



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

COURT (CHAMBER)

CASE OF LALA v. THE NETHERLANDS

(Application no. 14861/89)

JUDGMENT

STRASBOURG

22 September 1994

In the case of Lala 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 F. MATSCHER,

Mr B. WALSH,

Mr S.K. MARTENS,

Mr R. PEKKANEN,

Mr J.M. MORENILLA,

Mr A.B. BAKA,

Mr G. MIFSUD BONNICI,

Mr J. MAKARCZYK,

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

Having deliberated in private on 25 March and 23 August 1994,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 12 July 1993 and by the Government of the Kingdom of the Netherlands ("the Government") on 30 August, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14861/89) against the Netherlands lodged with the Commission under Article 25 (art. 25) by a Netherlands national, Mr Radjinderpersad Roy Lala, on 8 March 1989.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the Netherlands recognised the compulsory jurisdiction of the Court (Article 46) (art. 46); the Government's application referred only to Articles 44 and 48 (art. 44, art. 48). The object of the request and of the application was to obtain a decision as to whether the

* Note by the Registrar. The case is numbered 25/1993/420/499. 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.

facts of the case disclosed a breach by the respondent State of its obligations under Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention.

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. On 23 August 1993 the President of the Court decided, under Rule 21 para. 6 and in the interests of the proper administration of justice, that a single Chamber should be constituted to consider both the instant case and the case of *Pelladoah v. the Netherlands* (27/1993/422/501).

4. The Chamber to be constituted for this purpose 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 25 August 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr F. Matscher, Mr B. Walsh, Mr R. Pekkanen, Mr J.M. Morenilla, Mr A.B. Baka, Mr G. Mifsud Bonnici and Mr J. Makarczyk (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

5. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Government, the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 26 November 1993 and the applicant's memorial on 3 December. The Secretary to the Commission informed him that the Delegate would submit his observations at the hearing.

6. On 3 December 1993 the Commission produced certain documents from the file on the proceedings before it, as requested by the Registrar on the President's instructions.

7. In accordance with the decision of the President, who had given the applicant leave to use the Dutch language (Rule 27 para. 3), the hearing took place in public in the Human Rights Building, Strasbourg, on 22 March 1994. 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*,
Mrs I.M. ABELS, Ministry of Justice,
Mrs M.J.T.M. VIJGHEN, Ministry of Justice, *Advisers*;

- for the Commission

Mr H.G. SCHERMERS, *Delegate*;

- for the applicant

Mr B.R. ANGAD GAUR, advocaat en procureur, *Counsel*,
Mr C.J. VAN WOERDEN, *Adviser*.

The Court heard addresses by Mr de Vey Mestdagh, Mr Schermers and Mr van Woerden, and also replies to questions put by several of its members.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. Mr Radjinderpersad Roy Lala is a Netherlands national born in 1961 and resident in The Hague.

It appears that in proceedings predating, and unrelated to, the events complained of he was sentenced to pay a fine, failing which he was liable to a term of detention (*hechtenis*).

9. On 19 November 1986, after a trial in absentia, the Hague Regional Court (*arrondissementsrechtbank*) convicted Mr Lala of the indictable offence (*misdrijf*) of forgery (*valsheid in geschrifte*) in that he had concealed an income from work while enjoying social- security benefits. It sentenced him to four weeks' imprisonment (*gevangenisstraf*), two weeks of which were suspended for a probationary period of three years on condition, *inter alia*, that he co-operated in repaying the excess.

10. Mr Lala filed an appeal to the Hague Court of Appeal (*gerechtshof*).

Summoned to the hearing of that court on 7 September 1987, he failed to appear. The official record of the hearing states that Mr Lala was declared to be in default and contains the following passage:

"Mr A. G., lawyer in The Hague, is present as counsel of the accused and states that his client will not appear at the hearing because he is still liable to pay a fine, which he is unable to do, and he therefore runs the risk of being arrested immediately to serve the term of detention to which he is liable in the event of failure to pay."

11. In its default judgment of 21 September 1987, the Court of Appeal overturned the judgment of the Regional Court on technical grounds; it again convicted Mr Lala but reduced the sentence to two weeks' imprisonment.

12. Through his lawyer, the applicant filed an appeal on points of law to the Supreme Court (*Hoge Raad*). Those of his complaints which are of relevance here may be summarised as follows: firstly, the Court of Appeal had not allowed the applicant's counsel to speak last, as required by law; and secondly, not only had the Court of Appeal not allowed the applicant's counsel to conduct the defence, although the latter had signalled the wish to do so by his presence, but the Court of Appeal had also failed to determine whether Mr Lala had had a compelling and legitimate reason not to appear,

in which case his counsel should have been entitled to conduct the defence in his client's absence.

13. In its judgment of 27 September 1988, the Supreme Court dealt with the applicant's second complaint first in the following terms:

"In cases where the accused has not appeared but his counsel is present at the beginning of the court hearing, the court may proceed on the assumption that if counsel for the accused wishes to act as such despite the absence of his client, he will make this known to the court. As the record of the hearing of the Court of Appeal contains nothing from which it might be deduced that counsel made it known to the Court of Appeal that he wished to act in that capacity - neither his own presence nor his explanation of his client's absence will serve this purpose - it must be assumed that he has failed to do so. Under these circumstances the Court of Appeal was not obliged to allow counsel to act as such in the course of the hearing of the criminal case against his client."

As to the first complaint, the Supreme Court held that it appeared from the official record of the hearing that the lawyer had stated the reasons for his client's absence, but not that he had acted as counsel during his client's trial. Consequently, that it had to be assumed that he had not so acted. Accordingly, the Court of Appeal had been under no obligation to allow the lawyer to speak last.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Trial in absentia

14. In general, the accused - if he is not a juvenile (section 500 h of the Code of Criminal Procedure (Wetboek van Strafvordering, CCP)) - is not under an obligation to appear at the hearing.

The court must examine of its own motion the validity of the summons (geldigheid der dagvaarding - section 348 CCP). If, in spite of having been properly summoned, the accused does not appear at the hearing, the court will declare him to be in default (verstek verlenen) and proceed with the case in his absence. This is the rule even if the accused gives prior notice of his absence and asks for the hearing to be adjourned (see, inter alia, the judgment of the Supreme Court of 26 February 1985, NJ (Nederlandse Jurisprudentie, Netherlands Law Reports) 1985, 567) or submits his defence in writing (see the judgment of the Supreme Court of 9 October 1990, NJ 1991, 133) and even if the accused cannot be blamed for his absence (see, inter alia, the judgments of the Supreme Court of 20 December 1977, NJ 1978, 226, and 10 October 1989, NJ 1990, 293). The court has the power to order the accused to appear or to be produced before them by the police (section 272 CCP) but it is rarely made use of unless the accused is a juvenile.

15. An accused who has been convicted in his absence by the first-instance court may file an objection (*verzet* - section 399 (1) CCP); this is an ordinary legal remedy in Netherlands law. Such an objection entitles the accused to a full retrial by the same court (section 403 CCP).

An objection may not be filed by an accused who has, or has had, the opportunity to appeal to a higher court with jurisdiction as to both fact and law (*hoger beroep* - section 399 (2) CCP). This means that the possibility of an objection is limited to those cases in which the law does not admit of such an appeal, i.e. where the sentence is nothing more serious than a small fine or where a regulatory offence (*overtreding*) has been dealt with in first instance by the Regional Court.

It follows from section 339 (1) CCP that no objection may be filed against a default judgment given on appeal.

B. Rights of the defence in the absence of the accused

1. Representation

16. In certain cases the accused may be represented in his absence. In cases which are dealt with at first instance by the Regional Court, this possibility exists if the criminal offence with which the accused is charged does not carry a prison sentence. However, the representative must be a lawyer who must state that he has been specifically empowered to act as such (*bepaaldelijk daartoe gevolmachtigd* - section 270 CCP).

At the hearing the procedural position of the representative is that of the accused himself, i.e. - even if the representative is a lawyer - not that of counsel (see, *inter alia*, the judgment of the Supreme Court of 25 April 1989, NJ 1990, 91). This means that like the accused, he may be cross-examined by the court and the prosecution and his statements may be used as evidence (see the judgment of the Supreme Court of 13 February 1951, NJ 1951, 476); he may also be assisted by a lawyer - or another lawyer - as counsel.

If representation is allowed at first instance before the Regional Court, it is also allowed on appeal before the Court of Appeal (section 415 CCP).

2. Conducting the defence

17. The question - which was in dispute among learned writers - whether the defendant, having been declared in default, is entitled to have his defence conducted for him by counsel was decided by the Supreme Court in its judgment of 23 November 1971 (NJ 1972, 293). Although the Procurator General (*procureur-generaal*) had suggested an answer in the affirmative, the Supreme Court came to the opposite conclusion. It reasoned that, were such an entitlement to be recognised, trial *in absentia* would take

on an adversarial character incompatible with the basic idea of the Code of Criminal Procedure that a defendant who had been declared in default and convicted might always file an objection if he felt that he would not have been convicted had the court heard his defence. The Supreme Court went on to hold that it was true that since the introduction of the Code of Criminal Procedure the right to file an objection had been considerably curtailed, but pointed out that in so doing the legislature had not changed the character of trial in absentia. In conclusion, no section of the Code of Criminal Procedure nor any principle of unwritten law entitled a defendant who had been declared in default to have his defence conducted in his absence by counsel.

18. The Supreme Court has accepted, however, that a trial court may, at its discretion, allow counsel to speak in defence of an accused who has been declared in default. This discretion is quite frequently made use of. The Supreme Court strictly maintains the rule that if in such cases a trial court allows counsel to speak at all, it must allow him all rights available to the defence. It may not impose any limitations as to what subjects he may address (judgment of 19 May 1987, NJ 1988, 217); it may not deny him the right to speak last (judgment of 22 March 1988, NJ 1989, 13); if there are witnesses, counsel must be permitted to cross-examine them (judgment of 28 May 1991, NJ 1991, 729).

19. In principle the Supreme Court has held to its rule (see paragraph 17 above) that a defendant who has been declared in default is not entitled to have his defence conducted by counsel, but since its judgment of 26 February 1980 (NJ 1980, 246) it is its established case-law that there is one exception: in that judgment, it ruled, on the basis of, inter alia, Article 6 (art. 6) of the Convention, that a trial court is obliged to allow counsel to conduct the defence of an accused who has been declared in default if it is of the opinion that "compelling reasons" (*klemmende redenen*) prevent the accused from appearing at the hearing and it sees no reason to defer its examination of the case. The Supreme Court has accepted the corollary that counsel should in any case, if he so requests, be allowed the opportunity to argue that such reasons exist (judgments of 10 October 1989, NJ 1990, 293, and 19 December 1989, NJ 1990, 407).

20. The Supreme Court, in its judgment of 16 February 1988 (NJ 1988, 794), has held that a "compelling reason" exists not only if it is impossible for the accused to appear, but also if such an important interest is at stake for the accused that - in view of all circumstances that may be considered relevant - he cannot reasonably be expected to appear for trial and may therefore expect either that his trial will be adjourned until some later time when he will be able to attend or that his counsel will be allowed to conduct the defence.

The Supreme Court has consistently refused to accept the possibility of the accused being arrested as a "compelling reason" for his absence (see,

inter alia, its judgments of 24 November 1988, NJ 1988, 638, of 9 February 1992, DD (Delikt en Delinkwent, Offence and Offender) 93.292, and 4 May 1993, DD 93.396, in addition to its judgment in the instant case).

21. If counsel wishes to act for the defence in the absence of his client, he should expressly ask permission to do so. His presence alone is not sufficient (see, inter alia, the judgments of the Supreme Court of 14 November 1986, NJ 1987, 862; 25 November 1986, NJ 1987, 686; 8 December 1987, NJ 1988, 704; 18 September 1989, NJ 1990, 145; 14 December 1993, DD 94.166). Nor does a request made by counsel for the hearing to be deferred suffice, as was held in, inter alia, the Supreme Court's judgment of 21 December 1993 (DD 94.176).

PROCEEDINGS BEFORE THE COMMISSION

22. Mr Lala applied to the Commission on 8 March 1989. Relying on Article 6 paras. 1, 2 and 3 (c) (art. 6-1, art. 6-2, art. 6-3-c) of the Convention, he alleged that he had not had a fair trial in that his counsel had not been heard by the Court of Appeal and his conviction had been based exclusively on prosecution evidence.

23. The Commission declared the application (no. 14861/89) admissible on 21 October 1992. In its report of 4 May 1993 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 para. 1 taken in conjunction with Article 6 para. 3 (c) (art. 6-1, art. 6-3-c), and that there was no separate issue under Article 6 para. 2 (art. 6-2).

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

FINAL SUBMISSIONS TO THE COURT

24. In their memorial, the Government concluded that "there [had] ... been no question, in the case of Mr Lala, of any violation of Article 6 para. 3 (c) (art. 6-3-c) or of Article 6 para. 1 (art. 6-1) of the Convention".

* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 297-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARAS. 1 AND 3 (c) (art. 6-1, art. 6-3-c)

25. Mr Lala complained that at the appeal hearing before the Court of Appeal of The Hague his counsel had not been allowed to conduct the defence in his absence. He relied on Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention, which provide:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ... 3. Everyone charged with a criminal offence has the following minimum rights: ... (c) to defend himself in person or through legal assistance of his own choosing ..."

The Government rejected this submission but the Commission accepted it.

26. As the requirements of paragraph 3 of Article 6 (art. 6-3) are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the complaints under both provisions taken together (see, as the most recent authority, the *Poitrinol v. France* judgment of 23 November 1993, Series A no. 277-A, p. 13, para. 29).

27. In its report, the Commission considered that the right to defend oneself through legal assistance cannot be invoked only by defendants who are themselves present at their trial. The Commission was therefore of the opinion that the position adopted in Netherlands law, namely that an accused who does not attend his trial in person loses the right to defend himself through counsel, is incompatible with the respect for the fundamental guarantees which every person charged with a criminal offence should enjoy. The need to secure the attendance of the accused at the trial could not, in their opinion, justify proceeding to judgment against him without hearing the defence he wishes to put forward through his counsel.

At the hearing before the Court the Delegate of the Commission stressed that the principle of equality of arms enshrined in Article 6 (art. 6) required the arguments of the defence to be heard as far as possible in addition to those of the prosecution. While accepting that it was important that the accused should be present at his trial, which was the view expressed by the Court in its *Poitrinol* judgment referred to above (*ibid.*, p. 15, para. 35), he considered it inherently wrong that the threat of "forfeiture of human rights" should be used to compel him to attend.

28. The applicant stressed that he did not complain of having been prevented from defending himself, but from being defended by his counsel, who in fact attended the hearing of the Court of Appeal. He acknowledged the importance of the accused's attendance at trial, but contended that if, as in his case, the accused did not appear because of a reasonable fear of being

arrested, it was disproportionate to penalise non-appearance by preventing his counsel, who was prepared to defend him, from doing so.

He maintained that his counsel had specifically requested the court to be allowed to conduct his defence (the official record was incomplete in this respect), while pointing out that in any case his counsel had appeared in court at the appointed time, fully robed, and, as was self-evident, for no other reason than to conduct the defence.

29. The Government contended in the first place that it did not appear from the official record of the hearing that the applicant's counsel had explicitly requested permission to conduct the defence, as he should have done under the pertinent rules of Netherlands criminal procedure (see paragraph 21 above).

Furthermore, they maintained that the rule adopted by the Supreme Court, according to which a defendant who had been declared in default was not entitled to have his defence conducted by counsel unless there appeared to be compelling reasons for his absence (see paragraph 19 above), purported to dissuade those charged with a criminal offence from not attending trial. They stressed the importance of the accused's attendance. The system was in their view well balanced and not incompatible with Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c). The latter provision in no way implied that, contrary to the relevant provisions of domestic law, the accused always had the right to be absent from the hearing while his counsel conducted the defence.

30. The Court notes at the outset that the present case does not concern the question whether trial in the absence of the accused is compatible with Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c): the applicant's complaint is not that the appeal was heard in his absence - he had not availed himself of his right to attend - but rather that the Court of Appeal decided the case without his counsel, whom he had charged to conduct the defence and who attended the trial with the clear intention of doing so, being allowed to defend him.

31. In addition, the Court notes that, like the *Poitrimol* case, the present case concerns a criminal appeal by way of rehearing, which is the last instance where, under domestic law, the case could be fully examined as to questions of both fact and law.

32. The present case differs in several respects from the *Poitrimol* case, one important difference being that under Netherlands law the accused is, as a rule, not under an obligation to attend his trial, the exception to that rule being immaterial in the present context (see paragraph 14 above).

Accordingly, when the Netherlands Supreme Court gave its ruling that a defendant who has been declared in default is not entitled to have his defence conducted by counsel unless there appear to be compelling reasons for his absence, it did not suggest that this doctrine sought to discourage unjustified absences of the accused, but based it - initially at least - strictly

on the drafting history of the Code of Criminal Procedure (see paragraphs 17 and 19 above).

33. The case-law in question may however - as the Government argued - well be understood to serve the above purpose, because, as this Court pointed out in its *Poitrinol* judgment (*loc. cit.*, p. 15, para. 35), in the interests of a fair and just criminal process it is of capital importance that the accused should appear at his trial. As a general rule, this is equally true for an appeal by way of rehearing. However, it is also of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal, the more so if, as is the case under Netherlands law, no objection may be filed against a default judgment given on appeal.

In the Court's view the latter interest prevails. Consequently, the fact that the defendant, in spite of having been properly summoned, does not appear, cannot - even in the absence of an excuse - justify depriving him of his right under Article 6 para. 3 (art. 6-3) of the Convention to be defended by counsel.

34. Nor can the Court accept the Government's argument that the applicant cannot claim to be a victim of an interference with his rights under the said provisions because his counsel failed to ask the court's permission, in accordance with the relevant rule of Netherlands criminal procedure, to defend the accused (see paragraph 21 above). Everyone charged with a criminal offence has the right to be defended by counsel. For this right to be practical and effective, and not merely theoretical, its exercise should not be made dependent on the fulfilment of unduly formalistic conditions: it is for the courts to ensure that a trial is fair and, accordingly, that counsel who attends trial for the apparent purpose of defending the accused in his absence, is given the opportunity to do so.

35. In conclusion, there has been a violation of Article 6 para. 1 taken together with Article 6 para. 3 (c) (art. 6-1, art. 6-3-c).

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 2 (art. 6-2)

36. Before the Commission the applicant complained that his conviction had been based exclusively on evidence which he had not been able to challenge. He relied on Article 6 para. 2 (art. 6-2), which reads:

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

This complaint was not repeated before the Court. In view of its finding set out in paragraph 34 above, the Court sees no need to address the matter of its own motion.

III. APPLICATION OF ARTICLE 50 (art. 50)

37. According to 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."

The applicant made no claim in respect of costs and expenses.

He did, however, claim compensation for loss of opportunities, alleging that if his counsel had been allowed to conduct the defence he would probably have been sentenced to community service instead of imprisonment. He named no figure, leaving it to the Court to determine the amount *ex aequo et bono*.

The Government considered it unlikely that the sentence of the Court of Appeal would have been much different if the applicant's counsel had been allowed to conduct the defence. The Commission suggested that a "modest financial satisfaction" might be appropriate.

38. In view of all the circumstances of the case, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage the applicant may have suffered.

FOR THESE REASONS, THE COURT

1. Holds, by eight votes to one, that there has been a violation of Article 6 para. 1 of the Convention taken together with Article 6 para. 3 (c) (art. 6-1, art. 6-3-c);
2. Holds, unanimously, that it is not necessary to consider the allegation of a violation of Article 6 para. 2 (art. 6-2);
3. Holds, unanimously, that the above finding of a violation constitutes in itself sufficient just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 September 1994.

Rolv RYSSDAL
President

Herbert PETZOLD
Acting Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 53 para. 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Mr Ryssdal, joined by Mr Mifsud Bonnici;
- (b) dissenting opinion of Mr Matscher.

R. R.
H. P.

**CONCURRING OPINION OF JUDGE RYSSDAL JOINED BY
JUDGE MIFSUD BONNICI**

In its judgment the Court has made several references to the *Poitrimol v. France* judgment of 23 November 1993, Series A no. 277-A. In that case I dissented and found no violation of the Convention. The present case differs, however, in several respects from the *Poitrimol* case and can in my opinion certainly be distinguished from that case.

I agree that it is important for the fairness of criminal justice that the accused be adequately defended both at first instance and on appeal. I further agree that it is for the courts to ensure that the trial is fair, and that defence counsel who attends is given the opportunity of defending the accused in his absence.

DISSENTING OPINION OF JUDGE MATSCHER

(Translation)

In my opinion, a system of criminal procedure that is designed to encourage the accused to be present at his trial and at the hearing of any appeal and which does not allow an absent offender to be represented by his counsel unless there are valid reasons for his absence is not - in principle - contrary to the Convention.

It is only in criminal cases of some seriousness that the interests of justice may require that the accused should always be present or represented, if need be by counsel assigned officially (see, *mutatis mutandis*, the *Kremzow v. Austria* judgment of 21 September 1993, Series A no. 268-B, pp. 44-45, paras. 65-69, and the *Poitrimol v. France* judgment of 23 November 1993, Series A no. 277-A).

The present case is a fairly run-of-the-mill one. Deliberately and without any plausible justification the applicant, who was moreover on the spot, attended neither the trial nor the appeal hearing; furthermore, his counsel had not sought leave to represent him. That being so, the applicant's conviction in absentia did not infringe Article 6 paras. 1 and 3 (c) (art. 6-1, art. 6-3-c) of the Convention.

Accordingly, contrary to my position in the *Pelladoah v. the Netherlands* case, which is to be classified rather with the *Kremzow* and *Poitrimol* cases, I have voted against finding that there was a breach in this case.