AS TO THE ADMISSIBILITY OF

Application No. 34973/97
by Oscar HAMMERSTEIN
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 1 July 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

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 14 March 1996 by Oscar HAMMERSTEIN against the Netherlands and registered on 18 February 1997 under file No. 34973/97;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1954, and resides in Amsterdam. He is a lawyer. Before the Commission he is represented by Mr G. Spong, a lawyer practising in Amsterdam.

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

On suspicion of having participated in a criminal organisation, handling and receiving stolen goods, narcotics offences and fraud, the applicant was detained on remand on 16 March 1994. He was released on 27 April 1994.

In the subsequent criminal proceedings against him which only concerned charges of fraud, the applicant was acquitted by the Regional Court (Arrondissementsrechtbank) of Amsterdam by judgment of 23 December 1994.

In the subsequent proceedings on appeal, the Court of Appeal (Gerechtshof) of Amsterdam concluded in its judgment of 20 June 1995, on pages 3 and 4 under points 4 and 5, that in rendering his services

as a lawyer the applicant had acted thoughtlessly ("lichtvaardig zijn diensten als advocaat heeft verleend") and had acted carelessly in giving his assistance to the drafting of certain acts ("bij het verlenen van zijn medewerking aan het doen opstellen van ... aktes onzorgvuldig is te werk gegaan"). However, as the Court of Appeal did not find it established that the applicant had acted with intent, a conditio sine qua non for a conviction of the charges brought against the applicant, it acquitted the applicant.

On 25 August 1995, the Court of Appeal received requests under Article 89 and Article 591a of the Code of Criminal Procedure (Wetboek van Strafvordering) by the applicant for compensation of damage incurred as a result of the time spent in pre-trial detention and reimbursement of lawyer's costs incurred respectively. The Court of Appeal considered these requests in the course of a hearing held on 5 December 1995.

By decision of 19 December 1995, the Court of Appeal rejected the applicant's request under Article 89 of the Code of Criminal Procedure. It held that, in view of the Court of Appeal's findings set out on pages 3 and 4 under points 4 and 5 of its judgment of 20 June 1995, there were no grounds in equity ("gronden van billijkheid") to grant the applicant full or partial compensation for the time spent in pre-trial detention.

On the same day, in a separate decision, the Court of Appeal also rejected the applicant's request under Article 591a of the Code of Criminal Procedure for reimbursement of lawyer's costs incurred. With reference to the Court of Appeal's findings on pages 3 and 4 under points 4 and 5 of its judgment of 20 June 1995, the Court of Appeal held that there were no grounds in equity to grant the applicant's request either in part of in full.

Under Dutch law no appeal lies against the decisions of 19 December 1995.

COMPLAINT

The applicant complains that the reasons given in the decisions of 19 December 1995 of the Court of Appeal are contrary to Article 6 para. 2 of the Convention. He submits that these decisions constitute a kind of second-class conviction on the basis of a finding that the applicant is blameworthy.

THE LAW

The applicant complains that the reasons given in the decisions of 19 December 1995 of the Court of Appeal are contrary to Article 6 para. 2 (Art. 6-2) of the Convention.

Article 6 para. 2 (Art. 6-2) of the Convention reads as follows:

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

The Commission recalls that, despite the wording of Article 6 para. 2 (Art. 6-2) of the Convention, it has consistently interpreted this provision as also applying to situations where the person concerned is not or no longer formally subject to a criminal charge. Furthermore, the presumption of innocence is to be observed not only by the criminal court trying a case, but also by other authorities including courts other than those which are competent to determine a criminal charge (cf. Sekanina v. Austria, Comm. Report 20.5.92, Eur. Court HR, Series A no. 266, p. 20, para. 36).

The Commission further recalls that neither Article 6 para. 2

(Art. 6-2) nor any other provision of the Convention gives a person "charged with a criminal offence" a right to reimbursement of his costs or a right to compensation for lawful pre-trial detention where proceedings taken against him are discontinued (cf. Eur. Court HR, Englert v. Germany judgment of 25 August 1987, Series A no. 123, p. 54, para. 36). Nevertheless, such a decision may raise an issue under Article 6 para. 2 (Art. 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. In this respect the Convention organs distinguish between statements which reflect the opinion that the person concerned is guilty and statements which merely describe a state of suspicion. The former infringe the presumption of innocence, whereas the latter have been regarded as unobjectionable in various situations examined by the Convention organs (cf. Eur. Court HR, Leutscher v. the Netherlands judgment of 26 March 1996, Reports of Judgments and Decisions 1996-II, p. 436, para. 29).

The Commission has noted the relevant Dutch law and practice as described by the European Court in previous cases (Eur. Court HR, Masson and Van Zon v. the Netherlands judgment of 28 September 1995, Series A no. 327-A, pp. 10-14, paras. 26-31; and Leutscher v. the Netherlands judgment, loc. cit., pp. 432-433, paras. 15-18).

The Commission notes at the outset that there is no question in the present case of the Court of Appeal of Amsterdam refusing to grant the applicant's requests under Articles 89 and 591a of the Code of Criminal Procedure because it disagreed with the outcome of the criminal proceedings against him. It was the same court which acquitted the applicant.

As regards the reasons stated by the Court of Appeal for rejecting the applicant's requests under Articles 89 and 591a of the Code of Criminal Procedure, the Commission notes that the Court of Appeal considered that the applicant had acted thoughtlessly and carelessly. However, the Commission finds that it has not been submitted nor has it appeared that acting thoughtlessly or acting carelessly, as such, constitute criminal offences under Dutch law.

The Commission considers that the Court of Appeal meant to indicate, as it was required to do in its determination of the applicant's requests, that there had been reasonable suspicions concerning the applicant. Even if this reference to the findings of the Court of Appeal in the criminal proceedings against the applicant may be regarded as ambiguous or unsatisfactory by the applicant, the Commission is of the opinion that the Court of Appeal confined itself in substance to noting that there had been a "reasonable suspicion" that the applicant had "committed an offence" (Article 5 para. 1 (c) (Art. 5-1-c) of the Convention).

The Commission, therefore, cannot find that the Court of Appeal's decisions on the applicant's requests under Article 89 and 591a of the Code of Criminal Procedure offended the presumption of innocence guaranteed to the applicant under Article 6 para. 2 (Art. 6-2) of the Convention.

It follows that the application must be rejected for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER J.-C. GEUS

Secretary
to the Second Chamber

President
of the Second Chamber