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. 45908/99
by J.A.M. WOLFF METTERNICH
against the Netherlands

The European Court of Human Rights (First Section) sitting on 18 May 1999 as a Chamber composed of

Mr J. Casadevall *President*,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mr B. Zupančič,
Mrs W. Thomassen,
Mr T. Pantiru, *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 4 January 1999 by J.A.M. WOLFF METTERNICH against the Netherlands and registered on 3 February 1999 under file no. 45908/99;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1948 and living in Amsterdam. He is represented before the Court by Mr R.A.U. Baron von Quast-Juchter a lawyer practising in The Hague.

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

a. Particular circumstances of the present case

The family of the applicant's mother belongs to the Dutch nobility. Her family is entitled to carry the Dutch noble title of Count (*Graaf*). The family of the applicant's father does not belong to the Dutch nobility. Following his parents' divorce, the applicant officially changed his family name to his mother's maiden name. It appears that the applicant has added "Graaf" as the last of his first names.

On 4 February 1994, he requested the Minister for the Interior (*Minister van Binnenlandse Zaken*) to include him in the Netherlands ancestry register (*filiatieregister*), which would entitle him to carry a noble title. However, as in the Netherlands nobility is only transferred through the paternal line, the Minister rejected his request on 1 July 1994. The applicant's objection (*bezwaar*) against this decision was rejected by the Minister on 12 November 1996.

The applicant's appeal against this decision was dismissed by the Regional Court (*Arrondissementsrechtbank*) of Amsterdam on 21 January 1998. The applicant filed a further appeal with the Administrative Law Division (*Afdeling Bestuursrechtspraak*) of the Council of State.

In an article published on 4 July 1998 in the weekly "Elsevier", it was reported that the Queen of the Netherlands, who is the formal President of the Council of State, and the Minister for the Interior pursue a policy of not intervening in the natural decrease of the number of persons belonging to the Dutch nobility.

On 2 October 1998, the applicant's case was heard before the Administrative Law Division. One of its members, Mr L., repeatedly interrupted the applicant's lawyer and only displayed a negative interest in the applicant's submissions.

On 8 October 1998, the applicant challenged (*wraking*) Mr L. on grounds of bias. On 19 October 1998, the applicant further challenged all members of the Challenge Chamber (*Wrakingskamer*) of the Council of State, arguing that the entire Administrative Law Division cannot be regarded as impartial.

On 12 November 1998, the Administrative Law Division rejected the applicant's request of 8 October 1998 and, as the applicant apparently sought to obtain a decision from the Administrative Law Division, did not deal with his request of 19 October 1998.

On 16 March 1999, the Administrative Law Division rejected the applicant's appeal against the Regional Court's decision of 21 January 1998.

Insofar as the applicant complained that the Dutch rules on transferral of noble titles is contrary to the prohibition of discrimination under the relevant provisions in a number of international instruments, the Administrative Law Division held that there is an objective and reasonable ground for the difference in treatment as regards transferral of noble titles which lies in the circumstance that it concerns a historical institution which derives its right of existence solely from that historical character and therefore does not lend itself for adaptation to more recent views on equal treatment. The Administrative Law Division further noted that this difference in treatment applies equally to both men and women.

b. Relevant domestic law

Pursuant to the Act on Nobility (*Wet op de Adeldom*), and apart from the situation in which a Dutch noble title is transmitted via the paternal line at birth, ennoblement can only take place by elevation (*verheffing*) or incorporation (*inlijving*). Elevation is only possible for members of the Netherlands royal family. Incorporation is only possible for persons belonging to a foreign family with a recognised noble status in their country of origin and only where a request for incorporation has been made on the moment the person concerned obtains Dutch nationality.

Ennoblement takes place by a Royal Decree (*Koninklijk Besluit*). Under the relevant provisions of Dutch law governing names, noble titles and predicates form a part of a noble person's family name. The unlawful carrying of a noble title may attract consequences under Dutch criminal law.

In a decision of 21 February 1995 (Case no. R01.92.0559), the Administrative Law Division held that noble status is to be regarded as a historically grown institute to which, since 1848, no longer any rights and freedoms pertain.

COMPLAINT

The applicant complains under Article 6 § 1 of the Convention that, since the views on the underlying matter held by the highest representative of the Council of State, of which the Administrative Law Division forms a part, have become publicly known before his case was determined, it cannot be said that his case was decided by an independent and impartial tribunal. The farfetched reasons stated in the decision of 16 March 1999 only constitute a further indication that the Administrative Law Division cannot be regarded as an impartial and independent tribunal in the present case. He further submits to have incurred considerable damage as a result of this lack of independence and impartiality in that, *inter alia*, he has incurred legal costs. It was further his intention to register his name, including his noble title, as a trade name, which is now impossible.

THE LAW

The applicant complains under Article 6 § 1 of the Convention that, in the proceedings at issue, the Administrative Law Division of the Council of State cannot be regarded as independent and impartial.

Article 6 § 1 of the Convention, insofar as relevant, provides as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ..."

The Court considers at the outset that the Convention does not guarantee, as such, a right to be included in an ancestry register and thus to become entitled to carry a noble title.

As regards the question whether the proceedings at issue fall within the scope of Article 6 § 1 of the Convention under its "civil" head, the Court recalls that there must be a "dispute" ("contestation" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The "dispute" must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. The outcome of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (cf. Eur. Court HR, Masson and Van Zon v. the Netherlands judgment of 28 September 1995, Series A no. 327-A, p. 17, § 44).

It is clear from the facts of the case that there was a "dispute" and that the subject matter of this dispute concerned the question whether the applicant is entitled to carry the noble title of "Graaf". As regards the question whether this dispute concerned a "right" so as to attract the applicability of Article 6 § 1, the Court will first address the issue whether a "right" to the noble title claimed could arguably be said to be recognised under national law.

In this connection, in deciding whether a "right", civil or otherwise, could arguably be said to be recognised by Netherlands law, the Court must have regard to the relevant domestic legal rules on obtaining a noble status.

It appears that, according to the Act on Nobility, a noble status in the Netherlands can only be obtained in three manners, i.e. at birth by transmission via the paternal line, by elevation of a person belonging to the Netherlands royal family or by incorporation where a foreign person holding a noble status recognised in the country of origin obtains Dutch nationality.

The Court observes that it has not been submitted nor has it appeared that the applicant falls in any of these three categories. The Court is of the opinion that the absence of any discretion in the applicable domestic statutory rules as to the ennoblement of persons not falling within the above three categories indicates that no actual right is recognised in Dutch law.

The Court, therefore, concludes that the claim asserted by the applicant did not in any event concern a "right" which could arguably be said to be recognised under the law of the Netherlands. Consequently, the proceedings at issue cannot be regarded as falling within the scope of Article 6 § 1 of the Convention.

It follows that the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention, and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Josep Casadevall
President