

8. The Government, but not the applicants, filed further observations on the merits. The applicants submitted a claim for just satisfaction. The Government submitted comments on this claim (Rule 60 § 3 of the Rules of Court) after the expiry of the time-limit set for this purpose by the President of the Chamber. The President of the Chamber gave leave, pursuant to Rule 38 § 1 of the Rules of Court, for these comments to be included in the case file for the consideration of the Court.

9. The Court, after having consulted the parties, decided that no hearing on the merits was required.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants, Mr Vincenzo Del Latte and Mr Angelo Del Latte, were born in 1966 and 1967 respectively and live in Volendam, the Netherlands.

A. The criminal proceedings

11. On 22 June 1996 the applicants went together to the home of one Y., with whom they had quarrelled in a bar earlier. Finding Y. at home, one of them – apparently Vincenzo Del Latte – fired three shots from a gun in his general direction.

12. The applicants were arrested on the same day and charged with the attempted murder, or in the alternative, the attempted manslaughter of Y. The applicant Angelo Del Latte was in addition charged, in the further alternative, with aiding and abetting the attempted murder or manslaughter by Vincenzo Del Latte.

13. The applicants were taken into police custody (*inverzekeringstelling*) and thereafter kept in detention on remand (*voorlopige hechtenis*).

14. A first trial hearing took place before the Haarlem Regional Court (*arrondissementsrechtbank*) on 30 September 1996. On 14 October 1996 the Regional Court gave an interlocutory judgment remitting the case to the investigating judge (*rechter-commissaris*) for additional investigations.

A second trial hearing was held on 7 January 1997.

15. On 9 January 1997 the Regional Court gave judgment acquitting the applicants of all charges. This entailed the applicants' immediate release from detention on remand.

The prosecution appealed.

16. Following a hearing on 21 November 1997, the Amsterdam Court of Appeal (*gerechtshof*) gave judgment on 5 December 1997 upholding the Regional Court's acquittal.

Since in the Netherlands no appeal on points of law is possible against an acquittal (Article 430 § 1 of the Code of Criminal Procedure (*Wetboek van Strafvordering*) – hereinafter “CCP”), this brought the criminal proceedings to an end.

B. The compensation proceedings

17. Both applicants applied to the Court of Appeal in January 1998, each seeking monetary compensation in an amount of 31,200 Netherlands guilders (NLG) for the time spent in pre-trial detention (Article 89 CCP – see below).

18. A hearing was held on 24 April 1998.

19. On 5 June 1998 the Court of Appeal gave decisions dismissing the applicants' claims. Its reasoning, identical in both decisions, was the following (emphasis added):

“The Court of Appeal finds that the file contains sufficient evidence to prove that the applicant together with his brother went to the home of the victim [Y.] in Edam-Volendam and that shots were fired by one of them through [Y.]'s living-room window with a firearm. At that moment [Y.] was in that living-room. However, it has not been established conclusively (*onomstotelijk*) that the shooting was intended to kill [Y.].

However, in view of the other circumstances as they appear from the file, the actions of the applicant and his brother amounted to threats, within the meaning of Article 285 of the Criminal Code (*Wetboek van Strafrecht* – hereinafter “CC”).

The behaviour of the applicant together with his brother in any case justified that he be taken into police custody and subsequently held in detention on remand.

The Haarlem Regional Court, and also the Court of Appeal, have had to consider the case on the basis of the indictment prepared by the public prosecutor (*officier van justitie*). This indictment was limited to attempted murder/manslaughter. It did not contain any charge of threatening to commit a crime directed against life.

The Regional Court and the Court of Appeal found insufficient evidence to support the charges contained in the indictment, and the applicant had to be acquitted as a consequence.

In the light of the above, the Court of Appeal's acquittal can be qualified as a 'technical' acquittal, since adding a further alternative charge, as indicated above, would have led to a conviction.

In the circumstances the Court of Appeal finds no reasons in equity to award the applicant any compensation for the police custody and detention on remand.”

II. RELEVANT DOMESTIC LAW

1. The Criminal Code

Article 285

“1. Threatening [to commit]... any crime directed against life ... shall be punishable by a term of imprisonment not exceeding two years or a fourth-category fine. ...”

Article 287

“He who Deliberately deprives another of his life shall be guilty of manslaughter and shall be punished by a term of imprisonment not exceeding fifteen years or a fifth-category fine.”

Article 289

“He who Deliberately and with malice aforethought (*met voorbedachten rade*) deprives another of his life shall be guilty of murder and shall be punished by imprisonment for life or for a term not exceeding twenty years or a fifth-category fine.”

2. The Code of Criminal Procedure

Article 89

“1. If a case ends without the imposition of a punishment or measure, or when such punishment or measure is imposed but on the basis of a fact for which detention on remand is not allowed, the court may, at the request of the former accused, grant him compensation at the expense of the State for the damage which he has suffered as a result of police custody, clinical observation or detention on remand. Such damage may include non-pecuniary damage. ...”

Article 90

“1. Compensation shall be awarded in each case if and to the extent that the court, taking all circumstances into account, is of the opinion that there are reasons in equity to do so. ...”

Article 261

“1. The indictment shall comprise a description of the fact with which the accused is charged, stating the approximate time and location where it has allegedly been perpetrated; it shall also mention the statutory provisions under which the fact has been penalised.

2. The indictment shall further set out the circumstances under which the fact has allegedly been perpetrated. ...”

Article 350

“... the Regional Court shall Deliberate on the basis of the indictment (*op den grondslag der telastelegging*) and in the light of its investigation at the hearing as to whether it has been proven that the fact has been perpetrated by the accused, and, if so, what punishable act this gives rise to according to the law; if the fact is found to be proven and punishable, then the Regional Court shall Deliberate as to whether the accused can be punished and as to the imposition of a punishment or [non-punitive] measure as provided for by law.”

Article 352

“1. If the Regional Court finds it not proven that the accused has perpetrated the fact charged in the indictment (*het hem telastegelegde feit heeft begaan*), it shall acquit him. ...”

20. Articles 261, 350 and 352 considered together are consistently construed in domestic case-law as meaning that the trial courts must base their findings exclusively on the allegations presented in the indictment. Consequently, they cannot convict someone of any given criminal offence if they do not find that each and all of the elements constitutive of that offence, as defined by statute, have been covered in the indictment, even if the case file contains conclusive evidence that the accused is in fact guilty of the offence (see, among other authorities, the judgments of the *Hoge Raad* (Supreme Court) of 27 June 1995, *Nederlandse Jurisprudentie* – Netherlands Law Reports – 1996, nos. 126 and 127).

21. Criminal appeal proceedings in the Netherlands being by way of a complete rehearing, the above provisions also apply on appeal (Article 415).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

22. The applicants complained, under Article 6 § 2 of the Convention, that the reasoning of the Court of Appeal's decisions refusing them compensation for the time spent in pre-trial detention reflected a finding that they were guilty of a crime without their guilt having been established according to law.

23. Article 6 § 2 of the Convention provides as follows:

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

A. Submissions of those appearing before the Court

1. The applicants

24. The applicants submitted that the decisions of the Court of Appeal of 5 June 1998 contained a finding of guilt of criminal wrongdoing after they had been finally acquitted, in respect of the facts charged, by construing those facts in terms of a crime with which they were never charged and for which they were never tried.

25. The applicants, referring to *Hibbert v. the Netherlands* (dec.), no. 38087/97, 26 January 1999), pointed to the distinction made in the Court's case-law between statements which reflected the opinion that the person concerned was guilty and statements which merely described a state of suspicion. The former infringed the presumption of innocence while the latter did not. Since the statements at issue fell within the first category, Article 6 § 2 had been violated.

2. The Government

26. The Government did not dispute the applicability of Article 6 § 2 to the proceedings in question. They submitted, however, that no violation of that provision could be found. Referring to the Court's case-law, in particular its judgments in the cases of *Lutz v. Germany*, *Englert v. Germany* and *Nölkenbockhoff v. Germany* (25 August 1987, Series A no. 123), they argued that the Court of Appeal had merely taken into account the suspicion that still weighed against the applicants.

27. The applicants' acquittal of attempted manslaughter had not been called into question. In fact, in deciding whether or not to award compensation for pre-trial detention, the Court of Appeal had found that the facts as established, while not amounting to attempted manslaughter, could have led to a successful prosecution on a different charge. However, the Court of Appeal had not been called upon to give a decision on this basis, and the presumption of innocence was therefore not at issue. It had concluded, as it was fully entitled to in light of the Court's *Masson and Van Zon v. the Netherlands* judgment (28 September 1995, Series A no. 327-A) and its *Leutscher v. the Netherlands* judgment (26 March 1996, *Reports of Judgments and Decisions* 1996-II), that there were no reasons in equity to order the payment of compensation to the applicants.

28. Furthermore, the Government called upon the Court to refrain from examining decisions such as those complained of too closely. Otherwise,

such decisions would in future simply contain less information and would not accurately reflect the reasons which had prompted the courts' decisions.

29. Finally, the Court of Appeal's findings in the present case could hardly be considered unreasonable in the light of the established facts.

B. The Court's assessment

30. It is not in dispute that the compensation proceedings at issue fall within the ambit of Article 6 § 2 of the Convention. However, neither Article 6 § 2 nor any other provision of the Convention gives a person “charged with a criminal offence” the right to the reimbursement of his costs or the right to compensation for lawful pre-trial detention where proceedings taken against him were discontinued or resulted in an acquittal (see *Sekanina v. Austria*, judgment of 25 August 1993, Series A no. 266-A, § 25, and *Hibbert v. the Netherlands* (dec.), no. 30087/97, 26 January 1999). Nevertheless, a decision to refuse reimbursement of costs or compensation for lawful pre-trial detention may raise an issue under Article 6 § 2 of the Convention if supporting reasons amount in substance to a determination of the guilt of the former accused without his having previously been proved guilty according to law (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, § 37).

31. In the case of *Baars v. the Netherlands* where, as in the present case, the reasoning of the decision to refuse compensation for pre-trial detention was at issue, the Court distinguished between decisions which describe a “state of suspicion” and decisions which contain a “finding of guilt”. It found that only the second category is incompatible with Article 6 § 2 of the Convention (no. 44320/98, §§ 25-32, 28 October 2003, with further references).

32. Turning to the present case, the Court notes that it has not been argued, nor does it appear, that the applicants' pre-trial detention was unlawful. However, the Court of Appeal did not confine itself to noting that the decisions to take the applicants into police custody and, subsequently, to hold them in detention on remand, were justified, thus indicating a state of “suspicion” (Article 5 § 1 (c) of the Convention). Instead, it based its decisions on the consideration that the applicants would inevitably have been convicted on the facts at issue if the prosecution had charged them with “threatening to commit [a] crime directed against life”. This reasoning cannot be viewed independently of the Court of Appeal's earlier judgments of 5 December 1997 in which it had acquitted the applicants of the criminal charges that had been brought against them (i.e. the attempted murder or manslaughter of Y.).

33. The Court is of the opinion that the approach of the Court of Appeal on 5 June 1998 to the applicants' compensation claim amounted to a

determination of the applicants' guilt of a specific offence without their having been "proved guilty according to law" (see *O. v. Norway*, judgment of 11 February 2003, *Reports of Judgments and Decisions* 2003-II, §§ 39-41).

34. The Court therefore finds that there has been a violation of Article 6 § 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

36. The applicants each claim 14,157.94 euros ("EUR") plus statutory interest in respect of damage (the nature of which they have not specified) caused by the fact that they were kept in pre-trial detention. They argued that their claims could be distinguished from that submitted in the case of *Baars v. the Netherlands* (*loc. cit.*). In the present application, not only had the reasoning in the Court of Appeal's decisions at issue been inappropriate, but it had directly led to the wrongful dismissal of their claims. Therefore, there was a direct causal link between the violation and the damage alleged.

37. The Government argued that the applicants' claims should be rejected on the ground that they were unspecified and in the light of the Court's case law (*Baars v. the Netherlands*, *loc. cit.*, and *Demir v. Austria*, judgment of 5 November 2002, no. 35437/97).

38. The Court considers that the damage alleged has no causal link with the violation found, namely an infringement of the presumption of innocence (Article 6 § 2). The award sought could only have been based on a finding of unlawfulness regarding the applicants' police custody and pre-trial detention. The Court is, however, not in a position to make such a finding in the present case. It therefore makes no award under this head.

B. Costs and expenses

39. One of the applicants, Vincenzo Del Latte, claimed EUR 2,699.99 for his costs and expenses incurred in the proceedings before the Court. The applicant's counsel stated that the applicant is bound to pay him this fee (including Netherlands VAT), pursuant to a contractual obligation, once the proceedings before the Court were closed.

40. The Government argued that this claim should be rejected on the ground that it was unspecified and in the light of the Court's case law.

41. The Court reiterates that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see, among other authorities, *Campbell and Fell v. the United Kingdom*, judgment of 28 June 1984, Series A no. 80, pp. 55-56, § 143, and *B.B. v. the United Kingdom*, judgment of 10 February 2004, no. 53760/00, § 40).

42. The Court notes that Vincenzo Del Latte failed to submit a breakdown of the time spent on the case by his representative. Moreover, the claim is excessive, given that, apart from correspondence, the said representative only submitted an application form, short observations in reply to those of the Government at the admissibility stage and a claim for just satisfaction. Making its own assessment on an equitable basis and on the information contained in the case file, the Court awards the applicant EUR 500 for his costs and expenses, plus any tax that may be chargeable.

C. Default interest

43. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
2. *Holds*
 - (a) that the respondent State is to pay the applicant Vincenzo Del Latte, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 500 (five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 November 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Deputy Registrar

J.-P. COSTA
President