PARTIAL

AS TO THE ADMISSIBILITY OF

Application No. 15346/89
by A.M.
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 1 April 1992, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO

Mr. K. ROGGE, Secretary to the Second 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 8 June 1989 by A.M. against the Netherlands and registered on 4 August 1989 under file No. 15346/89;

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 citizen, born in 1926 and at present residing in Rijswijk, the Netherlands. In the proceedings before the Commission he is represented by Mr. A.J.L.J. Pfeil, a lawyer practising in Maastricht.

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

The applicant was arrested on 10 May 1984. On 11 May 1984, he was remanded in custody. On 15 May 1984, he was brought before the investigating judge who charged him with accepting bribes, cheating, forgery and the use of forged documents. On 22 February 1985, the Regional Court (Arrondissementsrechtbank) of Maastricht altered the detention into house arrest (huisarrest). On 25 March 1986, the Regional Court of Maastricht ordered the termination of this house arrest.

On 21 May 1987, the Regional Court of Maastricht found the applicant guilty of the charges of accepting bribes and the use of forged documents. The applicant was acquitted of the other charges. The Court sentenced him to one year's imprisonment. Both the applicant and the public prosecutor appealed against this judgment.

On 7 June 1988, the Court of Appeal (Gerechtshof) of

's Hertogenbosch declared part of the original charge of forgery and the use of forged documents null and void, and acquitted the applicant of the remaining charges.

On 6 September 1988, the applicant presented a request for compensation on the basis of Section 89 of the Code of Criminal Procedure (Wetboek van Strafvordering) which provides, inter alia, that an acquitted person can request compensation by the State for the material and non-material damage, caused by the detention on remand. Section 90 para. 1 of the same Code provides:

<Dutch>

> "1. De toekenning van een schadevergoeding heeft steeds plaats, indien en voorzover daartoe, naar het oordeel van de rechter, alle omstandigheden in aanmerking genomen, gronden van billijkheid aanwezig zijn."

<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."

On the same day, the applicant also presented a request for reimbursement of the legal and subsidiary costs provisionally estimated at 822.316,04 Dutch guilders - among which 804.090,99 guilders for lawyers' fees - on the basis of Section 591 (a) para. 2 of the Code of Criminal Procedure. This provision reads:

<Dutch>

> "2. Indien de zaak eindigt zonder oplegging van straf of maatregel kan aan de gewezen verdachte ... een vergoeding worden toegekend voor de schade welke hij ten gevolge van tijdverzuim door het gerechtelijk vooronderzoek en de behandelig der zaak ter terechtzitting werkelijk heeft geleden, alsmede in de kosten van een raadsman."

<Translation>

> "2. If a case comes to an end without imposition of a punishment or a measure, compensation may be granted to the former suspect ... for the damage which he has actually suffered as a result of loss of time due to the judicial criminal investigation and the trial itself, as well as the fees of a counsel."

On 9 December 1988, the Court of Appeal of 's Hertogenbosch, sitting in camera, rejected the request for compensation finding no reasonable ground for granting it. This decision was served on 12 December 1988. The Court based its decision mainly on the fact that the applicant had from the very beginning of the investigation misled the officers involved in the investigation and the courts on a wrong track and caused an exceptionally elaborate inquiry. Under these circumstances, the Court found no reason to compel the State to meet the costs which were mainly due to the applicant's behaviour which had not only caused great expenses for him but also for the State.

On 9 December 1988 the President of the Court of Appeal granted, on the basis of Section 591 (a) para. 1 of the Code of Criminal Procedure, reimbursement of 5.853,55 guilders for travelling and subsistence costs (reis- en verblijfkosten). It rejected the remainder of the request.

COMPLAINTS

1. Invoking Articles 3, 5 para. 1(c) and 18 of the Convention, the applicant complains that the detention on remand served improper purposes and that he was kept in solitary confinement during a part of this detention.

Invoking Article 5 para. 2 of the Convention, he also submits that the detention on remand was based on very vague grounds which made it difficult to present an adequate defence.

Invoking Article 5 para. 3 of the Convention, he complains that he was not brought before the investigating judge until 15 May 1984 while he was arrested on 10 May 1984 and remanded in custody on 11 May 1984.

2.2. The applicant complains that he was denied compensation for his unlawful detention on remand. He submits that he was finally acquitted and that he suffered substantial material and non-material damage. He invokes Articles 5 para. 5 of the Convention.

3. Stating that there is a right to compensation for the lawyers' fees after acquittal in Dutch legal practice, the applicant also complains that the refusal of his request for compensation under Article 591 (a) of the Code of Criminal Procedure violates his right of property guaranteed by Article 1 of Protocol No. 1.

4. The applicant further complains that the refusal to grant him compensation for the detention on remand and reimbursement of the lawyers' fees violates Article 6 para. 2 of the Convention which protects the presumption of innocence.

5. The applicant also complains that the refusal of his request for reimbursement of lawyers' fees violates Article 6 paras. 1 and 3 (c) of the Convention. He submits that he had enormous expenses for his legal assistance and had to incur great debts. He considers that there is an inequality of arms since the public prosecution is not hindered by financial restraints.

6. The applicant also complains that no appeal was possible against the decisions of 9 December 1988. He invokes Article 2 of Protocol No. 7 and Article 6 of the Convention.

7. The applicant finally complains that both his requests for compensation for detention on remand and for reimbursement of lawyers' fees were not examined fairly and in public by an impartial tribunal. He invokes Articles 13 and 6 paras. 1 and 3 (a) and (d) of the Convention.

THE LAW

1.1. The applicant complains that the detention on remand served improper purposes and that he was kept in solitary confinement during part of this detention. He adds that the detention was based on very vague grounds and that he was not brought before the investigating judge until 15 May 1984 while he was arrested on 10 May 1984 and remanded in custody on 11 May 1984. He invokes Articles 3, 18 and 5 paras. 1 (c), 2 and 3 (Art. 3, 18, 5-1-c, 5-2, 5-3) of the Convention.

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months, from the date on which the final decision was taken".

In the present case, the Commission is not called upon to

determine whether the final decision regarding the detention on remand is the decision of 22 February 1985 by which the Regional Court replaced the detention on remand by house arrest, or the decision of 25 March 1986 terminating this arrest, as the application was submitted to the Commission on 8 June 1989, that is more than six months after the date of either decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2.2.2.Invoking Article 5 para. 5 (Art. 5-5) of the Convention, the applicant complains that he was denied compensation for his unlawful detention on remand.

Article 5 para. 5 (Art. 5-5) of the Convention is in the following terms:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

It appears clearly from the text of Article 5 para. 5 (Art. 5-5) that the application of the provision presupposes the establishment of a breach of one of the preceding paragraphs of Article 5 (Art. 5).

Insofar the applicant has alleged a violation of Article 5 paras. 1 to 4 (Art. 5-1, 5-2, 5-3, 5-4) before the Dutch courts, the Commission first observes that no breach of these provisions has been established by these courts.

Secondly, the Commission has not found any violation of Article 5 paras. 1 to 4 (Art. 5-1, 5-2, 5-3, 5-4).

In these circumstances, in the absence of a finding of a breach of Article 5 paras. 1 to 4 (Art. 5-1, 5-2, 5-3, 5-4).
of the Convention, the applicant is not entitled to compensation under Article 5 para. 5 (Art. 5-5). Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Stating that there is a right to compensation for the lawyers' fees after acquittal in Dutch legal practice, the applicant also claims that the rejection of his request for compensation under Section 591 (a) of the Code of Criminal Procedure violates his right of property guaranteed by Article 1 of Protocol No. 1 (P1-1), which stipulates:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission has already recognised that a "claim" or a "debt" may constitute "possessions" within the meaning of Article 1 of Protocol No. 1 (P1-1) (No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146; No. 7775/77, Dec. 5.10.78, D.R. 15 p. 143).

However, the Commission notes that in the present case the

applicant, who hoped to be granted compensation for lawyers' fees, has not shown that he was at any time entitled to compensation on any ground whatsoever. The judgment of the Court of Appeal of 7 June 1988 has indeed not created any right to compensation for lawyers' fees; it has only created a possibility to obtain such a compensation, since Section 591 (a) para. 2 of the Code of Criminal Procedure provides that "compensation may be granted". Since the applicant's claim for compensation for legal costs could not be considered to be based on an established right, the decision of 9 December 1988 cannot have had the effect of depriving him of property of which he was the owner (cf., mutatis mutandis, No. 7822/77, Dec. 11.7.77, unpublished).

There is therefore in the instant case no appearance of a violation of Article 1 of Protocol No. 1 (P1-1) and this complaint is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant also complains that the refusal to grant him compensation for the detention on remand and reimbursement for lawyers' fees violates Article 6 para. 2 (Art. 6-2) of the Convention which protects the presumption of innocence. He explains that this refusal implicitly leads to a declaration of guilt all the more so since the requests were not examined fairly and publicly.

Article 6 para. 2 (Art. 6-2) of the Convention provides 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 Article that it may impose an obligation to respect the presumption of innocence on tribunals 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, both in its English and 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 the conviction or acquittal of the accused.

However, this provision does not give any right to reimbursement of an accused's necessary expenses in case the proceedings against him are discontinued or do not end in a conviction nor does it create any obligation for the Contracting State to pay in such cases compensation for lawful detention on remand (No. 9531/81, Dec. 6.10.82, D.R. 31 p. 213; No. 10107/82, Dec. 4.12.85, D.R. 48 p. 35; No. 12397/86, Dec. 14.10.88, unpublished).

It follows that this part of the application is again manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. Invoking Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention, the applicant further complains that the rejection of his request for reimbursement of lawyers' fees constitutes an inequality of arms in the criminal proceedings against him, as the public prosecutor is not hindered by financial restraints.

The Commission first notes that it is not required to decide whether or not the facts of the case disclose any appearance of a violation of the Convention in the criminal proceedings instituted against the applicant as the final decision regarding these proceedings was given by the Court of Appeal on 7 June 1988, which is more than six months before 8 June 1989, the date on which the application was submitted to the Commission.

Finally, the Commission considers that the refusal to afford

reimbursement of lawyers' fees after discharge or acquittal cannot have had the effect of rendering the former criminal proceedings retrospectively unfair in which proceedings in any event the applicant had not requested legal aid.

It follows that this part of the application must also be rejected under Article 27 paras. 2 and 3 (Art. 27-2, 27-3) of the Convention.

6. The applicant also claims that no appeal was possible against the decisions of 9 December 1988. He invokes Article 2 of Protocol No. 7 and Article 6 (P7-2, 6) of the Convention.

However, the Commission first notes that the Netherlands are not a party to Protocol No. 7 (P7).

Secondly, the Commission recalls that Article 6 (Art. 6) of the Convention does not guarantee a right to an appeal (cf. No. 8603/79, 8722/79, 8723/79 and 8729/79, Dec. 18.12.80, D.R. 22 p. 147).

It follows that the application is in this respect incompatible with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2).

7. The applicant finally complains that his requests for both compensation for detention on remand and reimbursement of lawyers' fees were not examined fairly and in public by an impartial tribunal. He invokes Articles 13 and 6 paras. 1 and 3 (a) and (d) (Art. 13, 6-1, 6-3-a, 6-3-d) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention provides, as far as relevant, as follows:

> "1. 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 ... by an independent and impartial tribunal established by law."

As there can be no doubt that the proceedings did not concern a criminal charge against the applicant, the Commission has first to consider whether there was a dispute concerning a right and, if so, whether the right was a civil right.

The Commission considers that it cannot, on the basis of the file, determine whether there was a dispute concerning a civil right and, if so, whether there has been a violation of Article 6 (Art. 6) in these proceedings without the observations of both parties.

The Commission therefore adjourns this part of the application.

For these reasons, the Commission,

by a majority, DECIDES TO ADJOURN the examination of the complaint under Article 6 para. 1 (Art. 6-1) of the Convention as to the proceedings concerning the applicant's requests for compensation after acquittal;

unanimously, DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)