Application No. 25209/94
by Lyas Rachid Bruno BENAHMED
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 23 January 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 2 August 1994 by Lyas Rachid Bruno BENAHMED against the Netherlands and registered on 20 September 1994 under file No. 25209/94;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

FACTS

The applicant is a United Kingdom citizen, born in 1972. At the time of the introduction of the application he was in detention in Haarlem, the Netherlands. Before the Commission he is represented by Mr. G.P. Hamer, a lawyer practising in Amsterdam.

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

On 14 September 1992, the applicant was arrested and subsequently detained on remand on suspicion of manslaughter.

On 17 September 1992, the investigating judge (rechter-commissaris) ordered the prolongation of the applicant's detention on remand. At that time, the applicant was being detained on suspicion of murder, attempted murder and inflicting bodily harm on his girlfriend O.

On 4 December 1992, the applicant was summoned to appear before the Regional Court (Arrondissementsrechtbank) of Amsterdam on 21 December 1992, on charges of murder, attempted murder and inflicting bodily harm on O.

On 21 January 1993, the Regional Court acquitted the applicant of the charges of murder and attempted murder, convicted him of

inflicting bodily harm on O. and sentenced him to a suspended prison sentence of one month with a probation period of two years. The applicant was released immediately.

The public prosecutor (officier van justitie) lodged an appeal against the Regional Court's judgment with the Court of Appeal (Gerechtshof) of Amsterdam.

On 8 November 1993, the Court of Appeal quashed the Regional Court's judgment, acquitted the applicant of murder and attempted murder, convicted him of inflicting bodily harm on O., and sentenced him to a suspended prison sentence of one month with a probation period of two years. No appeal in cassation was lodged.

On 24 November 1993, the applicant submitted a request under Section 89 of the Code of Criminal Procedure (Wetboek van Strafvordering) with the Court of Appeal of Amsterdam for compensation for the time he spent in detention on remand. He requested payment of 25,000.00 Dutch guilders. He argued that he was entitled to compensation despite the fact that he had been convicted of inflicting bodily harm on O., because detention on remand is not allowed for that offence.

On the same day, he submitted a request under Section 591(a) of the Code of Criminal Procedure with the President of the Court of Appeal of Amsterdam for reimbursement of the lawyer's fee - 611.00 Dutch guilders - he incurred when he submitted the request for compensation under Section 89 of the Code of Criminal Procedure.

On 14 March 1994, the Court of Appeal sitting in chambers (raadkamer), composed of its President, judge W., and judges D.O. and K., examined the request under Section 89 of the Code of Criminal Procedure. The applicant was heard. No procès-verbal was made.

On 28 March 1994, the Court of Appeal rejected the applicant's request for compensation under Section 89 of the Code of Criminal Procedure for the time he had spent in detention on remand, considering that the applicant's detention on remand had not been unlawful and that there were no equitable grounds for awarding him compensation.

The applicant's request under Section 591(a) of the Code of Criminal Procedure for reimbursement of the lawyer's fee was rejected on 28 March 1994 by the President of the Court of Appeal.

COMPLAINTS

The applicant complains of the fact that he was not awarded compensation for the 129 days he spent in detention on remand despite the fact that he was acquitted of the charges for which the detention on remand was imposed. He argues that under Article 5 para. 5 of the Convention a suspect whose innocence has been established has the right to compensation.

The applicant further complains that in the proceedings for compensation and reimbursement he did not receive a public hearing and that no procès-verbaux were drawn up. He also complains that the judges who ruled on his request for compensation were not the same judges as those who had examined the criminal case.

The applicant further complains that the presumption of innocence was violated because the Court of Appeal refused to award him compensation for the time he spent in detention on remand although he was acquitted of the charges for which the detention on remand was imposed.

The applicant invokes Article 5 paras. 4 and 5 and Article 6 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 August 1994 and registered on 20 September 1994.

On 18 May 1995, the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure. The Commission further decided that the Government should not, at that point in time, be invited to submit written observations on the admissibility and merits of the application. The further proceedings before the Commission were adjourned pending the outcome of the proceedings before the European Court in the cases of Masson and Van Zon.

On 28 September 1995, the European Court rendered its judgment in the cases of Masson and Van Zon.

By letter of 18 December 1995, the applicant's representative informed the Commission that the applicant wishes to withdraw his application in view of the findings of the European Court in the cases of Masson and Van Zon. The Government have been informed accordingly.

REASONS FOR THE DECISION

Having regard to Article 30 para. 1(a) of the Convention, the Commission notes that the applicant does not intend to pursue his application in view of the findings of the European Court in the cases of Masson and Van Zon (Eur. Court H.R., judgment of 28 September 1995, Series A no. 327). The Commission finds no special circumstances regarding respect for human rights as defined in the Convention which require examination of the application to be continued, in accordance with Article 30 para. 1 in fine of the Convention.

For these reasons, the Commission, unanimously,

DECIDES TO STRIKE THE APPLICATION OFF ITS LIST OF CASES.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)