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EGMR Nr. 44320/98 - Urteil vom 28. Oktober 2003 (Baars v. Niederlande)

Unschuldsvermutung: Schutz vor (Kosten-)Entscheidungen, welche den Angeklagten formal oder materiell ohne vorherigen gesetzlichen Schuldbeweis und ohne die Möglichkeit zur Ausübung der Verteidigungsrechte für schuldig erklären (Abgrenzung von -missverständlicher / bedenklicher - Verdachtsdarstellung und materieller Schuldfeststellung; Schutz auch bei Verfahrenseinstellung ohne vorherigen Freispruch); kein Entschädigungsanspruch nach Verfahrenseinstellung gemäß EMRK (Recht auf Privatleben).

Art. 6 Abs. 2 EMRK; Art. 8 EMRK

Leitsätze des Bearbeiters

1. Die Unschuldsvermutung wird verletzt, wenn eine justitielle Entscheidung einen Angeklagten als schuldig einschätzt, ohne dass zuvor ein gesetzlicher Schuldbeweis erbracht worden ist und der Angeklagte seine Verteidigungsrechte ausüben konnte. Dies kann auch der Fall sein, wenn keine formale Schuldfeststellung erfolgt. Es genügt für eine Verletzung, wenn die Entscheidungsbegründung zeigt, dass das Gericht den Angeklagten als schuldig ansieht.

2. Weder Art. 6 Abs. 2 EMRK noch eine andere Vorschrift der EMRK gewährt einem Angeklagten ein Recht auf eine Entschädigung, wenn ein gegen ihn eingeleitetes Verfahren eingestellt worden ist. Die Verweigerung einer Entschädigung hinsichtlich der für das Verfahren angefallenen Auslagen und Kosten stellt für sich genommen noch keine Verletzung der Unschuldsvermutung dar.

3. Die Entscheidung über eine solche Entschädigung nach der Beendigung des Verfahrens kann jedoch durch ihre Begründung zu einer Verletzung der Unschuldsvermutung führen, wenn zuvor der gesetzliche Schuldbeweis nicht erbracht worden ist und der Angeklagte seine Verteidigungsrechte nicht ausüben konnte. Dies gilt auch dann, wenn die Beendigung des Verfahrens nicht durch einen Freispruch erfolgt ist. Die Bezugnahme auf einen nach dem vorherigen Verfahren verbliebenen Tatverdacht führt dabei allein noch nicht zu einer Verletzung, selbst wenn die Äußerungen missverstanden werden können.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE 1

9. The applicant was born in 1928 and lives in Maaseik (Belgium). 2

10. On 15 February 1993 the applicant was arrested and taken into police custody (*verzekering*) on suspicion of forgery and of being an accessory to bribery of a public official. The public official concerned was a Mr B. The applicant was released from police custody on 19 February 1993. On 7 June 1995 the applicant was informed that the preliminary judicial investigation (*gerechtelijk vooronderzoek*) into the case had been closed. 3

11. By summons of 24 August 1995, the applicant was ordered to appear on 7 September 1995 before the Maastricht Regional Court (*arrondissementsrechtbank*) on charges of forgery committed together with others between 5 October 1991 and 5 November 1992. 4

12. Criminal proceedings had already been brought before the Maastricht Regional Court against Mr B. in relation to the same facts. Although both sets of criminal proceedings concerned the same facts, the criminal proceedings brought against Mr B. and the applicant were conducted separately. 5

13. In its judgment of 11 October 1995 in the applicant's case, the Maastricht Regional Court declared the prosecution inadmissible. It held that the judicial authorities had failed to deal with the applicant's case with the required diligence 6

and that therefore the applicant's right to a trial within a reasonable time under Article 6 § 1 of the Convention had been violated. The public prosecutor lodged an appeal with the 's-Hertogenbosch Court of Appeal (*gerechtshof*), but informed the applicant on 17 August 1996, before the appeal proceedings had commenced, that this appeal had been withdrawn.

14. On 20 January 1997, in the course of the criminal proceedings on appeal in the case of Mr B., the applicant was heard as a witness before the 's-Hertogenbosch Court of Appeal. In its judgment of 3 February 1997, the 's-Hertogenbosch Court of Appeal convicted Mr B. of, *inter alia*, participating in forgery. It was found established that a receipt dated 9 October 1991 in relation to an alleged payment of NLG 7,414 by Mr B. to the applicant had been fraudulently written out in co-operation with Mr B. 7

15. In the meantime, on 18 November 1996, the applicant had lodged a request under Article 591a of the Code of Criminal Procedure (*Wetboek van Strafvordering*) for the reimbursement of costs and expenses incurred in the course of the criminal proceedings against him. His total claim amounted to NLG 104,708.80. On the same day he had lodged a request under Article 89 of the Code of Criminal Procedure for compensation for pecuniary and non-pecuniary damage caused by his having been kept in police custody. This claim amounted to NLG 205,000. 8

16. In its decision of 2 April 1997 in respect of the applicant's claim for costs and expenses incurred, the Maastricht Regional Court awarded the applicant an amount of NLG 114.60 for travel expenses and rejected his claims for the remainder. In a separate decision of the same date, the Maastricht Regional Court rejected the applicant's claim for compensation for the time spent in pre-trial detention. The applicant lodged appeals against both decisions with the 's-Hertogenbosch Court of Appeal. 9

17. In two separate decisions of 19 March 1998, the Court of Appeal rejected the applicant's appeals against the two decisions of 2 April 1997 in relation to his claim for costs and expenses and his claim for the time spent in pre-trial detention. Its reasoning in both decisions included the following: 10

"It appears from the case against the co-accused B., in which the Court of Appeal delivered its final judgment on 3 February 1997 convicting B. of, amongst other things, 'participating in forgery', that the document referred to under a. above is a receipt. 11

The Court of Appeal takes the view that this receipt was forged by the applicant together with B. who was then an alderman of Maastricht. Given the following circumstances: 12

a. It is stated on this receipt that it was drawn up on 9 October 1991, whereas B. has stated that he was not in the Netherlands on that date and the applicant, heard as a witness at the appeal hearing on 20 January 1997 in the criminal case against B., has stated that the receipt was drawn up and signed after the journey to Egypt, i.e. after 27 or 28 November 1991; 13

b. B. initially stated that he had received the sum allegedly paid to him by the applicant from his son, which his son confirmed; 14

c. B. stated, after he and his son had withdrawn these statements, that he had received that money from his mother-in-law; 15

d. B.'s mother-in-law stated unambiguously on 12 February 1993 that she had never given her son-in-law any money, nor given any into his safe-keeping; 16

e. all the expenses for the journey to Egypt billed by the ... travel agency were debited to the account of 'travel, accommodation and representation expenses' of Baars Contractors and Road Builders Ltd. (*Aannemings- en wegenbouwmaatschappij Baars B.V.*) - that is, as business expenses - and were only debited to the private current account of the applicant, on the applicant's instructions, on 21 January 1992, the Court of Appeal finds in its judgment of 3 February 1997 that B. did not at any time, and in particular, did not on 9 October 1991 pay the sum of NLG 7,414 to the applicant. Based on these circumstances, from which it follows that the applicant - if the prosecution department had not forfeited the right to prosecute by exceeding a reasonable time and [the prosecution] had not been declared inadmissible by the Regional Court for that reason - would in all likelihood (*met grote mate van waarschijnlijkheid*) have been convicted, the Court of Appeal finds no reasons in equity for awarding compensation, and it will therefore dismiss the appeal." 17

II. RELEVANT DOMESTIC LAW 18

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THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION 20

19. The applicant complained under Article 6 § 2 of the Convention that the reasoning of the decisions of 19 March 1998 ran counter to the principle of the presumption of innocence enshrined in Article 6 § 2 of the Convention, which provides as follows: 21

" Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Government disputed this. 22

20. The applicant argued that the decisions at issue did not merely describe a state of continued suspicion but clearly reflected a finding that he was guilty. This finding was reached on the basis of proceedings against another person, to which he - the applicant - had not been party and in which he had not been able to exercise the rights of the defence. In his view, in the determination of requests under Articles 89 and 591a of the Code of Criminal Procedure, domestic courts ought only to have regard to the contents of the case-file of the person concerned. 23

21. The Government did not dispute the applicability of Article 6 § 2 to the proceedings in question. They submitted, however, that no violation of that provision could be found. Referring to the Court's case-law, in particular its judgments in the cases of *Lutz v. Germany*, *Englert v. Germany* and *Nölkenbockhoff v. Germany* (judgments of 25 August 1987, Series A no. 123), they argued that the Court of Appeal had merely taken into account the suspicion that still weighed against the applicant. It had concluded, as it was fully entitled to in light of the European Court's *Leutscher v. the Netherlands* judgment (26 March 1996, *Reports of Judgments and Decisions* 1996-II), that there were no reasons in equity to order the payment of compensation to the applicant. 24

22. The considerations on which the Court of Appeal had based the decisions complained about could not be interpreted otherwise than as a description of the suspicions against the applicant. They were in any case similar to those in other cases decided by the Convention organs, which had resulted in decisions of inadmissibility (*Kandel v. the Netherlands* [dec.], no. 25513/94, 18 May 1995, and *Hibbert v. the Netherlands* [dec.], no. 38087/97, 26 January 1999). 25

23. The Government further noted that, unlike in other cases such as that of *Sekanina v. Austria* (judgment of 25 August 1993, Series A no. 266), the applicant in the present case had never been formally acquitted. 26

24. While it was true that the Court of Appeal had had regard to the case against B., who had in fact been found guilty, it had to be remembered that B.'s conviction related to the same forgery as that which had given rise to the prosecution of the applicant. The facts and evidence in the two cases were therefore necessarily similar. 27

25. The Court notes that it is not part of its duties to rule on the scope of the examination by the Netherlands domestic courts of requests under Articles 89 and 591a of the Code of Criminal Procedure. Its task in the present case is solely to decide whether the facts complained of disclose a violation of Article 6 § 2 of the Convention. 28

26. In the *Minelli v. Switzerland* judgment of 25 March 1983 (Series A no. 62, p. 18, § 37), the applicable principle was stated as follows: 29

"In the Court's judgment, the presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law and, notably, without his having had the opportunity of exercising his rights of defence, a judicial decision concerning him reflects an opinion that he is guilty. This may be so even in the absence of any formal finding; it suffices that there is some reasoning suggesting that the court regards the accused as guilty."

27. In the *Lutz* judgment (*Lutz v. Germany*, judgment of 25 August 1987, Series A no. 123, p. 25, §§ 59-60, references omitted), the Court added: 30

"The Court points out, first of all, like the Commission and the Government, that neither Article 6 § 2 nor any other provision of the Convention gives a person 'charged with a criminal offence' a right to reimbursement of his costs where proceedings taken against him are discontinued. The refusal to reimburse Mr. Lutz for his necessary costs and expenses accordingly does not in itself offend the presumption of innocence (...). Nevertheless, a decision refusing reimbursement of an accused's necessary costs and expenses following termination of proceedings may raise an issue under Article 6 § 2 if supporting reasoning which cannot be dissociated from the operative provisions amounts in substance to a determination of the accused's guilt without his having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence".

28. The similarity of the present case with the *Lutz* case is that the criminal proceedings in both cases ended without 31

any decision on the merits because the prosecution was time-barred. In the subsequent proceedings in the *Lutz* case concerning reimbursement of costs and expenses, the German first-instance court noted (*loc. cit.*, § 62):

"that 'as the file [stood], the defendant would most probably have been convicted' (...). When dismissing the applicant's appeal, the Regional Court held, among other things, that had the prosecution not been statute-barred, the defendant 'would almost certainly have been found guilty of an offence'(...)". 32

The Court concluded that the German courts thereby meant to indicate, as they were required to do for the purposes of the decision, that there were still strong suspicions concerning the applicant. It added that, even if the terms used might appear ambiguous and unsatisfactory, the national courts had confined themselves in substance to noting the existence of "reasonable suspicion" that the defendant had "committed an offence". On the basis of the evidence, in particular Mr Lutz's earlier statements, the decisions described a "state of suspicion" and did not contain any finding of guilt. In this respect the Court found that there was a contrast with the more substantial, detailed decisions which the Court had considered in the aforementioned *Minelli* case. 33

29. In the present case, however, the Court of Appeal based its decision not to make any award to the applicant, who had been charged with forgery, on its view that "[the] receipt [had been] forged by the applicant" and enumerated in detail the elements from which this followed. 34

30. In these circumstances, it cannot be said that the Court of Appeal merely indicated that there were still strong suspicions concerning the applicant. 35

31. The reasoning of the Court of Appeal amounts in substance to a determination of the applicant's guilt without the applicant having been "found guilty according to law". It was based on findings in proceedings against another person, Mr B. The applicant participated in these other proceedings only as a witness, without the protection that Article 6 affords the defence. 36

32. The Court therefore finds that there has been a violation of Article 6 § 2 of the Convention. 37

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION 38

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FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 2 of the Convention; 40

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