

A. v. THE NETHERLANDS

EUROPEAN COMMISSION OF HUMAN RIGHTS

SECOND CHAMBER

Application No. 12728/87

A.

against

the NETHERLANDS

REPORT OF THE COMMISSION

(adopted on 14 October 1991)

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I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

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### A. The application

2. The applicant is a Dutch citizen, born in 1955. He is at present detained in a prison in The Hague, the Netherlands. Before the Commission he is represented by Mrs. Gerda E. M. Later, a lawyer practising in The Hague.

3. The application is directed against the Netherlands. The Government are represented by their Agent Mr. Karel de Vey Mestdagh of the Netherlands Ministry of Foreign Affairs.

4. The applicant complains under Article 6 para. 1 of the Convention of the length of criminal proceedings against him. The proceedings began with his arrest on 18 January 1983 and ended with the Supreme Court's rejection of his appeal on 19 May 1987.

### B. The proceedings

5. The application was introduced on 9 February 1987 and registered on 12 February 1987 under file No. 12728/87.

6. On 13 April 1989, the Commission decided to give notice of the application to the respondent Government, inviting them to submit their observations in writing on the admissibility and merits of the application, particularly the complaint under Article 6 para. 1 of the Convention concerning the length of the criminal proceedings.

7. The Government presented their observations on 22 September 1989, after an extension of the time-limit. The applicant's observations in reply were submitted on 19 December 1989, also after an extension of the time-limit. The applicant was granted free legal aid on 10 November 1989.

8. After having consulted the parties, the Commission decided on 26 February 1991 to refer the case to the Second Chamber.

9. On 10 April 1991 the Commission (Second Chamber) declared the application admissible as to the complaint of undue length of the criminal proceedings and inadmissible as to the remainder.

10. The Government submitted additional observations on 4 June 1991, maintaining their view that domestic remedies were not fully exhausted, but the Commission found no basis for applying Article 29 of the Convention.

11. After declaring the case admissible, the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. In the light of the parties' reactions the Commission finds that there is no basis on which a friendly settlement can be effected.

### C. The present Report

12. The present Report has been drawn up by the Commission (Second Chamber) in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber  
G. JÖRUNDSSON  
A. WEITZEL  
H. G. SCHERMERS  
Mrs. G. H. THUNE  
Mr. F. MARTINEZ  
Mrs. J. LIDDY

13. The text of the Report was adopted by the Commission on 14 October 1991 and is now transmitted to the Committee of Ministers in accordance with Article 31 para. 2 of the Convention.

14. The purpose of the Report, pursuant to Article 31 para. 1 of the Convention, is

- (1) to establish the facts, and
- (2) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

15. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application forms Appendix II.

16. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

## II. ESTABLISHMENT OF THE FACTS

17. On 18 January 1983 the applicant was arrested and charged with incitement to murder. He was accused of having promised money and heroin to another person, for helping him to kill someone, and of having supplied a description and the address of the person to be killed. On the same day he was detained on remand.

By judgment of 17 May 1983 the Regional Court (Arrondissementsrechtbank) of The Hague convicted the applicant and sentenced him to twelve years' imprisonment less the time already spent in prison pending trial.

18. The applicant appealed to the Court of Appeal (Gerechtshof) of The Hague. By judgment of 29 August 1983 the Court of Appeal upheld the judgment of the Regional Court.

19. The applicant introduced a plea of nullity to the Supreme Court (Hoge Raad). By judgment of 15 January 1985 the Supreme Court quashed the Court of Appeal's judgment on technical grounds and referred the case to the Court of Appeal of Amsterdam.

20. On 31 May 1985 the Attorney-General at Amsterdam Court of Appeal issued a summons against the applicant. The Court of Appeal heard the case on 28 June 1985. The applicant's request to suspend his detention on remand was refused by the Court but his request to suspend the hearing was granted. Before granting the suspension, the President referred the applicant and his lawyer to Article 277a of the Code of Criminal Procedure, which states that, if the suspect is in pre-trial detention and the hearing is suspended, the court will as a rule set the suspension at no more than one month. If there are compelling reasons, however, it can set a longer period; in such cases the reasons should be stated in the official report. The President informed the applicant and his lawyer of the existence of a compelling reason affecting the length of the suspension, namely that the Court of Appeal's calendar would not permit the hearing to be resumed before 20 September 1985. The lawyer agreed to this on behalf of the applicant.

The Court of Appeal resumed its hearing on 20 September 1985. It refused a new request by the applicant to suspend his detention on remand.

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21. By judgment of 4 October 1985 the Court of Appeal convicted the applicant and sentenced him to ten years' imprisonment less the time already spent in prison pending trial.

22. The applicant introduced a plea of nullity to the Supreme Court. He submitted, *inter alia*, that the length of the proceedings exceeded "a reasonable time" within the meaning of Articles 5 para. 3 and 6 para. 1 of the Convention.

23. By letter of 4 February 1986 the applicant requested the Court of Appeal of Amsterdam to suspend his detention on remand for several weeks pending his Supreme Court appeal. The Court of Appeal suspended his detention on remand for two weeks in April 1986. On 3 June 1986 the applicant requested the Court of Appeal of Amsterdam to suspend his detention on remand for an additional two weeks, and for one week-end every month. The Court of Appeal suspended the detention on remand for two weeks in July 1986, but rejected the request to suspend the detention on remand for one week-end every month.

24. On 15 September 1986 the documents concerning the case were received by the Registry of the Supreme Court.

25. On 10 October 1986 the applicant requested the Court of Appeal to release him from detention on remand, invoking, *inter alia*, Articles 5 para. 3 and 6 para. 1 of the Convention. In the alternative, he asked for suspension of the detention on remand. By decision of 29 October 1986 the Court of Appeal rejected the requests.

26. By judgment of 19 May 1987 the Supreme Court dismissed the applicant's plea of nullity. It held in respect of the period between 29 August 1983 and 15 January 1985 and the period between 15 January 1985 and 4 October 1985 that the applicant had not raised a complaint of the length of proceedings before the Court of Appeal of Amsterdam. Nor was the Court of Appeal bound to make an *ex officio* investigation into the reasonableness of the length of proceedings, merely because these proceedings had lasted a particular length of time. It held in respect of the period after 4 October 1985 that Articles 5 para. 3 and 6 para. 1 of the Convention had not been violated.

27. On 4 June 1987 the applicant submitted a request for a pardon, which was refused on 12 November 1987 by the Deputy Minister of Justice.

An application for review, which the applicant lodged on 28 December 1987, was declared inadmissible by the Supreme Court on 6 December 1988.

III. OPINION OF THE COMMISSION

A. Complaint declared admissible

28. The Commission has declared admissible the applicant's complaint under Article 6 para. 1 (Art. 6-1) of the Convention concerning the length of the criminal proceedings against him.

B. Point at issue

29. The point at issue is accordingly whether there has been a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

C. General considerations

30. Article 6 para. 1 (Art. 6-1) of the Convention stipulates:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a

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reasonable time by a ... tribunal established by law."

31. The three criteria established by the case-law of the European Commission and Court of Human Rights for assessing whether or not the length of proceedings has been reasonable are the complexity of the case, the conduct of the applicant and the conduct of the competent authorities (see Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, para. 80).

D. Determination of the length of the proceedings

32. The proceedings at issue began on 18 January 1983, when the applicant was arrested and charged with incitement to murder. They ended with the Supreme Court's decision of 19 May 1987 to reject the applicant's appeal in cassation.

33. The total length of proceedings thus comes to 4 years, 4 months and 1 day.

E. Examination of the conduct of the proceedings

34. The investigation of the case covered the period between the applicant's arrest on 18 January 1983 to the date of his summons to appear before the Regional Court of The Hague of 14 April 1983.

35. The proceedings at first instance covered the period from 14 April 1983, the date of his summons, to the date of the judgment of the Regional Court of The Hague of 17 May 1983.

36. The appeal proceedings lasted until 29 August 1983, when the Court of Appeal of The Hague decided to uphold the judgment of the Regional Court.

37. The proceedings related to the applicant's subsequent plea of nullity to the Supreme Court lasted until 15 January 1985, when the Supreme Court decided to quash the Court of Appeal's judgment of 29 August 1983 on technical grounds and to refer the case to the Court of Appeal of Amsterdam.

38. The proceedings before the Court of Appeal of Amsterdam lasted until 4 October 1985. Upon the applicant's request the hearing of 28 June 1985 was suspended and, with the applicant's consent, resumed on 20 September 1985. By judgment of 4 October 1985 the Court of Appeal convicted the applicant and sentenced him to ten years' imprisonment less the time already spent in prison pending trial.

39. The applicant again introduced a plea of nullity to the Supreme Court. The case-file was received by the Registry of the Supreme Court on 15 September 1986. By judgment of 19 May 1987 the Supreme Court dismissed the applicant's plea of nullity. The judgment of 4 October 1985 by the Court of Appeal of Amsterdam thereupon became final and the applicant's sentence enforceable.

F. Assessment of the reasonableness of the length of proceedings

40. The Government, maintaining that only the period between the judgment by the Court of Appeal in Amsterdam of 4 October 1985 and the judgment by the Supreme Court of 19 May 1987 can be taken into consideration, regard this period as undesirably, yet not disproportionately, long within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. They state furthermore that it was a serious and extensive criminal case in which several suspects were involved. The criminal procedure as a whole took 4 years and 4 months, because the applicant used all legal remedies available to him. The case was examined by five courts.

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41. The applicant submits that the delay became all the more unreasonable with the passing of time. Under Section 433 of the Dutch Code of Criminal Procedure the case-file should have been sent to the Supreme Court within a maximum of 54 days from the day of the decision of the Court of Appeal. In the present case the Court of Appeal of Amsterdam took its decision on 4 October 1985, whereas the Registry of the Supreme Court received the documents on the applicant's case on 15 September 1986, i.e. more than eleven months later. This made it impossible for the applicant to submit written pleadings to the Supreme Court with a view to a possible expedition of proceedings.

42. The Commission notes that the facts in the present case were not very complex.

43. The applicant did make use of the remedies available to him, but there can be no objection to an accused in criminal proceedings making use of the ordinary remedies available to him under domestic law.

44. With regard to the conduct of the judicial authorities the Commission regards as particularly relevant the period between 4 October 1985, when the Court of Appeal in Amsterdam took its decision, and 19 May 1987, when the Supreme Court took its second decision in this case. The Commission finds that this period was unreasonably long within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. It notes in this respect that under the Dutch Code of Criminal Procedure the Registrar to the Court that took the contested decision has to send the documents related hereto (including the contested judgment) to the Registrar of the Supreme Court within a maximum of 54 days from the day of the decision.

G. Conclusion

45. The Commission concludes unanimously that there has been a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

Secretary to the Second Chamber  
(K. ROGGE)

President of the Second Chamber  
(S. TRECHSEL)

APPENDIX I

HISTORY OF PROCEEDINGS

Date	Item
9 February 1987	Introduction of application
12 February 1987	Registration of application
(a) Examination of admissibility	
13 April 1989	Commission's decision to invite the Government to submit their observations on the admissibility and merits of the application limited to the issue under Article 6 para. 1 of the Convention concerning the length of the proceedings

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22 September 1989	Government's observations
10 November 1989	Legal aid granted
19 December 1989	Applicant's observations in reply
14 March 1991	Decision to refer the application to the Second Chamber
10 April 1991	Commission's decision to declare the applicant's complaint under Article 6 para. 1 of the Convention concerning the length of the proceedings admissible and to declare the remainder of the application inadmissible
(b) Examination of the merits	
22 April 1991	Parties invited to submit further observations on the merits before 31 May 1991
24 May 1991	Government's further observations
14 October 1991	Commission's deliberations on the merits, final vote
14 October 1991	Adoption of the Report