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

COURT (CHAMBER)

CASE OF ABDOELLA v. THE NETHERLANDS

(Application no. 12728/87)

JUDGMENT

STRASBOURG

25 November 1992

In the case of Abdoella v. the Netherlands*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr R. BERNHARDT,
Mr L.-E. PETTITI,
Mr B. WALSH,
Mr R. MACDONALD,
Mr N. VALTICOS,
Mr S.K. MARTENS,
Mr I. FOIGHEL,
Mr L. WILDHABER,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 June and 28 October 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the Netherlands Government ("the Government") on 2 January 1992, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 12728/87) against the Netherlands lodged with the European Commission of Human Rights ("the Commission") under Article 25 (art. 25) on 9 February 1987 by a Netherlands citizen, Mr Abdoel Aliem Khan Abdoella.

The Government's application referred to Articles 44 and 48 (art. 44, art. 48). Its object was to obtain a decision of the Court regarding all questions on which the Commission had formed conclusions in its report, and in particular its reasoning as to Article 6 para. 1 (art. 6-1) of the Convention.

---

* The case is numbered 1/1992/346/419. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and designated the lawyer who would represent him (Rule 30).

3. The Chamber to be constituted included ex officio Mr S.K. Martens, the elected judge of Netherlands nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 January 1992 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr L.-E. Pettiti, Mr B. Walsh, Mr R. Macdonald, Mr R. Bernhardt, Mr N. Valticos, Mr I. Foighel and Mr L. Wildhaber (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Registrar, consulted the Agent of the Government, the Delegate of the Commission and the applicant's lawyer on the organisation of the procedure (Rule 37 para. 1 and Rule 38).

Although the Government had previously stated that they considered a written procedure to be necessary, they indicated, by letter of 13 April 1992, that they did not wish to file a memorial. No memorial was received from the applicant within the time-limit laid down by the President.

On 3 June 1992 the Commission filed a number of documents which the Registrar had sought from it on the President's instructions.

On 5 June 1992 the Registrar received the applicant's claim for just satisfaction under Article 50 (art. 50) of the Convention.

5. As directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 22 June 1992. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government
  Mr K. DE VEY MESTDAGH, Ministry of Foreign Affairs, *Agent*,
  Mr A.T.J. DE BOER, Ministry of Justice, *Adviser*;
- for the Commission
  Mr H.G. SCHERMERS, *Delegate*;
- for the applicant
  Ms G.E.M. LATER, advocaat en procureur, *Counsel*,
  Mr M.Th.M. ZUMPOLLE, advocaat en procureur, *Adviser*.

The Court heard addresses by Mr de Vey Mestdagh for the Government, by Mr Schermers for the Commission and by Ms Later for the applicant.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. On 18 January 1983 Mr Abdoella was taken into police custody and charged with incitement to murder. He was subsequently detained on remand.

On the conclusion of the investigations, in which several suspects were involved, he was summoned, on 14 April, to appear for trial before the Regional Court (Arrondissementsrechtbank) of The Hague. On 17 May 1983 he was convicted and sentenced to twelve years' imprisonment less the time already spent in police custody and in detention on remand.

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

The applicant then, within the time-limit of fourteen days prescribed by Netherlands law (see paragraph 11 (d) below), introduced an appeal on points of law to the Supreme Court (Hoge Raad) by means of a statement made at the registry of the Hague Court of Appeal. The documents of the case were sent by the registry of that court to the registry of the Supreme Court and received there on 3 July 1984. The Procurator-General in his advisory opinion proposed its dismissal. However, by judgment of 15 January 1985, the Supreme Court quashed the Hague Court of Appeal's judgment on technical grounds and referred the case to the Amsterdam Court of Appeal. The registry of the Supreme Court sent the documents to the registry of the Amsterdam Court on 1 February 1985; they were received on the same day.

7. On 31 May 1985 the Attorney-General at the Amsterdam Court of Appeal issued a summons against the applicant. The Court of Appeal heard the case on 28 June 1985.

During the hearing the applicant requested a suspension of his detention on remand and also an adjournment of the hearing in order to have examined two witnesses who had been summoned at the request of the defence but who had failed to appear. The Court of Appeal refused the first request. However, with the agreement of counsel for the defence it adjourned the hearing until 20 September 1985; the reason given for a delay of that length (see paragraph 11 (a) below) was that the court's calendar for the intervening period did not permit an earlier date.

The Court of Appeal resumed its hearing on 20 September 1985, at which point the witnesses who had failed to appear on 28 June were examined. It refused a new request by the applicant for suspension of his detention on remand.

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 police custody and detention on remand.

8. Within the time-limit of two weeks prescribed by Netherlands law, Mr Abdoella introduced a second appeal on points of law to the Supreme Court by means of a statement made at the registry of the Amsterdam Court of Appeal.

Pending the hearing of that appeal the applicant made a number of requests to the Amsterdam Court of Appeal concerning his detention on remand. It suspended the measure for two weeks in April 1986 and again for two weeks in July 1986. However, on 29 October 1986 it rejected a request, based inter alia on Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1) of the Convention, for the detention to be terminated or else suspended.

In April 1987 the Amsterdam Court of Appeal again granted two weeks' leave, but refused to terminate or otherwise suspend the detention.

9. The documents of the case were sent by the registry of the Amsterdam Court of Appeal to the registry of the Supreme Court, which received them on 15 September 1986. On a date in October 1986, the President of the Criminal Division of the Supreme Court set the hearing for 10 February 1987. The applicant, through his counsel, subsequently filed his grounds of appeal.

Counsel for the defence proposed five grounds of appeal. The first of these, the only one which raised points with which this Court is concerned, was a complaint about violation of, inter alia, Article 5 para. 3 in conjunction with Article 5 para. 1 (c) and Article 6 para. 1 (art. 5-3, art. 5-1-c, art. 6-1) of the Convention. The explanatory note emphasised that the applicant had been in police custody and detention on remand since 18 January 1983 and that, as a consequence, both he and his family had developed psychiatric problems. Detention on remand had only been suspended twice on this ground, in each case for two weeks, the last such occasion having been in July 1986. Although the case was not complex, it had already taken more than four years, so that the "reasonable time" laid down by Article 5 (art. 5) of the Convention had been exceeded. A separate assessment of the various phases of the proceedings led to the same conclusion: in particular, the lapses of time involved in the first appeal on points of law, that involved in the procedure before the Amsterdam Court of Appeal and the treatment of the second appeal on points of law were such that the said provisions had not been complied with.

In accordance with the advisory opinion filed on 10 March 1987 by the Procurator-General the Supreme Court dismissed the applicant's appeal by judgment of 19 May 1987. It held, inter alia, that it had to be assumed that neither the applicant nor his counsel had raised the issue of the length of the proceedings at the Amsterdam Court of Appeal's hearings on 28 June 1985 and 20 September 1985; that the mere circumstance that the preparation of

the case and its examination by the Regional Court and the Court of Appeal of The Hague and the Supreme Court had taken two years (less some days) did not in itself oblige the Amsterdam Court of Appeal to address explicitly the question whether or not the case had been decided within a reasonable time; and that in addition, taking into account the time that had elapsed between the Amsterdam Court of Appeal's judgment of 4 October 1985 and the Supreme Court's 1987 hearing, no violation of Articles 5 para. 3 and 6 para. 1 (art. 5-3, art. 6-1) of the Convention had taken place. The personal circumstances of the applicant did not warrant any other conclusion.

10. On 4 June 1987 Mr Abdoella submitted a request for a pardon. This was refused on 12 November 1987 by the Deputy Minister of Justice (Staatssecretaris van Justitie).

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

The applicant was released from prison on 22 December 1989.

II. RELEVANT DOMESTIC LAW

A. Relevant provisions of the Code of Criminal Procedure

11. The following is a translation from the original Dutch of the relevant provisions of the Netherlands Code of Criminal Procedure (Wetboek van Strafvordering).

(a) Article 277a

"1. If the accused is in detention on remand, the following paragraphs of this article shall apply.

2. If the Regional Court suspends the examination at the hearing for a fixed period, it shall as a rule set the period of the suspension at no longer than one month. For compelling reasons, which are to be mentioned in the official record, it can decide on a longer period, but in no case more than three months.

3. ..."

For the purposes of this provision, a month is taken to mean thirty days (Article 136 para. 1). Article 277a is equally applicable to proceedings before the Court of Appeal (Article 415).

(b) Article 365

"1. The judgment shall be signed within twice twenty-four hours after its pronouncement by the judges who heard the case and by the registrar who was present at the deliberations.

2. If one or more of them are unable to do so, this shall be mentioned at the end of the judgment.

3. As soon as the judgment is signed, and in any case after the end of the period laid down in the first paragraph, the accused or his counsel can take cognisance of it and of the official record of the hearing."

This article too is equally applicable to proceedings before the Court of Appeal (Article 415).

(c) Article 449

"1. An objection [against a default judgment], an appeal or an appeal on points of law shall be lodged by means of a statement to be made by the person exercising that legal remedy at the registry of the court by which or at which the decision was given.

2. ...

3. ..."

(d) Article 408

"1. An appeal must be filed:

a. if the summons to appear at the hearing has been notified to the accused in person or the accused has appeared at the hearing, within fourteen days after the pronouncement of the final judgment;

b. in other cases, within fourteen days after a circumstance has occurred from which it follows that the accused is aware of the judgment.

2. ..."

(e) Article 409

"1. After an appeal is filed, the registrar of the District Court shall send the documents of the case to the registrar of the Court of Appeal as soon as possible.

2. ..."

(f) Article 432

"1. An appeal on points of law must be filed:

a. if the summons to appear at the hearing has been notified to the accused in person or the accused has appeared at the hearing, within fourteen days after the pronouncement of the final judgment;

b. in other cases, within fourteen days after a circumstance has occurred from which it follows that the accused is aware of the judgment.

2. ..."

(g) Article 433 (as applicable at the relevant time)

"1. The prosecution (Openbaar ministerie) is obliged, on pain of inadmissibility of the prosecution, to file, together with its appeal or within ten days thereafter, at the registry of its court, a written statement of its grounds of appeal on points of law.

2. The accused by whom or in whose name an appeal on points of law has been filed is entitled to file such a written statement with the Supreme Court until the day of the hearing at the latest.

3. The registrar of the court which delivered the judgment shall send the documents of the case to the registrar of the Supreme Court within thirty days after the time-limit for the prosecution to file its written statement has expired or after it has filed a written statement earlier.

4. ..."

In practice it was generally assumed that the time-limit according to paragraph 3 of this article was fifty-four days after the date of pronouncement of the Court of Appeal's judgment, irrespective of whether or not the prosecution had lodged an appeal on points of law.

Before the Act of 14 January 1976 (Staatsblad (Official Gazette) 9), which altered (inter alia) Article 433 para. 3, this provision, like Article 409, provided only that the documents were to be sent in "as soon as possible". The time-limit of thirty days was introduced "with a view to expediting the transmission of the file".

By the Act of 27 November 1991 (Staatsblad 663), which came into force on 1 May 1992, the time-limit of thirty days incorporated in the third paragraph of Article 433 in 1976 was removed; that paragraph now once more provides that the documents are to be sent in "as soon as possible". The reasons given therefor were firstly that, according to the case-law of the Supreme Court (see paragraphs 13 and 14 below), non-compliance with Article 433 para. 3 did not entail nullity and the rights of the accused in case of unreasonable delay in the proceedings before the Supreme Court were in any case protected by Articles 6 para. 1 (art. 6-1) of the Convention and 14 para. 1 of the International Covenant on Civil and Political Rights. Secondly, it was pointed out that in practice this time-limit was only rarely met and that it appeared inappropriate to maintain a provision which "in relation to the - speedy - pursuit of the proceedings before the Supreme Court creates expectations which in practice can hardly if at all be fulfilled".

(h) Article 436

"1. After the documents have been at the registry for a period of eight days, they shall be taken by the Procurator-General against receipt and forwarded to the Supreme Court along with his proposal for fixing a hearing date.

2. The president shall fix the date for the hearing and shall appoint a rapporteur to report at the hearing."

12. After referral by the Supreme Court, the documents of the case must be sent by its registry to the registry of the court which is to retry the case. However, due to the fact that the Code of Criminal Procedure contains no provisions at all relating to proceedings after referral, a provision comparable to Articles 409 and 433 and applicable in these cases does not exist.

B. Relevant case-law

13. Non-compliance with Article 409 para. 1 or Article 433 para. 3 of the Code of Criminal Procedure does not, according to the case-law of the Supreme Court, entail nullity: that sanction is not expressly provided for; neither are these provisions so essential that non-compliance should ipso facto lead to nullity. However, non-compliance is relevant in connection with the question whether the requirement of trial "within a reasonable time" within the meaning of Article 6 (art. 6) of the Convention has been complied with (see, for instance, the judgments of the Supreme Court of 23 September 1980, NJ (Nederlandse Jurisprudentie) 1981, 116, and 29 March 1988, NJ 1988, 813).

14. The case-law of the Supreme Court relating to the requirement of "trial within a reasonable time" within the meaning of Article 6 (art. 6) of the Convention in general, and more especially in relation to the question of the consequences of non-compliance with Articles 409 para. 1 and 433 para. 3 of the Code of Criminal Procedure, may be summarised as follows.

(a) Exceeding what may, depending on the particular circumstances of the case, be considered a "reasonable time" may, but does not necessarily, lead to inadmissibility of the prosecution; the court may also deem it appropriate to impose a more lenient sentence than it would have done had the violation of the relevant rights of the accused not taken place. If the court decides to impose a more lenient sentence, it must take into account the extent of the violation and also indicate the reduction which it has thought fit to apply (see, for instance, the Supreme Court's judgments of 29 January 1985, NJ 1985, 690; 7 April 1987, NJ 1987, 587; 29 March 1988, NJ 1988, 813; 25 April 1989, NJ 1989, 705).

(b) In order to determine whether or not a "reasonable time" has been exceeded, the court must consider both the various phases of criminal proceedings and their overall time-span and take into account all appropriate circumstances in reaching its decision, such as the complexity of the case, the conduct of the accused and the way in which the case has been handled by the competent authorities (see, for instance, the judgment of the Supreme Court of 19 February 1985, NJ 1985, 581).

(c) As the decision as to whether or not a reasonable time has been exceeded is thus partly dependent on the assessment of factual circumstances, the Supreme Court, which essentially has competence only as regards points of law, can examine the validity of the decision of the judge of fact only to a limited degree; thus a judgment can only be quashed if it reveals an incorrect view of the concept of trial within a reasonable time or of the standards set out in the preceding paragraph, or if the grounds given for its decision are insufficient (see, for instance, the judgments of the Supreme Court of 5 January 1982, NJ 1982, 339; 9 March 1982, NJ 1982, 409; 11 May 1982, NJ 1983, 280; 12 October 1982, NJ 1983, 371; 3 January 1984, NJ 1984, 403; 29 January 1985, NJ 1985, 690; 10 December 1985, NJ 1986, 480; 1 November 1988, NJ 1989, 680; 31 October 1989, NJ 1990, 257).

Although the Supreme Court has held that delaying criminal proceedings for more than two years does not in itself warrant the conclusion that a "reasonable time" has been exceeded (see its judgment of 16 December 1986, NJ 1987, 637), it is commonly assumed that in its above-mentioned limited assessment it applies, as a general guideline, a rule presumed to have been derived from the report of the Commission of 12 March 1984 in application no. 9193/80 (Marijnissen) (Decisions and Reports 40, pp. 83-99) endorsed by the Committee of Ministers in its resolution of 25 January 1985 (DH (85)4). This rule may be summarised as follows: in principle, a "reasonable time" has been exceeded if the proceedings in one of their phases have not been pursued for more than two years due to circumstances for which the accused is not responsible; if such an eventuality occurs and is pleaded by the defence, then a rejection of that plea must be particularly well reasoned. The character of this rule as a general guideline implies, on the one hand, that under certain circumstances stagnation for a shorter period may be a reason for applying such strict requirements to the grounds given for rejecting the defence's plea that a reasonable time has been exceeded and, on the other hand, apparently, that exceeding the time-limit of two years may sometimes, perhaps also depending on the further circumstances of the particular case, be allowed to pass.

(d) The courts must also address ex officio the question whether a reasonable time has been exceeded. However, it must only appear from the judgment that this has been done if there are special circumstances.

In considering whether or not such special circumstances are present, the Supreme Court uses the general guideline, mutatis mutandis, indicated in sub-paragraph (c). This means that, as a rule, it only holds the lower courts bound to address ex officio the question whether or not a reasonable time has been exceeded if it appears from the documents that the proceedings have been held up for more than two years due to reasons for which the defence cannot be held accountable. However, if there are special circumstances, the courts are obliged to address the question ex officio even

if the period of inactivity is shorter (see, for instance, the Supreme Court's judgments of 1 July 1981, NJ 1981, 625; 1 May 1990, NJ 1990, 641).

(e) The Supreme Court applies these rules itself in the procedure of appeal on points of law and thus addresses, ex officio if need be, the question whether it must be assumed that the duration of proceedings in this phase has led to excessive length of the proceedings. In this connection, it appears from its abundant case-law that the time elapsed between the filing of the appeal on points of law and the sending in of the documents to the registry of the Supreme Court has some significance: if this causes such a delay that the case comes up before the Supreme Court for the first time more than two years after the appeal on points of law was filed, then as a rule the judgment will be quashed and the case will be referred for retrial, at which point the judge of fact will have the options indicated in sub-paragraph (a) above of declaring the prosecution inadmissible or of reducing the sentence. However, the Supreme Court may itself reach the opinion that no other decision is possible than to declare the prosecution inadmissible, which it may then do of its own motion (see, for instance, its judgments of 12 January 1988, NJ 1988, 814; 29 March 1988, NJ 1988, 813; 12 April 1988, NJ 1988, 970; 25 April 1989, NJ 1989, 705; 6 June 1989, NJ 1990, 92; 13 February 1990, NJ 1990, 633). On the other hand, if the period of inactivity is shorter, the Supreme Court will merely state that the delay is longer than is desirable but that judgment of the case cannot be held not to have taken place within a reasonable time; it will then determine, applying the rule set forth in the preceding sub-paragraph, whether or not special circumstances warrant any different decision (see, for instance, its judgments of 13 January 1981, NJ 1981, 240; 3 March 1981, NJ 1981, 367; 16 February 1982, NJ 1982, 410; 4 June 1985, NJ 1986, 182; 16 September 1985, NJ 1986, 495; 11 February 1986, NJ 1986, 553; 11 February 1986, NJ 1986, 644; 16 February 1988, NJ 1988, 823).

PROCEEDINGS BEFORE THE COMMISSION

15. Mr Abdoella lodged his application with the Commission on 9 February 1987. He complained, inter alia, of the length of the criminal proceedings against him and relied on Article 6 para. 1 (art. 6-1) of the Convention.

On 10 April 1991 the Commission declared the application (no. 12728/87) admissible in this respect and inadmissible as to the remainder. In its report of 14 October 1991 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art.

6-1). The full text of the Commission's opinion is reproduced as an annex to this judgment*.

AS TO THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

16. At the hearing, the Government stated the view that, with regard to possible delays before the second appeal on points of law, no complaints were raised until the final instance before the Supreme Court. According to the Government, this meant that domestic remedies had not been exhausted as far as these prior lapses of time were concerned, since the assessment thereof involved questions of fact which could and therefore should have been raised before the lower courts.

17. This matter was raised before the Commission but not before the Court until the hearing. Since the Government have failed to file a statement setting out the objection not later than the time when they informed the President of their intention not to file a memorial, as laid down in Rule 48 para. 1 of the Rules of Court, it must be rejected as out of time (for recent authorities, see particularly the Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, p. 42, para. 119; the Brozicek v. Italy judgment of 19 December 1989, Series A no. 167, p. 15, para. 30; mutatis mutandis, the Open Door and Dublin Well Woman v. Ireland judgment of 29 October 1992, Series A no. 246-A, p. 23, para. 46).

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

18. The applicant claimed that his case had not been decided within a "reasonable time" as required by Article 6 para. 1 (art. 6-1) of the Convention, according to the relevant parts of which:

> "In the determination ... of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The Government disputed this view, whereas the Commission subscribed to it.

19. The Commission based its opinion on the period which it regarded as particularly relevant, that between 4 October 1985, when the judgment of the Amsterdam Court of Appeal was pronounced, and 19 May 1987, the

---

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 248-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

date of the final decision of the Supreme Court. However, the compass of the "case" is delimited not by the Commission's report but by its admissibility decision (see particularly the Guzzardi v. Italy judgment of 6 November 1980, Series A no. 39, p. 39, para. 106; more recently, the Helmers v. Sweden judgment of 29 October 1991, Series A no. 212-A, p. 13, para. 25).

The Commission declared admissible "the applicant's complaint under Article 6 (art. 6) of the Convention concerning the length of the proceedings". From the way the Commission has, in paragraph 3 of its admissibility decision, paraphrased this complaint, it is clear that the complaint before the Court concerns the length of the proceedings taken as a whole, and in particular the time involved in the two appeals to the Supreme Court. It is true that in her pleadings before the Court the applicant's lawyer particularly stressed the length of the second of these appeals, but the Court finds that it cannot be inferred therefrom that she intended to restrict the complaint to that period.

Accordingly, the period to be taken into consideration began on 18 January 1983, the date of the applicant's arrest, and ended on 19 May 1987, the date on which the Supreme Court rejected his appeal. It thus lasted for four years, four months and one day.

20. The reasonableness of the length of proceedings is to be assessed with reference to the criteria laid down in the Court's case- law and in the light of the circumstances of the case.

21. The Delegate of the Commission expressed the view that the length of the criminal proceedings could not be justified by the large number of court examinations involved.

22. The Court observes that the case, although not particularly complex, was a serious one, the applicant having been accused of the crime of incitement to murder. Nevertheless the courts dealt with it within the above-mentioned period of four years and four months. In view of the fact that five court examinations were involved, this period as such is not unreasonable.

23. However, after the applicant filed his first appeal on points of law, within fourteen days after 29 August 1983 (see paragraph 6 above), the documents of the case were not sent to the Supreme Court until 3 July 1984 - more than ten months after judgment was delivered by the Hague Court of Appeal - and after the applicant filed his second appeal on points of law, within fourteen days after 4 October 1985 (see paragraph 8 above), the Supreme Court did not receive the documents of the case until 15 September 1986, nearly eleven and a half months after the judgment of the Amsterdam Court of Appeal. For these lapses of time the Government have not offered any explanation.

24. The time-limit of thirty days was incorporated in Article 433 of the Netherlands Code of Criminal Procedure with a view to expediting the transmission of the case-file (see paragraph 11 (g) above). In the applicant's

case, the judicial authorities failed to comply with it on both occasions. It appears that compliance had become the exception by the time the time-limit was abolished.

Article 6 para. 1 (art. 6-1) imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of its requirements.

This Court has in the past held that what was at stake for the applicant had to be taken into account in assessing the reasonableness of the length of proceedings (see particularly the X v. France judgment of 31 March 1992, Series A no. 234-C, pp. 90-91, para. 32; the H. v. the United Kingdom judgment of 8 July 1987, Series A no. 120, p. 59, para. 71). Likewise, this Court has repeatedly held, in the context of Article 5 para. 3 (art. 5-3), that persons held in detention pending trial are entitled to "special diligence" on the part of the competent authorities (see, as the most recent authorities, the Tomasi judgment of 27 August 1992 mentioned above, p. 35, para. 84; the Herczegfalvy v. Austria judgment of 24 September 1992, Series A no. 242-B, p. 23, para. 71). The Court concludes that where a person is kept in detention pending the determination of a criminal charge against him, the fact of his detention is a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met.

The time required on both occasions for transmission of the documents to the Supreme Court totals more than twenty-one months of the fifty-two which it took to deal with the case. The Court finds such protracted periods of inactivity unacceptable, especially where, as in the present case, the accused is detained; in its opinion, they go well beyond what can still be considered "reasonable" for the purposes of Article 6 para. 1 (art. 6-1).

25. There has accordingly been a violation of Article 6 para. 1 (art. 6-1).

III. APPLICATION OF ARTICLE 50 (art. 50)

26. Under Article 50 (art. 50) of the Convention,

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

27. In respect of non-pecuniary damage, the applicant claimed compensation to the tune of 150 Dutch guilders (NLG) for each day of detention from 29 October 1986 - the date on which the Amsterdam Court

of Appeal gave its decision refusing to terminate or else suspend his detention on remand (see paragraph 8 above) - until his release on 22 December 1989. This amounts to a total of 1,149 days; the applicant thus claims a total of NLG 172,350 under this head.

The Delegate of the Commission considered this claim excessive.

The Government maintained that, in the event of the Court's finding a violation, only the excessive length of time involved in the second appeal on points of law would fall to be considered; since, in the majority of cases, case-files were forwarded by Courts of Appeal to the Supreme Court within five months, and in the instant case it had taken some eleven months, there had been a delay of only six months.

28. The Court recalls, firstly, that it has considered the length of time involved in the first appeal on points of law as well as the second; secondly, that the time spent in police custody and detention on remand - up to the day on which the Supreme Court rejected the second appeal on points of law - was deducted from the applicant's sentence.

Although the time during which the applicant had to wait in detention for his case to be dealt with by the Supreme Court counted towards his sentence, the Court accepts that he may have suffered some frustration and anxiety. However, in the circumstances the Court is of the opinion that the finding of a violation of Article 6 para. 1 (art. 6-1) constitutes in itself sufficient just satisfaction as regards any non-pecuniary damage.

B. Costs and expenses

29. The applicant claimed NLG 10,901.88 minus the sums paid and payable in legal aid in respect of the costs of legal representation before the Commission and the Court.

The Government did not comment. For his part, the Delegate of the Commission considered it appropriate to reimburse the applicant his legal costs in so far as they are not covered by legal aid. The Court agrees.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Rejects the Government's preliminary objection;

2. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);

3. Holds that this judgment constitutes in itself, as regards any non-pecuniary damage, sufficient just satisfaction for the purposes of Article 50 (art. 50);

4. Holds that the Kingdom of the Netherlands is to pay to the applicant, within three months, NLG 10,901.88 (ten thousand nine hundred and one guilders and eighty-eight cents) less FRF 8,825 (eight thousand eight hundred and twenty-five French francs) in respect of costs and expenses.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 25 November 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar