The public Court Trial

of

Dutch Court “Hoge Raad”

Case: Dutch judge is only presumed impartial

Introduction

This case is a national matter, but impossibly only in this country in Europe due to the violation of dependency or partiality.

In the Netherlands are two Supreme Courts. One is titled “Raad van State” and the other is titled “Hoge Raad” (hereafter mentioned as**:** “HR”). The RvS has exclusive jurisdiction on the General Administrative Law Act that rules deeds, actions or behaviour of official bodies or official authorities. All other laws are the exclusive jurisdiction of the HR.

In the Netherlands is a special Court Trial titled (in Dutch) “Wraking”. This Court Trial is handled by a distinct tribunal in the same Court. By law must each accusation that a litigant may have against a judge and this accusation damages the case-law, be submitted before the main case is handled. In practice the Court Trial “Wraking” is demanded in the same document that starts the Court Trial of the ‘main’ case. Each accused judge or tribunal looses instantly the empowerment to judge and must postpone the litigation.

In an appeal in cassation argued a civilian that the deciding tribunal did not meet the requirement of an impartial tribunal as required by article 6 of the EU-Convention for the Protection of Human Rights and Fundamental Freedoms.

In its publicly pronounced cassation decision considers the HR in paragraph 3.3 –second sentence– (Quote): "*Bij de beoordeling van een beroep op het ontbreken van onpartijdigheid van de rechter dient voorop te staan dat een rechter uit hoofde van zijn aanstelling moet worden vermoed onpartijdig te zijn.*".
This is translatable in (English Quoted):
"*When judging an appeal for the lack of impartiality of a judge, must firstly be considered that a judge is presumed to be impartial on the basis of his appointment*".

This cassation decision has case number 01163/07, archive registration ECLI:NL:HR:2008:BC3785 and is attached although it is written in Dutch. A translatable in English version is at the moment not available.

The facts of violation

The following facts are selected by their international judgeable ability.

The national law violations are gathered in the webdossier (*1) and the factual co-basis of an appeal that is addressed to the Dutch King. This appeal is available in the webdossier "www.de-openbare-zaak.nl" in the international section in English in the rubric "Exceptional Letters" behind item 00 "Higher appeal to the Dutch King". These national law violations are involved because in other countries is a judiciary comparable working.

(01) A judge is presumed to be impartial.
Corollary:
In each case of a presumption then by default is also the opposite presumed. So, in this case a judge is equally presumed to be partial.
Refutation:
Each national legislator has to guarantee an impartial judge (*2). The Dutch legislator of the involved law-article (*3) guaranteed an impartial judge by a –by law enforced– sworn oath plus hereafter –also by law enforced– the evidence by a signed form –which format and content is by law prescribed– of the truly happening of this event. This form is signed by the new judge and –almost always– the Court's president in front of who the oath is sworn.

(02) A judge is presumed (to be impartial) on the basis of his appointment.
Corollary:
The Supreme Court HR –judges themselves– pretends that a Dutch judge becomes empowered by appointed.
Refutation:
Each national legislator has to guarantee an empowered judge. The Dutch legislator of the involved law-article (*3) guaranteed a for judge-work empowered –judicial– public servant by a –by law enforced– sequence. After the appointment of an applicant into a judicial function at a Court then firstly the oath must be sworn and only hereafter the judge-work can start.

(03) A judge is presumed to be impartial on the basis of his appointment.
Corollary:
The Supreme Court HR –judges themselves– determine that the by law enforced form –or as a validated copy– is not deliverable in a Court Trial or in an appeal in cassation.
Refutation:
Each judge has a personal copy of the signed form plus the original is archived in the Court's president's archive. This makes a signed –copy of the– form deliverable and available out of two sources.

(04) Assuming the Supreme Court HR,
* truly write the decision**:**
the Court surely noticed that the form is not delivered plus the Court did not order –after noticing and deliberation– the delivery of evidence by the form.
* consciously lie**:**
these persons in their official capacity plus the Court's president also in his official capacity are all judicial insane.

Corollary**:**
The judiciary, Courts and their judges are equipped with a judge-decision to a totally unlimited independency beyond the worst criminality against the Human Rights.

Refutation**:**
Whether or not being aware, faking to be an empowered judge is a crime beyond the capital crimes against Human Rights. Whether by perjury, insanity or other crimes do each or all damage case-law, justice and the peace system of "the independent and impartial tribunal".

(05) The same statement –that a judge is (only) presumed to be impartial– is repeated more times in appeals in cassation. Each time the by law obligated form is not delivered.

Corollary:
The repeating confirms the deliberant of the statement. More then likely has this Supreme Court HR placed itself in the highest level of an empathic prohibited level-system of Human Rights (*12). Copying the European Court for Human Rights (*21) it unlawful ordered itself outside judgement of a Court of first instance. This clears the official way to unlimited independency beyond the worst crimes against the Human Rights. The judiciary, Courts and their judges are equipped with a judge-decision to copy this unlimited.

Refutation**:**
The criminal fact the judiciary, Courts and judges brought itself outside judgement of other Courts. Nevertheless it is always lawful judge-able by the public in the legal frame of the Human Rights.

Whether the Supreme Court HR is fake or judicial insane –and copied by all other Courts– the Human Right to a by evidence proven sworn and impeccable workmanlike judge is unchangeable and remains stolen from each individual Dutch civilian. The president of this Supreme Court has no serious contrary facts to refute.

Each right can only corollary out of a law-article. So, each judicial corollary, result or conclusion needs a legal frame for having a legal power. The independency of Dutch judges is limited by Dutch law (*4) by UN-Declaration article 30 or EU-Convention article 17.

The accountability of the Court "Hoge Raad"

By Dutch law is the Dutch Supreme Court HR erected to destroy judge-decisions and to disciplinary condemn judges (*6). The Dutch Supreme Court HR is erected to fire judges. Also is the Dutch Supreme Court HR accountable for its own criminal decisions**:** this is each judge's perjury.

The Dutch Supreme Court HR is sufficient motivated accused (*7). The accusations are also a notice of default in the legal frame of the Warranty Agreement of the UN-Declaration or EU-Convention. The president replies (*8) that he does not see one reason to reply.

Undisputable declares the Court's staff or judges by their president that it can not refute by serious legal contrary facts. In this case must each judge –by Dutch law enforced– accept and handle these accusations as true.

Regardless the 'overhead' accountability of the Dutch King by the King's oath does this Supreme Court HR have an own or individual accountability. Plus each individual who made the decision and the each individual who did not persecute the crimes or making.

The legal empowerment of the public to judge

The public is by law empowered to examine and judge court-decisions or judge-decisions on the Human Rights (*9).

Both the European Courts brought their deeds, behaviour and actions or themselves out of judgement. So, the public is the only left empowered, independent judge over the Courts.

Legal frames and arised rights

Due to the deliberate lack of legal frames in judge-decisions –in particular the ones that state Human and Civil Rights or out of which these rights corollaries– it becomes necessary to pronounce publicly these legal frames and arised rights.

(06) The Warranty Agreement

Rights do solely arise out of a preceding law article. The Human Rights are proclaimed in and by the Universal Declaration (*10). This declaration is a pledge, so a normal contract. This UN-contract has at the supplying side each Member State of the United Nations and at the receiving side each of the civilians or inhabitants of each Member State.

The UN-contract is in the European Union further elaborated into the Convention for the Protection of Human Rights and Fundamental Freedoms(hereafter mentioned as: ECPHR). This EU-Convention is a Warranty Agreement (*11) on the supply of protection, so a normal contract. This EU-contract has at the supplying side each Member State of the European Union and at the receiving side each of the civilians or inhabitants of each Member State.

By ratification became the VN-contract and the EU-contract implemented in the national law. What more is agreed on is in the ECPHR and guaranteed the supply to everyone. Example: The Dutch Constitution –by article 94– establishes the priority and dominance of the ECPHR over each law-article.

Agreements Rights.

Each country has Agreements Rights in which is elaborated what precise mutual rights, out of a contract arise. Undisputable and crystal clear is, that in the legal frame of the contract on Human Rights first of all must be supplied, a Court with an impeccable staff and the guaranteed tribunal with an average or better quality of sworn judges. The European and national judiciary, Courts and judges work under the Warranty Agreement and Agreements Rights.

(07) Human Rights are possession

Due to the contractually stated possession of –worldwide– everyone civilian, are the Human Rights impossibly a charity. Because these rights are everyone's possession these are impossibly an economic object.

Due to the contractually stated possession of everyone European civilian, is the Protection of Human Rights impossibly a charity. Because this Protection is everyone's possession this is impossibly an economic object.

So, the economic status of a country is no reason or justification to steal –some of– the Human Rights. Besides a theft, is this also a breach of contract of their's Protection. The economic status of a country is impossibly a redress or compensation of damages.

Because the Human Rights and their Protection are no economic objects both are easy to supply everywhere, in any situation and in any legal relationship. Each notice of a stolen possession is an undiscussable and undisputable –instant compulsory– restitution, of which a delay causes a huge financial and immaterial damage.

(08) Only one (1) Court, in fact the Court of first instance

Confirmed by the European Court of Human Rights, contains the Human Rights only one (1) Court, namely the "Court of first instance" (*12). An appeal is only a notice of default and solely the right of a State to repair**:** nothing more.

Due to the Warranty Agreement or contracts has each individual civilian the right that an appeal is not needed. Each appeal is by default about a partly irremediable damage.

(09) The supremacy over the judiciary, a Court, a tribunal or a judge

Only the Governments signatory are the High Contracting Parties involved in the ECPHR, that secured to everyone the Rights and Freedoms defined in the Convention (*13). This excludes the presumed law-base of a "Judicial Power".

Nothing in the European Convention may be interpreted as implying for any State, group or person any right to any act aimed at the destruction of any of the rights and freedoms or aimed at their limitations to a greater extend then is provided in the Convention (*14).

The Human Rights are protected by the supremacy of the rule of law and not by a Court's tribunal (*15).

(10) The compelling obligation of a public hearing

Each judge's task is to judge the case that the individual civilian submitted for the determination of his Human and Civil Rights (*20). To be sure to understand the writing in the documents a judge must order the Court to let a public hearing take place. To verify the points of dispute by whom of the litigants the judge must order the Court to let a public hearing take place. Already these two necessities clears up the legislator's will by a compelling prescription that a public hearing takes place.

Even when an inadmissibility seems to be beyond doubt then still this is the prohibited opinion of the Court. Then the litigant must be notified with a request for points of dispute with the Court and to start a court fee free Court Trial against the Court on the justice of these points.

(11) The judge-decision for everyone executable

Each judge-decision is the determination of the Human and Civil Rights of everyone (*20). So, this decision must emphatic determine to be for everyone and thus by everyone executable at every place in the country.

Also this by law compelling property does require that the decision makes verifiable how the settled case is detected as a case in the category which the legislator intends and aims at.

(12) Each appeal must be reproducible

When the litigation is not reproducible as it took place –like any other scientific research or investigation– then the right of the public to examine or judge is impossible to execute and thus destructed. Equally is a just appeal impossible. The judge-decision is indisputable on forehand an offence with irremediable damage.

(13) The effective remedy against Courts and judges

Against criminal Courts and criminal judges who commit perjury must be supplied to everyone an effective remedy (*16). This remedy can impossibly be effective at a Court and tribunal that beforehand does not judge and condemn its colleague-judges. When this Court and tribunal is not made available then the public –or the involved civilian– is the only legal empowered judge.

(14) The equalizing power of Human Rights

The Human Rights are an equalizing power (*17) and nothing less and nothing more. In case the civilian and the public with Human Rights should take-over the oversize of power then the difference in power remains**:** Nothing improves by turn-over the roles. This wisdom gave birth to the Universal Declaration of Human Rights.

(15) The sole detectability of the presence of Human Rights

Human Rights exist unconditional (*18). So these are always present for everyone and valid.

Everywhere where an oversize of power is used, undisputable the Human Rights not exist because Human Rights are present or not. In particular the equalizing power of these Rights is impossibly a little present and is impossibly the most powerful.
Note: The use of power is just doing the job right.
So, each misuse of power –like ignore or not use the critics– is a crime, but leave this misuse unpunished is a capital crime.

The call for violence

The absence of Human Rights is a call for violence in whatever way (*15).

(16) The ownership of an expression

The EU-contract contains the Protection of the Fundamental Freedom of speech or expression (*19). To express freely one's will is one's Fundamental Freedom and thus is this expression the speaker's or writer's and signatories' enduring possession. Stealing this expression and exchange it for some interpretation or some perception of a tribunal or judge, is a crime, but leave the theft or the exchanged expression unpunished is a capital crime.

(17) Only the Dutch legislator's intentions and aims rule

By the ownership of its expression does also the legislator remain the sole owner of each by this legislator made law-article. In the Netherlands is also a Court or judge lawful not empowered or not entitled to decide by its own opinion. A judge or tribunal or public are prohibited to ignore the legislator's intentions and aims (*14). By Constitution article 94 does the priority and supremacy of the Convention for Protection of Human Rights and Fundamental Freedoms rule over each law-article.

Conclusion

(18) verified and correct,

after reinvestigating the preceding refutations is,

that this Supreme Court HR's judge pronounces publicly,

* each Dutch judge –including the Supreme Court's judges– is only presumed impartial and not more;

the facts that,

* each Dutch judge –including the Supreme Court's judges– is not empowered or judicial insane;
* whether the judge is not empowered or judicial insane, in both cases is each Dutch judge-decision without legal power;
* in the Netherlands is guaranteed no just and fair judge, because this judge –only one is enough– would guaranteed have condemned his colleagues for perjury and the other crimes or the crime of faking to be a sworn judge;

regardless of the lies and crimes that,

* whether the judge-decision makers are fake or judicial insane, in both cases is it possible and no crime to accidentally determine the correct Human Right in the given case;

(19) verified factresults,

that the Supreme Court HR is –similar as the Supreme Court "RvS"– a role model for each other Court and its judges;
that the Supreme Court HR brings itself out of judgement by any tribunal;
that not one single State, Power, group or person is outside or above the law;
that the Supreme Court HR does not let the Court Trial of resistance take place;
that the lack of appeal erects instantly the claim for compensating the damage;

(20) legal power of the document

Nevertheless its lack of legal power by its crime, remains each written expression the lasting declaration of the Supreme Court HR, the judges' or signatories' deliberated will. A –once in a while– confessed Human or Civil Right surely does not contradict the crimes by a fake judge in a fake judge-decision. The fact that these rights are not with consistency determined –in or as a legal frame– but accidentally, does establish the deliberately deletion when they are not determined and this deletion establishes the crime.

(21) the legal consistency, the unity of legal order and the legal certainty

Some layers of Courts with on top a single or Supreme Court does not erect:

* the unity of legal order.
  Exclusively the one legislator guarantees this.

* the consistency of legal order.
  Exclusively one decision for everyone civilian and executable at every place in the country guarantees this.

* the legal certainty.
  Exclusively the reproducibility of the litigation, the detect-ability of the case and the executive power of the public's judgement –also on the application of the law and corollary rights– guarantees legal certainty.

The Supreme Court HR indicates levels in Human Rights or in judging Human Rights with in the top-level one supreme Court. This is by law prohibited (*12): the Human and Civil Rights are undividable, out of levels, everywhere and equal.

The Supreme Court HR is role model and drags other Courts into similar crimes. This is a unity of crime. Each decision of the Supreme Court HR is the practical model for each judge –in ordinary courts the ones leading the disciplinary courts– on how to put into practice the ruling of its own opinion. Each judge is practical example for the society on how to put cheating into practice and get away with it.

A dictatorial decree

The Supreme Court HR exhibits how to make a complete fake decision that does not change a thing in the dispute and in the legal or practical situation before and after the decision. This decision is similar with an authorial dictatorial decree.

(22) Worst crime: lack of self-cleaning and an own righteous conscience

Each Court and real judge is assumed to know and apply the law and Human Rights. Each Court must supply a sworn judge with an impeccable craftsmanship. When a Court's tribunal or judge pretends to be the last resort for protection against the injustice then must each Court's judge be enough moral characterised to look in the mirror. The mirror is brought to and held up in front of the Supreme Court HR by each individual civilian with its case. Each condemnation is equally valid for the doing of this Supreme Court. Not look in the mirror at the same time of the good judging is the worst capital crime against the Human Rights and Warranty Agreement.

To develop the protecting task into a dictatorial power –by doing the job not or too late– is the most terrible crime against humanity by this Supreme Court and its developments.

(23) sole respectable behaviour

Paper rules do not change persons' mentality or thinking.
Each person who developed itself above the "enough"-level of righteousness, exposes itself by the genuine receipt of each criticism like a grateful gift which helps to improve the quality of a highest level of protecting justice and peace. And act this way. Others are identifiable and verified by the remain of fighting plus doing all to keep it in silence or to cover it up in many ways and pretending a defence by accusing and fighting the messenger in return. The Human Right of a decision –by the Dutch King– in an equally reasonable period of time is deliberately violated.

The Supreme Court HR does not exposes itself by the genuine receipt of each criticism like a grateful gift which helps to improve the quality of a highest level of protecting justice and peace. The Supreme Court HR remains fighting and keeps an illegal oversize of power.

(24) The breach of contract

Each Court, judge or judiciary works under the Agreements Rights and the Warranty Agreement. The secure of the Human Rights is a by law erected normal contract. Due to the Warranty–Agreements Rights is each appeal a notice of default and only the right of a Member State to repair defects or omissions. The obligation of a litigant to appeal avoids an instant claim for compensating irremediable damage. The litigants in an appeal are the State joined by the appellant versus the tribunal that decided and its Court.

Being communicative not available –verified by the period of silence– for an individual citizen does the Supreme Court HR and in particular its judge target the

messenger and show to the public no interest in the message and the seriousness of its content.
This is another breach of contract and a crime.

The long silent time establishes instantly the Supreme Court's –and in the end the Dutch King's– lawful obligation to pay for compensating the irremediable damages and the delay-damage. The payment not dismisses the Supreme Court HR to still fulfil their share of the contract.

(25) call for violence

The injustice and discrimination by the judge-decisions force people to take own measures to protect their rights. The Human and Civil Rights are by law given possessions to everyone which are stolen by Courts, judges and judiciary instead of protected. The arise and grow of violence is primarily and mainly caused by the crimes of each Court and each of its judges (*15). After the notice of resistance is submitted the Court keeps only silence. This is another evidence of the same crime.

(26) intolerable unfairness

Besides the crime of theft of the legislator's ownership of freedom of speech, is the replace by a judge's opinion a perjury due to intolerable unfairness. Each doing together is under rules that are known beforehand, while a judge-opinion is always afterwards.

(27) Business model

To force each individual civilian into appealing or new Court Trials is impossibly to declare otherwise then to benefit a business model of the judiciary. These doings creates more cases which are paid for –by the State and by the litigants– and it creates work. To turn a last resort of justice or peace into a business model is a capital crime.

(28) Perjury and capital crime

By turning away –regardless by which doing– from each crime by the judiciary, does the Supreme Court HR and each member individual commit perjury and a capital crime against the Human and Civil Rights**:** the Human Rights for everyone are not secure and were not secured. There is impossibly an excuse to turn this into justice, also because the public can not turn away and is empowered to judge.

The evidence for the corollaries of perjury and crimes by Courts or by judges in the Netherlands –as an example but not the only one– are or are delivered in or by the webdossier (*1) Besides the International section is also evidence in the section "Court Trials to the public".

(29) More perjury and capital crime

When the paper decision is not verifiable on the verifiability of the completeness of the information and facts in the decision, then this complete public Human Right by the publicly pronounced decision is destroyed. This is a capital crime.

When the Court Trial or litigation is not reproducible as it took place –like any other scientific research or investigation– then the Human Right of the public to examine or control is impossible to execute and thus destructed. Equally is a just appeal impossible and indisputable is the judge-decision on forehand an offence with irremediable damage.

Now is the case that no independent and impartial Court and its tribunal or a sworn judge is available. In this case the Human Right of access to the "Court of first instance" (*12) under article 6 and 13 of the Convention for Protection of the Human Rights and Fundamental Freedoms, is destructed.

(30) special international verifiable

Verifiable with the number and words ("artikel" is translatable in "article") does the appendix not mention the article 94 of the Constitution that prescribes the ruling priority and dominancy of the European Convention of Human Rights and neither the Dutch law "Wet algemene bepalingen" which prescribes the limitations of each judge's doing, behaviour or actions. Notice that the Public has the Human Rights to be correct and complete informed.

Determination

Deeds are committed

The concluded crimes –in paragraph 18-30– are committed, these are done by the Dutch Supreme Court HR and these cause irremediable damages. The lack of legal frames grew in the case-law up to the criminal practice to ignore the law or to ignore judge-decisions which publishes application(s) of Human Rights.

Damages

Although the HR confesses that in the Netherlands are no sworn judges or otherwise that each judge is judicial insane, each individual civilian has the Human and Civil Right to a by evidence proven sworn and impeccable workmanlike judge. So, by forehand is each judge-decision not legal and useless. So, also by forehand is each Court Trial not legal and a fake. So, the people are forced to take own measurements escalating to violence and beyond. This causes huge damages.

When the litigation is not reproducible as it took place –like any other scientific research or investigation– then the right of the public to examine or control is impossible to execute and thus destructed. Equally is a just appeal impossible and indisputable is the judge-decision on forehand an offence with irremediable damage

The omission of protection of its Human and Civil Rights causes damage to each individual Dutch civilian. The impact of experiencing in full awareness the injustice or discrimination causes a huge damage. The impact of experiencing in appeal that the issues deliberately are not judged by a tribunal or judge causes a huge damage plus a huge delay-damage. By silencing the submitted notice of default, appeal or notice of resistance with the purpose to deliberately exceed a reasonable period of time causes a huge delay-damage. The destroyed trust causes a huge damage. Being forced to take own measures and also to be compelled to have at last, to rebel against judicial tyranny and judicial oppression causes huge damage. The main case in each of the illegal or unlawful national case-law and European case-law causes significant damage.

Executability

It would be insane of the Supreme Court HR and the Dutch King not to obey and execute the law out of an own righteous conscience, but delay again –in fact refuse– until a (yet unknown) public's executive power executes this public's judge-decision with force on the Supreme Court HR. The Dutch King is sufficient informed and also about the damages and all details for payment (*22).

This payment impossibly dismisses the Supreme Court HR from impeccably executing the contract.

The defence of the freedoms and rights of all citizens is the sworn task of the Dutch King

Before stepping into the office of Kingship the Dutch King swore the oath (among others)**:** "*that I the freedom and the rights of all citizens and all inhabitants shall defend, (…)*".

To allow the judge(s), Courts or judiciary to commit their crime s against each individual citizen is perjury by the Dutch King; nothing less and nothing more. Doing significantly less to stop this and return the judicial system back under rule and dominancy of the Human Rights is perjury by the Dutch King and probably more crimes. Each public servant and officer swore an oath to be faithful to the Dutch King, also therefore is the Dutch King accountable.

References:

*1. The webdossier that is or is in the URL "www.de-openbare-zaak.nl", and its international section in English and its section "Court Trials to the public".
*2. Convention for Protection of Human Rights and the Fundamental Freedoms, preamble and article 1
*3. The Dutch law "Wet rechtspositie rechterlijke ambtenaren", article 5g.
*4. The Dutch law "Wet gelijke behandeling"
*5. Decision with archive registration ECLI:NL:HR:2007:AY6713, paragraph 3.5.
*6. The Dutch law "Wet op de rechterlijke organisatie", article 79 and article 13a.
*7. The webdossier at the URL "www.de-openbare-zaak.nl", in the international section in English, in the rubric "Exceptional letters" under item 01 "Letter to the president of the Dutch Supreme Court".
*8. The Letter is as the last attached to this document
*9. Case Campbell and Fell versus the UK, 28-06-1984, paragraph 91.
*10. Universal Declaration of Human Rights, preamble last considerance
*11. Convention for Protection of Human Rights and the Fundamental Freedoms, preamble and article 1
*12. Case De Cubber versus Belgium, 26-10-1984, paragraph 32.
*13. Convention for Protection of Human Rights and the Fundamental Freedoms, preamble and article 1
*14. European Convention for Protection of Human Rights and the Fundamental Freedoms, article 17.
*15. Universal Declaration of Human Rights, preamble third considerance
*16. European Convention for Protection of Human Rights and the Fundamental Freedoms, article 13.
*17. Universal Declaration of Human Rights, preamble first considerance
*18. Universal Declaration of Human Rights, whole preamble
*19. Convention for Protection of Human Rights and the Fundamental Freedoms, article 10
*20. European Convention for Protection of Human Rights and the Fundamental Freedoms, article 6.
*21. Case European Court of Justice versus the Public, paragraph 31, 4-th asterisk
*22. The webdossier at the URL "www.de-openbare-zaak.nl", in the international section in English, in the rubric "Exceptional letters" under item 00 "Higher appeal to the Dutch King".

ECLI:NL:HR:2008:BC3785

Soort procedure	Cassatie
Instantie	Hoge Raad
Rechtsgebied	Strafrecht
Zaaknummer(s)	01163/07
Datum uitspraak	25 maart 2008
Datum gepubliceerd	5 april 2013
Formele relaties	Conclusie: ECLI:NL:PHR:2008:BC3785

Uitspraak

25 maart 2008
Strafkamer
nr. 01163/07

Hoge Raad der Nederlanden

Arrest

op het beroep in cassatie tegen een arrest van het Gerechtshof te Amsterdam, van 10 mei 2006, nummer 23/000214-04, in de strafzaak tegen:

[verdachte],
geboren te [geboorteplaats] op [geboortedatum] 1974,
wonende te [woonplaats]

1. De bestreden uitspraak

Het Hof heeft in hoger beroep - met vernietiging van een vonnis van de Rechtbank te Amsterdam van 9 oktober 2003 - voor zover aan 's Hofs oordeel onderworpen - de verdachte ter zake van 1. en 2. opleverende "de voortgezette handeling van poging tot zware mishandeling en diefstal, voorafgegaan en vergezeld van geweld tegen personen, gepleegd met het oogmerk om die diefstal voor te bereiden en gemakkelijk te maken, terwijl het feit wordt gepleegd door twee of meer verenigde personen" en 4. "opzettelijk handelen in strijd met het in artikel 2, onder C, van de Opiumwet gegeven verbod" veroordeeld tot een gevangenisstraf voor de duur van vier jaren.

2. Geding in cassatie

2.1. Het beroep is ingesteld door de verdachte. Namens deze hebben mr. G.P. Hamer en mr. B.P. de Boer, beiden advocaat te Amsterdam, bij schriftuur middelen van cassatie voorgesteld. De schriftuur is aan dit arrest gehecht en maakt daarvan deel uit.

De Advocaat-Generaal Wortel heeft geconcludeerd dat de Hoge Raad de bestreden uitspraak zal vernietigen, doch uitsluitend ten aanzien van de opgelegde straf, die straf zal verminderen en het beroep voor het overige zal verwerpen.

2.2. De Hoge Raad heeft kennisgenomen van het schriftelijk commentaar van de raadslieden op de conclusie van de Advocaat-Generaal.

3. Beoordeling van het eerste middel

3.1. Het middel behelst de klacht dat de verdachte in hoger beroep is veroordeeld door een gerecht dat niet voldeed aan het vereiste van een "impartial tribunal" in de zin van art. 6, eerste lid, EVRM.

3.2. In cassatie moet van het volgende worden uitgegaan.

(i) De verdachte is bij het bestreden arrest veroordeeld ter zake van onder meer de voortgezette handeling van poging tot zware mishandeling en diefstal, voorafgegaan en vergezeld van geweld tegen personen, gepleegd met het oogmerk om die diefstal voor te bereiden en gemakkelijk te maken, terwijl het feit wordt gepleegd door twee of meer verenigde personen, begaan op 4 augustus 2002 te Amsterdam ten aanzien van [slachtoffer]. Uit de gebezigde bewijsmiddelen kan worden afgeleid dat het Hof [medeverdachte] als mededader heeft aangemerkt.

(ii) De bestreden uitspraak is mede gewezen door mr. L.A.J. Dun.

(iii) De mededader [medeverdachte] is bij vonnis van 17 juli 2003 door de Rechtbank te Amsterdam veroordeeld ter zake van de voortgezette handeling van het medeplegen van poging tot doodslag en diefstal, voorafgegaan en vergezeld van geweld tegen personen, gepleegd met het oogmerk om die diefstal voor te bereiden en gemakkelijk te maken terwijl het feit wordt gepleegd door twee of meer verenigde personen, begaan op 4 augustus 2002 te Amsterdam ten aanzien van [slachtoffer].

(iv) Bij de behandeling van de zaak door het Hof is door de verdediging een proces-verbaal overgelegd waaruit blijkt dat bij de behandeling van de zaak van de mededader [medeverdachte]
door de Rechtbank het Openbaar Ministerie werd vertegenwoordigd door mr. Dun, voornoemd.

3.3. De Hoge Raad stelt het volgende voorop. Bij de beoordeling van een beroep op het ontbreken van onpartijdigheid van de rechter in de zin van art. 6, eerste lid, EVRM dient voorop te staan dat een rechter uit hoofde van zijn aanstelling moet worden vermoed onpartijdig te zijn, tenzij zich uitzonderlijke omstandigheden voordoen die zwaarwegende aanwijzingen opleveren voor het oordeel dat hij jegens de verdachte een vooringenomenheid koestert, althans dat de bij de verdachte dienaangaande bestaande vrees objectief gerechtvaardigd is.

Een algemene regel aan de hand waarvan kan worden beoordeeld of sprake is van uitzonderlijke omstandigheden als voormeld, valt niet te geven. Wel kan worden gewezen op EHRM 15 december 2005, nr. 73797/01 (Kyprianou tegen Cyprus).

In die zaak overwoog het Europese Hof voor de rechten van de mens onder meer:
"121. An analysis of the Court's case-law discloses two possible situations in which the question of a lack of judicial impartiality arises. The first is functional in nature: where the judge's personal conduct is not at all impugned, but where for instance the exercise of different functions within the judicial process by the same person (see the Piersack v. Belgium case, cited above), or hierarchical or other links with another actor in the proceedings (see court martial cases, for example Grieves v. the United Kingdom, cited above, and Miller and Others v. the United Kingdom, nos. 45825/99, 45826/99 and 45827/99, 26 October 2004), objectively justify misgivings as to the impartiality of the tribunal, which thus fails to meet the Convention standard under the objective test (see paragraph 118 above). The second is of a personal character and derives from the conduct of the judges in a given case. In terms of the objective test, such conduct may be sufficient to ground legitimate and objectively justified apprehensions as in the above-mentioned Buscemi case, but it may also be of such a nature as to raise an issue under the subjective test (for example the Lavents case, cited above) and even disclose personal bias. In this context, therefore, whether a case falls to be dealt with under one test or the other, or both, will depend on the particular facts of the contested conduct."

3.4. De betrokkenheid van mr. Dun als officier van justitie bij de strafzaak van de mededader [medeverdachte] levert een uitzonderlijke omstandigheid op als hiervoor onder 3.3 bedoeld. De klacht dat te dezen niet is voldaan aan het vereiste van berechting door een onpartijdig gerecht in de zin van art. 6, eerste lid, EVRM, is dus gegrond.

4. Beoordeling van het vierde middel

4.1. Het middel behelst de klacht dat de redelijke termijn als bedoeld in art. 6, eerste lid, EVRM in de cassatiefase is overschreden.

4.2. De verdachte heeft op 15 mei 2006 beroep in cassatie ingesteld. De stukken zijn op 20 april 2007 ter griffie van de Hoge Raad binnengekomen. Dat brengt mee dat de redelijke termijn als bedoeld in art. 6, eerste lid, EVRM is overschreden. Het middel is dus terecht voorgesteld. De rechter naar wie de zaak zal worden teruggewezen zal in geval van strafoplegging die overschrijding daarbij dienen te betrekken.

5. Slotsom
Hetgeen hiervoor is overwogen brengt mee dat de bestreden uitspraak niet in stand kan blijven, de overige middelen geen bespreking behoeven en als volgt moet worden beslist.

6. Beslissing

De Hoge Raad:
vernietigt de bestreden uitspraak;

verwijst de zaak naar het Gerechtshof te 's-Gravenhage, opdat de zaak op het bestaande hoger beroep opnieuw wordt berecht en afgedaan.

Dit arrest is gewezen door de vice-president G.J.M. Corstens als voorzitter, en de raadsheren A.J.A. van Dorst, J.W. Ilsink, W.M.E. Thomassen en H.A.G. Splinter-van Kan, in bijzijn van de griffier S.P. Bakker, en uitgesproken op 25 maart 2008.

PRESIDENT
VAN DE
HOGE RAAD DER NEDERLANDEN

Den Haag, 8 oktober 2019
No. UIT-P/2019/3453

De heer [redacted]

Geachte heer [redacted]

Op 7 oktober 2019 ontving ik per fax uw brief van gelijke datum. Zoals ik u in mijn brief van 26 september 2019 heb laten weten, zie ik geen reden om met u in het Engels te corresponderen. Op verdere correspondentie van uw kant zal ik ook niet meer reageren.

Hoogachtend,

M.W.C. Feteris

Postbus 20303 / 2500 EH Den Haag

Copy in English, meant as a guide into the Dutch original

Dear Mr. <person's name>

On October 7, 2019 I received by fax your letter with the same date. Like I let you know in my letter of September 26, 2019, do I see not a reason to correspond with you in English. To further correspondence from your side shall I not react anymore.

Respectfully,
<signature>
M.W.C. Feteris.