AS TO THE ADMISSIBILITY OF

Application No. 12191/86
by Govert van GINSBERGEN
against the Netherlands

The European Commission of Human Rights sitting in private on 8 September 1988, the following members being present:

MM. C.A. NØRGAARD, President
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. J. RAYMOND, Deputy Secretary to the Commission

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

Having regard to the application introduced on 17 April 1986 by Govert van GINSBERGEN against the Netherlands and registered on 28 May 1986 under file No. 12191/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a retired lawyer of Dutch nationality, born on 4 September 1909. He lives in Brasschaat, Belgium.

On 18 September 1985, the applicant instituted civil proceedings on behalf of a client before the Regional Court (Arrondissementsrechtbank) of Breda. The case concerned a tort action against the secretary of an advisory committee which had declared that the Collective Agreement for the Cleaning and Window-cleaners Trade (CAO van het Schoonmaak-en Glazenwassersbedrijf) did not apply to the contractual relationship between the applicant's client and his employer.

On 18 March 1986, the Regional Court declared itself incompetent ratione loci to deal with the case. The Court recalled that Section 126 para. 1 of the Code of Civil Procedure states that actions such as the one before it must be introduced with the court of the place of residence of the summoned party. The case was then referred to the competent court which was the Regional Court of Amsterdam. The Regional Court subsequently considered that the lawyer had made a blatant mistake in bringing the case before the wrong court and ordered, relying on Section 58 of the Code of Civil Procedure, that the applicant should bear the costs of the proceedings in person. These amounted to 520 Dfl.

Section 58 of the Code of Civil Procedure provides, inter

alia, that lawyers who have been negligent in the exercise of their profession can be ordered to pay the costs in person without possibility of recovering them from their client. It appears that, in these cases, the lawyer cannot lodge an appeal against the court order. According to Section 332 of the Code of Civil Procedure, only the parties in the civil proceedings can appeal against judgments of a Regional Court.

COMPLAINTS

The applicant complains that the court order to pay the costs of the proceedings was issued without a prior hearing of the applicant concerning his alleged mistake, and that there was no remedy available for him against the order. He alleges that Section 58 of the Code of Civil Procedure, in general and as applied in his case, violates Article 6 of the Convention.

The applicant also alleges that discrimination on the ground of his age was the basis of the court order complained of.

THE LAW

1. The applicant has first complained that the Regional Court's decision whereby he was ordered to pay the costs of the proceedings personally was made without prior hearing and that there existed no possibility of appeal against the order. In this respect he has alleged that Section 58 of the Dutch Code of Civil Procedure, both in general and as applied in his case, violates Article 6 (Art. 6) of the Convention.

The Commission recalls that, under Article 25 (ARt. 25) of the Convention, it is not competent to examine in abstracto the conformity of national legislation with the Convention (see, inter alia, No. 8307/78, Dec. 11.7.80, D.R. 21, p.116). It can therefore only deal with the applicant's complaint insofar as it relates to the court order that the applicant bear the costs of the proceedings personally.

The Commission understands the applicant to be relying on the right to a fair hearing as guaranteed by Article 6 (Art. 6) of the Convention. Article 6 para. 1 (Art. 6-1) provides, as far as relevant, as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

The question arises in the present case whether this provision is applicable to the proceedings which resulted in the order that the applicant pay the cost of the proceedings.

The fact that the court order against the applicant was made in the course of civil proceedings cannot, in itself, bring about the applicability of Article 6 para. 1 (Art. 6-1) of the Convention, since the applicant was not a party to those proceedings (cf., mutatis mutandis, No. 10615/83, Dec. 3.7.84, D.R. 38, p. 213). The Commission must next examine whether these proceedings and the court order involved the determination of the applicant's civil rights or obligations within the meaning of Article 6 para. 1 (Art. 6-1).

It appears from the facts that the basis for a court order such as the one issued against the applicant depends, in the first place, upon an assessment by the court that the lawyer in question has in fact been negligent. The present applicant disputes that he has been negligent at all and points out that he has correctly interpreted the Dutch law concerning the competence of the civil courts.

The Commission recalls its decision in No. 10615/83 (loc. cit,) which examined a similar complaint where it held as follows:

> "The Commission recognises that in imposing the requirements that the applicant pay the costs "thrown away" on 6 September 1983 it was necessary for the judge to evaluate to some extent the applicant's conduct of the case which had resulted in the question of an adjournment. That this evaluation could only be partial and superficial is well-illustrated by the mere fact that the applicant was not present to explain matters to the Court, still less to defend his professional reputation. Nevertheless, the Commission concludes that the judge's investigation of this aspect of the applicant's conduct of proceedings was conducted, not in the context of an evaluation of his professional capabilities as such, or of his professional relationship with his client, but as an aspect of the proper administration of justice, responsibility of which ultimately lies with the judiciary. The Commission therefore concludes that the judge's order, and the

> exceptional proceedings, in the absence of the applicant and with scant prior notice to him, must properly be regarded as disciplinary proceedings in the context of the administration of justice and the proper organisation of the work of the courts, and hence did not involve a determination of the applicant's civil rights or obligations."

Likewise in the present case, the Commission considers that the Regional Court's evaluation of the applicant's professional conduct of the proceedings was based on the requirement that the applicable rules on competence ratione loci of the courts are observed in order to avoid unnecessary proceedings and that the exceptional court order must properly be regarded as a disciplinary measure in the context of the administration of justice and the proper organisation of the work of the courts.

Moreover, the Commission notes that the court order concerning the costs of the proceedings had no bearing, either directly or indirectly on the right of the applicant to continue to exercise his profession, since the applicant had already retired from the profession before the court's decision (cf, mutatis mutandis, Eur. Court H.R. Pudas judgment of 27 October 1987, Series A no. 125, p. 16 para. 37).

The Commission therefore concludes that the decision whereby the applicant was ordered to pay the costs of the proceedings did not involve a determination of his civil rights or obligations.

The Commission must also consider whether the court order constituted the determination of a criminal charge against the applicant within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

Again, the Commission recalls its decision on the admissibility of application No. 10615/83, in which it applied the principles developed by the Court in case of Engel and others (judgment of 8 June 1976, Series A no. 22, p. 35, para. 82). In that case the Commission found that the nature of the order to pay costs involved an investigation of the applicant's conduct of proceedings, in the exercise of judicial control of the proper administration of justice, with a view to preventing avoidable delay in the conduct of proceedings. The Commission further noted that the maximum penalty which could be imposed by the judge was that the lawyer personally pay the actual costs "thrown away" as a result of his conduct.

The Commission finds that these considerations also apply in the present case and therefore arrives at the same conclusion that, although the court order involved the imposition of a sanction on the applicant, the nature of the proceedings and the severity of the penalty are not such as to constitute the "determination of a criminal charge" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that the provisions of Article 6 para. 1 (Art. 6-1) of the Convention are not applicable to the proceedings resulting in the court order imposed on the applicant, and that the applicant's complaints under Article 6 para. 1 (Art. 6-1) must be rejected as incompatible ratione materiae within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. As regards the applicant's complaint that the court order discriminated against him on grounds of age, the Commission recalls that it has found that the proceedings complained of fall outside the ambit of Article 6 para. 1 (Art. 6-1) of the Convention. Nor can it be said that the facts in the present case fall within the ambit of other substantive provisions of the Convention and the Protocols. It follows, therefore, that Article 14 (Art. 14) does not apply in the present case (cf., for example, Eur. Court H.R., Rasmussen judgment of 28 November 1984, Series A no. 87, p. 12 para. 29) and that this part of the application must also be rejected as incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission — President of the Commission

(J. RAYMOND) — (C.A. NØRGAARD)