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

FIRST SECTION

CASE OF CAPEAU v. BELGIUM

(Application no. 42914/98)

JUDGMENT

STRASBOURG

13 January 2005

In the case of Capeau v. Belgium,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 December 2004,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 42914/98) against the Kingdom of Belgium lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Belgian national, Mr Wim Capeau ("the applicant"), on 29 May 1998.

2. The applicant was represented by Mr N. van Overloop, a lawyer practising in Ghent. The Belgian Government ("the Government") were represented by their Agent, Mr C. Debrulle, Director-General, Federal Justice Department.

3. The applicant complained of a violation of Articles 5 § 1 (c), 6 § 2 and 14 of the Convention, contending that the statutory requirement to establish his innocence by adducing factual evidence or submitting legal argument to that effect was incompatible with the presumption of innocence.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 6 April 2004, the Chamber declared the application partly admissible.

7. The Government filed observations on the merits of the case (Rule 59 § 1). The applicant did not submit any observations within the time allowed.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1967 and lives in Ghent.

9. On 29 March 1994 he was arrested in connection with an investigation concerning a case of arson committed on 25 May 1993.

10. On 1 April 1994 the Committals Division of the Ghent Criminal Court refused to extend the validity of the arrest warrant. On appeal, the Indictment Division of the Ghent Court of Appeal overturned that decision and prolonged the applicant's pre-trial detention.

11. On 21 April 1994 the investigating judge rescinded the warrant concerned.

12. On 29 June 1994 and 2 June 1995 respectively the Committals Division and the Indictment Division, ruling on the action to be taken on the basis of the investigation to date, held that there was insufficient evidence to commit the applicant for trial and discontinued the proceedings.

13. On 25 October 1996 the applicant claimed compensation for unwarranted pre-trial detention, relying on the Law of 13 March 1973 (see "Relevant domestic law" below).

14. On 12 May 1997 the Minister of Justice refused the applicant's claim on the ground that he had not "established his innocence by adducing factual evidence or submitting legal argument to that effect", as required by section 28(1)(b) of the Law of 1973. That requirement was justified, according to the Minister, in the case of an order or judgment discontinuing criminal proceedings, given that a discontinuation decision was not a bar to the reopening of the case if new information or evidence were to come to light.

15. On 4 July 1997 the applicant contested the Minister's decision by means of an application to the Unwarranted Pre-trial Detention Appeals Board.

16. On 1 December 1997 the applicant appeared before the Appeals Board, which upheld the refusal of his claim by a decision taken on the same day and served on the applicant on 29 March 1998. It noted that the grounds for presuming the guilt of the applicant, who had always denied committing the offence he stood accused of when appearing before the courts investigating the charge, had been held to be insufficient to justify committing him for trial. It observed that, although the applicant had announced his intention of submitting a pleading setting out the evidence in the file which "amply" proved his innocence, he had not done so and had not replied to the Government's submissions. Consequently, the Appeals Board found that he had not proved his innocence as the law required (*dat*

verzoeker derhalve het bij de wet van hem vereiste bewijs van onschuld niet bijbrengt).

II. RELEVANT DOMESTIC LAW

17. At the material time the relevant provisions of the Law of 13 March 1973 on compensation for unwarranted pre-trial detention read as follows:

Section 27

"(1) Any person deprived of his liberty in conditions incompatible with Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, approved by the Law of 18 May 1955, shall be entitled to compensation.

(2) The action for compensation shall be brought in the ordinary courts in accordance with the formalities laid down in the Judicial Code and directed against the Belgian State in the person of the Minister of Justice."

Section 28

"(1) A compensation claim may be lodged by any person held in pre-trial detention for more than eight days, provided the detention concerned or its prolongation were not provoked by his own conduct:

(a) if he has been exculpated directly or indirectly by a judicial decision that has become final;

(b) if after being discharged through an order or judgment discontinuing the proceedings he establishes his innocence by adducing factual evidence or submitting legal argument to that effect;

(c) if he has been arrested or kept in detention after expiry of any statutory limitation period;

(d) if he has been discharged through an order or judgment discontinuing the proceedings which expressly states that the act which gave rise to the pre-trial detention did not constitute a criminal offence.

(2) The amount of compensation shall be determined equitably, and with regard to all the circumstances of public and private interest.

(3) Where the person concerned is not able to bring compensation proceedings in the ordinary courts, compensation may be claimed by means of a written request to the Minister of Justice, who shall rule on it within six months.

The compensation shall be awarded by the Minister of Justice from the Treasury account if the conditions set out in subsection (1) above are satisfied.

Where compensation is refused, or the amount is considered insufficient, or the Minister of Justice has not replied within six months of the request, the person concerned may apply to the Board set up in accordance with subsection (4) below.

In the case of prosecution for one of the offences defined in Articles 147, 155 and 156 of the Criminal Code, committed against the person detained, the six months mentioned in the preceding paragraph shall begin to run on the day when that prosecution is closed by a decision that has become final.

(4) An Appeals Board is hereby instituted to hear appeals against decisions taken by the Minister of Justice, or rule on compensation claims where the Minister has not reached a decision in accordance with the conditions set out in subsection (3) above.

The Appeals Board shall be composed of the President of the Court of Cassation, the President of the *Conseil d'Etat* and the President of the Belgian Bar Association or, where one or more of those persons are prevented from sitting, of the Vice-President of the Court of Cassation, the Vice-President of the *Conseil d'Etat* and the Vice-President of the Bar Association.

The duties of secretary to the Appeals Board shall be performed by one or more members of the registry of the Court of Cassation appointed by its president.

The rules of procedure of the Appeals Board shall be laid down by the Crown.

(5) Appeals and claims shall take the form of applications in two copies signed by the claimant or his lawyer and lodged with the registry of the Court of Cassation within sixty days of the Minister's decision or of the expiry of the time within which he should have announced it.

The Crown shall lay down the procedure before the Appeals Board sitting in closed session.

The Appeals Board shall give its ruling on the opinion expressed at the hearing by Principal Crown Counsel attached to the Court of Cassation, after hearing the submissions of the parties.

The Appeals Board's decisions shall be delivered at a public sitting. No appeal shall lie against them.

At the parties' request, an extract from the Appeals Board's decision shall be published in the *Moniteur belge*, but the extract may not mention the amount awarded. The costs of publication shall be borne by the Treasury.”

THE LAW

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

18. The applicant complained that his compensation claim had been refused on the ground that he had not established his innocence by adducing factual evidence or submitting legal argument to that effect. He argued that this constituted a breach of Article 6 § 2 of the Convention, which provides:

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

19. The Government referred to the Court's case-law. In the instant case the decision to discontinue the proceedings against the applicant had left open the possibility of reopening the case if new evidence came to light. When examining the applicant's compensation claim, the Appeals Board had noted that he had neither quantified the claim nor informed it of the evidence in the file which established his innocence, contrary to his stated intention. Furthermore, the applicant had not replied to the submissions of the Ministry of Justice. Thus he had neither attempted to adduce the evidence required nor provided clarifications which might have permitted the Appeals Board to make an equitable ruling on the damage he had allegedly sustained, if it thought that was justified. The Appeals Board had therefore been compelled to find that the applicant had not established his innocence. In doing so it had identified a state of lingering suspicion which did not imply any finding of guilt.

20. The applicant submitted that Article 6 § 2 of the Convention was breached where a person was refused compensation for pre-trial detention imposed for a reason which implied his or her guilt when there had been no formal finding to that effect and when the claimant had not had the opportunity to exercise the rights secured by Article 6 of the Convention. In the present case, the reasoning given in the decisions of the Minister of Justice and the Appeals Board left no doubt that the applicant's claim had been refused on account of his presumed guilt. The forms of words used went well beyond mere suspicions or suppositions. The fact that claimants were required by section 28(1)(b) of the Law of 1973 to adduce evidence of their innocence established a presumption of guilt incompatible with Article 6 § 2 of the Convention. In short, there had been a violation of that provision.

21. The Court reiterates that the Convention must be interpreted in such a way as to guarantee rights that are practical and effective as opposed to theoretical and illusory (see, among other authorities, *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, pp. 15-16, § 33; *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 34, § 87;

and *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, pp. 35-36, § 99); that also applies to the right enshrined in Article 6 § 2 (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, p.16, § 35).

22. According to the Court's case-law, the presumption of innocence is infringed if a judicial decision concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court regards the accused as guilty. The scope of Article 6 § 2 is not therefore limited to pending criminal proceedings but extends to judicial decisions taken after prosecution has been discontinued (see, among other authorities, *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62; *Englert v. Germany*, judgment of 25 August 1987, Series A no. 123-B; and *Nölkenbockhoff v. Germany*, judgment of 25 August 1987, Series A no. 123-C) or after an acquittal (see *Sekanina v. Austria*, judgment of 25 August 1993, Series A no. 266-A; *Rushiti v. Austria*, no. 28389/95, 21 March 2000; and *Lamanna v. Austria*, no. 28923/95, 10 July 2001).

23. In addition, the Court observes that, according to its settled case-law, 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 or a right to compensation for lawful detention on remand where proceedings against him are discontinued (see *Dinares Peñalver v. Spain* (dec.), no. 44301/98, 23 March 2000; see also *Englert* and *Sekanina*, cited above, p. 54, § 36, and pp. 13-14, § 25, respectively). Merely refusing compensation does not therefore in itself infringe the presumption of innocence (see, *mutatis mutandis*, *Nölkenbockhoff* and *Minelli*, cited above, p. 79, § 36, and p. 17, §§ 34-35, respectively).

24. The Court is therefore required to determine whether the Unwarranted Pre-trial Detention Appeals Board, through the way it conducted its business, the reasons it gave for its decision or the language in which it set out its reasoning, allowed doubt to be cast on the presumption of the applicant's innocence, when he had not been proved guilty according to law.

25. The Court notes that the Appeals Board's refusal was based solely on the fact that the applicant had not supported his compensation claim by adducing evidence of his innocence. Although it was founded on section 28(1)(b) of the Law of 13 March 1973, which expressly provides that a person against whom proceedings have been discontinued must establish his innocence by adducing factual evidence or submitting legal argument to that effect, such a requirement, without qualification or reservation, casts doubt on the applicant's innocence. It also allows doubt to attach itself to the correctness of the decisions by the investigating courts, notwithstanding the observation in the Appeals Board's decision that the evidence against the

applicant at the time when he appeared before those courts had been judged insufficient to justify committing him for trial. It is true that the voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation (see *Sekanina*, cited above, pp. 15-16, § 30), and that in Belgian law a discontinuation order does not bar the reopening of a case in the event of new evidence or new developments. However, the burden of proof cannot simply be reversed in compensation proceedings brought following a final decision to discontinue proceedings. Requiring a person to establish his or her innocence, which suggests that the court regards that person as guilty, is unreasonable and discloses an infringement of the presumption of innocence. The Court would observe in that connection that, in criminal cases, the whole matter of the taking of evidence must be looked at in the light of Article 6 § 2 and requires, *inter alia*, that the burden of proof be on the prosecution (see *Barberà, Messegué and Jabardo v. Spain*, judgment of 6 December 1988, Series A no. 146, p. 33, §§ 76-77). Consequently, the reasoning of the Unwarranted Pre-trial Detention Appeals Board was incompatible with respect for the presumption of innocence.

26. In conclusion, there has been a violation of Article 6 § 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

27. The applicant submitted that the provisions of the Law of 13 March 1973 were discriminatory in that they imposed different conditions for the award of compensation for unwarranted pre-trial detention depending on whether the remand prisoner had been discharged by the investigating court on the ground that there was no case to answer or acquitted by the trial court. He argued that this constituted discrimination in relation to the right guaranteed by Article 6 § 2 of the Convention. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

28. The Government argued that there had been no violation of Article 14 of the Convention in the case. They contended that the difference in treatment complained of was justified by the provisional nature of a discontinuation decision given that, unlike an acquittal, a discontinuation decision based on the ground that there was no case to answer did not bar the reopening of the case if new evidence came to light.

29. The applicant submitted that the situation in issue constituted an unjustified difference in treatment in that a person whom the investigating court had decided it could not commit for trial because there was no case to

answer had to establish his or her innocence by adducing factual evidence or submitting legal argument to that effect, whereas a person who had been committed for trial – and against whom therefore, it had to be supposed, there was some serious prima facie evidence – but was later acquitted, even with the benefit of the doubt, did not have to prove his or her innocence.

30. The Court considers that this complaint relates to the same legal situation as the one in respect of which it has found a breach of Article 6 § 2 of the Convention, and therefore does not deem it necessary to examine it separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

32. After the decision on admissibility, the applicant's counsel did not submit any claim for just satisfaction within the time allowed, although in the letter sent to him on 8 April 2004 his attention had been drawn to Rule 60 of the Rules of Court, which provides that any claim for just satisfaction under Article 41 must be set out in the written observations on the merits. Accordingly, since the Court received no reply within the time prescribed in the letter accompanying the decision on admissibility, it considers that there is no reason to award any sum under Article 41 of the Convention (see *Willekens v. Belgium*, no. 50859/99, § 27, 24 April 2003).

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that it is not necessary to consider whether there has been a violation of Article 14 of the Convention.

Done in French, and notified in writing on 13 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Christos ROZAKIS
Registrar President