



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

SECOND SECTION

CASE OF A.B. v. THE NETHERLANDS

(Application no. 37328/97)

JUDGMENT

STRASBOURG

29 January 2002

FINAL

29/04/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.B. v. the Netherlands,

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

Mr J.-P. COSTA, *President*,

Mr A.B. BAKA,

Mr GAUKUR JÖRUNÐSSON,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mrs W. THOMASSEN,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 January 2002,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 37328/97) against the Kingdom of the Netherlands lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr A.B. (“the applicant”), on 18 March 1997.

2. The Dutch Government (“the Government”) were represented by their Agent, Mr R. Böcker, of the Netherlands Ministry of Foreign Affairs. The applicant was initially represented by Mr D. Gebhardt. On 10 January 1999, the applicant informed the Court that he no longer wished to be represented by Mr Gebhardt. The President of the Chamber granted the applicant leave to present his own case (Rule 36 § 4 (b) of the Rules of Court). The President of the Chamber further acceded to the applicant’s request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

3. The applicant alleged an interference with his correspondence by the Netherlands Antilles penitentiary authorities with, *inter alia*, the Commission, in violation of his rights under Article 8 of the Convention and, relying on Article 13 in conjunction with Articles 3 and 8 of the Convention, he claimed not to have had any effective remedy in respect of the conditions of his detention and the control of his correspondence.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was initially allocated to the First Section of the Court (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 of the Rules of Court.

6. By a decision of 31 August 1999, the Chamber declared the application partly inadmissible and adjourned its further examination of the remaining part of the application. On 5 September 2000, after having received the parties' observations on the admissibility and merits on the remaining part of the application, the Chamber declared this part of the application admissible.

7. The Government, but not the applicant, filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties were invited to submit final written observations of which possibility the applicant availed himself.

8. Following the general restructuring of the Court's Sections as from 1 November 2001 (Rule 25 § 1 of the Rules of Court), the application was assigned to the newly composed Second Section of the Court (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings against the applicant

9. On 8 May 1996 the applicant was arrested in New York (USA) and placed in detention on the basis of a extradition request from the authorities of the Netherlands Antilles where he had been charged with embezzlement and forgery. He was extradited to the Netherlands Antilles on 30 May 1996 and detained in the Pointe Blanche Penitentiary on the island of St. Maarten.

10. In a document dated 18 June 1996 bearing the applicant's signature, it is stated that the applicant appointed Mr D. Gebhardt as the:

"true and lawful Attorney in my name, place and stead and for my use and benefit: To exercise any or all of the following powers as to my criminal case in the Netherlands Antilles, any interest therein and thereon. To appoint or terminate lawyers, receive and take possession of documents, to ask demand, sue for, recover, collect and receive all necessary documents in my criminal case, and appeal any decision, file complaints and whatsoever. Giving and granting to my said Attorney full powers and authority ... until this power is revoked."

11. On 11 December 1996, following adversarial proceedings during which the applicant was assisted by Mr R. – a local legal aid lawyer to whom the case had been assigned –, the First Instance Court (*Gerecht in*

Eerste Aanleg) of the Netherlands Antilles convicted the applicant of embezzlement and fraud and sentenced him to three years and nine months' imprisonment. Both the applicant and the public prosecutor filed an appeal with the Joint Court of Justice (*Gemeenschappelijk Hof van Justitie*) of the Netherlands Antilles and Aruba.

12. On 7 October 1997, following adversarial proceedings during which the applicant was represented by Mr J. – a local lawyer –, the Joint Court of Justice quashed the judgment of 11 December 1996, convicted the applicant of embezzlement and forgery and sentenced him to three years' imprisonment. Although on 13 October 1997 the applicant filed an appeal in cassation with the Netherlands Supreme Court (*Hoge Raad*), he subsequently withdrew this appeal. Consequently, the Joint Court of Justice's judgment of 7 October 1997 became final. On 27 February 1998, after having served his sentence, the applicant was released from prison.

B. The applicant's conditions of detention

13. On 21 September 1996 the applicant sent a letter of complaint about the conditions of detention in the Point Blanche Penitentiary, where he was held, to one of the judges of the First Instance Court of St. Maarten, in the latter's capacity as a member of the Prisons and Remand Centres Supervisory Board (*Commissie van Toezicht Gevangeniswezen en Huizen van Bewaring*).

14. In this letter, in which the applicant referred to a conversation he had had with this judge on 20 September 1996, the applicant explained, among other things, that inmates were locked in their cells for 21 hours a day with nothing to do, that after ten days' detention in Point Blanche an inmate was permitted on the following Saturday a maximum of four sheets of paper and four envelopes, that there were no telephone facilities apart from previously announced incoming telephone calls not exceeding fifteen minutes, that inmates had to provide for their own clothing and bed linen, which they had to wash in the showers or primitive sinks during recreation, that toilets did not flush and that shower taps and pipes were leaking. In his letter the applicant suggested practical solutions for these matters and explained why such solutions would be beneficial for all concerned.

15. On 13 January 1998, the applicant informed the European Commission of Human Rights ("the Commission") that he had been transferred to the Koraal Specht Prison on the island of Curaçao for medical reasons and had been admitted to the infirmary there. The applicant stated that, apart from the bathroom, the infirmary had no lights after sunset and inmates remained locked in for 23 hours a day.

16. In his letter of 5 February 1998, the applicant informed the Commission that, on 31 January 1998, he had been transferred from the infirmary to the adjacent old infirmary building, where he was detained in a

cell of about 5 metres long and 3 metres wide. He shared this cell with three other persons. Two slept on temporary beds, two others on the floor. He was provided with a foam mattress. No sheets or blankets were provided and he was not allowed to retrieve his own sheets from his personal belongings. He stated that he used a towel as a cover.

C. The correspondence of the applicant and his then representative with the Commission

17. By letter of 7 April 1997, Mr D. Gebhardt, who initially represented the applicant in the proceedings before the Commission and subsequently the Court, complained to the Director of the Point Blanche Penitentiary that his letters to the prisoners there, including the applicant, had been opened and withheld by the prison authorities although these letters were marked “from lawyer to client”. Mr Gebhardt drew the Director’s attention to the Court’s judgment of 25 February 1992 in the case of *Campbell v. the United Kingdom* (Series A no. 233). He requested the Director to ensure that his earlier letters, which had been withheld in the past, be delivered to the addressees and that his clients be provided with official letter paper for their correspondence with him.

18. By letter of 9 April 1997, enclosing a copy of his letter of 7 April 1997 to the Director of the Point Blanche Penitentiary, Mr Gebhardt filed a complaint against the Director of the Point Blanche Penitentiary with the Governor (*Gouverneur*) of the Netherlands Antilles. Apart from other general problems concerning this Director’s activities, Mr Gebhardt complained that the Point Blanche prison authorities had restricted the applicant’s possibilities to acquaint himself with the contents of his case-file, a copy of which his defence lawyer had given him. On the basis of these restrictions, the lawyer retrieved the documents, as the lawyer-client privilege was not guaranteed. Mr Gebhardt requested the Governor to ensure that the principle of confidentiality between lawyers and their clients be respected by issuing the necessary instructions to the Director of the Point Blanche Penitentiary.

19. On 22 July 1997, the Cabinet of the Governor informed Mr Gebhardt that the Governor had received a report on these matters from the Minister of Justice and that the latter had been requested on 13 June 1997 to answer Mr Gebhardt’s letter. On 25 September 1997, the Cabinet of the Governor informed Mr Gebhardt that the Minister of Justice had been reminded to answer Mr Gebhardt’s letter.

20. On 1 September 1997, Mr Gebhardt informed the Governor of the Netherlands Antilles that he had not yet received any response from the Minister of Justice of the Netherlands Antilles. Mr Gebhardt further stated the applicant had appointed him to represent him in proceedings before the Commission, in which context the applicant needed to sign a power of

attorney sent to Mr Gebhardt by the Commission's Secretariat. With reference to his letter of 9 April 1997, Mr Gebhardt stated that, contrary to Article 8 of the Convention, the prison authorities were blocking his access to the applicant. Mr Gebhardt therefore requested the Governor to ensure that the applicant would receive and return the Commission's standard letter of authority.

21. On 27 September 1997, the public prosecutor of St. Maarten, to whom Mr Gebhardt's letter of 1 September 1997 had been forwarded, sent the power of attorney signed by the applicant to Mr Gebhardt.

22. As in the meantime Mr Gebhardt had also informed the Commission's Secretariat that he had had difficulties obtaining access to the applicant, the Secretariat of the Commission sent a letter on 1 October 1997 to the applicant directly, requesting him to complete, sign and return a power of attorney for his representation by Mr Gebhardt in the proceedings before the Commission.

23. On 28 October 1997, the Commission's Secretariat received the completed and signed letter of authority from the applicant directly. The letter was stamped by the St. Maarten prison authorities and bore an illegible mark written by hand with a red ink ballpoint pen, which appeared to be a prison officer's visa. In the accompanying letter, the applicant informed the Commission that the prison authorities had opened the Commission's letter of 1 October 1997.

24. By letter of 14 November 1997, the Commission's Secretariat requested the applicant to provide further details as to the opening of the Commission's letter of 1 October 1997 and the control exercised by the prison authorities of correspondence between the applicant and the Commission.

25. On 12 December 1997, the Commission received the applicant's reply, stating that he had also received the Commission's letter of 14 November 1997 after it had been opened by the prison authorities. When the letter was given to him, he was told that it had been opened by mistake and that, after it had been read, it had not been stamped. The applicant submitted the original of the Commission's letter of 1 October 1997 – which carried the same stamp and red ballpoint mark as the authority form – and the original letter of 14 November 1997 which carried no stamp or other mark.

26. In his letter, the applicant explained that the prison stamp on his letters to the Commission had been placed on blank paper prior to his writing on it. He had addressed this letter to the President of the European Commission and had sealed the envelope himself, as only letters addressed to the President of the European Commission were exempted from control by the prison authorities and, consequently, could be sealed by inmates themselves. He further stated he was not allowed to personally seal his mail to his lawyer.

27. On 20 December 1997, Mr Gebhardt addressed a complaint to the Office of the Public Prosecutor of St. Maarten about problems at the Point Blanche Penitentiary in respect of his correspondence with various detainees there. The applicant was not included in the list of detainees cited. Referring to Article 8 of the Convention, Mr Gebhardt requested the public prosecutor to ensure that any correspondence between detainees and the Commission and between detainees and himself be treated as confidential by the Point Blanche Prison authorities.

28. In his letter of 5 February 1998, the applicant informed the Commission that on 20 January 1998 he had received a letter from his lawyer which had been opened.

D. Other actions undertaken by Mr Gebhardt on behalf of the applicant

29. On 10 June 1997, Mr Gebhardt addressed a letter concerning the applicant's case to the Queen of the Netherlands. On 24 July 1997, Mr Gebhardt was informed by the Minister for Netherlands-Antillean and Aruban Affairs that the letter of 10 June 1997 had been forwarded to this Ministry. Since the applicant's case was still *sub iudice*, the Minister stated that:

“the Antillean judicial authorities still have to judge your defence statement, in which you refer to the treatment of your client. I have full confidence in the judgment of these authorities.”

Mr Gebhardt was further informed that a copy of his letter had been sent to the Governor of the Netherlands Antilles, requesting the latter to bring the matter to the attention of the Minister of Justice.

30. On 26 August 1997, Mr Gebhardt addressed a petition to the Queen of the Netherlands requesting the applicant's release, arguing that the applicant was being unlawfully detained in inhuman conditions.

31. On 5 December 1997, Mr Gebhardt addressed a further letter to the Queen of the Netherlands in which he gave an account of the applicant's state of health while in detention and, among other things, complained of the lack of response to these problems from the authorities. He requested the Queen to intervene in order to obtain medical parole for the applicant.

32. On 23 December 1997, with reference to the letter of 24 July 1997, Mr Gebhardt informed the Minister for Netherlands-Antillean and Aruban Affairs that neither the Governor of the Netherlands Antilles nor the Minister of Justice of the Netherlands Antilles had replied.

II. RELEVANT DOMESTIC LAW AND PRACTICE

a. Code of Criminal Procedure and prison rules

33. Under Article 50ter of the former Code of Criminal Procedure (*Wetboek van Strafvordering*) of the Netherlands Antilles, as in force at the relevant time¹, every practising lawyer registered with the Joint Court of Justice of the Netherlands Antilles and Aruba is competent to represent accused persons in criminal proceedings in the Netherlands Antilles. When absolutely necessary (“*volstrekte noodzakelijkheid*”) other suitable persons, such as foreign lawyers, may be allowed to act as counsel.

34. Pursuant to Article 46 of the National Decree <on Prison Administration> (*Landsbesluit* – Official Bulletin of the Netherlands Antilles (PB) 1958 no. 18) and Articles 67-69 of the Rules of Order and Discipline for Prisons and Remand Centres (*Reglement van Orde en Tucht voor de Strafgevangenis en de Huizen van Bewaring* – Official Bulletin of the Netherlands Antilles (PB) 1958 no. 19), which were in force at the material time, detainees were entitled to write letters on Sundays and to receive letters at all times. The prison governor ensured that detainees’ letters, which could only be written with materials provided free of charge by the prison authorities, were posted without delay. The prison authorities also paid the costs of postage. Apart from detainees’ letters addressed to the Governor of the Netherlands Antilles, the Minister of Justice, the Prisons and Remand Centres Supervisory Board, the First Instance Court, the Joint Court of Justice, the Public Prosecutor, the Procurator-General and the Lieutenant Governor (*gezaghebber*), all correspondence of detainees was subject to control by the prison authorities.

35. The Rules of Order and Discipline for Prisons and Remand Centres were replaced by a new National Ordinance on Prisons in the Netherlands Antilles (*Landsverordening Beginselen Gevangeniswezen*), which entered into force on 13 August 1999². New Prison Regulations (*Gevangenismaatregelen*) and Internal Prison Rules (*Huishoudelijke Reglementen*) are currently being prepared³.

36. The National Decree (*Landsbesluit*) of 29 December 1962 (PB 1962 no. 160), in force at the relevant time, set up the Prisons and Remand Centres Supervisory Board. This Board was responsible for the supervision of all matters relating to penal establishments, with particular reference to the treatment of detainees and compliance with regulations. However, under

¹ On 1 October 1997 a new Code of Criminal Procedure entered into force.

² Article 1 of the National Decree (*Landsbesluit*) of 6 August 1999.

³ Response of 17 June 1998 of the Government of the Netherlands Antilles to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment on its visit to the Netherlands Antilles from 7-11 December 1997, CPT/Inf (98)17, 10 December 1998, p. 43.

the system established under this National Decree, detainees had no formal right of complaint.

37. This situation changed with the entry into force of the new National Ordinance on Prisons in the Netherlands Antilles, which provides detainees with a limited right of complaint and by which the mandate of the Prisons and Remand Centres Supervisory Board includes supervising the execution of custodial sentences, examining detainees' complaints and considering other grievances presented by detained persons. Under Article 44 § 6 of the new National Ordinance, compensation may be granted where the Supervisory Board finds a complaint to be partially or wholly well-founded.

38. Under the system in force at the material time, problems relating to conditions of detention could also be reported to the Office of the Procurator-General. In the case of unacceptable behaviour taking place in a detention facility, the Procurator-General could order an inquiry to be carried out by the National Criminal Investigation Department (*Landsrecherche*).

39. The first paragraph of Article 50sexies of the former Code of Criminal Procedure of the Netherlands Antilles, in so far as relevant, provided as follows:

“Counsel has free access to a lawfully detained suspect, can speak with him in private and exchange letters with him without others reading them, . “

40. Under the second paragraph of Article 250sexies of the former Code of Criminal Procedure of the Netherlands Antilles, the public prosecutor or, if involved, the investigating judge (*rechter-commissaris*) may, during the preliminary criminal investigation (*voorbereidend onderzoek*) and in the interests of this investigation, order restricted contacts between a suspect and his lawyer, namely a denial of access to the suspect, non-private consultations or the withholding of correspondence and/or other documents. Such restrictions can only be ordered for a maximum period of six days and, pursuant to Article 250sexies § 3, are subject to review by the Joint Court of Justice.

41. The wording of Article 70 of the Code of Criminal Procedure of the Netherlands Antilles, which entered into force on 1 October 1997, is almost identical to Article 250sexies of the former Code of Criminal Procedure.

b. Civil law provisions

42. If no legal remedy exists under administrative law, the Netherlands Antilles civil courts have traditionally had competence to grant relief against the administration. This competence is based on Article 2 of the Uniform National Ordinance on the Organisation of the Judiciary (*Eenvormige Landsverordening op de Rechterlijke Organisatie*), which reads:

“Jurisdiction in civil cases involves hearing all disputes over civil rights and debt claims.”

43. In accordance with the Netherlands Supreme Court’s findings in its leading judgments of 31 December 1915 and 18 August 1944 (*Nederlandse Jurisprudentie* (NJ) 1916, p. 407, and NJ 1944/45, no. 598) on a similar provision in the Netherlands Act on the Organisation of the Judiciary (*Wet op de Rechterlijke Organisatie*), the Netherlands Antilles courts permit themselves a broad interpretation of the notion of “civil rights”. The right claimed by a plaintiff, and not the relationship between the parties, determines the competence of the civil courts (Joint Court of Justice, *Dirksz v. the Netherlands Antilles*, judgment of 28 June 1955). This means that civil courts are competent to hear disputes under civil law as well as under public law, provided that the protection of a civil right is being sought.

44. The civil courts’ competence as to the lawfulness of acts of the administration is, however, limited where a remedy offering sufficient guarantees for a fair procedure is available under statutory administrative law. Whilst in principle remaining competent, civil courts are to refrain from examining the lawfulness of an administrative act or decision against which an administrative appeal lies. Examination of the lawfulness of such an act or decision is not, however, excluded if the administrative appeal does not offer sufficient guarantees for a fair procedure.

45. On this basis the Netherlands Antilles civil courts consider themselves competent to rule on the lawfulness of acts of the administration when these relate to or are directed against persons in detention.

46. Claims against the administration submitted to the civil courts are, generally speaking, brought in the form of an action for tort (*onrechtmatige daad*) within the meaning of Article 1382 of the Civil Code (*Burgerlijk Wetboek*) of Aruba and the Netherlands Antilles. An act of the administration is unlawful and constitutes a tort under Article 1382 when it is contrary to a rule of international or domestic law which seeks to protect the plaintiff’s interests, or to the general principles of proper administration (*algemene beginselen van behoorlijk bestuur*), which in the Netherlands Antilles are for the most part unwritten legal standards with which acts of the administration must comply. Where civil courts are competent, it is possible to request the court, in summary civil proceedings (*kort geding*), to take an interim measure.

47. The Convention, which according to the domestic courts’ case-law is directly applicable in the legal order of the Netherlands Antilles, is frequently used by the civil courts in their examination of claims that an act of the administration is unlawful.

48. In a decision taken on 17 July 1991 in summary civil proceedings brought by 23 inmates of the Koraal Specht Prison, the First Instance Court of Curaçao reviewed *inter alia* a claim for unlimited correspondence rights

under Article 8 of the Convention (*Rietwijk et al. v. the Netherlands Antilles*, KG 209/1991). It held on this claim:

“For the time being it has not been established that the interference with the fundamental right of respect for correspondence provided by <Article 46 of the National Decree on Prison Administration and Articles 67-69 of the Rules of Order and Discipline for Prisons and Remand Centres> exceeds the boundaries set out in the second paragraph of Article 8 of the Convention. The special position of detainees simply renders such interference necessary.

It has been established that the <prison> direction does not allow detainees from the Netherlands Antilles to write more than two letters per week and that, for detainees from abroad, the maximum amount has been set at three per week. It is further the rule for all detainees that they may send two Christmas cards per year at public expense and ten extra at their own expense.

Also in the assessment of these limitations, the special position of detainees may be taken into consideration. The circumstance that all letters, both incoming and outgoing, must be censored constitutes a ground of justification for the limitations submitted. It has been established that the director, by virtue of Article 46 § 1 of <the National Decree>, is empowered to limit the fundamental right in this sense. The claim is consequently rejected.”

The First Instance Court did, however, find in favour of the detainees on a number of other claims: It ordered the defendant to allow each detainee to have visits of 30 minutes per week, to cover an open sewer in the prison’s courtyard and to ensure the availability of health care services for at least 15 hours per week. It further prohibited the defendant from placing detainees in a punishment cell for more than two weeks. Such cells must anyway have daylight and a water supply.

49. In a decision taken on 6 December 1995 in summary proceedings taken by two detainees who did not explicitly invoke the Convention, the First Instance Court of Curaçao set out the conditions under which a person could be held in pre-trial detention (*voorlopige hechtenis*) in the Rio Canario police cell complex. As these conditions were not met, it issued an interim measure prohibiting the defendant from keeping one of the two plaintiffs (the other one having been transferred already) in detention in this complex. It ordered his transfer to the Curaçao remand centre within six hours or, if this was not possible, to release him (*Balentien and Geertruida v. the Netherlands Antilles*, KG 568/94).

50. In a decision taken on 9 February 1996 in summary proceedings brought by a detainee, the First Instance Court of Curaçao ruled that to hold a person in custody (*inverzekeringstelling*) for nearly three days in a police cell – that he shared with another person – of three square metres without sanitary facilities and without a possibility of outdoor exercise, was contrary to Article 3 of the Convention, and ordered the immediate release of the plaintiff (*Moesquit v. the Netherlands Antilles*, KG 66/1996).

51. In a decision taken on 14 November 1997 in summary proceedings brought by six detainees (*Damon et al. v the Netherlands Antilles*, KG 426/97), the First Instance Court of Curaçao held

“1. The plaintiffs ... claim against the defendant, the <Netherlands Antilles authorities>,”

- six orders, described in their petition, identical to the orders already issued by the First Instance Court by judgment of 23 September 1996 (AR 1464/93 against the <Netherlands Antilles authorities> at the suit of five other plaintiffs, and which orders all concern facilities of an elementary hygienic and humanitarian nature;

- a prohibition on imposing collective punishments in the form of a denial of visits, mail or access to the canteen;

- a prohibition on administering corporal punishments to detainees, in particular “circle ill-treatment” (*kringmishandelingen*) and the “soultrain”⁴;

all of this on penalty of a default fine of 10,000 Netherlands Antilles Guilders (NAF) for each day that the <Netherlands Antilles authorities> violate one of these orders or prohibitions as regards one of the plaintiffs, with a maximum of NAF 250,000 per plaintiff. ...

4.1. <It has been> established that none of the humanitarian and sanitary facilities which the authorities of the Netherlands Antilles had been ordered to execute, following this court’s judgment of 26 September 1996, have materialised, so that <the plaintiffs> justly claim that the <Netherlands Antilles authorities> be ordered once again to do so.

4.2. Indeed:

- it has not been argued nor does it appear that nutritional plans have been drawn up by a dietician, whereas ... these should have been available more than a year ago. This is not altered by the recent activities of a dietician since these have not actually resulted in the practical introduction and implementation of menus.

- it has been argued but not shown that up to now sufficient pest control ... <by placing anti-cockroach devices in cells> has taken place;

- the <Netherlands Antilles authorities> recognise that an increase in the number of visiting cells by three has not yet taken place, and no well-founded reason for this has been given; it is understandable that security demands render that increase laborious and time-consuming, but after one year it should have been completed;

- the <Netherlands Antilles authorities> do not deny in so many words that placements in a punishment cell take place without <a prior> hearing of the detainees concerned; the reference to the sanctions that may be applied where the instruction to hear is not respected does not constitute rebuttal;

⁴ Forcing detainees to walk with their hands bound behind their backs between a double line of prison guards who strike the detainees with batons.

- the <Netherlands Antilles authorities> have submitted that there is now sufficient natural light and air in the punishment cell, but this is not plausible and the court fails to see, if this was indeed the case, why <the plaintiffs> would make a claim to this end, and why, in addition, an order with a default fine could therefore harm the <Netherlands Antilles authorities>;

- the <Netherlands Antilles authorities> have not really denied that the punishment cell is not or only partially equipped with a mattress, bedding, a table and a chair.

5.1. The requested prohibition on imposing collective and corporal punishments shall also be ordered.

5.2. The <Netherlands Antilles authorities> have not denied that collective punishments have been applied, but have pointed out an emergency situation that may occur. That it is sometimes impossible to find out who in a shared cell has committed a prosecutable offence is no justification for punishing everyone concerned; in this way innocent people are knowingly punished, and that can never be justified.

5.3. And it is further established that corporal punishments have been administered, not only on the basis of declarations made during the trial that have been hardly disputed, but also on the basis of the Paula Report⁵ the contents of which have not been disputed. Corporal punishments are prohibited under conventional-law provisions.

6.1. The claims will therefore be granted. Given the nature of the prohibition, no maximum limit shall be fixed for the default fine concerning the prohibition on corporal punishment.

6.2. In this connection it is further considered that, in so far as the interests of <the plaintiffs> in granting <their claims> do not lie in offences already committed, their interests lie in the prevention thereof since the danger that these <offences> will reoccur is apparently real.

7.1. The question remains whether a default fine must be attached to this ruling.

7.2. The defence of the <Netherlands Antilles authorities> that they will voluntarily comply with judicial ruling is not credible; the <Netherlands Antilles authorities> have apparently done nothing about the orders contained in the judgment of 23 September 1996. This pleads in favour of imposing default fines.

7.3. ... nothing has induced the <Netherlands Antilles authorities> to do something about the worrisome wrongs in the Koraal Specht Prison. In the entire country and Kingdom there is unanimous agreement that the prison by far does not comply with the norms that are internationally recognised and set out in Treaties, – also the <Netherlands Antilles authorities> through their Minister continuously recognises this – but nothing happens.

7.4. If the <Netherlands Antilles authorities> realise that a wide variety of measures are required to guarantee the physical security and the mental and physical health of

⁵ Report by the domestic Paula Commission of enquiry on the situation in the Koraal Specht Prison

detainees ... then they receive a judicial order and nevertheless fail to do what is urgently required of them, the question arises whether a default fine would be of any help.

8. Nevertheless, the reason to impose a default fine is that, within the framework of the present summary proceedings, no other coercive measure is available and <the plaintiffs> cannot be denied the right to try now to obtain enforcement of the orders which have been granted ...”

The First Instance Court found in favour of the plaintiffs on all claims and set a default fine of NAF 10,000 for each day of failure to respect any of the orders or prohibitions to the detriment of one of the plaintiffs up to a maximum of NAF 250,000 per plaintiff, and a default fine of NAF 50,000 for each time the prohibition on corporal punishment was not respected as regards any of the plaintiffs.

52. Following a violent incident on 14 July 1998 at the Koraal Specht Prison in Curaçao (see paragraph 57 below), five detainees brought tort proceedings against the authorities of the Netherlands Antilles. In its decisions of 6 December 1999, the Court of First Instance of Curaçao held that the plaintiffs had been subjected to treatment contrary to Article 3 of the Convention and awarded them damages varying from NAF 10,000 to NAF 22,500 (*Arrindel v. the Netherlands Antilles*, A.R. nr. 1598/99, *Thodé v. the Netherlands Antilles*, A.R. nr. 1599/99, *Bart v. the Netherlands Antilles*, A.R. nr. 1600/99, *Jops v. the Netherlands Antilles*, A.R. nr. 1601/99, and *Dovale v. the Netherlands Antilles*, A.R. nr. 1696/99).

III. RELEVANT DOMESTIC AND INTERNATIONAL MATERIALS

53. In its Report of 18 January 1997, the European Committee for the Prevention of Torture and Inhuman Treatment (“CPT”) on its visit to the Netherlands Antilles from 26 to 30 June 1994⁶, found that the conditions of detention in the Koraal Specht Prison amounted to inhuman and degrading treatment. This finding led the CPT’s delegation to send a letter on 10 August 1994 to the Minister of Justice setting out a number of urgent measures which had to be taken to improve conditions of detention there.

54. According to this Report, the Koraal Specht Prison regulations make no provision for the use of telephones by prisoners and that, in practice, it appeared that prisoners who are resident in the island of Curaçao could make calls once a week and foreign nationals once a month. Calls were apparently limited to about ten minutes and were monitored by prison staff. As to the visiting facilities, the CPT recommended their complete review in order to establish more open arrangements for ordinary visits.

The CPT further observed that placements in the punishment cell, with only bread and water on alternate days, was current practice, and

⁶ CPT/Inf (96)1.

recommended that the Netherlands Antilles take immediate steps to prohibit the placement of prisoners in punishment cells on a bread and water diet. The CPT further found that the amount of time that two general medical practitioners spent in the prison – 15 hours per week for about 500 prisoners – was inadequate.

55. The CPT Report of 10 December 1998 on its second visit to the Netherlands Antilles from 7 to 11 December 1997⁷, in which the ruling of 14 November 1997 by the First Instance Court of Curaçao (see paragraph 51 above) is mentioned⁸, concluded that the material conditions of detention in the Koraal Specht Prison remained unsatisfactory and the CPT called upon the Netherlands Antilles authorities to take immediate steps to draw up a comprehensive strategy to combat violence in all its forms at Koraal Specht Prison and that this strategy be vigorously implemented without delay. It also recommended that the Netherlands Antilles authorities redouble their efforts in *inter alia* reducing the overcrowding and improving the overall state of repair of the detention areas (including the sanitary facilities). The CPT further recommended that immediate steps be taken to ensure that every prisoner would be supplied with a mattress at night.

56. Certain positive developments concerning prisoners' contacts with the outside world were noted by the CPT delegation, particularly as regards improved access to a telephone and the possibility offered to some prisoners of having supervised open visits. Nevertheless, many complaints were heard from prisoners about lengthy delays before they were granted access to a telephone and about such access often being refused arbitrarily; complaints were also heard about the delayed distribution and/or forwarding of correspondence.

57. The CPT Report of 25 May 2000 on its third visit to the Netherlands Antilles from 25 to 29 January 1999⁹ records that, as had been the case in 1997, health care staff insisted that many cases of violence went unreported and that apparently efforts to keep a precise record of cases of violence waned during the second half of 1998. The Report also mentions an incident having occurred on 14 July 1998 at the Koraal Specht Prison. The information gathered by the CPT delegation suggested that police officers had beaten prisoners who had already been brought under control; the prisoners were naked and handcuffed behind their backs. The matter had not been immediately reported by the prison staff to their own hierarchical superiors (the director of the prison) or to the National Criminal Investigation Department and, more than half a year later, investigations into the conduct of the police and prison officers involved were still at an embryonic stage. It further appeared that those same police officers continued to be deployed in the prison.

⁷ CPT/Inf (98)17.

⁸ Page 14, § 10.

⁹ CPT/Inf (2000)9.

58. The CPT further noted that, by a Decree of 2 November 1998, an independent Commission was established (“the Kleinmoedig Commission”) to guarantee the physical integrity of persons deprived of their liberty and to investigate any abuse that might occur.

59. The CPT also observed that the measures adopted to address the acute problem of unauthorised prison staff absenteeism, resulting in levels of prison officer presence on the wings being considerably lower than necessary for the proper and safe functioning of the establishment, had failed, that no target date had been set for strengthening the enforcement of those measures and that apparently no alternative policy was being considered.

60. As regards the conditions of detention in the Koraal Specht Prison, the CPT noted the efforts made to improve the material environment, but also observed that the prison continued to suffer some degree of overcrowding, that problems in providing prisoners with adequate food at regular times and ready access to drinking water continued to persist, and that the health care services had worsened in comparison with its second visit in December 1997. The CPT delegation was further told that there was a shortage of mattresses, despite the fact that budgetary means were available.

61. In its response¹⁰ to the CPT report on its third visit, the Netherlands Antilles authorities confirmed that, as to the alleged irregularities said to have taken place on 14 July 1998, a preliminary judicial investigation had commenced, in the course of which a number of witnesses were being heard by the investigating judge. The CPT was further informed that the water problem (inadequate pressure) had been resolved, that the arrangements for supplying meals were satisfactory and that there was no question now of a shortage of mattresses. The response further stated that the medical service had been restructured on 1 April 1999 in accordance with the recommendations of the CPT.

62. On 10 February 2000, in accordance with the National Decree No. 756/JAZ, an Investigation Commission was established to investigate a number of elements contained in the last CPT report, including conditions of detention. This Commission was presided over by Mr M. Gumbs, the then State Secretary of Justice of the Netherlands Antilles. In the course of its activities, the Investigation Commission conducted a visit to the Point Blanche Penitentiary.

In its report the Commission recorded that inmates at the Point Blanche Penitentiary, as well as the judicial authorities, had indicated that there were still cases of ill-treatment of inmates by prison guards. A complaint about this had been filed with the public prosecutor (*Officier van Justitie*) in the meantime. The judicial authorities indicated to the Commission that they

¹⁰ CPT/Inf (2000)10.

had strong suspicions that ill-treatment had in fact occurred. The Commission noted that it was unclear what was being done to prevent ill-treatment. It also noted that inmates could file a written complaint to the public prosecutor through the prison director.

Inmates indicated to the Commission that there are no educational or recreational programmes for detainees, thus forcing detainees to remain idle all day. According to the detainees, it depended on who of the prison guards were on duty whether something was done with the detainees.

The Commission observed that in the recreation rooms, which were in a good state, several activities took place such as music lessons given by an inmate. It further noted that computers could be used and that there was a possibility to play table-tennis and watch television. It noted that, for lack of staff (only one staff member) and means to develop activities, there was only a limited use of the workshops.

The Commission recorded that the Point Blanche Penitentiary had a maximum capacity of 120 places which were constantly occupied. Although there were 32 members of staff, in practice only 16 were available daily. The reason for this considerable absenteeism was reportedly the failure to deal quickly enough with staff matters (payment of overtime, child allowances, salary adjustments, posting allowances, maintenance costs, etc.). As staff had already been waiting for these matters to be dealt with for years, they were threatening with actions if this situation did not improve soon.

In most cells – each having a surface of 12.8 m² and designed for one to three persons – furnishings such as chairs, tables and mattresses were either lacking or in bad condition, and sanitary facilities were in disrepair and dilapidated, sometimes to such an extent that inmates had to use buckets to shower and flush toilets. It recommended replacing the toilet flushes and the replacing the shower heads and taps with vandal-proof materials. The report further states that:

“the (natural) ventilation is “too” good. During hurricanes and during certain periods of the year, inmates must protect themselves against the strong winds (from hurricanes) and the humidity caused by condensation. To this end cardboard boxes are hung around the beds.”

The Investigation Commission further found the kitchen of the Point Blanche Penitentiary, where 120 meals are prepared daily, to be in an unacceptable state of dilapidation and disrepair, as well as freely accessible to vermin, including rats. It noted, *inter alia*, that for technical reasons (the need of repair) two cold-storage rooms were out of use for 2 and 6 years respectively, and that a much smaller cold-storage facility was being used, as a result of which only limited food supplies could be stored. This caused problems after the island had been hit by a hurricane and food was difficult to obtain. It recommended that the entire kitchen, including all the appliances, be replaced.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

63. The Government repeated their pre-admissibility argument that the application should be rejected for failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention, which states:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.”

64. The Government conceded that the applicant could not be required, for the purposes of Article 35 § 1 of the Convention, to file a complaint with the Prisons and Remand Centres Supervisory Board, the Governor, the Procurator General, the Minister of Justice or the prison director.

65. However, relying on domestic case-law which had not been submitted during the admissibility proceedings, the Government contended that civil summary proceedings based on claims of tort are an effective remedy in the Netherlands Antilles against alleged breaches of the Convention by the administration, and that such proceedings had proved to be effective and swift, even in prison matters.

66. The Government were of the opinion that the applicant was free to put his Convention complaints before the civil court in summary proceedings. There was nothing to prevent the applicant from seeking an interim measure in summary proceedings, for which legal representation is not mandatory and, in any event, free legal aid was available to him. Moreover, the applicant was well aware of this possibility because, together with four other inmates of the Point Blanche Penitentiary, he took civil proceedings before the Court of First Instance of St. Maarten, claiming the same remission of sentence granted to detainees in the Koraal Specht Prison on grounds of overcrowding, as well as claiming the right to create an association of detainees in the Penitentiary. This resulted in a judgment of 18 April 1997 in which it was held *inter alia* that, on the basis of Article 11 of the Convention, inmates could claim the right of assembly and that, consequently, in all reasonableness and for the purposes of formalising the proposed association, the inmates' representative and notary public could not be refused entry to the Point Blanche Penitentiary. It therefore ordered the authorities of the Netherlands Antilles to allow a notary public entry into the establishment. However, for reasons that are unclear, the applicant failed to avail himself of this remedy.

67. The applicant refuted the Government's submissions as regards the effectiveness of such proceedings, as the prison authorities had acted within the rules and regulations in force at the time. Despite the assurances given,

the Netherlands Antilles authorities had failed to initiate and implement the necessary changes. The civil courts were thus unable to offer adequate redress. Moreover, the prison authorities would not willingly grant an inmate access to court for an infringement of rules which had not been modified by the Minister of Justice.

68. The applicant confirmed that he had participated in the proceedings which resulted in the judgment of 18 April 1997 and referred to by the Government. However, he submitted that this action was brought by a newly arrived, well-meaning lawyer who supported the inmates' cause, but who was only prepared to take proceedings on behalf of a group and for a fee that was not within the reach of the individual inmate. Whilst the sum was relative to the total costs of the action, it still represented a considerable sum for many inmates. The applicant is therefore of the opinion that the concept of free and easy access to the courts, as submitted by the respondent Government, does not reflect the reality. Finally, he contended that there is ample evidence to demonstrate that, even when courts give a ruling, the administration is not swift in its implementation.

69. The relevant principles as to exhaustion of domestic remedies have been set out in *inter alia* the Court's judgment of 28 July 1999 in the case of *Selmouni v. France* (no. 25803/94, §§ 74-77, ECHR 1999-V): The purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions. However, the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time.

Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement. One such reason may be the national authorities' remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed execute a court order. In such circumstances, the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of.

The Court would emphasise that the application of this rule must make due allowance for the context and the particular circumstances of the individual case. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism.

70. As regards the application of Article 35 § 1 of the Convention to the facts of the present case, the Court notes at the outset that it appears from

various reports that the situation in the Netherlands Antilles prison establishments was, and continues to be, characterised by significant, serious, structural problems.

71. The Court observes that the various court decisions submitted by the respondent Government demonstrate the existence of a remedy before the civil courts. By availing themselves of this remedy, inmates may obtain a ruling as to the compatibility of administrative acts with their Convention rights and, if need be, to obtain injunctions.

72. The applicant, however, did not avail himself of this remedy in respect of his present complaints. On this point, the Court recalls that the existence of mere doubts as to the prospects of success of a particular remedy, which is not obviously futile, is not a valid reason for failing to exhaust domestic remedies (cf. *Van Oosterwijck v. Belgium* judgment of 6 November 1980, Series A no. 40, p. 18, § 37). However, in assessing the remedy suggested by the Government, the Court must take account not only of its existence in the legal system of the Netherlands Antilles but also of the general legal and political context in which it operates, as well as the personal circumstances of the applicants.

73. In this connection, the Court is struck by the findings of the First Instance Court of Curaçao in its decision of 14 November 1997 from which it clearly appears that the authorities of the Netherlands Antilles have remained totally passive for more than a year in complying with six injunctions to repair rather serious structural shortcomings of an elementary hygienic and humanitarian nature in prison facilities. Furthermore, the Court has regard to the findings and recommendations contained in various reports by, *inter alia*, the CPT on the conditions of detention in the Netherlands Antilles at the material time. The Court cannot but conclude that, in the absence of convincing explanations from the Government for their failure to take the necessary measures within a reasonable time to repair the structural problems criticised in these reports, and to observe the aforementioned court orders, there were special circumstances at the material time which dispensed the applicant from the obligation to exhaust the remedy suggested by the Government.

74. The Court therefore rejects the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

75. The applicant alleged that, during his detention in the Netherlands Antilles, the prison authorities interfered in his exchange of correspondence with his lawyers, the European Commission of Human Rights, Mr Gebhardt who represented him in the proceedings before the European Commission of Human Rights, the prosecution authorities of the Netherlands Antilles, the British Consul and private persons. He claimed that his correspondence was opened and read by the prison authorities and that he was prevented

from establishing contacts outside prison because of the extremely limited facilities available to him to write letters or telephone. He relied on Article 8 of the Convention, which reads in so far as relevant as follows:

“1. Everyone has the right to respect for his private and family life, ... and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime”

76. Although the Government do not dispute that the prison authorities interfered with the applicant’s correspondence and that the rules in force at the material time did not specifically privilege prisoners’ lawyers or the Convention institutions, they argue that generally speaking the confidential character of such correspondence was respected. Furthermore, under the new National Ordinance on Prisons, the category of privileged persons and organs includes “bodies that are competent under the law of the Netherlands Antilles to take cognisance of complaints or to hear cases commencing with a complaint”.

77. As to the applicant’s correspondence with Mr Gebhardt, the Government submit that the Point Blanche prison staff were not aware that Mr Gebhardt was acting as the applicant’s counsel in the proceedings before the Commission. The applicant had been represented by two other lawyers in the criminal proceedings against him who, unlike Mr Gebhardt, were officially registered in the Netherlands Antilles. Furthermore, Mr Gebhardt was known to the prison staff as a former inmate of the Point Blanche Penitentiary and the prison rules then in force prohibited correspondence with former prisoners. Relying on the Contracting States’ margin of appreciation under Article 8 of the Convention, the Government argue that the requirements for the safety and security of prison staff and others may reasonably have led the authorities to decide that correspondence between the applicant and a former inmate should be subject to control.

78. As regards the alleged interference with the applicant’s correspondence with persons other than the European Commission of Human Rights and his representative, the Government argue that this claim is unsubstantiated.

79. The Government submit that the rules in force at the relevant time in relation to detainees’ contacts with the outside world were compatible with the Convention. On this point, the Government contend that the new National Ordinance on Prisons, which contains regulations on detainees’ outside contacts by letter, telephone and visits, as well as the grounds on which a detainee’s right to respect for his correspondence may be restricted, fully meets the requirements of Article 8 of the Convention.

80. The applicant submits that, apart from his correspondence in relation to his application to the Commission, the prison authorities also interfered

with his consular mail, and that any mail not sent out by the prison authorities was never returned to him. The applicant further refers to the complaints that were filed by his wife, the British Consul and himself in respect of *inter alia* the abruptness of their meetings with the applicant, despite the fact that overseas visitors were supposed to be allowed longer visits due to their infrequency.

a. Interference with the applicant's correspondence with the European Commission of Human Rights

81. The Court notes that the Government do not contest that the prison authorities interfered with the applicant's correspondence with the European Commission of Human Rights and his representative in the proceedings before the Commission (see paragraphs 22-28 above).

82. This interference with the applicant's right to respect for his correspondence under Article 8 of the Convention can only be justified if the conditions of the second paragraph of this provision are met, namely whether it was "in accordance with the law", pursued a legitimate aim, and was necessary in a democratic society for achieving that aim (cf. *Di Giovine v. Italy*, no. 39920/98, 26.7.2001, § 24).

83. The interference at issue had a legal basis, namely Article 46 of the National Decree <on Prison Administration> and Articles 67-69 of the Rules of Order and Discipline for Prisons and Remand Centres. However, as regards the legitimate aim and the necessity of the interference, no reasons have been disclosed or substantiated which could justify the control of the applicant's correspondence with a Convention organ, the confidentiality of which must be respected (cf. *Peers v. Greece*, no. 28524/95, 26.4.2001, § 84). In the absence of such reasons, the interference cannot be regarded as being justified under Article 8 § 2 of the Convention.

84. Consequently, the Court finds that there has been a violation of Article 8 of the Convention.

b. Interference with the applicant's correspondence with Mr Gebhardt

85. The Court notes that it is not in dispute that the prison authorities interfered in the applicant's correspondence with Mr Gebhardt, who initially represented him in the proceedings before the Convention organs. It further notes that the applicant does not contest that Mr Gebhardt was a former inmate of the Point Blanche Penitentiary and was known, as such, to the prison authorities. It is not in dispute that Mr Gebhardt was not authorised to practise law in the Netherlands Antilles and that, according to rules in

force at the relevant time, detainees were not allowed to correspond with former prisoners.

86. In so far as there was an interference by the prison authorities with the exchange of the applicant's correspondence with Mr Gebhardt, the Court observes that neither the Convention nor the Rules of Procedure of the European Commission of Human Rights at the material time required the representatives of applicants to be practising lawyers. The Court notes that, apart from a statement that the prison rules contained a prohibition on prisoners' correspondence with former fellow inmates, the Government have not presented any arguments to explain why such a blanket prohibition could be justified under Article 8 § 2 of the Convention.

87. Although the Court accepts, having regard to the ordinary and reasonable requirements of imprisonment, that it may be necessary to screen such correspondence, it finds no grounds for a complete ban within the terms of the second paragraph of Article 8 of the Convention.

88. The Court concludes therefore that there has been a violation of Article 8 of the Convention as regards the interference with the applicant's correspondence with Mr Gebhardt.

c. Interference with the applicant's correspondence with others

89. The Court finds that the alleged interference with the applicant's correspondence to the prosecution authorities of the Netherlands Antilles, the British Consul and private persons is wholly unsubstantiated, whilst noting however that, given the prison rules in force at the time, such correspondence would have been subject to control by the prison authorities. However, in the absence of concrete evidence, the Court finds that the facts of the case do not disclose a violation of the applicant's rights under Article 8 of the Convention.

d. Communication facilities in prison

90. As regards the applicant's complaint of being restricted in establishing contacts with persons outside prison because of limited facilities for letter writing or telephoning, the Court takes into account the importance for prisoners to be able to maintain contacts with their family and friends outside prison.

91. According to the rules in force at the material time, detainees were entitled to send a two or three letters per week and to receive letters at all times. The costs of writing materials and postage were borne by the prison authorities. In these circumstances, the Court cannot find that the applicant was arbitrarily or unreasonably restricted in his possibilities to maintain contacts by letter with persons outside prison.

92. In respect of the telephone facilities, the Court considers that Article 8 of the Convention cannot be interpreted as guaranteeing prisoners the right to make telephone calls, in particular where the facilities for contact by way of correspondence are available and adequate.

93. Where, as in the present case, telephone facilities are provided by the prison authorities, these may – having regard to the ordinary and reasonable conditions of prison life – be subjected to legitimate restrictions, for example, in the light of the shared nature of the facilities with other prisoners and the requirements of the prevention of disorder and crime. In this context and to the extent that such conditions may be regarded as an interference with private life or correspondence, the Court finds that they may be considered justified in terms of the second paragraph of Article 8.

94. Consequently, the Court finds that the restrictions complained of do not disclose any appearance of a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

95. The applicant alleged that there existed in the Netherlands Antilles no effective remedy within the meaning of Article 13 of the Convention in respect of the conditions in which he was detained or the interference with his correspondence.

Article 13 of the Convention reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

96. The Court recalls that Article 13 of the Convention guarantees remedies at the national level to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (cf. *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 97).

97. The Court considers that the applicant did have an arguable complaint as regards his rights under Article 8 of the Convention and, given the nature of the general conditions of detention in the Netherlands Antilles as described in various official reports (see paragraphs 53-62 above), also as

regards his rights under Article 3 of the Convention, which prohibits *inter alia* inhuman or degrading treatment.

98. Recalling its finding in respect of the preliminary objection filed by the Government, in particular the lack of adequate implementation by the Netherlands Antilles authorities of judicial orders to repair the unacceptable shortcomings of penitentiary facilities, as well as noting their failure to implement the urgent recommendations of the CPT, the Court finds that the applicant did not have effective remedies for his Convention complaints.

99. There has, therefore, been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

101. The applicant has not submitted any claim for pecuniary damage or costs. He did however claim non-pecuniary damage, but left it to the Court’s discretion to assess the amount.

102. The Government considered, on the basis of their preliminary objection, that no just satisfaction should be awarded to the applicant.

103. The Court finds that the applicant did indeed suffer some moral damage which cannot be compensated solely by the finding of a violation. Deciding on an equitable basis, the Court awards the applicant 3,500 Euros, plus any value-added tax that may be chargeable.

B. Default interest

104. According to the information available to the Court, the statutory rate of interest applicable in the Netherlands at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 8 of the Convention in respect of the interference with the applicant's correspondence with the former European Commission of Human Rights and his representative, Mr Gebhardt;
3. *Holds* that there has been no violation of Article 8 of the Convention in respect of the applicant's other complaints under this provision;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 3,500 (three thousand five hundred) Euros, plus any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

Done in English, and notified in writing on 29 January 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President