CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 38072/97
by Mohammed NAVIEDE
against the United Kingdom

The European Court of Human Rights (Third Section) sitting on 7 September 1999 as a Chamber composed of

Mr J.-P. Costa, *President*,
Sir Nicolas Bratza,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mr K. Jungwiert,
Mrs H.S. Greve, *Judges*,

with Mrs S. Dollé, *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 18 September 1997 by Mohammed Naviede against the United Kingdom and registered on 7 October 1997 under file no. 38072/97;

Having examine the case file;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1953. He is currently detained in H.M. Prison in Derbyshire. He is represented before the Court by Mr Andrew Kenyon, a solicitor practising in Manchester.

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

On an unspecified date the applicant was charged by the Serious Fraud Office with various offences of dishonesty. He applied and was granted legal aid.

At the end of 1992 the applicant's case was transferred to the Central Criminal Court. It was first listed before a judge in March 1993. At that stage the applicant was represented by solicitors and senior and junior counsel.

On 24 May 1994 the applicant was arraigned. The hearing was fixed for September 1994. However, that date was vacated because the applicant's representatives had sent to the Serious Fraud Office detailed submissions as to why the prosecution should have been discontinued. Following the rejection of these submissions, the applicant decided that he wished to represent himself.

On 13 October 1994 the applicant's counsel appeared before the judge and asked to be allowed, together with their solicitors, to withdraw from the case. The judge heard the applicant's senior counsel, his solicitor and the applicant himself. He also heard counsel for the Crown.

The applicant's position was that he wished to present himself the factual side of the case, examine and cross-examine witnesses and address the jury. At the same time he wanted to be allowed to have his solicitors and counsel to advise him upon and argue on his behalf such matters of law as might arise in the course of the case. The applicant's solicitor told the judge that he had advised the applicant that he should be represented by counsel if his case was to be conducted properly. However, according to the solicitor, there had been a serious breakdown of confidence between himself and the applicant and in those circumstances, unless directed to the contrary, he wished to withdraw.

The applicant's counsel said that he knew of cases where a defendant had retained solicitors and counsel to argue the law and the Crown's counsel accepted that, provided that proper ground rules were established, such a course of action could be followed.

The judge, having satisfied himself that the applicant had formed a firm and considered opinion and that his views had been properly presented to the court, decided that it would be improper to allow the applicant to proceed with the case in the manner he envisaged. The judge considered that, if counsel were to continue to participate in the proceedings, they should have control over the case. Counsel for the applicant and the Crown agreed. Then the applicant was asked whether, in the light of this development, he wished to reconsider his decision to represent himself. He refused.

The court reconvened on 21 October 1994. The matter of the applicant's representation was again discussed. The judge formally allowed the applicant's counsel and solicitors to withdraw. The applicant was allowed to represent himself. However, new solicitors were retained to advise the applicant who could seek advice from counsel on particular matters. These solicitors assisted the applicant throughout the proceedings and occasionally consulted counsel.

On 28 October 1994 the applicant requested that the court should sit only three days a week. However, the judge refused this request.

On a number of subsequent occasions, before the actual beginning of the trial, the applicant repeated his wish to have the kind of representation he had favoured from the beginning. However, the judge reaffirmed his earlier ruling. On at least one occasion, on 4 November 1994, the judge again sought and received confirmation that the applicant had decided to represent himself.

The judge's last pre-trial re-iteration of his ruling was on 3 January 1995 when he stated the following:

> "It is an absolute right for someone to represent themselves; and Mr Naviede has decided to represent himself in this trial. I have considered the question of whether I should extend his legal aid for leading and junior counsel to represent him; and I have come plainly to the conclusion that it would be wholly inappropriate in this case for Mr Naviede to represent himself, have control of cross-examination and the calling of witnesses [on] issues of fact, then instruct counsel to represent him on points of law throughout the course of the case. It seems to me that that would be wrong. It would involve, were I to grant this application, an adjournment of this case for ... a considerable period ... and, in all the circumstances, I have no alternative but to reject the application that is made. The defendant has had ample time to prepare himself for this trial ... [A] great deal of work has been done on his behalf. The documents have all been got in order and, in my view, the representation that he has - which in the representation of experienced solicitors, who no doubt are knowledgeable in the law - is a proper basis on which we ought to proceed."

The trial began on 9 January 1995. The applicant requested that the hearing be adjourned for a period of four to six weeks because he was suffering from mental exhaustion and stress. The judge, having heard expert evidence from two doctors for the defence and two for the prosecution, refused the applicant's request on the ground that the applicant was fit to continue with the hearing. Then the applicant cross-examined the most important prosecution witness.

On 11 February 1995 the applicant informed the judge that he was to undergo an operation as he was suffering from the disease of pneumothorax. He applied for an adjournment that would also give him sufficient time to recover from the post-operative effects. The court adjourned the case for five weeks. On returning, however, on 15 March 1995, the applicant was still suffering from post-operative discomfort and requested another week's adjournment. In support of his request the applicant invoked his doctor's opinion that he was at risk of a nervous breakdown. However, the judge relied on the evidence of another doctor that the applicant was in a fit state and refused his request.

On 14 May 1995 the judge, in the absence of the jury, threatened the applicant that he could be found in contempt of court because one of his witnesses was not present.

On Thursday 25 May 1995 the applicant, having completed eleven days in the witness box, asked for an adjournment until next Tuesday in order to prepare for the examination of the defence witnesses. The judge decided that the rest of the day would be sufficient for the applicant to prepare himself.

On 7 July 1995 the applicant was convicted of a number of dishonesty offences. He was sentenced to nine years' imprisonment.

The applicant obtained leave to appeal to the Court of Appeal against conviction and sentence. He relied on a number of grounds including the failure of the judge to grant his above-mentioned requests concerning the presentation of his case, the number of sittings per week and the adjournments. In the proceedings before the Court of Appeal the applicant was represented by legal aid counsel.

On 21 March 1997 the Court of Appeal, for technical reasons, quashed the applicant's convictions on some counts, substituted convictions for different offences and reduced his sentence to six years. However, the court did not allow any of the grounds of appeal concerning the above-mentioned requests. Furthermore, it refused to certify any question of law involved in the determination of the appeal as being of general public importance.

COMPLAINTS

1. The applicant complains under Article 6 § 1 and 3 (b) of the Convention that the first instance court refused to allow him sufficient time and facilities to prepare his defence. In this connection he refers in particular to the judge's decisions of 28 October 1994, 9 January 1995 and 15 March 1995 and to the contempt of court incident. He also considers that on 15 March 1995 the judge should have dismissed the jury of his own motion because the applicant was physically and mentally unfit properly to defend himself.

2. The applicant complains under Article 6 § 1 and 3 (c) of the Convention of the court's refusal to allow him to present his own case on points of fact and to have counsel represent him on points of law and of the court's failure to warn him adequately of the disadvantages that might ensue from his decision to represent himself on points of both fact and law.

THE LAW

1. The Court will first examine the applicant's complaint under Article 6 § 1 and 3 (c) of the Convention that he had to represent himself on points of fact and law. The applicant in essence complains that, although he had the benefit of legal aid, he was not allowed to represent himself on points of fact and to have counsel represent him on points of law only.

The relevant parts of Article 6 of the Convention provide as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... .

...

3. Everyone charged with a criminal offence has the following minimum rights:

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

The Court considers that, since the requirements of Article 6 § 3 are particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the complaint from the point of view of these two provisions taken together (see Eur. Court HR, Isgrò v Italy judgment of 19 February 1991, Series A no. 194-A, p. 12, § 31).

The Court also considers that the above-mentioned provisions do not give the accused an absolute right to decide himself the way in which his defence is to be assured. Courts have in principle the right to make regulations concerning the appearance of lawyers before them. In addition, accused persons on legal aid do not have an absolute right to choose their defence counsel (Eur. Court HR, Croissant v. Germany judgment of 25 September 1992, Series A no. 237-B, pp. 32 and 33, §§ 27 and 29).

The Court recalls that the applicant's initial legal aid certificate covered legal assistance by both a solicitor and a barrister. In these circumstances, it can be assumed that the national authorities considered that representation by counsel at the trial hearing was "required in the interests of justice". However, it appears that there was a breakdown of co-operation between the applicant and his legal representatives who felt obliged to return their brief. In previous cases where the applicant was considered to be responsible for such a breakdown the Convention organs found that the refusal of the trial judge to appoint new counsel did not amount to a violation of Article 6 of the Convention (No. 8386/78, Dec. 9.10.80, D.R. 21, p. 126). They also considered that an applicant could forfeit his rights under Article 6 § 3 (c) of the Convention by personally creating a situation in which at the last minute before the hearing he was left without legal representation (No. 8251/78, Dec. 11.10.79, D.R. 17, p. 166).

In the circumstances of the case, the applicant reacted to the breakdown of confidence between himself and his defence team by refusing to accept any legal representation on points of fact. However, he wished to be represented by counsel on points of law. The judge gave the applicant the following two options: either to continue being represented by counsel on points of both fact and law or to represent himself being advised by a fresh set of solicitors who could consult new counsel on specific points. The applicant opted for the latter course.

The Court considers that in these circumstances no appearance of a violation of Article 6 § 1 and § 3 (c) of the Convention is disclosed. The applicant was given "the right to defend himself in person" and, to a certain degree, the right to "free legal assistance". The refusal of the judge to appoint for the applicant legal aid counsel who would represent him only on points of law, i.e. counsel with limited powers over the conduct of the defence, must be seen as a legitimate exercise by the judge of his power to make regulations concerning the appearance of lawyers before his court. It must be also noted in this connection that on 3 January 1995 the judge observed that, if he were to agree to the applicant's proposal

concerning the modalities of his representation, it would involve an adjournment of the case for a considerable period.

Moreover, it does not transpire that the applicant was not fully aware of the implications of his choice. On 13 October 1994 the judge took pains to ensure that the applicant had formed a firm and considered opinion and that his views had been properly presented to the court. Moreover, on a number of subsequent occasions he gave the applicant the opportunity to reconsider his position. In these circumstances, it must be concluded that, although free legal representation at the hearing, as opposed to advice, appeared to be "required in the interests of justice" the applicant had freely waived this right.

In the light of all the above, the Court considers that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

2. The Court will then consider the applicant's complaint under Article 6 §§ 1 and 3 (b) of the Convention that he was not provided with adequate time and facilities for the proper preparation of his defence.

Article 6 § 3 (b) of the Convention, which must be examined in conjunction with Article 6 § 1, provides as follows:

"Everyone charged with a criminal offence has the following minimum rights:

b. to have adequate time and facilities for the preparation of his defence".

The Court notes that the applicant complains of the judge's failure to order that the court should sit only three times a week, to order a number of adjournments requested by the applicant and to discharge the jury after a long interruption of the proceedings. He also complains of the judge's threatening the applicant with contempt of court when one defence witness did not appear.

The Court recalls that the applicant represented himself at the trial hearing. Although this did not disclose an appearance of a violation of Article 6 of the Convention, the Court recalls that an applicant who represents himself must be given time and facilities for the preparation of his defence that would be adequate in his particular circumstances (No. 8386/78, Dec. 9.10.80, D.R. 21, p. 126). The Court also acknowledges that the applicant's position might have been ameliorated had the domestic court granted his requests for more adjournments and less court sittings per week.

Nevertheless, the Court considers that national judges have a very difficult task in balancing the need to ensure that the defendant has adequate time to prepare his case and the need to ensure that the trial progresses in a reasonably expeditious way. Although the main concern of any court should be that the accused is treated fairly, this does not mean that the court must accede to every request made by the defendant.

Thus, the Court considers that the judge who presided over the applicant's trial cannot be criticised for refusing to accede to the applicant's pre-trial request that the court should sit only three days a week. Moreover, there is no indication that similar requests were made later on during the trial when the question of the applicant's state of health arose.

As regards the judge's refusal to grant two requests for adjournments supported by some medical evidence on 9 January 1995 and 15 March 1995, the Court notes that the evidence submitted by the applicant was not the only medical evidence before the judge. The prosecution submitted countervailing evidence to the effect the applicant was in a fit state to continue with the proceedings. In these circumstances, the Court finds no reason to disagree with the judge's assessment of the applicant's fitness to participate in the proceedings. Not only did the judge have direct knowledge of the applicant's condition but he also proved not to be entirely insensitive to the applicant's state of health, since he did order an adjournment on 11 February 1995.

The Court further considers that the judge's decision to grant only a short adjournment on 25 May 1995 was dictated by his concern not to allow further delays in the proceedings that had already lasted almost five months. It is to be observed that such a long period of time shows that, in general, the applicant had adequate time for preparing of his defence. Moreover, the Court notes that the applicant never requested the judge to discharge the jury, a course that, in any event, would have caused even greater delays.

Finally, the Court notes that the judge's warning that the applicant might be found to be in contempt of court was prompted by the latter's failure to ensure the presence of a defence witness. His aim was, therefore, again to prevent future delays in the proceedings. Moreover, it was given in the jury's absence and, as a result, could not have had any prejudicial impact on the outcome of the proceedings.

The Court, having examined each of the above incidents separately as well as their cumulative impact, considers that the applicant was not thereby inhibited in the presentation of his case and that they did not render the proceedings overall unfair. No appearance of a violation of Article 6 § 1 and § 3 (b) of the Convention is, therefore, disclosed.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

J.-P. Costa
President