CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38087/97
by Samuel St. Clavier HIBBERT
against the Netherlands

The European Court of Human Rights (First Section) sitting on 26 January 1999 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr G. Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *Judges*,

with Mr M. O'Boyle, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 30 May 1997 by Samuel St. Clavier Hibbert against the Netherlands and registered on 8 October 1997 under file no. 38087/97;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Dutch national, was born in 1969. He is represented by Mr S.J. van der Woude, a lawyer practising in Amsterdam.

By letter of 23 December 1998, the applicant's representative informed the Court that the applicant had died on 9 August 1998 and that his mother, the applicant's sole heir, wished to pursue her son's application.

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

On 24 September 1991, the applicant was arrested and detained on remand on suspicion of having committed robbery. By summons of 6 December 1991, the applicant was charged with various counts of robbery and extortion and ordered to appear on 20 December 1991 before the Regional Court (*Arrondissementsrechtbank*) of Amsterdam.

In its judgment of 20 December 1991, following adversarial proceedings, the Regional Court of Amsterdam acquitted the applicant of the charges against him for lack of sufficient evidence and ordered his immediate release. The applicant was released on the same day. The public prosecutor filed an appeal with the Court of Appeal (*Gerechtshof*) of Amsterdam.

In its judgment of 8 March 1993, following proceedings *in absentia* as the applicant had failed to appear, the Court of Appeal of Amsterdam quashed the judgment of 21 December 1991, convicted the applicant of one count of robbery and two counts of extortion and sentenced him to two years' imprisonment with deduction of the time spent in pre-trial detention. The applicant filed an appeal in cassation with the Supreme Court (*Hoge Raad*).

On 27 February 1996, the Supreme Court, holding that the Court of Appeal had unjustly not allowed the applicant's lawyer to conduct the applicant's defence in the latter's absence before the Court of Appeal, quashed the judgment of 8 March 1993 and referred the case back to the Court of Appeal of The Hague.

By judgment of 11 September 1996, following proceedings *in absentia*, the Court of Appeal of The Hague acquitted the applicant for lack of sufficient evidence.

On 7 October 1996, the applicant filed a request with the Court of Appeal of The Hague, under Article 89 of the Code of Criminal Procedure (*Wetboek van Strafvordering*), for compensation in an amount of NLG. 9,100 for the time he had spent in pre-trial detention as well as a request, under for Article 591a of the Code of Criminal Procedure, for reimbursement by the State of his legal costs in an amount of NLG. 789.60 in connection with the proceedings on his request under Article 89 of the Code of Criminal Procedure.

In its decision of 12 March 1997, the Court of Appeal of The Hague rejected the applicant's request for compensation for the time he had spent in pre-trial detention, holding:

<Translation>

> "Article 89 of the Code of Criminal Procedure opens the possibility for compensation of damages suffered as a consequence of having been detained in pre-trial custody where a case ends without the imposition of a punishment ... Compensation shall be awarded if and to the extent the court, taking all circumstances into account, is of the opinion that there are reasons in equity to do so.
>
> The court considers on this point that, in the applicant's case, there were witnesses having made incriminating statements as to the applicant's involvement in the punishable facts as charged, which fully justified the applicant's detention during that phase <of the proceedings>.
>
> Moreover, sufficient lawful evidence was available, yet doubts as regards the applicant's role have led to the acquittal. It has therefore not been established that the applicant has not committed the fact, so that, all circumstances having been taken into account, there are no reasons in equity for any compensation."

On 12 March 1997, in a separate decision, the Court of Appeal also rejected the applicant's request under Article 591a of the Code of Criminal Procedure. It held that, given its decision on the applicant's request under Article 89 of the Code of Criminal Procedure, there were no reasons in equity for the costs claimed.

No appeal lies against the decisions of 12 March 1997.

COMPLAINT

The applicant complains that the reasons stated in the decisions of 12 March 1997 of the Court of Appeal are contrary to Article 6 § 2 of the Convention in that they constitute a violation of the principle of presumption of innocence.

THE LAW

The applicant complains that the reasons stated in the decisions of 12 March 1997 of the Court of Appeal violate the principle of presumption of innocence within the meaning of Article 6 § 2 of the Convention.

The Court notes at the outset that the applicant has died after the introduction of his application and that his mother has informed the Court that she wishes to pursue the application introduced by her son.

Although the heirs of a deceased applicant cannot claim a general right that the examination of the application brought by the latter be continued by the Court (cf. Eur. Court HR, Scherer v. Switzerland judgment of 25 March 1994, Series A no. 287; No. 8261/78, Comm. Report 9.10.82, D.R. 30, p. 5; and No. 12526/86, Dec. 7.1.91, D.R. 68, p. 104), the Court has accepted on a number of occasions that close relatives of a deceased applicant are entitled to take his or her place (cf. Eur. Court HR, Deweer v. Belgium judgment of 27 February 1980, Series A no. 35, p. 19, § 37; and Raimondo v. Italy judgment of 22 February 1994, Series A no. 281-A, p. 8, § 2).

In the present case, the Court accepts that the applicant's mother can pursue the application brought by her son (cf. Eur. Court HR, Nölkenbockhoff v. Germany judgment of 25 August 1987, Series A no. 123, p. 77, § 33).

As regards the substance of the present case, the Court considers that Article 6 § 2 of the Convention has consistently been interpreted as also applying to situations where the person concerned is not or no longer formally subject to a criminal charge.

The Court further considers that neither Article 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, § 36). 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. In this respect a distinction is made 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 Court (cf. Eur. Court HR, Lutz v. Germany judgment of 25 August 1987, Series A no. 123, p. 25, § 62; Englert v. Germany judgment, loc. cit., p. 55, § 39; Nölkenbockhoff v. Germany judgment, loc. cit., p. 80, § 39; and Leutscher v. the Netherlands judgment of 26 March 1996, *Reports of Judgments and Decisions* 1996-II, p. 436, § 31).

The Court has noted the relevant Dutch law and practice as described 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, §§ 26-31; and Leutscher v. the Netherlands judgment, loc. cit., pp. 432-433, §§ 15-18).

The Court notes that the decision cannot be viewed independently of the Court of Appeal's previous decision in which it acquitted the applicant of the criminal charges against him.

As regards the reasons stated by the Court of Appeal for rejecting the applicant's request under Article 89 of the Code of Criminal Procedure, the Court notes that the Court of Appeal considered that, given the fact that incriminating statements had been made by witnesses as to the applicant's involvement in the punishable facts as charged, his pre-trial detention was fully justified.

The Court is of the opinion that the Court of Appeal's wording can reasonably be interpreted as an indication, as it was required to do in its determination of the applicant's request under Article 89 of the Code of Criminal Procedure for compensation for the time he had spent in pre-trial detention, that there had been reasonable suspicions concerning the applicant. Even if the 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 latter, the Court finds 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) of the Convention).

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

It follows that the application must be rejected for being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President