



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

CASE OF DOUIYEB v. THE NETHERLANDS

(Application no. 31464/96)

JUDGMENT

STRASBOURG

4 August 1999

In the case of Douiyeb v. the Netherlands,

The European Court of Human Rights, sitting, in accordance with Article 27 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as amended by Protocol No. 11¹, and the relevant provisions of the Rules of Court², as a Grand Chamber composed of the following judges:

Mrs E. PALM, *President*,
Mr L. FERRARI BRAVO,
Mr L. CAFLISCH,
Mr J.-P. COSTA,
Mrs V. STRÁŽNICKÁ,
Mr W. FUHRMANN,
Mr K. JUNGWIERT,
Mr M. FISCHBACH,
Mr B. ZUPANČIČ,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr T. PANTIRU,
Mr E. LEVITS,
Mr K. TRAJA,
Mrs S. BOTOUCHAROVA,

and also of Mrs M. DE BOER-BUQUICCHIO, *Deputy Registrar*,

Having deliberated in private on 3 and 24 June 1999,

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”) and by the Netherlands Government (“the Government”) on 24 November 1998 and 11 December 1998 respectively, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 31464/96) against the Netherlands lodged with the Commission under former Article 25 by a Moroccan national, Mr Abdelaziz Douiyeb, on 1 March 1996.

Notes by the Registry

1-2. Protocol No. 11 and the Rules of Court came into force on 1 November 1998.

The Commission's request referred to former Articles 44 and 48 and to the declaration whereby the Netherlands Government recognised the compulsory jurisdiction of the Court (former Article 46). The Government's application to the Court referred to former Articles 44 and 48. The object of the request and 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 Articles 5 §§ 1 and 4 of the Convention.

2. On 22 December 1998 the applicant designated Mr F. Panholzer of the Amsterdam Bar as the lawyer who would represent him (Rule 36 of the Rules of Court).

3. The President of the Court, acting through the Deputy Registrar, consulted the Agent of the Netherlands Government (Mr R. Böcker), the applicant's lawyer and the Commission on the organisation of the written procedure (Rule 38). Pursuant to the order made in consequence on 9 February 1999, the Registrar received the applicant's memorial on 23 February 1999 and the Government's memorial on 8 April 1999. On 8 April 1999 the Government also produced a number of documents which had not been submitted in the proceedings before the Commission.

4. In accordance with the provisions of Article 5 § 4 of Protocol No. 11 to the Convention, taken together with Rules 100 § 1 and 24 § 6 of the Rules of Court, the case was referred to the Grand Chamber of the Court. The Grand Chamber included *ex officio* Mrs W. Thomassen, the judge elected in respect of the Netherlands (Article 27 § 2 of the Convention and Rule 24 § 4 of the Rules of Court), Mr L. Wildhaber, President of the Court, Mrs E. Palm, Vice-President of the Court, Mr J.-P. Costa and Mr M. Fischbach, Vice-Presidents of Sections (Article 27 § 3 of the Convention and Rule 24 §§ 3 and 5 (a)). The other members appointed to complete the Grand Chamber were Mr L. Ferrari Bravo, Mr L. Caflisch, Mr W. Fuhrmann, Mr. K. Jungwiert, Mr B. Zupančič, Mrs N. Vajić, Mr J. Hedigan, Mrs M. Tsatsa-Nikolovska, Mr T. Pantiru, Mr E. Levits, Mr K. Traja and Mrs S. Botoucharova (Rule 24 § 3 and Rule 100 § 4).

5. After consulting the Agent of the Government and the applicant's lawyer, the Grand Chamber decided that it was not necessary to hold a hearing. The Government and the applicant were invited to submit a reply to the other party's memorial.

6. The Government's reply to the applicant's memorial was received on 12 May 1999. The applicant's reply to the Government's memorial and a document not submitted previously were received on 20 May 1999. Although the latter were received after the expiry of the time-limit fixed for this purpose, the President decided on 28 May 1999, in accordance with Rule 38 § 1 to admit to the case file the applicant's reply as well as the additionally submitted document.

7. As Mr L. Wildhaber was unable to attend the deliberations on 3 June 1999, his place as President of the Grand Chamber was taken by Mrs E. Palm (Rule 10); Mrs V. Strážnická, substitute judge, replaced him as a member of the Chamber (Rule 24 § 5 (b)).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Moroccan national and was born in 1960. He lives in Amsterdam.

9. On 26 February 1996, in the course of an investigation into offences against public decency following complaints filed with the police, the assistant public prosecutor (*hulpofficier van justitie*), in accordance with Articles 54 and 55 of the Netherlands Code of Criminal Procedure (*Wetboek van Strafvordering*, hereinafter “CCP”), issued a warrant for the applicant’s arrest on suspicion of contravening Article 250 *ter* of the Netherlands Criminal Code (*Wetboek van Strafrecht*, hereinafter referred to as “CC”), which provision prohibits trafficking in persons (*mensenhandel*).

10. On the basis of this warrant the police arrested the applicant in his home on the same day at 1.05 p.m. and brought him to the police station. According to the formal police report on this arrest (*proces-verbaal van aanhouding*) of 26 February 1996, the police officers identified themselves and, upon request of the member of the applicant’s family who answered the door, showed the warrant for the applicant’s arrest when they entered the applicant’s home and arrested him in relation to an offence under Article 250 *ter* CC. This police report further states that the applicant was provided with a copy of the arrest warrant. The formal police report does not mention at what time the applicant was provided with this copy.

11. On 26 February 1996, at approximately 3 p.m., the applicant was questioned by two police officers. In so far as relevant, the formal police report on this questioning (*proces-verbaal van verhoor*) states as follows:

(Translation)

“After we had informed the suspect that he was not obliged to answer and also informed him what he was to be questioned about, he stated to us as follows:

‘I understand what I am suspected of. I understand you well. I do not understand for what I have been arrested. I have no statement to make, I want to speak to my lawyer first. I will not sign anything.’

After his statement had been read out to him, he agreed with it, but refused to sign it.”

12. At 3.05 p.m. on 26 February 1996, after the applicant had been brought before the assistant public prosecutor, the latter ordered the applicant’s detention in police custody (*inverzekeringstelling*) for a maximum of three days.

13. According to the wording of the custody order, the applicant’s custody had been ordered at 3.05 p.m. on suspicion of having contravened Article 250 CC. The relevant legal qualification was stated to be “living off immoral earnings” (*koppelarij*). The custody order further stated that the applicant and his lawyer had been provided with a copy of the custody order without delay (*onverwijld*). The custody order does not contain an indication as to the exact time the applicant and his lawyer were provided with a copy of this order.

14. On the cover page of the police investigation file and in the formal police report on the investigation in the present case, both dated 26 February 1996, it is recorded that the applicant, together with another person, was suspected of contravening Article 250 *ter* CC.

15. On 27 February 1996 the applicant was brought before the investigating judge (*rechter-commissaris*) in order to be heard and on the prosecution’s request to order the applicant’s detention on remand (*inbewaringstelling*), which written request was based on Article 250 *ter* CC and referred to the offence set out therein. During this hearing, the applicant was assisted by his lawyer.

16. The applicant denied the suspicions against him, explaining:

(Translation)

“I only run errands for the girls. I know girls from the Czech Republic, Lithuania, Russia and the Netherlands. I pick them up with the car and bring them home. I do so at their own request. I earn about 50 guilders per day with that [activity].”

In response to the public prosecutor’s demand, the applicant stated:

(Translation)

“Everything is falling apart on me, my marriage and my children. If my family becomes aware that I am involved in trafficking in women, they will kill me.”

17. The applicant’s lawyer submitted that the applicant had been placed in police custody on suspicion of contravening Article 250 CC, for which offence police custody cannot be ordered. He demanded the applicant’s immediate release.

18. According to the minutes of this hearing, the investigating judge ordered the applicant's detention on remand, holding:

(Translation)

"I, investigating judge, inform the suspect, as I do not find the police custody unlawful, that as to the submissions – however well-founded in fact they may be – regard must be had to the nature of the infringed rule(s), the interest protected by such rule(s), the degree to which this interest may be considered as having been harmed and the relevant interests of society."

19. The written order for the applicant's detention on remand (*bevel tot bewaring*) issued by the investigating judge, in so far as relevant, reads:

(Translation)

"... as it is plausible that the suspect is to a considerable extent involved in trafficking in persons; that the pre-trial detention is in all reasonability necessary to ... reveal the truth as [the] suspect denies [the offence] and (a) further witness(es) need(s) to be heard;

NOTING the contents of ... Article(s) 250 *ter* Criminal Code/1/2;

ISSUES an order for detention on remand against [the] suspect for a period of ten days..."

20. Following the prosecution's request for the applicant's further detention on remand (*gevangenhouding*), the Regional Court (*Arrondissementsrechtbank*) of Amsterdam, after having heard the applicant and after having noted the grounds on which the applicant's detention on remand had been ordered and having found these grounds still to be pertinent, on 5 March 1996 ordered the applicant's further detention on remand for a period of thirty days. On 6 March 1996, the applicant was released for lack of space for further detainees in any remand centre.

21. By a judgment of 30 August 1996, the Regional Court of Amsterdam acquitted the applicant of the charges brought against him under Article 250 *ter* CC. On the same day, in a different set of proceedings concerning unrelated facts, the Regional Court of Amsterdam convicted him of unlawful possession of a firearm and sentenced him to six weeks' imprisonment.

22. On 14 November 1996, the applicant filed a request under Article 89 CCP for compensation in respect of damage sustained on account of the time spent in pre-trial detention on suspicion of committing the offences of which he had been acquitted. Instead of seeking pecuniary compensation, the applicant requested the Regional Court to order the deduction of the time he had spent in pre-trial detention from the six weeks' imprisonment to which he had been sentenced in the other set of criminal proceedings.

23. In its decision of 25 April 1997, the Regional Court noted that the applicant had been taken into police custody on 26 February 1996 on suspicion of committing an offence under Article 250 *ter* CC, that on 27 February 1996 the investigating judge had ordered the applicant's detention on remand and that he had been released for lack of space on 6 March 1996. Pursuant to Article 27 § 2 CC and Article 90 § 4 CCP, the Regional Court ordered that ten days be deducted from the six weeks' imprisonment imposed for the other offence (see paragraph 21 above). As to the remaining 32 days, the applicant has successfully sought a royal pardon, these 32 days having been commuted to 69 hours' community work.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. According to Article 54 CCP, a public prosecutor is competent to order the arrest of a person suspected of having committed a criminal offence in respect of which pre-trial detention (*voorlopige hechtenis*) may be ordered.

25. Pursuant to Article 57 CCP, a public prosecutor or assistant public prosecutor is competent to order a person's detention in police custody, after having seen and heard that person, who is entitled to be assisted by a lawyer.

26. According to Article 58 CCP, a custody order can only be issued in respect of punishable offences for which pre-trial detention may be ordered. A custody order is only valid for a maximum of three days and may be prolonged once for a maximum period of three days. No appeal lies against a custody order.

27. Article 59a CCP requires that no later than three days and fifteen hours after being arrested, a suspect must be brought before an investigating judge in order to be heard. On that occasion the suspect may request the investigating judge, in accordance with Article 59a § 4 CCP, to order his or her release. Where the investigating judge finds the order for detention in police custody (*inverzekeringstelling*) unlawful, the suspect's immediate release must be ordered (Article 59a § 5 CCP).

28. In order to prolong the detention of a suspect, the public prosecutor can request the investigation judge for a remand order (*inbewaringstelling*) under Article 63 CCP. Pursuant to Article 64 § 1 CCP this remand order is valid for a period of maximum ten days.

29. Although no direct appeal lies against a remand order, a person whose detention on remand has been ordered can, in accordance with Article 69 § 1 CCP, apply to the Regional Court for an order lifting the pre-trial detention (*opheffing voorlopige hechtenis*). Under Article 87 § 2 CCP,

an appeal against a rejection by the Regional Court of a first request to lift pre-trial detention may be lodged with the Court of Appeal (*Gerechtshof*).

30. In order to prolong the detention of a suspect whose remand has been ordered by the investigation judge, the public prosecutor can request the Regional Court for an order for further detention on remand (*gevangenhouding*). Pursuant to Article 66 CCP this order is valid for a period of maximum thirty days. Under Article 71 CCP, an appeal against an order for further detention on remand lies with the Court of Appeal.

31. According to the established case-law of the Supreme Court (*Hoge Raad*), procedural defects occurring in respect of previous orders for pre-trial detention do not constitute independent grounds for dismissing an application for a subsequent category of pre-trial detention. A judge must examine for each category separately whether all conditions are fulfilled (see HR (*Hoge Raad*), 4 March 1975, *NJ* (*Nederlandse Jurisprudentie*), 1975, no. 241; HR, 10 November 1981, *NJ* 1982, no. 45; and HR, 7 October 1988, *NJ* 1989, no. 510). However, in deciding requests under Article 69 CCP, a judge may take procedural defects into consideration as a relevant factor (see HR, 16 March 1990, *NJ* 1990, no. 500).

32. Article 67 CCP reads as follows:

“1. An order for pre-trial detention can be issued in case of suspicion of:

(a) an offence which, according to the law, carries a punishment of imprisonment of four years or more;

(b) one of the offences defined in Articles 132, 250 *bis*, 285 § 1, 318, 321, 326, 326a, 326c, 395 and 417 *bis* of the Criminal Code;

(c) the misdemeanour described in Article 432, under 3°, of the Criminal Code;

(d) one of the offences defined in:

– Article 175 § 2 of the Road Traffic Act 1994;

– Article 27 § 2 of the Act on Extraordinary Competences of Civilian Authorities;

– Articles 52, 53 § 1 and 54 of the Act on Conscientious Objections to Military Service;

– Article 31 of the Act on Games of Chance;

– Article 11 § 2 of the Opium Act;

– Article 46 of the Stockbroking Control Act;

– Article 31 §§ 1 and 2 of the Act on Arms and Ammunition.

2. The order can further be issued if no permanent address or place of residence of the suspect in the Netherlands can be established and he is suspected of an offence within the jurisdiction of the courts and which, according to the law, is punishable by imprisonment.

3. The previous paragraphs are only applied when it appears from the facts or circumstances that there are serious indications against the suspect.”

(“1. Een bevel tot voorlopige hechtenis kan worden gegeven in geval van verdenking van:

a. een misdrijf waarop naar de wettelijke omschrijving een gevangenisstraf van vier jaren of meer is gesteld;

b. een der misdrijven omschreven in de artikelen 132, 250 bis, 285, eerste lid, 318, 321, 326, 326a, 326c, 395 en 417 bis van het Wetboek van Strafrecht;

c. de overtreding omschreven in artikel 432, onder 3°, van het Wetboek van Strafvordering;

d. een der misdrijven omschreven in:

– artikel 175, tweede lid, van de Wegenverkeerswet 1994;

– artikel 27, tweede lid, van de Wet buitengewone bevoegdheden burgerlijk gezag;

– de artikelen 52, 53, eerste lid, en 54 van de Wet gewetensbezwaren militaire dienst;

– artikel 31 van de Wet op de kansspelen;

– artikel 11, tweede lid, van de Opiumwet;

– artikel 46 van de Wet toezicht effectenverkeer 1995;

– artikel 31, eerste en tweede lid, van de Wet wapens en munitie.

2. Het bevel kan voorts worden gegeven indien geen vaste woon- of verblijfplaats in Nederland van de verdachte kan worden vastgesteld en hij verdacht wordt van een misdrijf waarvan de rechtbanken kennis nemen en waarop, naar de wettelijke omschrijving, gevangenisstraf is gesteld.

3. De voorgaande leden van dit artikel vinden alleen toepassing wanneer uit feiten of omstandigheden blijkt van ernstige bezwaren tegen de verdachte.”)

33. Article 250 CC provides as follows:

“1. The following persons shall be punished:

1° any person who intentionally causes or encourages his minor child, foster child or adopted child, his ward, a minor entrusted to him for care, education or supervision, or a servant or subordinate who is a minor, to commit an indecent act with another person, shall be liable to a term of imprisonment not exceeding four years or a fourth-category fine.

2° any person who intentionally causes or encourages a minor who he knows to be or may reasonably be expected to know to be a minor to commit an indecent act with another person, other than in the cases defined under 1°, shall be liable to a term of imprisonment not exceeding three years or a fourth-category fine.

2. If the offender has made a profession or habit of committing the indictable offence, the terms of imprisonment may be increased by one third.”

(“1. Wordt gestraft:

1° met gevangenisstraf van ten hoogste vier jaren of geldboete van de vierde categorie, hij die het plegen van ontucht door zijn minderjarig kind, stiefkind of pleegkind, zijn pupil, een aan zorg, opleiding of waakzaamheid toevertrouwde minderjarige of zijn minderjarige bediende of ondergeschikte met een derde opzettelijk teweegbrengt of bevordert.

2° met gevangenisstraf van ten hoogste drie jaren of een geldboete van de vierde categorie, hij die, buiten de gevallen genoemd onder 1°, het plegen van ontucht door een minderjarige wiens minderjarigheid hij kent of redelijkerwijs moet vermoeden, met een derde opzettelijk teweeg brengt of bevordert.

2. Indien de schuldige van het plegen van het misdrijf een gewoonte maakt, kunnen de gevangenisstraffen met een derde worden verhoogd.”)

34. Article 250 *ter* CC states as follows:

“1. The following persons commit the offence of trafficking in persons and are liable to a punishment of six years’ imprisonment or a fifth-category fine:

1° any person who induces another person to engage in prostitution by means of violence or any other physical action or by means of threats of violence or of any other physical action or by misusing authority or influence derived from the actual state of affairs, or by means of deception, or who under any of these circumstances undertakes any action which he or she knows or may reasonably be expected to know will lead to the other person becoming engaged in prostitution;

2° any person who recruits, takes with him or abducts any person with a view to inducing the latter to engage in prostitution in another country;

3° any person who induces another person to engage in prostitution, or who, as regards this other person, undertakes any action which he or she knows or may reasonably be expected to know will lead to the other person becoming engaged in prostitution, if the other person is a minor.

2. The penalty for the following offences shall be eight years' imprisonment or a fifth-category fine:

1° trafficking in persons, committed by two or more persons acting in concert;

2° trafficking in persons, where the victim is aged less than sixteen years;

3° trafficking in persons, if violence or any other physical action referred to in paragraph 1 results in serious bodily harm.

3. Trafficking in persons, committed by two or more persons acting in concert, under circumstances set out in paragraph 2 under 2° or 3°, shall be punishable by ten years' imprisonment or a fifth-category fine."

("1. Als schuldig aan mensenhandel wordt gestraft met gevangenisstraf van zes jaren of geldboete van de vijfde categorie:

1° degene die een ander door geweld of een andere feitelijkheid of door bedreiging met geweld of een andere feitelijkheid dan wel door misbruik van uit feitelijke verhoudingen voortvloeiend overwicht of door misleiding tot prostitutie brengt, dan wel onder voornoemde omstandigheden enige handeling onderneemt waarvan hij of zij weet of redelijkerwijs moet vermoeden dat die ander daardoor in de prostitutie belandt;

2° degene die een persoon aanwerft, medeneemt of ontvoert met het oogmerk die persoon in een ander land in de prostitutie te brengen;

3° degene die een ander tot prostitutie brengt, dan wel ten aanzien van een ander enige handeling onderneemt waarvan hij of zij weet of redelijkerwijs moet vermoeden dat die ander daardoor in de prostitutie belandt, indien die ander minderjarig is.

2. Met gevangenisstraf van acht jaren of een geldboete van de vijfde categorie wordt gestraft:

1° mensenhandel door twee of meer verenigde personen;

2° mensenhandel ten aanzien van een persoon die de leeftijd van zestien jaren nog niet heeft bereikt;

3° mensenhandel, indien geweld of een andere feitelijkheid als bedoeld in het eerste lid, zwaar lichamelijk letsel ten gevolge heeft.

3. Mensenhandel door twee of meer verenigde personen onder de omstandigheden, bedoeld in het tweede lid onder 2° or 3°, wordt gestraft met gevangenisstraf van tien jaren of geldboete van de vijfde categorie.")

PROCEEDINGS BEFORE THE COMMISSION

35. Mr Douiyeb applied to the Commission on 1 March 1996. He alleged that his detention in police custody had been contrary to Article 5 §§ 1 (c) and 4 of the Convention.

36. The Commission declared the application (no. 31464/96) admissible on 10 March 1998. In its report of 17 September 1999 (former Article 31), it expressed the opinion that there had been a violation of Article 5 § 1 (c) of the Convention (eighteen votes to fourteen) and that no separate issue arose under Article 5 § 4 of the Convention (eighteen votes to fourteen)¹.

FINAL SUBMISSIONS TO THE COURT

37. The applicant in his memorial requested the Court to find the respondent State in breach of Article 5 of the Convention and to award him compensation in relation to this breach.

38. The Government for their part requested the Court to hold that there had been no breach of Article 5 of the Convention.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

39. The applicant complained that his detention in police custody had been in violation of Article 5 § 1 (c) of the Convention, which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;”

1. *Note by the Registrar.* A copy of the Commission’s report is obtainable from the Registry.

40. In the Commission's view, with which the applicant in substance agreed, the applicant's detention in police custody was not ordered "in accordance with a procedure prescribed by law" as required by Article 5 § 1 of the Convention. This was because the investigating judge had failed to determine a crucial issue concerning the lawfulness of the applicant's detention in police custody, namely whether this detention was in fact based on Article 250 of the Criminal Code ("CC"), which prohibits causing or encouraging a minor to commit an indecent act with another person, as stated in the custody order, or on Article 250 *ter* of the Criminal Code, which provision prohibits trafficking in persons, although this issue had been explicitly raised by the applicant's lawyer during the hearing before the investigating judge on 27 February 1996.

41. The applicant further argued that in his case Article 250 CC did not offer sufficient scope for his detention in police custody and maintained that it was only when he was brought before the investigating judge on 27 February 1996 that he became aware that the suspicions against him concerned Article 250 *ter* CC rather than 250 CC.

42. The Government submitted that the reference to Article 250 CC instead of Article 250 *ter* CC in the order for the applicant's detention in police custody was the result of a mere clerical error, committed when the order was typed out by a police officer. They emphasised that, although the reference to Article 250 CC was incorrect, this did not affect the lawfulness of the order at issue since pre-trial detention could be ordered for several offences mentioned in Article 250.

43. The Government argued moreover that it clearly appeared from the facts of the case that the applicant was aware, from the outset, that he was suspected of trafficking in persons, that is the offence defined in Article 250 *ter* CC, on grounds of which suspicion he was arrested and subsequently detained.

44. The Court recalls that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof (see the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3297, § 139).

45. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with. A period of detention will in principle be lawful if it is carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. For this reason, the Convention organs have

consistently refused to uphold applications from persons convicted of criminal offences who complain that their convictions or sentences were found by the appellate courts to have been based on errors of fact or law (see the *Benham v. the United Kingdom* judgment of 10 June 1996, *Reports* 1996-III, p. 753, §§ 41-42).

46. In the present case the Court observes that, under Netherlands law, pre-trial detention may be ordered in case of suspicion of an offence which carries a punishment of imprisonment for four years or more (see paragraph 33 above). As the offences set out in Article 250 *ter* CC and Article 250 CC can attract a prison sentence of that duration – as regards the latter provision, either under Article 250 § 1 subsection 1 alone or under Article 250 § 1 subsection 2 combined with the aggravating circumstances set out in Article 250 § 2 – the Court considers that both Articles 250 and 250 *ter* CC offer in principle sufficient scope for an order for detention in police custody.

47. It is not in dispute that the criminal investigation against the applicant concerned the offence set out in Article 250 *ter* CC, namely trafficking in persons, and that the order for the applicant's arrest correctly specified that the statutory provision which the applicant was suspected of contravening was Article 250 *ter* CC.

48. The Court notes from the police report on the first questioning of the applicant on 26 February 1996, as submitted by the Government on 8 April 1999 (see paragraph 3 above), that on this occasion the applicant was informed of the subject matter about which he was going to be questioned. According to this report, the applicant stated at that time that he understood what he was suspected of (see paragraph 11 above). The Court further notes that this questioning took place shortly before the order for the applicant's detention in police custody was issued by the assistant public prosecutor.

49. In these circumstances, the Court finds no support for the applicant's contention that he only became aware of the nature of the suspicions against him when he was brought before the investigating judge on 27 February 1996.

50. It is true that the order for the applicant's detention in police custody mentions Article 250 CC as the legal basis for this order. However, the Court has noted the contents of the case file and, in particular, the documents submitted by the Government on 8 April 1999, i.e. the cover page of the criminal investigation at issue, the police report on this investigation, the police report on the applicant's first questioning on 26 February 1996, the written request by the public prosecutor for an order for the applicant's detention on remand and the order for the applicant's detention on remand issued on 27 February 1996 by the investigating judge. These documents had not been made available in the proceedings before the Commission.

51. On the basis of the contents of the case file, the Court finds it established that the reference to Article 250 CC in the custody order was the result of a mere clerical error committed when this document was typed out. All other documents concerning the applicant's case mention Article 250 *ter* CC as the basis of the criminal investigation against him.

52. In these circumstances, the Court considers that the applicant must have or ought to have been aware that the mention of Article 250 CC instead of Article 250 *ter* CC in the order for his detention in police custody was the result of a mere clerical error (see, *mutatis mutandis*, the Gea Catalán v. Spain judgment of 10 February 1995, Series A no. 309, p. 11, § 29; and the De Salvador Torres v. Spain judgment of 24 October 1996, *Reports* 1996-V, p. 1587, § 33).

53. As to the proceedings before the investigating judge on 27 February 1996, the Court notes that this error was brought to the attention of the investigating judge when the applicant's lawyer argued that the applicant had been unlawfully detained in police custody since, in his opinion, it was not possible to order detention in police custody on the basis of Article 250 CC (see paragraph 17 above).

54. Admittedly, the reasons given by the investigating judge for rejecting this argument, as recorded in the minutes of the relevant hearing, contain no express acknowledgement that an error had occurred in the wording of the custody order and are rather confusing when taken out of context. However, it is to be noted that the criminal investigation against the applicant solely concerned a suspicion that he had contravened Article 250 *ter* CC and that the written request by the public prosecutor for an order for the applicant's detention on remand as well as the investigating judge's decision on this request explicitly refer to Article 250 *ter* CC. This being so, when the matter is placed in its factual context, the investigating judge must be taken as having rejected this argument implicitly in that this judge actually examined the lawfulness of the applicant's detention in police custody under Article 250 *ter* CC.

55. In conclusion and on the facts of the present case, the Court considers the applicant's complaint to be unfounded and therefore finds that there has been no breach of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

56. The applicant further alleged a violation of Article 5 § 4 of the Convention in relation to his detention in police custody. Article 5 § 4 reads:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

57. The Court recalls that the mere fact that the Court has found no breach of the requirements of paragraph 1 of Article 5 does not mean that it is dispensed from carrying out a review of compliance with paragraph 4; the two paragraphs are separate provisions and observance of the former does not necessarily entail observance of the latter (see the *Kolompar v. Belgium* judgment of 24 September 1992, Series A no. 235-C, p. 57, § 45).

58. The Court notes that, on 27 February 1996 and pursuant to Article 59a of the Code of Criminal Procedure, the applicant was brought before the investigating judge in order to be heard and in connection with the public prosecutor’s request for an order for the applicant’s detention on remand. During this hearing the investigating judge examined the lawfulness of the applicant’s detention in police custody, the applicant’s request for immediate release on grounds of the alleged unlawfulness of his detention in police custody and the prosecutor’s request for an extension of the applicant’s detention. The investigating judge found the applicant’s detention in police custody lawful and, in conformity with the request of the public prosecutor, issued an order for the applicant’s detention on remand (see paragraphs 15-19 above).

59. It follows that the applicant did have access to proceedings by which the lawfulness of his detention in police custody was decided speedily by a court. Accordingly, the Court cannot find a violation of Article 5 § 4 in this instance.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no breach of Article 5 § 1 of the Convention;
2. *Holds* that there has been no breach of Article 5 § 4 of the Convention.

Done in English and in French, and notified in writing on 4 August 1999 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Elisabeth PALM
President

Maud DE BOER-BUQUICCHIO
Deputy Registrar