



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

AFFAIRE HOZEE c. PAYS-BAS

CASE OF HOZEE v. THE NETHERLANDS

(81/1997/865/1076)

ARRÊT/JUDGMENT

STRASBOURG

22 mai / May 1998

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SUMMARY¹

Judgment delivered by a Chamber

The Netherlands – length of criminal proceedings

ARTICLE 6 § 1 OF THE CONVENTION (“reasonable time”)

A. Period to be taken into consideration

Starting-point: reasonable time requirement begins when person “charged” (substantially affected). In instant case fiscal penalties imposed on applicant’s companies and not on applicant personally – no reason for him to suppose he was under investigation in his personal capacity – applicant became substantially affected when questioned for first time as a suspect.

End: when appeal on points of law rejected by Supreme Court.

Total: eight years, five months and eighteen days.

B. Reasonableness of the length of proceedings

Reiteration of Court’s case-law on criteria for determining reasonableness of length of proceedings.

Preliminary judicial investigation: appears to have lasted a disturbingly long period of time – length of four years and seven months must be convincingly justified – investigating authorities had to unravel network of interconnecting companies and accounts, interview substantial number of witnesses, collect and examine significant volume of material – complexity compounded by involvement of co-suspects – no period of inertia on part of the authorities – length of this phase of the proceedings cannot be considered unreasonable.

Post investigation proceedings: three instances involved – period not excessive.

Conclusion: no violation (seven votes to two).

COURT’S CASE-LAW REFERRED TO

15.7.1982, *Eckle v. Germany*; 24.2.1994, *Bendenoun v. France*; 27.6.1997, *Philis v. Greece* (no. 2)

1. This summary by the registry does not bind the Court.

In the case of *Hozee v. the Netherlands*²,

Notes by the Registrar

2. The case is numbered 81/1997/865/1076. 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.

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the relevant provisions of Rules of Court B¹, as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,

Mr L.-E. PETTITI,

Mr A.N. LOIZOU,

Sir John FREELAND,

Mr L. WILDHABER,

Mr B. REPIK,

Mr P. JAMBREK,

Mr U. LÖHMUS,

Mr P. VAN DIJK,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 23 February and 25 April 1998,

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

PROCEDURE

1. The case was referred to the Court by a Netherlands national, Mr Wilhelmus Hozee (“the applicant”) on 14 August 1997, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 21961/93) against the Kingdom of the Netherlands lodged by the applicant with the European Commission of Human Rights (“the Commission”) under Article 25 on 26 May 1993.

Mr Hozee’s application to the Court referred to Article 48 of the Convention as amended by Protocol No. 9, which the Netherlands have ratified. The object of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

1. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. On 26 September 1997 the Court's Screening Panel decided not to decline consideration of the case and to submit it to the Court (Article 48 § 2 of the Convention).

3. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant designated the lawyer, Mr P. Baauw of the Netherlands Bar, who would represent him (Rule 31). Having originally been designated by the initials W.H., the applicant subsequently agreed to the disclosure of his name.

4. The Chamber to be constituted included *ex officio* Mr P. van Dijk, the elected judge of Netherlands nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 25 October 1997, in the presence of the Registrar, the President of the Court, Mr R. Ryssdal, drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr A.N. Loizou, Sir John Freeland, Mr L. Wildhaber, Mr B. Repik, Mr P. Jambrek and Mr U. Löhmus (Article 43 *in fine* of the Convention and Rule 21 § 5).

5. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Registrar, consulted Mr R.A.A. Böcker, the Agent of the Netherlands Government ("the Government"), the applicant's lawyer and Mr E.A. Alkema, the Delegate of the Commission, on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the orders made in consequence, the Registrar received the Government's and the applicant's memorials on 12 December 1997.

6. Having regard to the opinions expressed by the applicant, the Government and the Delegate of the Commission and having satisfied itself that the condition for derogation from its usual procedure had been met (Rules 27 and 40), the Chamber decided to dispense with a hearing in the case and Mr Bernhardt gave the applicant and the Government leave to file observations on the content of each other's memorials.

7. The additional observations of the applicant were received by the registry on 16 February 1998 and those of the Government on 17 February 1998. On 25 February 1998 the Secretary to the Commission informed the Registrar that the Delegate had no observations to make on the memorials and observations filed.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in the Netherlands in 1943 and currently lives in Belgium.

9. In the late 1970s and early 1980s the applicant was the managing director of, *inter alia*, the cleaning agencies S. and S.N., both limited liability companies. In September 1980 the Netherlands tax authorities inspected the accounts of another cleaning company, W.N. This inspection showed that the latter company was a subcontractor of S. and S.N. Between 1981 and 1984 the tax authorities inspected the accounts of S. and S.N., and those of their subcontractors.

10. On 31 December 1981 the Tax Inspector issued the first of a number of supplementary tax assessments to the companies of which the applicant was the managing director. By way of a fiscal penalty these sums were increased by 100% as the tax authorities considered that the respective companies had returned incorrect tax statements (see paragraph 23 below). The companies challenged these supplementary tax assessments in proceedings which are of no direct relevance to the case before the Court.

11. On 28 June 1982 a discussion took place between two inspection officers of the Audit Division of the Department of Direct Taxes (*Afdeling Controle der Directe Belastingen*) of The Hague and the lawyer of S.N. In the course of this discussion Mr H., the company's accountant, and the applicant were invited to answer a number of questions put by these officers.

12. In May 1984 the Audit Division of the Department of Direct Taxes of The Hague handed over to the Fiscal Intelligence and Investigation Department (*Fiscale inlichtingen- en opsporingsdienst*, "FIOD") the investigation against, *inter alia*, the companies of which the applicant was the managing director.

13. On 14 June 1984 the FIOD interrogated the applicant as a suspect (*verdachte*). In the same month the FIOD seized his accounts for the purposes of the investigation. Between 27 February 1985 and 10 June 1986 the FIOD questioned about seventy persons in connection with the investigation against the applicant.

14. On 8 May 1985 the applicant was arrested on suspicion of fraud and detained on remand. He was conditionally released on 17 June 1985. The conditions for his release, which included the provision of a banker's guarantee in an amount of 200,000 Netherlands guilders (NLG), were lifted on 11 December 1985.

15. On 10 May 1985 a preliminary judicial investigation (*gerechtelijk vooronderzoek*) against the applicant was opened, during which the

investigating judge heard the applicant on four occasions. The investigating judge further examined twenty-five witnesses and three experts, most of them at the applicant's request.

16. The preliminary judicial investigation was closed in January 1989. The applicant was subsequently summoned to appear before the Regional Court of The Hague on 13 April 1989 on five counts of fraud and one count of participation in a criminal organisation.

17. The applicant lodged an objection (*bezwaar*) against the summons, which was rejected after a hearing in camera. On 18 May 1989 the Regional Court began its examination of the substance of the charges. Another hearing was held on 27 July 1989. On 10 August 1989 the Regional Court acquitted the applicant of participation in a criminal organisation but convicted him on five counts of fraud. It sentenced him to twenty-four months' imprisonment, six months of which were suspended for a probationary period of two years, and a fine of NLG 500,000. The time the applicant had spent in pre-trial detention was credited against his prison sentence.

18. Both the applicant and the public prosecutor filed appeals against this judgment to the Court of Appeal (*gerechtshof*) of The Hague.

19. On 11 July 1991 the Court of Appeal quashed the Regional Court's judgment, convicted the applicant on three counts of fraud and acquitted him on two other counts of fraud. Taking into account another conviction which had occurred in the meanwhile, as required by Article 63 of the Criminal Code (*Wetboek van Strafrecht* – see paragraph 26 below), it sentenced him to six months' imprisonment, three months of which were suspended for a probationary period of two years, and a fine of NLG 25,000.

20. As to the argument that the prosecution should be declared inadmissible because the criminal charges had not been determined within a reasonable time, the Court of Appeal found that the criminal proceedings had started on 14 June 1984, when the applicant had been questioned for the first time as a suspect. It further held that:

“The case concerns the administration of a number of closely intertwined companies with limited liability which attempted to conceal that association from the outside world. At the outset of the investigation against the suspect this was still far from clear and it was also unclear that use had been made of false invoices... In view of the complexity of the investigation, the reasonable time within the meaning of Article 6 of the European Convention on Human Rights has not been exceeded at that stage of the present case... The defence attributes the length of the judicial investigation, *inter alia*, to the inferior quality of the investigation by the *FIOD* and the limited time at the investigating judge's disposal. Be that as it may, the length of the investigation was primarily caused by the defence's wish to have many witnesses, who had already been interrogated once, examined again very extensively. Even though the investigation by the *FIOD* may not have been flawless, the fact that this complex case has taken much time certainly cannot be entirely or even mainly blamed on the judicial authorities.

Nor has the reasonable time been exceeded in the appeal proceedings in the present criminal case, considering, on the one hand, the length of this period and, on the other hand, the seriousness of the facts at issue. Taking all the aforementioned circumstances into account, the total length of the proceedings up to the present day in this criminal case has not exceeded a reasonable time either. The Court refers to what it has stated above as regards the complexity of the case.”

21. As regards the sentence to be imposed, the Court of Appeal held *inter alia*:

“On the one hand, the Court is of the opinion that an unconditional prison sentence is in every respect justified, taking into account the seriousness of the proven facts. In actual fact the suspect was the managing director of S. and S.N. In that capacity the suspect has committed, for an extended period of time and on a large scale, evasion of paying due social-security contributions and due corporation taxes, in order to line the purses of these companies and/or benefit the people who were in charge of these companies, all to the detriment of third parties.

On the other hand, the Court takes into account the time that has elapsed since the commission of the offences the suspect was charged with. The Court will therefore now proceed to impose a prison sentence of a duration to be stated below, half of which will be suspended, and this in combination with a fine.”

22. The applicant’s subsequent appeal on points of law was rejected by the Supreme Court (*Hoge Raad*) on 1 December 1992. As to the applicant’s complaint that the criminal charges against him had not been determined within a reasonable time, the more so as – in his submission – the proceedings against him should be considered to have started on 31 December 1981, the Supreme Court accepted the reasoning of the Court of Appeal.

II. RELEVANT DOMESTIC LAW

A. Substantive provisions

23. Pursuant to section 20(1) of the General Act on State Taxes 1959 (*Algemene wet inzake rijksbelastingen*) a demand for supplementary tax is made if a tax for which the taxpayer is under an obligation to file a declaration (*die op aangifte behoort te worden voldaan of afgedragen*) is not paid or is not paid in its entirety.

In such cases a fiscal penalty is additionally imposed (section 21(1)).

24. Section 68 of the General Act on State Taxes 1959 makes it an offence, *inter alia*, deliberately to file an incomplete tax return or to falsify or withhold from the tax authorities information that one is required under tax law to provide.

25. Forgery of documents is an offence under Article 225 of the Criminal Code.

26. Article 63 of the Criminal Code provides that if a person, who has previously been convicted, is convicted of an offence committed before the first conviction, the sentence imposed following the first conviction shall be taken into consideration in the determination of the sentence following the second conviction as if the accused had been tried for both offences simultaneously. This means, *inter alia*, that the maximum fine that may be imposed is the sum of the fines that may be imposed for each offence, but the maximum term of imprisonment is that which may be imposed in respect of the offence carrying the longest sentence plus one-third thereof (Articles 57 and 58).

B. Procedure

1. The Code of Criminal Procedure

27. The public prosecutor is charged with investigating criminal offences that have been committed within the jurisdiction of the Regional Court to which he is attached (Article 148 § 1). He is empowered to order subordinate authorities to take investigative measures (Article 148 § 2). If he considers, on the basis of such investigations, that a prosecution is required, he takes the necessary action (Article 167 § 1).

28. A prosecution is considered to begin when the accused is summoned to the hearing (Article 258 § 1) or when the public prosecutor requests a preliminary judicial investigation (see paragraph 29 below).

29. The public prosecutor may lodge a request with the investigating judge to undertake a preliminary judicial investigation (Article 149). Such a request shall indicate the offence believed to have been committed and, if possible, the suspect (Article 181 § 1).

If the investigating judge accedes to the request, he must hear the suspect (Article 200). He is empowered to order the appearance of witnesses (Articles 210 and 213) and experts (Article 227), and to order the competent authorities to take other investigative measures (Article 177 § 1).

30. Article 180 of the Code of Criminal Procedure requires the trial court to ensure that the preliminary judicial investigation proceeds without undue delay. The trial court can order, of its own motion or at the request of the prosecution or the defence, that the case file be produced before it and the investigation brought to a close immediately or speedily.

2. The General Act on State Taxes

31. If a tax fine has been imposed under section 21 of the General Act on State Taxes 1959 (see paragraph 23 above), it is open to the taxpayer to submit an administrative objection (*bezwaarschrift*) to the competent tax inspector (section 23).

An appeal against the latter's decision lies to the Taxation Division of the Court of Appeal (section 26).

It is, however, also open to the taxpayer to lodge an appeal directly to the Taxation Division of the Court of Appeal without first submitting an administrative objection to the tax inspector (section 26(2)).

32. In addition, the General Act on State Taxes contains procedural provisions derogating from the Code of Criminal Procedure as *lex specialis*, which may be applied in cases where tax offences are believed to have been committed.

33. Although the public prosecutor retains his competence under the Code of Criminal Procedure, investigations into tax offences may also be ordered and carried out by the tax authorities. The latter may forward the case file to the public prosecutor if they consider a prosecution desirable, i.e. – for present purposes – if they do not wish to proceed on the basis of section 21 (see paragraph 23 above) but rather on the basis of section 68 (see paragraph 24 above). They are obliged to do so, *inter alia*, if they have seized any documents.

PROCEEDINGS BEFORE THE COMMISSION

34. Mr Hozee applied to the Commission on 26 May 1993. He relied on Article 6 § 1 of the Convention, complaining of the length of the criminal proceedings against him.

35. The Commission (Second Chamber) declared the application (no. 21961/93) admissible on 28 February 1996. In its report of 9 April 1997 (Article 31), it expressed the unanimous opinion that there had been no violation of Article 6 § 1. The full text of the Commission's opinion is reproduced as an annex to this judgment¹.

FINAL SUBMISSIONS TO THE COURT

36. The applicant in his memorial requested the Court to find that the facts of the case disclosed a breach by the respondent State of Article 6 § 1 of the Convention.

37. The Government for their part asked the Court in their memorial to conclude that the facts disclosed no breach of the Convention.

1. *Note by the Registrar.* For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. The applicant complained of the excessive length of the criminal proceedings (see paragraphs 9 to 22 above) instituted against him. He alleged a violation of Article 6 § 1 of the Convention, which provides, so far as relevant:

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

39. The Government contested this allegation maintaining that the applicant had taken an erroneous view of the actual length of the impugned proceedings and that the time taken was, in the circumstances of the case, reasonable. The Commission agreed with the Government.

A. Period to be taken into consideration

40. The applicant submitted that the proceedings were set in motion on 31 December 1981 when the Tax Inspector issued the first of a number of supplementary tax assessments to the companies of which he was the managing director, and were concluded on 1 December 1992 when the Supreme Court rejected his appeal on points of law. He maintained that the Commission had incorrectly assessed the reasonableness of the length of the proceedings by omitting the period between 31 December 1981 and 14 June 1984.

41. The Government agreed that the period under consideration ended with the judgment of the Supreme Court. However, they argued that the proceedings only commenced on 14 June 1984, the date on which the applicant was first interrogated by the *FIOD* as a suspect (see paragraph 13 above). Although the applicant's companies had been under investigation for suspected submission of incorrect tax statements, the Government contended that prior to 14 June 1984 no action had been taken in relation to the applicant in his personal capacity which could reasonably have led him to believe that criminal proceedings would be instituted against him. In this regard, they underlined that, even though a fiscal penalty had been imposed on the companies (see paragraph 10 above), criminal proceedings rarely follow on from this.

42. The Commission agreed with the Government's reasoning and their conclusion that the period to be examined for the purpose of assessing the reasonable time requirement under Article 6 § 1 started to run only on 14 June 1984 and ended on 1 December 1992.

43. The Court notes that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged"; this may occur on a date prior to the case coming before the trial court, such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted or the date when preliminary investigations were opened. Furthermore, "charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test whether the situation of the suspect has been substantially affected (see the *Eckle v. Germany* judgment of 15 July 1982, Series A no. 51, p. 33, § 73).

44. Applying these principles to the facts before it, the Court notes that even if a fiscal penalty or tax surcharge may in certain circumstances be considered a criminal charge within the meaning of Article 6 § 1 of the Convention (see the *Bendenoun v. France* judgment of 24 February 1994, Series A no. 284, p. 20, § 47), the penalty in the instant case was imposed by the tax authorities at the end of 1981 on the applicant's companies and not on him personally. There was nothing to suggest that the applicant at that stage was himself suspected of fraud, the offence with which he was eventually charged. Moreover, the imposition of a fiscal penalty under section 21 of the General Act on State Taxes does not give rise to criminal proceedings in the absence of elements which would justify the intervention of the *FIOD* (see paragraphs 23, 32, 33 and 41 above).

45. Furthermore, between 1981 and May 1984 the applicant's companies were under investigation in connection with the tax returns which they had submitted. The applicant himself had no reason to suppose during that period that he was under investigation in his personal capacity and he was not substantially affected by any measure taken. Evidence of personal involvement in fraudulent practices only came to light as the investigation into the companies deepened, with the result that the Audit Division of the Department of Direct Taxes transferred the file to the *FIOD* and an entirely new procedure was set in motion. On 14 June 1984 the *FIOD* questioned the applicant and officially notified him that he was under suspicion of having committed a criminal offence. It was at that moment, when he became a suspect for the first time, that his situation was substantially affected.

46. For the above reasons the Court takes 14 June 1984 as the date from which there was a "charge" within the meaning of Article 6 § 1 of the Convention. The end point is not in contention, namely 1 December 1992, when the Supreme Court rejected his appeal (see paragraph 22 above).

Accordingly, the proceedings lasted a total of eight years, five months and eighteen days.

B. Reasonableness of the length of the proceedings

47. The applicant, notwithstanding his contention as to the date on which the proceedings began, submitted that the length of the proceedings, in particular the pre-trial investigation, was excessive and the fault of the authorities. He referred to the fact that he had been refused permission to cross-examine witnesses in the phase of the proceedings before the *FIOD* with the result that a number of these witnesses had to be later re-examined by the investigating judge at his request.

48. The Government pleaded that the length of the proceedings was not unreasonable in view of the complexity of the case. The applicant had *de facto* control over several companies, and during the initial stages of the investigation there was the additional complication of the involvement of co-suspects. In order to ascertain whether the applicant had evaded payment of social-security contributions and corporation taxes, the *FIOD* had to scrutinise the accounts of the various companies and interview seventy witnesses, of whom twenty-five were re-examined by the investigating judge mainly at the request of the applicant. The investigating judge also questioned the applicant four times and heard three experts (see paragraphs 13 and 15 above).

49. The Commission agreed with the view of the Government, finding that the comparatively long duration of the pre-trial investigation could be explained by the particular complexity of the case. Thereafter the judicial proceedings had been conducted with relative speed.

50. The Court notes that the reasonableness of the length of the impugned proceedings must be assessed in the light of the particular circumstances of the case and with regard to the criteria laid down in its case-law, in particular the complexity of the case, and the conduct of the applicant and of the relevant authorities (see, among many other authorities, the *Philis v. Greece* (no. 2) judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1083, § 35).

51. Having regard to the above criteria, the Court observes that the investigating judge concluded the preliminary judicial investigation in January 1989, in other words four years and seven months after the applicant was first questioned as a suspect. This would appear to be a disturbingly long period of time. In fact, the Government conceded in their memorial that it was longer than desirable. In the circumstances, it is particularly necessary for the length of this period to be convincingly justified.

52. The Court notes in this connection that the *FIOD* in a first stage and, subsequently, the investigating judge were confronted with the task of unravelling a network of interlocking companies and accounts which had been created in such a way as to make it as difficult as possible for the authorities to detect fraudulent tax and social-security practices. To mount a case against the applicant the authorities had to take evidence from a substantial number of witnesses and collect and examine a very significant volume of materials. The undoubted scale and complexity of the investigation were further compounded by the involvement of other suspects in the fraud. Having regard to these considerations and to the fact that the pre-trial investigation does not disclose any period of inertia on the part of the authorities, the length of this phase of the proceedings cannot be considered unreasonable. As to the applicant's contention that the investigation conducted by the investigating judge could have been expedited had he been able to question witnesses before the *FIOD*, it cannot be said with any certainty that this would have reduced significantly the length of the overall pre-trial phase, bearing in mind that it would in all probability have resulted in extending the length of the proceedings before the *FIOD* and would not necessarily have relieved the investigating judge of the need to examine witnesses.

53. As to the length of the court proceedings following the close of the pre-trial investigation, it is to be noted that three different instances were involved. The Court considers that the period spent disposing of the case at these instances, namely three years and ten and a half months, cannot be regarded as excessive.

54. The Court, like the Commission, would also note that the applicant was detained for a period of sixteen days and that the Court of Appeal mitigated his sentence in view of the time that had elapsed since the commission of the offences.

55. Having regard to the above considerations, the Court finds that there has been no breach of Article 6 § 1 in the circumstances of the instant case.

FOR THESE REASONS, THE COURT

Holds by seven votes to two that there has been no violation of Article 6 § 1 of the Convention.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 22 May 1998.

Signed: Rudolf BERNHARDT
President

For the Registrar
Signed: Vincent BERGER
Head of Division
at the Registry of the Court

In accordance with Article 51 § 2 of the Convention and Rule 55 § 2 of Rules of Court B, the dissenting opinion of Mr Repik joined by Mr Pettiti is annexed to this judgment.

Initialled: R. B.
Initialled: V. B.

DISSENTING OPINION OF JUDGE REPIK,
JOINED BY JUDGE PETTITI

(*Translation*)

I regret that I am unable to agree with the majority that Mr Hozee's case was heard within a reasonable time and accordingly that there was no breach of Article 6 § 1.

The Court's approach was different from its usual one in cases of this type. Taking as its starting-point its finding that the case was complex, it assessed the length of the proceedings as a whole and in a rather summary way, without conducting a more thorough analysis of the different stages of the proceedings.

Firstly, even though the proceedings under consideration did not begin until 14 June 1984, the fact that an administrative inquiry had already been under way for three years and must have reached an advanced stage by the time it was transferred to the *FIOD* (see paragraph 45 of the judgment) cannot be disregarded.

According to the Court of Appeal the length of the preliminary investigation (an additional four years and seven months) was caused primarily by the defence's wish to have a number of witnesses questioned again (see paragraph 20 of the judgment). The *FIOD* finished questioning the witnesses on 10 June 1986. Even if the investigating judge did not start to hear the twenty-five witnesses until a later date, it took two years and seven months for them to be heard, that is more than a month each on average for taking evidence. That does not suggest that they were heard with the necessary degree of diligence.

The case was transferred to the court of first instance on 13 April 1989; it held two hearings, neither of which, apparently, lasted more than a day, and delivered judgment on 10 August 1989. That makes it doubtful that the case remained very complex by that stage of the proceedings. In any event, in view of the speed at which the proceedings before the court of first instance, whose role was the most demanding, were conducted, the length of the proceedings before the appellate courts (more than three years and three months) calls for an explanation that has not been forthcoming.

The Court's approach risks creating unjustified inequalities in the determination of what constitutes a reasonable time within the meaning of Article 6 § 1. In a very similar case, *Reinhardt and Slimane-Kaïd v. France*, a period almost identical in length was held to be unreasonable and to have infringed Article 6 § 1 of the Convention.

To my mind, the proceedings in the Hozee case lasted more than a reasonable time and there has been a violation of Article 6 § 1.