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

COURT (CHAMBER)

CASE OF PELLADOAH v. THE NETHERLANDS

(Application no. 16737/90)

JUDGMENT

STRASBOURG

22 September 1994

In the case of Pelladoah 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. 16737/90) against the Netherlands lodged with the Commission under Article 25 (art. 25) by a Mauritian national, Mr Satyanund Pelladoah, on 17 April 1990.

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 27/1993/422/501. 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 Lala v. the Netherlands (25/1993/420/499).

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 30 November. 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 President's decision, 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 V. KRAAL, advocaat en procureur, *Counsel*.

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

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

8. Mr Satyanund Pelladoah is a Mauritian national born in 1947 and resident in Quatre Bornes, Mauritius.

9. On 27 December 1985 Mr Pelladoah was arrested at Schiphol Airport after customs officials found more than twenty kilograms of heroin, some of it mixed with methaqualone (a synthetic psychotropic drug), in a suitcase which he was carrying.

He was charged primarily with bringing into the country, with or without criminal intent as the case might be, a quantity of a substance containing heroin. This amounts to an indictable offence (misdrijf) carrying a maximum penalty of twelve years' imprisonment (gevangenisstraf) and a fine of NLG 100,000 if committed with criminal intent (opzettelijk - section 2 (1) (A) and section 10 (4) of the Opium Act - Opiumwet) but a summary offence (overtreding) carrying a maximum penalty of only six months' detention (hechtenis) and a fine of NLG 25,000 if committed without such intent (section 2 (1) (A) and section 10 (1) of the Opium Act). In the alternative, he was charged with possession (aanwezig hebben) of such a substance, with or without criminal intent as the case might be, which is an indictable offence carrying a maximum penalty of four years' imprisonment and a fine of NLG 100,000 if committed with criminal intent (section 2 (1) (C) and section 10 (2) of the Opium Act), but a summary offence carrying a maximum of six months' detention and a fine of NLG 25,000 if criminal intent is absent (section 2 (1) (C) and section 10 (1) of the Opium Act).

10. On 14 August 1986 Mr Pelladoah was tried by the Haarlem Regional Court (arrondissementsrechtbank); he admitted having "taken a suitcase off the luggage conveyor ... [which, when examined by customs,] turned out to contain a large quantity of a substance subsequently found to be heroin".

11. The Regional Court gave judgment on 21 August 1986, acquitting Mr Pelladoah of bringing a quantity of heroin into the country with criminal intent, but finding him guilty of doing so without criminal intent; it sentenced him to six months' detention. By the same judgment it ordered his immediate release as he had already spent that length of time in detention on remand.

12; Both the prosecution and the defence appealed against the Regional Court's judgment to the Amsterdam Court of Appeal. The applicant was expelled from the Netherlands pursuant to the Aliens Act (Vreemdelingenwet) before the appeals were heard.

13. The Amsterdam Court of Appeal held a hearing in the case on 10 February 1987. The official record of the hearing states that Mr Pelladoah was declared to be in default and contains the following passage:

> "Mr K. [counsel for Mr Pelladoah] declares - in essence - : ... I request the court to allow me to conduct the defence, as my client, in view of his place of residence, is unable to appear at the hearing."

The Court of Appeal refused this request since "no compelling reason (klemmende reden) had become apparent" to allow it.

Witnesses were heard; the prosecution was allowed to question them but Mr Pelladoah's lawyer was not.

14. The Court of Appeal gave judgment on 24 February 1987. In view of information to the effect that an extensive investigation into the drugs trade was under way in Mauritius, in the course of which Mr Pelladoah had made statements to the Mauritian authorities, the Court of Appeal held that the case had not been fully examined and ordered the case to be reheard. A new summons was issued for Mr Pelladoah to appear.

15. The second hearing of the Court of Appeal in the case was held on 20 November 1987. Since two of the three judges had not been present at the first hearing, the examination of the case was commenced anew.

This time Mr Pelladoah's lawyer asked to be allowed to represent his client pursuant to section 270 of the Code of Criminal Procedure (Wetboek van Strafvordering, CCP - see paragraph 23 below) as regarded the alternative charge.

This request was refused because "it had not been stated, nor did it appear, that [the lawyer] had been specifically authorised by the accused to represent him; moreover, the primary charge, for which representation was not allowed, fell to be examined first".

One of the witnesses who had been heard at the previous hearing was heard again; the prosecution was granted the opportunity to question him and make observations as to his statements but again Mr Pelladoah's lawyer was not.

The prosecution asked that Mr Pelladoah be sentenced to twelve years' imprisonment.

16. The Court of Appeal then suspended the hearing until 22 January 1988 so as to enable the prosecution to have relevant parts of the report of the Mauritian authorities translated into Dutch.

17. The hearing was continued on 22 January 1988. The lawyer asked to be allowed to represent Mr Pelladoah at the hearing and submitted a written declaration authorising him to do so.

The Court of Appeal again refused to accede to the lawyer's request on the ground that "the primary charge, which carried a sentence of imprisonment and for which, consequently, representation [was] not allowed, fell to be examined first".

18. On 5 February 1988 the Court of Appeal delivered a default judgment. It found Mr Pelladoah guilty on the primary charge, committed with criminal intent, and sentenced him to nine years' imprisonment. According to its judgment, it based the sentence on "the seriousness of the act concerned and the circumstances in which it was committed, and the person of the accused"; it drew attention to the quantity of the heroin-containing substance brought into the country and observed that Mr Pelladoah had made unlawful use of his diplomatic passport.

19. Through his lawyer, Mr Pelladoah filed an appeal on points of law to the Supreme Court (Hoge Raad).

In his grounds of appeal (cassatiemiddelen) he complained essentially of the following: firstly, that at its first hearing on 10 February 1987 the Court of Appeal had erred in not considering the reason for the applicant's failure to appear - the trouble and expense of a journey from Mauritius to the Netherlands - to be sufficiently "compelling"; secondly, that representation by the lawyer should have been allowed because even if criminal intent was proven the primary charge did not concern an indictable offence which carried a sentence of imprisonment.

20. The Supreme Court gave judgment on 24 October 1989.

As to the applicant's first complaint, it observed that on 20 November 1987, a different chamber of the Court of Appeal had begun a completely new examination of the case and that the judgment of that court had therefore not been based on the hearing of 10 February 1987. It held that a complaint concerning the refusal of a request made at the latter hearing could therefore not entail the nullity of that judgment.

It also rejected the applicant's second complaint, citing the legal provision according to which the primary charge, in case of criminal intent, constituted an indictable offence carrying a term of imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Trial in absentia

21. In general, the accused - if he is not a juvenile (section 500 h of the Code of Criminal Procedure) - 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 deferred (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 it by the police (section 272 CCP) but it is rarely made use of unless the accused is a juvenile.

22. 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 summary offence 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

23. 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 act 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

24. 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.

25. 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 afford 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).

26. In principle the Supreme Court has held to its rule (see paragraph 24 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" 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).

27. 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.

In its judgment of 30 November 1993, DD (Delikt en Delinkwent, Offence and Offender) 94.147, Bijl. NJB (case-law supplement to the Nederlands Juristenblad, Netherlands Law Review, 14 January 1994, no. 2, p. 17), the Supreme Court has recognised that the expulsion of the accused pursuant to the Aliens Act generally constitutes a "compelling reason" for his absence at the trial.

28. If counsel wishes to act for the defence in the absence of his client, he should expressly ask for 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). Neither is a request made by counsel for the hearing to be deferred, as was held in, inter alia, the Supreme Court's judgment of 21 December 1993, DD 94.176.

PROCEEDINGS BEFORE THE COMMISSION

29. Mr Pelladoah applied to the Commission on 17 April 1990. Relying on Article 6 paras. 1 and 3 (c) (art. 6-1, 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.

30. The Commission declared the application (no. 16737/90) admissible on 11 January 1993. 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).

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

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

FINAL SUBMISSIONS TO THE COURT

31. In their memorial, the Government concluded that "there [had] ... been no question, in the case of Mr Pelladoah, 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".

AS TO THE LAW

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

32. Mr Pelladoah complained that at the appeal hearing before the Amsterdam Court of Appeal 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.

33. 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 (art. 6-1), the Court will examine the complaints under both provisions taken together (see, as the most recent authority, the Poitrimol v. France judgment of 23 November 1993, Series A no. 277-A, p. 13, para. 29).

34. In their 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 Poitrimol 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.

35. The applicant agreed with the Commission. In addition, he pointed out that no provision of Netherlands law prevented counsel from conducting the defence in the absence of the defendant. He questioned whether, as a matter of fact, his place of residence - Mauritius - should not have been considered sufficient "compelling reason" within the meaning of the case-law of the Supreme Court. He further expressed the opinion that in any event depriving him of the right to be defended was a disproportionate measure not justified by the circumstances.

36. The Government contended in the first place that on 24 February 1987, when the hearing was resumed following adjournment (see paragraph 15 above), the applicant's counsel had not explicitly repeated his request to be allowed to conduct the defence, as he should have done under the pertinent rules of Netherlands criminal procedure (see paragraphs 15, 20 and 28 above). Relying on a judgment of the Supreme Court of 30 November 1993 (see paragraph 27 above), they alleged that, had he done so, there would have been a fair chance that his request would eventually have been allowed.

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 26 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.

37. The Court notes at the outset that the present case does not concern the question whether, in view of the gravity of what was at stake for the applicant, trial in the absence of the accused was 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 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. The importance of what was at stake for the applicant is nonetheless a factor to be taken into account.

38. 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.

39. 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 21 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 24 and 26 above).

40. 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 Poitrimol 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 (see paragraph 22 above).

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.

41. 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 28 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.

42. 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. APPLICATION OF ARTICLE 50 (art. 50)

43. 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 suggested, however, that the Government should not execute the prison sentence of nine years which the Court of Appeal had imposed and arrange for his name to be removed from the international list of wanted persons. However, in his view this would not constitute restitutio in integrum since he had spent six months in detention on remand, had been unable to leave Mauritius and had had his career destroyed. For these reasons, he suggested that he should also be awarded "a financial settlement of NLG 30,000 a year from 5 February 1988 onwards".

The Government denied that the applicant had suffered any damage. For the Commission it seemed reasonable to request the Netherlands Government not to execute the sentence without first offering the applicant the opportunity to defend his case, but whether any financial compensation was in order should depend on the outcome of further judicial investigations in the Netherlands.

44. The Court recalls that it has no jurisdiction to direct the Government to reopen proceedings (see, as the most recent authority, the Saïdi v. France judgment of 20 September 1993, Series A no. 261-C, p. 57, para. 46); therefore it is not in a position to support the Commission's suggestion.

As regards the applicant's claim for compensation, 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 UNANIMOUSLY

1. Holds 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 that the above finding of a violation constitutes in itself sufficient just satisfaction;

3. Dismisses the remainder of the claim for 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 concurring opinion of Mr Ryssdal, joined by Mr Mifsud Bonnici, is annexed to this judgment.

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.

In the instant case the accused was convicted of a very serious offence and sentenced to nine years' imprisonment. As the Court has come to the conclusion that 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), it is, however, in this case not necessary to determine whether and under what conditions an accused can waive the exercise of his right to appear at the hearing (see the Colozza v. Italy judgment of 12 February 1985, Series A no. 89, p. 14, para. 28, and the F. C. B. v. Italy judgment of 28 August 1991, Series A no. 208-B, p. 21, para. 33).