PARTIAL

AS TO THE ADMISSIBILITY OF

Application No. 15379/89
by J.Z.
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 2 June 1989 by J.Z. against the Netherlands and registered on 18 August 1989 under file No. 15379/89;

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 1919 and at present residing in Meeuwen-Gruitrode (Belgium). In the proceedings before the Commission he is represented by Mr. A. Duynstee, a lawyer practising in Maastricht, the Netherlands.

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

On 11 May 1984, the applicant was arrested and charged with bribery of a public official, forgery and use of forged documents. On 29 January 1985, the applicant was released on condition that he provided bail of 350.000 Dutch guilders and that he reported to the investigating judge (Rechter-Commissaris) every week. This latter condition was lifted on 14 February 1986.

On 24 June 1987, the Regional Court (Arrondissementsrechtbank) of Maastricht found the applicant guilty of some of the charges of bribery of a public official and forgery and acquitted him of the other charges. The Court sentenced the applicant 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 acquitted the applicant. His co-accused M., a public

official, was also acquitted of the charges of accepting bribes, cheating, forgery and the use of forged documents, after part of the original charges against him had been declared null and void.

On 5 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 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 486.394,60 Dutch guilders - among which 470.000 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 arguing that there was no reasonable ground for granting it. The Court stated that the applicant had been arrested and detained on remand on suspicion of having bribed a public official and that this suspicion had continued during the examination of the criminal case by the Court of Appeal. The applicant had been acquitted of the specific charge of bribery, but during its examination of the criminal charges, the Court had found established that the applicant had made some payments to M., his co-accused, and it had come, on the basis of lawful and serious indications, to the conclusion that part of these payments had been made following an illicit arrangement, although the latter circumstances had not been included as such in the original indictment.

On the same day, 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 3.559,80 guilders for travelling and subsistence costs (reis- en verblijfkosten). He rejected the remainder of the request. The President of the Court, referring to the decision

given the same day by the Court of Appeal, pointed out that there had been some reasonable suspicions that the applicant had committed the offence of bribery of a public official, though he had been acquitted of this charge. It also pointed out that the applicant had from the very beginning of the investigation misled the officers involved in the investigation and the courts and caused an exceptionally elaborate inquiry. Under these circumstances, the President of 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.

COMPLAINTS

1. Invoking Article 6 para. 1 of the Convention, the applicant complains that he was denied compensation and reimbursement of the legal and subsidiary costs after acquittal. He submits that this provision guarantees a right to compensation for detention on remand undergone by a person who is subsequently acquitted of all charges, as well as a right to reimbursement of the necessary expenses of an acquitted person and to compensation for all the (material and non-material) damage suffered by this person.

The applicant also complains under Article 6 para. 1 of the Convention that his request was not examined in public by an impartial tribunal, though these proceedings concerned the determination of civil rights and obligations.

2. The applicant also complains that the reasons given in the decisions rejecting his requests for compensation infringe the presumption of innocence guaranteed by Article 6 para. 2 of the Convention.

3. The applicant finally complains that Dutch law does not guarantee any right of appeal against decisions relating to compensation and reimbursement of the necessary legal expenses after acquittal. Invoking Article 13 of the Convention, he complains that he had no effective remedy to redress the violations of the Convention committed by the Court of Appeal and its President in the judgments of 9 December 1988.

THE LAW

1. The applicant complains that he was denied compensation and reimbursement of the legal and subsidiary costs after acquittal.

Invoking Article 6 para. 1 (Art. 6-1) of the Convention, he complains that neither of his requests were examined in public by an impartial tribunal, as required by Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1), first sentence, of the Convention reads:

> "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 within a reasonable time 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 first has 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.

2. The applicant also complains that the reasons given in the decisions rejecting his requests for compensation infringe 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 provides as follows:

> "2. 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.

According to the jurisprudence of the Convention organs 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 judicial decision concerning compensation reflects an opinion that he is guilty (Eur. Court H.R., Nölkenbockhoff judgment of 25 August 1987, Series A no. 123, p. 79, para. 37).

In this respect, the European Court of Human Rights found it 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 9 December 1988, the Court of Appeal of 's-Hertogenbosch decided that there were no reasonable grounds for granting compensation under Section 89 of the Code of Criminal Procedure and its President rejected the request for reimbursement of lawyers' fees on the basis of Section 591 (a) of the same Code. These decisions were based, on the one hand, on the fact that there had been some reasonable suspicions that the applicant had committed the offence of bribery of a public official, though he had been acquitted of this charge and, on the other hand, on the fact that the applicant had adopted from the very beginning of the investigation a misleading attitude which put the officers involved in the investigation and the courts on a wrong track and led to an exceptionally extensive inquiry.

The Commission considers that the decisions of 9 December 1988 did not contain any finding of guilt as to the original charges. Furthermore, the Court of Appeal and its President, acting on an equitable basis and having regard to the above-mentioned circumstances, did not impose any sanctions on him, but merely refused to order that his costs and expenses or any compensation should be paid out of public funds (cf., mutatis mutandis, No. 11150/84, Dec. 9.12.87, unpublished).

Consequently, the Commission finds that the decisions of 9 December 1988 do not amount to a violation of the principle of the presumption of innocence as guaranteed in Article 6 para. 2 (Art. 6-2)

of the Convention.

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

3. The applicant finally complains that Dutch law does not guarantee any right of appeal against decisions relating to compensation or reimbursement of the necessary legal expenses after acquittal. Invoking Article 13 (Art. 13) of the Convention, he explains that he had no effective remedy to redress the violations of the Convention committed by the Court of Appeal and its President in the judgments of 9 December 1988.

The Commission recalls that Article 13 (Art. 13) of the Convention confers on everyone whose rights and freedoms guaranteed by the Convention have been violated a right to an effective remedy before a national authority.

Insofar as the present complaint lies inside the scope of Article 6 (Art. 6) (see above, point 1), the Commission recalls its case-law, according to which this provision does not require that there should be several degrees of court jurisdictions (cf. No. 5849/72, Dec. 16.12.79, D.R. 1 p. 46; No; 12446/86, Dec. 5.5.88, unpublished). Consequently, the applicant did not have, under Article 13 (Art. 13), a right to a remedy against the decisions of the Court of Appeal of 9 December 1988.

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

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 and reimbursement of legal and other costs after acquittal;

- unanimously, DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)