AS TO THE ADMISSIBILITY OF

Application No. 11884/85
by D.
against the Netherlands

The European Commission of Human Rights sitting in private on 7 May 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 June 1985 by D. against the Netherlands and registered on 6 December 1985 under file No. 11884/85;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The facts as submitted by the applicant may be summarised as follows.

The applicant is a Moroccan national, born in 1952 in Issoufian, Morocco, and currently residing in Utrecht, the Netherlands. He works in a hospital in a non-professional capacity.

In the proceedings before the Commission he is represented by Mr. E. Hummels, a lawyer practising in Utrecht.

On 18 June 1985, the applicant was arrested and put into detention on suspicion of murder. His brother was also detained on suspicion of the same murder. Mr. Hummels presented himself as both brothers' lawyer.

That same day the lawyer was denied access to the applicant by Order of the Public Prosecutor, who based himself on Section 50 para. 2 of the Dutch Code of Criminal Procedure (Wetboek van Strafvordering), which provides, inter alia:

> "If specific circumstances lead to a serious suspicion that free consultation between counsel and the accused will either be used to acquaint the accused with certain circumstances which, in the interest of the investigation, he should temporarily not be informed of, or will be abused to attempt to impede the discovery of the truth, <.....> during the preliminary investigation the public prosecutor may repeatedly order that counsel shall not have access to the accused or that they shall not be allowed to consult alone and that letters or other documents exchanged between counsel and the accused shall not be handed over. The order shall describe the specific circumstances as in the preceding sentences; it shall only limit the free consultation between counsel and the accused to the extent, and for the time period, that the circumstances require, and is at any rate only valid during six days at most <.....>."

In accordance with para. 3 of Section 50, this Order was immediately brought before the Regional Court (Arrondissementsrechtbank) of Utrecht for review. The Public Prosecutor stated that he had reason to suspect that the applicant and his brother were attempting to cover up the truth. Therefore, to avoid them being able to align their statements, they should not be allowed to consult with the same lawyer. He invoked the first reason stated in Section 50 para. 2.

The applicant's counsel (Mr. Hummels) claimed before the Regional Court a violation of Article 6 para. 3 (c) of the Convention, because the accused was being denied the counsel of his choice.

The Regional Court, on 19 June 1985, ratified the Public Prosecutor's Order, confirming the "serious suspicion that free consultation between counsel and <the applicant> will be used to acquaint <the applicant> with certain circumstances which, in the interest of the investigation, he should temporarily not be informed of".

As regards the argument under Article 6 para. 3 (c) of the Convention, the Regional Court held that it did not apply, as the applicant had not yet been formally charged.

No appeal is possible against this decision by the Regional Court. The applicant was allowed to see a lawyer appointed by the Court.

On 25 June 1985 the applicant was released following a request by his counsel (Mr. Hummels). The Regional Court of Utrecht considered in their release order that the reasons for his detention no longer existed.

No subsequent criminal proceedings were brought against the applicant and he was awarded monetary compensation by the Court of Appeal (Gerechtshof) of Amsterdam on 1 May 1987 for having been put in detention without sufficient reason.

COMPLAINT

The applicant complains of having been denied the right to consult with the lawyer of his choice during his detention. He invokes Article 6 para. 3 (c) of the Convention in this respect.

THE LAW

The applicant has complained that he was denied the right to defence counsel of his own choice. He has alleged a violation of Article 6 para. 3 (c) (Art. 6-3-c) of the Convention in this respect. This Article provides as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance to be given it free when the interests of justice so require;"

The Commission does not find it necessary to determine the question whether Article 6 para. 3 (c) (Art. 6-3-c) of the Convention applies in cases where a person is detained but not subsequently charged and brought to trial because, in any event, it finds the applicant's complaints manifestly ill-founded for the reasons set out below.

In the present case the applicant was detained for seven days and then released. No subsequent criminal proceedings were instituted against him. The applicant was not allowed to see his personal lawyer because that lawyer was also representing the applicant's brother, who had been arrested at the same time on the same charge. The Public Prosecution wished to eliminate the risk of collusion between the two brothers. The Regional Court approved the Public Prosecutor's decision on 19 June 1985. Under Dutch law the applicant's counsel may be denied access to his client during the preliminary investigation for specific purposes and for a limited period of time. The applicant was allowed unlimited access to another lawyer appointed by the Court.

The restrictions placed on the applicant's contact with his personal lawyer were limited in time, in accordance with Dutch law, and all the necessary functions of defence counsel at this stage of the proceedings which the personal lawyer was unable to perform could be fulfilled by the lawyer appointed by the Court.

In these circumstances, the Commission concludes that there is no indication that Article 6 para. 3 (c) (Art. 6-3-c) of the Convention, even if applicable, was violated in the present case.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

&_DECLARES THE APPLICATION INADMISSIBLE.&S

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)