AS TO THE ADMISSIBILITY OF

Application No. 25513/94
by Joop KANDEL
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 18 May 1995, the following members being present:

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

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 31 August 1994 by Joop KANDEL against the Netherlands and registered on 2 November 1994 under file No. 25513/94;

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 1946, and resides in Leerdam, the Netherlands. Before the Commission, he is represented by Mrs. S.E. Marseille, a lawyer practising in The Hague.

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

1. Particular circumstances of the present case

On 29 September 1988 a preliminary judicial investigation into fraud was started in respect of the activities of the applicant and the H. company, of which he was the sole manager. On 4 October 1988 the applicant's house and the premises of the H. company were searched by the investigating authorities.

On 19 November 1990 the applicant was arrested and subsequently detained on remand on the suspicion of having committed fraud. He was released on 22 November 1990.

By summons of 14 September 1993 the applicant was ordered to appear before the Regional Court (Arrondissementsrechtbank) of Rotterdam on 12 October 1993 on charges of fraud.

On 12 October 1993 the Regional Court, following the defence's

objection to that effect, declared the prosecution inadmissible. It noted that, since certain unexplained lengthy delays had occurred in the pre-trial stage of the criminal proceedings against the applicant, it could no longer be held that the case against the applicant was dealt with within a reasonable time as required by Article 6 of the Convention. The criminal proceedings were consequently discontinued.

On 7 December 1993 the Regional Court received a request under Section 591 (a) of the Code of Criminal Procedure (Wetboek van Strafvordering) by the applicant and the H. company for reimbursement of 88.709,17 Dutch guilders for lawyer's costs until 15 October 1989 and a further amount, still to be determined, for lawyer's costs after 15 October 1989 incurred in the criminal proceedings against him.

On 10 March 1994 the Acting President of the Rotterdam Regional Court rejected the request for reimbursement, holding, in respect of the applicant, that:

<Translation>
"... all circumstances taken into consideration, there are no reasonable grounds for granting the requested reimbursement of counsel's costs.

As regards the applicant, it is certainly not improbable, noting the contents of the aforementioned criminal case-file, that - if the public prosecution had been admissible in its prosecution - the full criminal division of this Regional Court would have found such a part of the charges against the applicant proven that the imposition of a punishment and/or measure could reasonably have been expected."

Under Dutch law no appeal lies against the Regional Court's decision of 10 March 1994.

2. Relevant domestic law

Section 591 (a) of the Code of Criminal Procedure, insofar as relevant, provides as follows:

<Translation>
"1. If a case comes to an end without imposition of a punishment or measure ... compensation will be granted to the former suspect or his heirs for his travel and subsistence costs incurred for the investigation and the examination of his case, calculated on the basis of the Act on Fees in Criminal Cases.

2. If a case comes to an end without imposition of a punishment or measure ... compensation may be granted to the former suspect or his heirs for the damage which he has actually suffered as a result of the loss of time due to the judicial investigation and the examination of his case at the trial, as well as the costs of counsel. This will include compensation for the costs of counsel during the detention on remand. Compensation for such costs may furthermore be granted when a case ends with imposition of a punishment or measure on the basis of a fact for which detention on remand is not allowed.

3. ....

4. Sections 90 and 591, paras. 2 to 5, apply by analogy."

Section 591 of the Code of Criminal Procedure, insofar as relevant, provides as follows:

<Translation>
"2. The amount of the compensation shall be determined at the request of the former suspect or his heirs. This request must be

submitted within three months following the termination of the case. The determination shall be made by the trial court which has dealt with or, otherwise, was dealing with the case at the moment it came to an end, and in fact by the District Court judge or by the president of the court. To this end the president can appoint one of the judges of the Court of Appeal or the Regional Court, who have dealt with the case. The District Court judge or the Regional Court judge will issue an execution order for the amount of the compensation.

3. Petitioners can be heard. If they so wish they will be heard, at least summoned. They can be assisted by a lawyer. Section 24, last paragraph, applies.

...."

The last paragraph of Section 24 of the Code of Criminal Procedure provides:

<Translation>
"The counsel or the lawyer will be provided with the opportunity to make the necessary statements at the hearings."

Section 90 of the Code of Criminal Procedure provides as follows:

<Translation>
"1. Compensation is awarded where, and insofar as, in the opinion of the judge, taking all circumstances into account, there are equitable grounds for it.

2. In the determination of the amount the living conditions of the former suspect are also being taken into account.

3. The decision is reasoned. The decision is immediately notified to the former suspect or to his heirs, but, in case of a rejection, with omission of the reasons. In that case the former suspect or his heirs can consult the reasons at the registry."

COMPLAINT

The applicant complains that the reasons given in the decision of 10 March 1994 of the Acting President of the Rotterdam Regional Court, rejecting his request for reimbursement, infringed the presumption of innocence guaranteed by Article 6 para. 2 of the Convention.

THE LAW

The applicant complains that the reasons given in the Rotterdam Regional Court's decision of 10 March 1994 rejecting his request for reimbursement infringed the presumption of innocence guaranteed by 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 first notes that it cannot be excluded from a reading of the text of this provision that it may impose an obligation to respect the presumption of innocence on jurisdictions which are not directly involved in the determination of criminal charges in a particular case. This follows from the very general terms of this provision, as they appear both in the English and in the French texts (cf. No. 10427/87, Dec. 12.5.86, D.R. 47, pp. 85, 91).

The application of Article 6 para. 2 (Art. 6-2) is therefore not limited to procedures where a prosecution ends in a the conviction or acquittal of the accused, or where they are discontinued (cf. Eur. Court H.R. Allenet de Ribemont judgment of 10 February 1995, Series A no. 308, para. 35).

The Commission recalls that neither Article 6 para. 2 (Art. 6-2) nor any other provision of the Convention gives persons "charged with a criminal offence" a right to reimbursement of their costs or a right to compensation for lawful detention on remand when proceedings taken against them are discontinued. The decision complained of, therefore, does not in itself offend the presumption of innocence (cf. Eur. Court H.R., Lutz and Nölkenbockhoff judgments of 25 August 1987, Series A no. 123, p. 25, para. 59 and p. 79, para. 36).

Nevertheless, the presumption of innocence enshrined in Article 6 para. 2 (Art. 6-2) will be violated if, without the accused having previously been proved guilty according to law, the supporting reasoning of a judicial decision concerning compensation in substance amounts to a determination of the accused's guilt (Eur. Court H.R., Lutz and Nölkenbockhoff judgments, loc. cit. p. 25, para. 60 and p. 79, para. 37).

In this respect, the European Court of Human Rights found to be decisive first whether or not "the courts confined themselves in substance to noting the existence of 'reasonable suspicion' that the defendant had 'committed an offence'" and second whether or not the decision in question amounted to "a penalty or a measure that can be equated to a penalty" (Eur. Court H.R., Lutz judgment of 25 August 1987, Series A no. 123, pp. 25-26, paras. 62-63).

In the present case, on 10 March 1994, the Acting President of the Regional Court of Rotterdam decided that there were no reasonable grounds for granting reimbursement under Section 591 (a) of the Code of Criminal Procedure. This decision was based on the finding that, in view of the applicant's case-file, it was not improbable that a partial conviction and the imposition of a criminal sanction would have followed, had the prosecution been declared admissible.

The Commission considers that the Acting President of the Regional Court meant to indicate, as he was required to do so for the purposes of the decision to be taken, that there were still strong suspicions concerning the applicant. Even if the terms used by the Acting President may be regarded as ambiguous and unsatisfactory, he confined himself in substance to noting the existence of a "reasonable suspicion" that the applicant had "committed an offence" (Article 5 para. 1 (c) (Art. 5-1-c) of the Convention).

On the basis of the evidence in the applicant's case-file, the decision described a "state of suspicion". It contains a prediction of the probable outcome of the criminal proceedings had they been continued, but not a finding of guilt (cf. Eur. Court H.R., Lutz and Nölkenbockhoff judgments, loc. cit. p. 25, para. 62 and p. 80, para. 39). The voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation (cf. Eur. Court H.R., Sekanina judgment of 25 August 1993, Series A no. 266-A, p. 15, para. 30).

Furthermore, the Acting President of the Regional Court, acting on an equitable basis and having regard to the circumstances of the applicant's case, did not impose any sanctions on the applicant, but merely refused to order that his legal costs should be paid out of public funds (cf., mutatis mutandis, No. 11150/84, Dec. 9.12.87, unpublished).

Consequently, the Commission finds that the decision of 10 March

1994 did not violate the presumption of innocence.

It follows that the application must be rejected as 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.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)