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

FOURTH SECTION

CASE OF ZOON v. THE NETHERLANDS

(*Application no. 29202/95*)

JUDGMENT

STRASBOURG

7 December 2000

In the case of Zoon v. the Netherlands,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mrs W. THOMASSEN,
Mr M. PELLONPÄÄ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 29 June and 16 November 2000,

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

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by the European Commission of Human Rights ("the Commission") on 6 March 1999 and by the Netherlands Government ("the Government") on 17 March 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention. It originated in an application (no. 29202/95) against the Kingdom of the Netherlands lodged with the Commission under former Article 25 by a Netherlands national, Mr Herman Olivier Zoon ("the applicant"), on 16 June 1995. The applicant alleged that he was not provided with a copy of the complete version of a judgment convicting and sentencing him at a time when he had to decide whether to lodge an appeal. In its report of 4 December 1998 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable from the Registry.], the Commission concluded by seventeen votes to seven that there had been a violation of Article 6 §§ 1 and 3 (b).

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

2. On 31 March 1999 a panel of the Grand Chamber decided that the case should be dealt with by a Chamber constituted within one of the Sections of the Court.

3. Subsequently the application was allocated to the Fourth Section (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 June 2000 (Rule 59§ 2).

There appeared before the Court:

(a) *for the Government*
Ms J. SCHUKKING, Ministry of Foreign Affairs, *Agent*,
Mr J. STRUYKER BOUDIER, Ministry of Justice,
Ms L. LING KET ON, Ministry of Justice, *Advisers*;

(b) *for the applicant*
Mr G.H.J. DOLK, *advocaat en procureur*, *Counsel*.

The Court heard addresses by Mr Dolk, Ms Schukking and Mr Struyker Boudier, and also their answers to questions put by it in writing beforehand and by some of the judges individually during the hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. The applicant used to work as a general practitioner in Dirksland, the Netherlands.

7. On 9 September 1993 preliminary judicial investigations were initiated into allegations of forgery and fraud perpetrated by the applicant.

8. In the course of these investigations the applicant stated on his own initiative that in March 1993 he had performed euthanasia on, and at the request of, one of his patients. However, he had stated to the municipal coroner (*gemeentelijk lijkschouwer*) that the patient had died from natural causes.

B. The trial proceedings

9. The applicant was summoned to appear before the Regional Court (*Arrondissementsrechtbank*) of Rotterdam on the following charges:

(1) principally: murder; alternatively: taking another person's life at that person's request;

(2) in his capacity of physician, falsifying a death certificate as regards the cause of a person's death;

(3) falsifying prescriptions;

(4) forging and presenting prescriptions for the acquisition of an opiate.

10. On 30 August 1994 the applicant lodged an objection (*bezwaarschrift*) against the summons (*dagvaarding*) with the Regional Court.

11. Following a hearing in camera on 2 December 1994, the Regional Court dismissed the objection.

12. On 27 April 1995 a public hearing took place before the Regional Court, during which the case was considered on the merits. Both the applicant and his defence counsel, two lawyers from the same law firm in Rotterdam, were present. In their pleadings, counsel for the applicant raised the following points:

(a) the indictment was invalid (it being argued that certain points were not set out in sufficient detail);

(b) the prosecution case was inadmissible (the argument being that the use of far-reaching measures such as a house search and pre-trial detention was excessive and unlawful);

(c) the obligation incumbent on physicians to report cases of euthanasia themselves, thus exposing themselves to the risk of criminal punishment, ran counter to Article 6 of the Convention;

(d) the evidence had been obtained unlawfully;

(e) the prescriptions had only been forged in part, not in their entirety;

(f) the applicant had confessed to euthanasia, which precluded a conviction of the more serious crime of murder;

(g) there was a defence of *force majeure* in respect of the charges of euthanasia and forging the death certificate;

(h) the applicant had not acted culpably;

(i) in the event of a conviction, no sentence should be imposed as the applicant had suffered enough already as a result of the proceedings (which had destroyed his reputation and his practice) and further punishment would serve no legitimate purpose.

13. On 11 May 1995 the Regional Court gave judgment in public and in the presence of the applicant's defence counsel.

It is a matter of dispute whether the grounds of the judgment were read out in addition to the operative provisions or only the operative provisions.

According to the Government, the President of the Regional Court, in accordance with the usual practice, read out the considerations relating to the validity of the summons, the main considerations underlying the dismissal of the defence plea concerning the admissibility of the prosecution, a summary of considerations relating to the evidence, and considerations as to whether the applicant was criminally liable. The applicant submitted, however, that his lawyers only heard the President state that he was acquitted of the principal charge under (1) and of the charge under (4), that the defence in respect of the alternative charge under (1) was rejected, that the applicant was found guilty of the alternative charge under (1) and the charges under (2) and (3), and that the seriousness of these offences warranted a suspended term of imprisonment of six months and a fine of 50,000 Netherlands guilders (NLG).

14. As to a written copy of the judgment, the Government submitted that they had ascertained that a signed version of the judgment in abridged form (*kop-staart vonnis*) was available when judgment was pronounced on 11 May 1995 and that it was the policy of the Regional Court of Rotterdam at the relevant time to provide a copy of the judgment in abridged form if this was requested in writing. According to the applicant, however, his lawyers telephoned the Regional Court's registry before the expiry of the period within which an appeal could be filed and were told that no judgment was available. Furthermore, the applicant's lawyers were not aware that the Regional Court had a policy of issuing copies of judgments only upon a request in writing.

15. The applicant did not appeal. The public prosecutor lodged an appeal but withdrew it on 2 June 1995.

C. Content of the judgment in abridged form

16. The judgment in abridged form, a copy of which was submitted by the Government, contains, *inter alia*, the Regional Court's considerations as to the validity of the summons and as to the admissibility of the prosecution. As regards the latter, the Regional Court rejected the applicant's argument that the prosecution in respect of the charges of murder and euthanasia was inadmissible. It considered that since section 10 of the Act on the Disposal of the Dead (*Wet op de Lijkbezorging*) had not yet entered into force at the time of the impugned act, there had not existed a legal obligation for the applicant to report the fact that he had committed an offence.

17. The judgment in abridged form further lists those offences of which the Regional Court acquitted the applicant and those of which it found him guilty. In respect of the items of evidence on which the Regional Court based its verdict, the judgment in abridged form only states “P.M.”, for *pro memoria*, meaning that a detailed enumeration of the items of evidence would be produced at a later date, if necessary. The Regional Court

proceeded to deal with, and reject, the applicant's subsidiary pleadings to the effect that if the prosecution was admissible, then the evidence had been obtained unlawfully. Subsequently, the Regional Court examined the criminal liability of the applicant and determined the sentence to be imposed on him, rejecting the applicant's claim that he had acted legitimately in a situation of *force majeure*. The judgment in abridged form concludes with a sentence stating that the judgment was read out in public on 11 May 1995.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. According to Article 359 § 1 of the Code of Criminal Procedure (*Wetboek van Strafvordering* – "CCP"), a judgment must detail the items of evidence on which a conviction is based. However, since – pursuant to Article 345 § 3 CCP – the court has to deliver the judgment within fourteen days following the closure of the trial, it was not unusual at the relevant time that initially a judgment in abridged form would be drafted in cases where the accused was convicted. Such a judgment did not give an account of the items of evidence on which the conviction was based. A complete version of the judgment was not prepared unless the convicted person or the public prosecutor lodged an appeal against the judgment. In that case the items of evidence were detailed in the judgment and the case file, including the complete judgment, was transmitted to the appellate court.

19. Where a judgment in abridged form was prepared, compliance with Article 365 § 1 CCP, which required that a (full) judgment be signed within forty-eight hours after its delivery by the judges who examined the case, was precluded. However, the judgment in abridged form would be signed in that form and, as soon as this had been done, the accused or his counsel would be able to inspect it, as well as the official records of the hearings, at the registry of the trial court, as was prescribed by Article 365 § 3 CCP for full judgments.

20. It appears that at the relevant time the Regional Court of Rotterdam had a practice of providing the defence with a copy of the judgment in abridged form only if a request was made in writing.

21. According to Article 404 taken in conjunction with Article 408 § 1 (a) CCP, an appeal against a judgment of the regional court had to be lodged with the court of appeal (*Gerechtshof*) within fourteen days following the day on which the judgment was read out in public. Once lodged, the appeal could be withdrawn by the person who instigated it, at the latest just prior to the start of the hearing on appeal (Article 453 § 1 CCP).

22. The Supreme Court (*Hoge Raad*) has held that an appeal filed outside the fourteen-day period is inadmissible even if the accused or his counsel have, through no fault of their own, been unable to inspect the judgment of the regional court within the fourteen-day period (judgment of 11 November 1986, *Nederlandse Jurisprudentie (NJ)* 1987, no. 568).

23. When the court of appeal examines the case, it should have before it a complete version of the judgment of the lower court. If this is not the case, the judgment is null and void and should be quashed (*vernietigd*) by the court of appeal on formal grounds pursuant to Article 359 §§ 1 and 10 CCP. However, this does not mean that the court of appeal must refer the case back to the regional court: Article 423 § 2 CCP provides that a case should be referred back to a regional court only if the judgment is quashed and the regional court has not decided on the merits of the case. This provision thus embodies the principle of the right to be tried at two levels by courts competent to examine the facts.

24. The proceedings before the court of appeal offer a full new hearing since most of the provisions of the CCP which apply to the proceedings before the lower court also apply on appeal (Article 415 CCP). The accused who has lodged the appeal may at his discretion submit his objections and possible additional objections in writing, both before and during the hearing. He may also submit additional objections orally in the course of the hearing until the formal closure of the appeal court's examination (Articles 416 and 311 §§ 1 and 4 CCP).

25. In a case which led to a judgment of the Supreme Court on 17 September 1990, the accused complained before the court of appeal that the judgment of the first-instance court did not detail the items of evidence. The court of appeal subsequently quashed the judgment because the items of evidence were not detailed but it did not refer the case back to the regional court, since the latter court had already decided on the merits of the case (see paragraph 23 above). In cassation the applicant invoked Article 6 § 3 of the Convention.

The Advocate-General (*Advocaat-Generaal*) at the Supreme Court submitted an advisory opinion (*conclusie*) to the effect that the fact that the judgment of the first-instance court had not detailed the items of evidence did not prevent the accused from conducting his defence on appeal since, firstly, an accused does not have to defend himself against the judgment by which he was convicted but against the accusation levelled against him by the public prosecution department; and secondly, the court of appeal examines the case independently on the basis of the trial and the summons and not on the basis of the judgment of the first-instance court. The Supreme Court eventually dismissed the appeal and, for its reasoning, referred to the advisory opinion of the Advocate-General (*NJ* 1991, no. 12).

26. When only the accused has filed an appeal, the court of appeal may impose a sentence heavier than that imposed at first instance if that decision is reached unanimously (Article 424 § 2 CCP). Unanimity is not required if the public prosecutor has also filed an appeal. If it is found that the public prosecutor has filed an appeal with the sole aim of preventing the unanimity requirement in Article 424 § 2 from applying, his appeal may be declared

inadmissible (see the judgments of the Supreme Court of 22 June 1982, *NJ* 1983, no. 73, and 29 March 1983, *NJ* 1983, no. 482).

27. The practice described in paragraph 18 above was subsequently codified in Articles 138b and 365a CCP, which entered into force on 1 November 1996, after the events complained of. If no appeal is lodged, a complete judgment will be made available upon request of the prosecutor or the accused or his lawyer within three months after delivery of the judgment, unless this request is devoid of reasonable interest (Article 365c §§ 1 and 2 CCP, which also entered into force on 1 November 1996).

THE LAW

I. SCOPE OF THE CASE BEFORE THE COURT

28. The applicant, in his memorial, complained of what he considered a disproportionate and unnecessary use of coercive measures in the course of the criminal investigation, such as pre-trial custody and a search of his house, and of the damage to his reputation caused by press releases issued by the public prosecutor about his case.

29. The Commission, in its decision of 14 January 1998, declared admissible only "the applicant's complaint that he had not been provided with a copy of the complete judgment of the Regional Court at the time he had to decide whether to lodge an appeal". The scope of the case before the Court being defined by the Commission's decision on admissibility, the Court cannot consider the complaint mentioned in paragraph 28 above (see, among many other authorities, the Reinhardt and Slimane-Kaïd v. France judgment of 31 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 659, § 88).

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (b) OF THE CONVENTION

30. The applicant complained that he did not have available a copy of the complete written judgment of the first-instance court at the time when he had to decide whether or not to lodge an appeal. He alleged a violation of Article 6 §§ 1 and 3 (b) of the Convention. The relevant parts provide as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... Judgment shall be pronounced publicly ...
>
> ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(b) to have adequate time and facilities for the preparation of his defence;

..."

The Commission, in its report of 4 December 1998, agreed with the applicant that there had been a violation of Article 6 §§ 1 and 3 (b) of the Convention. The Government disputed this.

31. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the applicant's complaint under Article 6 §§ 1 and 3 (b) taken together (see, among other authorities, the Vacher v. France judgment of 17 December 1996, *Reports* 1996-VI, p. 2147, § 22).

A. Availability of a copy of the written judgment at the time when the applicant had to decide whether to appeal

32. The applicant alleged that he did not have available a copy of either the complete written judgment or the judgment in its abridged form before the expiry of the time-limit for lodging an appeal. He was not provided with one at the time when judgment was pronounced. After delivery of the judgment his counsel had asked for a copy but had been met with a refusal at the registry of the Regional Court of Rotterdam.

33. In so far as it was alleged by the Government that the Regional Court of Rotterdam operated a policy of not providing copies of judgments in writing unless a written request to that effect was received, the applicant alleged that his counsel had been unaware of any such policy; moreover, even assuming that such a policy existed, it had never been made public, so that the members of the Rotterdam Bar could not reasonably be expected to know of it.

The applicant and his counsel had thus been denied the opportunity to take proper cognisance of the grounds on which the judgment of the Regional Court was based, and consequently to make an informed assessment of the possible outcome of an appeal.

34. Moreover, the grounds of the judgment of the Regional Court had not been read out in public at the time of delivery. In any event, even if they had been, this would not have been a proper substitute for a written copy, which the defence would have been in a position to study at leisure.

35. According to the Government, the President of the Regional Court read out the court's considerations as to the validity of the summons, the main considerations underlying the dismissal of the defence plea concerning the admissibility of the prosecution case, a summary of the considerations

relating to the evidence, and considerations as to whether the applicant was criminally liable. Moreover, it was stated in the judgment itself that it was read out in public on 11 May 1995.

36. The Court notes that the question of the extent to which the Regional Court's judgment was read out in public in the presence of the defence remains a matter of dispute. However, it is not contested that the operative part of the judgment was read out in public in the presence of the applicant's defence counsel.

37. The Government stated that the judgment in abridged form was available for inspection at the registry of the Regional Court after its delivery, and that – in accordance with the policy operated by the Regional Court of Rotterdam – a copy would have been made available to the defence, had they so requested in writing. It is not in dispute that, for whatever reason, the applicant and his counsel never made such a request.

Whether or not the applicant's counsel were aware of the said policy, the fact remains that it is not disputed that the judgment in abridged form was available for inspection forty-eight hours after delivery.

38. The Court must therefore conclude that, apart from the fact that the applicant was aware of the operative part of the judgment, it would also have been possible for him and his counsel to take cognisance of the text of the judgment in abridged form well before the expiry of the fourteen-day time-limit for lodging an appeal, so that they would have had sufficient time to file an appeal. The fact that they failed to do so cannot be imputed to the respondent State.

B. The judgment in abridged form

39. The applicant complained that the judgment in abridged form contained insufficient information to enable him to make an informed decision as to whether or not to appeal. The evidence relied on by the Regional Court to ground the conviction had been omitted. The only way for him to obtain a copy of the fully reasoned judgment would have been to lodge an appeal, which would have exposed him to the possibility that the Court of Appeal might impose a heavier sentence.

Had he appealed for the sole purpose of obtaining a copy of the fully reasoned judgment with the intention of possibly withdrawing his appeal after making an informed assessment of his chances, he would still have run the risk that the prosecution might also have appealed. The prosecution might then have maintained the appeal, which would have meant that the case would have gone for hearing before the court of appeal. This would quite likely have resulted in the imposition of a heavier sentence.

It was, in the applicant's submission, contrary to Article 6 §§ 1 and 3 (b) to force him to run such a risk simply in order to obtain the fully reasoned version of the judgment.

40. The Government explained the reasons which had led to the practice of giving judgment in abridged form initially and providing an elaborated version only if an appeal was lodged. In the Netherlands, it was provided that judgment had to be given no later than fourteen days after the close of the trial. However, in most cases it was not feasible for the courts to produce a complete judgment within that time. A compromise was therefore necessary between the requirements of judicial expedition and those of procedural fairness. Such a solution had the additional advantage of leaving the accused in uncertainty for no longer than a fortnight.

41. Moreover, in the applicant's case, the judgment in abridged form had contained sufficient information. The facts of the case had not been in dispute. There could have been no uncertainty as to the factual grounds on which the applicant's conviction was based. The applicant's defences had been of a legal nature. The Regional Court's findings in relation to these defences, as well as its considerations relating to the determination of the sentence, were clearly stated in the judgment in abridged form.

42. Notwithstanding the fact that an appeal must be lodged within fourteen days of the oral delivery of the judgment, grounds for appeal may be submitted up to the time of the appeal hearing. Therefore, the Government argued, if the applicant had lodged an appeal, the complete judgment would have been made available in time to enable him to present supplementary grounds of appeal.

43. It could not be said either that the applicant would have incurred any special risk by lodging an appeal. The prosecution had an autonomous competence to appeal, regardless of any action taken by the accused. In general, it avoided doing so for reasons of procedural economy; however, if the accused appealed, these reasons ceased to apply. Should the accused withdraw his appeal, the prosecution would have to decide whether to maintain its own; its decision, whichever way it went, would be based on reasonable grounds relating to the merits of the case.

44. Finally, if the appeal went ahead there would be a complete rehearing. It was inherent in such proceedings that the court of appeal would form its own views of the case and in appropriate cases might impose a heavier sentence.

45. The Court is not called upon to express a general view on the practice followed in the Netherlands with regard to judgments in abridged form. It will confine itself to the facts of the case before it.

46. The applicant's defences concerned the validity of the summons, the admissibility of the prosecution case, the lawfulness of the way in which evidence had been obtained, the qualification in law of the acts charged and mitigating circumstances (see paragraph 12 above). These issues were addressed in the judgment in its abridged form (see paragraphs 16-17 above). The applicant does not deny this.

47. It is true that the items of evidence on which the actual conviction was based are not enumerated in the judgment. However, the applicant never denied having committed the acts charged and never challenged the evidence against him as such. Moreover, the applicant has not claimed, nor does it appear, that his conviction was based on evidence that was neither contained in the case file nor presented at the hearing of the Regional Court.

48. It is further noted that in Netherlands criminal procedure an appeal is not directed against the judgment of the first-instance court but against the charge brought against the accused. An appeal procedure thus involves a completely new establishment of the facts and a reassessment of the applicable law. It follows, in the Court's opinion, that the applicant and his counsel would have been able to make an informed assessment of the possible outcome of any appeal in the light of the judgment in abridged form and of the evidence contained in the case file.

49. The Court accepts that the prosecution's entitlement to lodge and maintain an appeal is an autonomous one, in no way dependent on whether the defence lodges an appeal. That being so, the possibility that the prosecution might follow suit if the defence appealed cannot be of decisive importance.

50. In the circumstances of the present case, therefore, it cannot be said that the applicant's defence rights were unduly affected by the absence of a complete judgment or by the absence from the judgment in abridged form of a detailed enumeration of the items of evidence relied on to ground his conviction.

51. Accordingly, there has been no violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (b).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (b).

Done in English, and notified in writing on 7 December 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President