AS TO THE ADMISSIBILITY OF

Application No. 30059/96
by Jan Pieter DE KOK
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

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

Having regard to the application introduced on 15 November 1995 by Jan Pieter DE KOK against the Netherlands and registered on 5 February 1996 under file No. 30059/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1952, and resides in Rotterdam. He states to be a classical homeopathic and iatrosophical doctor. In the proceedings before the Commission, he is represented by Mr P.J. de Bruin, a lawyer practising in Rotterdam.

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

On 9 October 1987, Daisy was born. Shortly after her birth, she started to suffer from respiration and feeding problems. At that time, Daisy and her mother were medically followed by the homeopathic doctor Ms M.D., whom the applicant supervised and who worked according to the applicant's principles and methodology. For personal health reasons Ms M.D. transferred these two patients to Mr O.J., another doctor supervised by the applicant. Between 1 and 25 January 1988 there were a number of contacts by telephone between Daisy's mother and/or her mother, who sought guidance, and the applicant. The applicant billed them for these telephone consultations.

On 9 February 1988, Daisy was admitted to hospital. It appeared that she was suffering from a growing tumour in the trachea.

On the basis of several complaints submitted to the Inspector of Public Health (Inspecteur van de Volksgezondheid) for the province of North-Holland about unauthorised practising of medicine by the

applicant, the Dutch investigating authorities requested the police to open an investigation.

The applicant was present when, on 24 June 1988, the police arrested Ms M.D. in connection with her treatment of Daisy. At that point in time, the applicant was briefly questioned by police officer L. in the presence of Ms M.D. On 12 August 1988, after having been cautioned, the applicant was interrogated at the Hague police office about Daisy's treatment.

On 18 August 1988, the police transmitted the results of its investigation of the case concerning Daisy to the prosecution authorities. No criminal or disciplinary proceedings were brought against Ms M.D.

As from March 1990, the applicant treated Ms R. prescribing her homeopathic medication. On 15 March 1990, upon the request of her husband, Mr R., Ms R. was examined by Mr P., a medical specialist in the R. hospital. He diagnosed a double-sided pneumonia and an inflammation of the middle ear and advised admission to hospital and treatment with antibiotics, which she refused.

On 19 April 1990, both the applicant and Mr O.J., examined Ms R. As her situation did not improve, they sought the assistance of Mr P. who was only prepared to assist in having Ms R. admitted to hospital. Shortly after, Ms R. was taken to hospital, where she was diagnosed as suffering from pneumonia in an advanced stage and a virulent infection in both ears. When she was released from hospital on 8 June 1990, 30% of her lung capacity and 40% of the hearing capacity of her left ear had been irreparably lost.

By letter of 1 May 1990, Mr R. requested the public prosecution department of The Hague to start criminal proceedings against the applicant. On the basis of this request, the prosecution department ordered the police to investigate the matter.

On 26 June 1990, the applicant was arrested and detained on remand. He was released on 29 June 1990. On the same day a preliminary judicial investigation (gerechtelijk vooronderzoek) was opened against the applicant in connection with the events concerning Ms R. and Daisy.

On 5 June 1991, the investigating judge (rechter-commissaris) appointed the general practitioner Mr B. as a medical expert. The applicant filed an objection against this appointment on 13 June 1991. Following a hearing on 8 July 1991, the Regional Court (Arrondissementsrechtbank) of The Hague, meeting in chambers (raadkamer), rejected this objection on 18 July 1991. Mr B. submitted his report to the investigating judge on 22 June 1991.

On 10 September 1991, the preliminary investigation against the applicant in respect of the events concerning Ms R. and Daisy was closed. A notification of prosecution (kennisgeving van verdere vervolging) as regards these facts was served on the applicant on 24 September 1991.

By summons of 5 November 1991, the applicant was ordered to appear on 21 February 1992 before the Regional Court (Arrondissementsrechtbank) of The Hague on two separate sets of charges of having inflicted serious bodily harm, one set of charges relating to Ms R. and one set of charges to Daisy.

On 21 February 1992, a hearing was held before the Regional Court. The applicant's lawyer was absent. The applicant was present, but, after having submitted a written statement to the court, left before the prosecution had presented the case.

The Regional Court rejected the written request of the defence

to adjourn the proceedings in order to examine the minutes (processen-verbaal) of the police. The Regional Court found it established that the defence had been aware of the contents of these minutes already on 14 June 1991 and that, given the lapse of time between the notification of prosecution and the first hearing, the defence had had sufficient time to prepare the case.

The prosecution requested the Regional Court to be allowed to amend the charges against the applicant. The Regional Court granted the request and decided to adjourn its further examination until 1 May 1992 in order to serve the amended charges on the applicant.

On 1 May 1992, the Regional Court resumed the proceedings against the applicant. Both the applicant and his lawyer were present. After the parties' pleadings, the Regional Court closed its investigation.

By judgment of 15 May 1992, the Regional Court of The Hague acquitted the applicant of the charges involving Daisy, convicted him of participation in the causing of serious bodily harm (medeplegen van zware mishandeling) as regards Ms R. and sentenced him to two years' imprisonment under deduction of the time spent in pre-trial detention. The Regional Court further granted the prosecution's request to take the applicant in immediate detention (onmiddellijke gevangenneming), holding that, given the applicant's statement that he would continue to practise medicine according to his own principles, there was a serious possibility that the applicant would repeat the commission of offences of which he had been convicted. The applicant filed an appeal with the Court of Appeal (Gerechtshof) of The Hague.

On 25 May 1992, the applicant requested the Court of Appeal to order his release from pre-trial detention. The Court of Appeal meeting in chambers ordered the applicant's release on 2 June 1992.

On 21 June 1993, a first hearing on the applicant's appeal against the judgment of 15 May 1992 took place before the Court of Appeal. The defence requested the Court of Appeal to hear eight witnesses in public proceedings. After having deliberated the Court of Appeal decided to adjourn the proceedings until 23 September 1993 in order to hear four witnesses to be selected by the defence. The defence opted for the first four witnesses on their list, namely Mr R., Ms R., Mr P. and Mr B. Insofar as the defence requested the Court of Appeal to record the statements of these witnesses word for word, the court held that minutes of the court hearings would be drafted by the President and the Registrar in accordance with the law.

On 13 September 1993, the Court of Appeal heard the applicant and the four witnesses selected by the defence.

At that hearing the applicant stated to the Court of Appeal, inter alia, that he had founded and was the director of the Collegium Iatrosophicum. He further stated that he practised medicine on the basis of iatrosophical principles and that he prescribed self-prepared medications. He also stated that he had not followed any medical or pharmaceutical training, but was self-taught. He further stated that, in the context of his practice, he co-operated with conventional doctors, that such doctors who wish to work on the basis of iatrosophical principles first receive a training with him and that afterwards they work under his supervision. He confirmed that he had supervised both Ms M.D. and Mr O.J.

After the applicant, the Court of Appeal heard Mr P. as a witness. The applicant wished to question Mr P. in person on the basis of a list of questions. He submitted this list to the court following the court's request. After having examined the list of questions in chambers, the Court of Appeal informed the applicant that, on the basis of Article 288 of the Code of Criminal Procedure (Wetboek van Strafvordering), it would prevent ex officio that insinuating,

suggestive, irrelevant and/or unnecessarily harmful questions be put to the witness. Of the initial total of 119 questions of the defence, 30 were accepted by the Court of Appeal and, with the consent of the defence, put to this witness by a member of the court on behalf of the defence.

The applicant objected that the Court of Appeal had prevented him from putting a part of his written questions to the witness and informed the court that he had prepared written questions for each witness to be heard in the proceedings and thus also for the next witness. The Court of Appeal also examined the list of questions for the next witness Ms R. The court stated again that it would prevent ex officio that insinuating, suggestive, irrelevant and/or unnecessarily harmful questions be put to this witness. Of the initial total of 149 questions of the defence, 42 were accepted by the Court of Appeal and, with the consent of the defence, put to this witness by a member of the court on behalf of the defence.

The same procedure was followed when the witness Mr B., a medical specialist who had examined Ms R. after her admission to hospital, was heard before the Court of Appeal. Of the initial total of 144 questions of the defence, 63 were accepted by the Court of Appeal and, with the consent of the defence, put to this witness by a member of the court on behalf of the defence.

The next witness, Mr R., was heard before the Court of Appeal according to the same procedure. Of the initial total of 200 questions of the defence, 59 questions were accepted by the Court of Appeal and, with the consent of the defence, put to this witness by a member of the court of behalf of the defence.

After the hearing of these witnesses, the defence requested the Court of Appeal to hear five other witnesses, i.e. Mr O.J., Mr B., Mr L., Mr E.V. and Mr D. After having deliberated, the court accepted to hear three of the proposed witnesses. It rejected the request to hear police officer L. The Court of Appeal noted that the applicant had stated before the court that he maintained the statement he had made to Mr L. as recorded in the minutes (proces-verbaal) No. 35285/1988 of the police. As the defence had stated in support of its request to hear Mr L., that it sought to question him on the reasons why the applicant had refused to sign these minutes, the Court of Appeal found a hearing of Mr L. on this point not necessary or relevant for its examination of the substance of the applicant's case.

The Court of Appeal rejected the request to hear Mr D. as it had already agreed to hear Mr B. The court noted that, in the context of the preliminary judicial investigation, Mr B. had already submitted a reasoned written report. As the defence had not indicated why two expert-witnesses should be heard before the court, on which points the defence disagreed with Mr B. or why Mr D. would be more of an expert than the expert Mr B., the Court of Appeal did not find that the refusal to hear Mr D. would harm the applicant in his defence.

On 13 December 1993, the Court of Appeal heard Mr O.J. as a witness. The President of the court informed Mr O.J. that Mr and Ms R. had informed the Court of Appeal that they did not give permission to render their medical data public. The applicant himself wished to question Mr O.J. before the court. The applicant stated he would question Mr O.J. on the basis of a previously prepared list with written questions and requested the court to be allowed to submit his written description of Ms R.'s clinical picture which was to be used in his questioning. After having examined this document and the list of questions in chambers, the Court of Appeal informed the applicant that, on the basis of Article 288 of the Code of Criminal Procedure (Wetboek van Strafvordering), it would prevent ex officio that insinuating, suggestive, irrelevant and/or unnecessarily harmful questions be put to the witness. On that basis the Court of Appeal

excluded the applicant's description of Ms R.'s clinical picture as subject of the questions to be asked. Of the initial total of 91 questions, 83 relating to both Ms R. and Daisy were accepted by the Court of Appeal and, with the consent of the defence, put to this witness by a member of the court on behalf of the defence.

The Court of Appeal further heard Mr E.V., the paediatrician who had treated Daisey after her admission to hospital. On the basis of a list with written questions, 77 questions were put to this witness, with the consent of the defence, by a member of the court on behalf of the defence.

The court further heard Mr B., the expert who had submitted a report to the investigating judge on 22 June 1991. The applicant again requested the Court of Appeal to be allowed to submit his description in writing of Ms R.'s clinical picture which was to be used in his questioning of Mr B.

The court rejected the request finding, inter alia, that this description contained intimate and medical information about Ms R., whilst she had not given permission to render this information public.

The applicant informed the Court of Appeal that he would question Mr B. on the basis of a previously drafted list of questions. The Court requested the applicant to submit this list and, after having examined the list in chambers, again informed the applicant that on the basis of Article 288 of the Code of Criminal Procedure, it would prevent ex officio that insinuating, suggestive, irrelevant and/or unnecessarily harmful questions be put. Of an initial total of 116 questions, 104 were allowed by the Court of Appeal and, with the consent of the defence, put to this witness by a member of the court on behalf of the defence.

After having rejected a request by the defence to show the Court of Appeal a video tape of 78 minutes on which several wrongs in conventional medicine have been documented for lack of relevance, the court adjourned its further proceedings until 18 April 1994.

On 7 March 1994, the public prosecutor addressed the following letter to the applicant's lawyer:

(translation)

"On 18 April 1994 the case of (the applicant) will be heard again.

In the course of the previous hearing(s) of the case I had to observe that your client wished to put a large number of questions, I presume with your consent, to the witnesses heard so far concerning the private life of Mr R., whereas in my opinion these questions were irrelevant to the facts (with which your client has been charged).

I find it hard to avoid the impression that the main intention of this was to harm the complainant (aangever) R. These questions have therefore justly not been allowed by the Court of Appeal.

I warn you that I shall seriously object when similar remarks which have no bearing on the facts (with which your client has been charged) will be made by you in the course of your pleadings, whereby I do not exclude that Mr R. will file a complaint for criminal libel or slander against you.

A copy of this letter will be transmitted to the President of the Court of Appeal and Mr R."

On 18 April 1994, the final pleadings took place before the Court

of Appeal. The applicant's lawyer submitted the comments of the defence on the hearings before the Court of Appeal and referred to comments on the minutes of the hearings in the applicant's case previously submitted by the defence to the Court of Appeal. The defence complained, inter alia, that the prosecutor's letter of 7 March 1994 constituted an unacceptable interference with the exercise of the rights of the defence, that the Court of Appeal, in particular its President, had unjustly restricted the exercise of the applicant's rights of defence and that the proceedings had exceeded a reasonable time.

After the applicant's lawyer had completed his final pleadings, the President of the Court of Appeal asked him whether the remarks made by him in respect of the Court of Appeal were to be considered as a formal challenge (wraking) of the court in the person of its President. After consultation with his lawyer, the applicant informed the court that he did not wish to challenge the court in the person of its President. After the applicant's final statement, the Court of Appeal closed its investigation.

In its judgment of 2 May 1994, the Court of Appeal of The Hague quashed the judgment of 15 May 1992 of the Regional Court, convicted the applicant of having caused serious bodily harm (zware mishandeling) as regards Ms R. and of participation in the causing of serious bodily harm (medepleging van zware mishandeling) as regards Daisy and sentenced him to 24 months' imprisonment with deduction of the time spent in pre-trial detention and eight months of which were suspended during a probation period of two years.

As regards the objections of the defence against the amendment of the charges in the proceedings in first instance, the Court of Appeal found that this amendment had been lawfully made. Insofar as the applicant argued that the prosecution should be declared inadmissible on the basis of the prosecutor's letter of 7 March 1994 to the applicant's lawyer, the Court of Appeal considered that, although it found the contents of the letter not very suitable, the letter only contained a warning to the lawyer to refrain from harmful remarks towards Mr R. The court did not find that this warning constituted a restriction of the applicant's defence or a personal threat against the lawyer in the exercise of his profession. The court further noted that the applicant's lawyer, at the hearing of 18 April 1994, had amply and without any restriction availed himself of the possibility to submit whatever was useful for the applicant's defence.

Insofar as the applicant argued that, as regards the facts concerning Daisy, the proceedings had exceeded a reasonable time, the Court of Appeal held that, although the delay between the applicant's first questioning on 12 August 1988 and the opening of the preliminary judicial investigation on 29 May 1990 was undesirably long, it was not of such a nature that the prosecution should be declared inadmissible on the basis that the proceedings had exceeded a reasonable time. Insofar as the applicant alleged that he had already been questioned in connection with the facts at issue in April 1988, the Court of Appeal found no factual basis for this allegation.

As regards the defence's various objections as regards the fairness of the proceedings on appeal, the Court of Appeal held, inter alia, that pursuant to Article 288 of the Code of Criminal Procedure it was competent to prevent the putting of questions previously submitted and thus known to the court, that the fact that a member of the court had put the questions allowed by the court to the respective witnesses on behalf of the defence had taken place with the consent of the applicant and his lawyer, that the witnesses had been heard in accordance with the relevant provisions of the Code of Criminal Procedure and that it had not been made plausible that the veracity of their statements had been influenced by previous knowledge about the course of affairs at the hearings.

As regards the argument of the defence that the way the court had conducted the proceedings on appeal was contrary to Article 6 of the Convention, the Court of Appeal noted that the applicant had not availed himself of the possibility to challenge the Court of Appeal and that no facts or circumstances had appeared which should lead to the conclusion that a full new hearing on appeal should take place as the principles of a fair trial had been violated.

As regards the sentence to be imposed, the Court of Appeal considered that an unconditional prison sentence of two years would in principle be appropriate. However, in view of the fact that the personal attitude of Ms R., as a follower of the applicant, had played a part in the creation of the situation and in view of the lapse of time in the case concerning Daisy, the Court of Appeal decided that part of the sentence should be conditional.

The applicant filed an appeal in cassation with the Supreme Court (Hoge Raad), submitting 16 complaints in cassation. The Supreme Court examined the appeal on 11 October 1994.

On 24 January 1995, the Advocate-General to the Supreme Court submitted his conclusions, to which the applicant replied on 5 March 1995.

On 16 May 1995, the Supreme Court rejected the applicant's appeal in cassation. Insofar as the applicant complained that the Court of Appeal could not be regarded as impartial, the Supreme Court found that the applicant could have challenged the Court of Appeal judges, but noted that the applicant had explicitly refused to do so. The Supreme Court found no grounds on the basis of which the applicant's fear that the Court of Appeal was biased could be regarded as objectively justified.

Insofar as the applicant complained that the proceedings had exceeded a reasonable time within the meaning of Article 6 para. 1 of the Convention and that therefore the prosecution should be declared inadmissible, the Supreme Court upheld the reasoning of the Court of Appeal. It further did not find that the delay between the introduction of the appeal in cassation and the first hearing in the cassation proceedings should lead to the inadmissibility of the prosecution.

The Supreme Court further rejected two complaints relating to factual findings of the Court of Appeal. Referring to Article 101a of the Judicial Organisation Act (Wet op de Rechterlijke Organisatie), the Supreme Court rejected the remainder of the applicant's appeal in cassation as not prompting a determination of legal issues in the interest of legal unity and legal development.

Article 101a of the Judicial Organisation Act reads:

(translation)

> "If the Supreme Court considers that a complaint submitted cannot lead to cassation and does not prompt a determination of legal issues in the interest of legal unity and legal development, it can limit itself to this finding when giving the reasons of its decision on that point."

COMPLAINTS

The applicant submits a number of complaints that the criminal proceedings against him were not in conformity with the requirements of Article 6 of the Convention.

1. The applicant complains that he was deprived of a fair trial in that the Court of Appeal limited the exercise of his defence rights by not allowing the defence to put certain questions to some of the

witnesses, by not allowing him to seek further clarifications on specific points, by changing questions to witnesses, by taking certain witnesses into protection and by not allowing the defence to demonstrate the mendacity of statements made before the police by witnesses also heard before the court.

2. The applicant complains of the way in which the President of the Court of Appeal conducted the hearings held on 13 September and 13 December 1993 in that he interfered in the way in which the defence questioned witnesses and could, therefore, not be regarded as being impartial. The applicant submits that the President clearly appeared to be biased.

3. The applicant complains that he was tried by a judicial body lacking the required knowledge of classical homeopathy and conventional medicine.

4. The applicant complains that the medical specialists B. and V., who had been appointed by the Court of Appeal, lacked the required independence, as both had interests in the proceedings. It was important for Mr B. to conceal the mistakes which had been made in the hospital and it was important for Mr V. to conceal the real course of events in the treatment of Daisy.

5. The applicant complains that the Court of Appeal rejected his request to appoint Mr D. as a classical homeopathic expert and his request to hear police officer L. as a witness.

6. The applicant complains that the prosecution influenced the way the defence in his case was conducted by threatening his lawyer with criminal proceedings in case the defence would not comply with the indications given by the prosecution.

7. The applicant complains that the contents of the minutes of the questioning by the police and minutes of the respective court hearings in his case are not reliable in that these minutes do not contain a verbatim reproduction of what has been said on those occasions, whereas these minutes have been used in evidence.

8. The applicant complains that the proceedings in respect of both Daisy and Ms R. exceeded a reasonable time.

9. The applicant complains that it was only at the first court hearing of his case that the prosecution modified the charges against him by referring to the fact that he was a medical practitioner whereas this was known as from the outset of the criminal proceedings against him.

10. The applicant complains under Article 14 of the Convention in conjunction with Article 6 para. 3(d) of the Convention that the Dutch courts rejected his argument that there had been an emergency situation. He submits that he has not been sufficiently allowed to question witnesses and experts on this point and considers that he has been discriminated against for being a iatrosophic in that he was convicted and in that such a high sentence was imposed.

11. The applicant finally complains that the Supreme Court rejected a number of his complaints in cassation under Article 101a of the Judicial Organisation Act without giving any substantial reasoning for its rejection.

THE LAW

1. The applicant submits a number of complaints that the criminal proceedings against him were not in conformity with the requirements of Article 6 (Art. 6) of the Convention.

Article 6 of the Convention, insofar as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by an ... impartial tribunal established by law....
>
> 2. ....
>
> 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;
>
> c. to defend himself in person or through legal assistance of his own choosing ...;
>
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
> ...."

2. The applicant complains that it was only at the first court hearing of his case that the prosecution modified the charges against him by referring to the fact that he was a medical practitioner whereas this was known as from the outset of the criminal proceedings against him.

The Commission notes that the charges against the applicant were amended at the outset of the proceedings in first instance and that the Regional Court, on the basis of this amendment, decided to adjourn the proceedings for a period of more than two months.

In these circumstances the Commission cannot find that the applicant was harmed in the exercise of his defence rights as guaranteed by Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention.

It follows that this complaint must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Insofar as the applicant's complaints relate to the taking and assessment of evidence by the trial courts, the Commission recalls that, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which the defence seeks to adduce. More specifically, Article 6 para. 3(d) (Art. 6-3-d) of the Convention leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the autonomous sense given to that word in the Convention system; it does not require the attendance and examination of every witness on the accused's behalf (cf. Eur. Court HR, Engel v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 38, para. 91; Bricmont v. Belgium judgment of 7 July 1989, Series A no. 158, p. 31, para. 89; and Vidal v. Belgium judgment of 22 April 1992, Series A no. 235-B, p. 32, para. 33).

The Commission notes that in the proceedings at issue a number of witnesses proposed by the defence have in fact been heard before the Court of Appeal and that the defence has been enabled to question these witnesses, albeit that the Court of Appeal did not allow the defence to ask certain questions which it considered to be insinuating, suggestive, irrelevant and/or unnecessarily harmful.

It follows from the national courts' margin of appreciation in

assessing the relevance of the evidence the defence seeks to adduce, that they have also a margin of appreciation in controlling the accused's questioning of such defence witnesses as are called.

The Commission cannot find that the Court of Appeal's decisions and the reasons given therefor not to hear certain witnesses or the way in which it controlled the applicant's questioning of the witnesses heard in his case deprived the applicant of a fair trial within the meaning of Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention or constitute an indication that this court was biased. As regards the latter aspect the Commission finds it further relevant that the applicant explicitly refused to challenge the Court of Appeal after his attention had been drawn to this possibility.

Considering that the applicant was convicted following adversarial proceedings in which the defence has been provided with ample opportunity to hear, question and object to witnesses and to submit whatever it found relevant to the applicant's case, the Commission finds no indication that the proceedings at issue, as regards the taking of evidence, were contrary to the requirements of Article 6 (Art. 6) of the Convention.

4. The applicant complains that he was tried by a judicial body lacking the required knowledge of classical homeopathy and conventional medicine.

The Commission finds that, in criminal proceedings, the right of access to court does not necessarily include the right to be tried by a criminal court possessing a detailed knowledge of the particular professional activity of the accused where the acts for which he or she stands trial have been committed in the context of an exercise of professional activities. It is open to criminal courts to seek the views of professional experts, which the domestic investigative and judicial authorities in the proceedings at issue have in fact done.

It follows that this complaint must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. The applicant complains that the prosecution influenced the way the defence in his case was conducted by threatening his lawyer with criminal proceedings in case the defence would not comply with the indications given by the prosecution.

The Commission has noted the contents of the letter of 7 March 1994 which the prosecutor addressed to the applicant lawyer. The Commission further notes that the prosecutor addressed a copy of this letter to the Court of Appeal, which considered it following a complaint by the defence.

The Commission finds no indication in support of the assumption that the contents of the letter unduly restricted the applicant in the exercise of his defence rights in the proceedings at issue. In this respect the Commission notes that the letter at issue had been sent after the person referred to in this letter had already been heard as a witness before the Court of Appeal, that the warning in this letter solely concerned this particular witness and finally that the Court of Appeal did in fact express its criticism on the contents of the letter.

It follows that this complaint must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

6. The applicant complains that the contents of the minutes of the questioning by the police and minutes of the respective court hearings in his case are not reliable in that these minutes do not contain a

verbatim reproduction of what has been said on those occasions, whereas these minutes have been used in evidence.

The Commission recalls that it is not competent to examine alleged errors of fact or law committed by national courts, except where it considers that such errors might have involved a possible violation of the rights and freedoms set forth in the Convention (cf. No. 25062/94, Dec. 18.10.95, D.R. 83 p. 77).

The Commission further recalls that, as a general rule, it is for the national courts to assess the evidence before them (cf. No. 22909/93, Dec. 6.9.95, D.R. 82 p. 25).

The Commission notes that in the present case the trial court hearings were recorded in minutes according to the provisions of the Dutch Code of Criminal Procedure. It further notes that the defence submitted its comments on these and other minutes in the course of the proceedings before the Court of Appeal and before this Court reached its verdict. In these circumstances the Commission cannot find that the absence of verbatim records of the various hearings in the applicant's case deprived the applicant of a fair hearing within the meaning of Article 6 (Art. 6) of the Convention.

It follows that this part of the application must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

7. Insofar as the applicant complains that the Supreme Court rejected a number of his complaints in cassation under Article 101a of the Judicial Organisation Act without giving any substantial reasoning for its rejection, the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument (cf. Eur. Court HR, Ruiz Torija v. Spain judgment of 9 December 1994, Series A no. 303-A, p. 12, para. 29).

The Commission further recalls that when a State provides for an appeal to a Supreme Court, it may prescribe the conditions and procedure (cf. No. 12972/87, Dec. 9.11.87, D.R. 54 p. 207) and that Article 6 (Art. 6) of the Convention does not require that a decision whereby an appeal tribunal, basing itself on a specific legal provision, rejects an appeal as having no chance of success be accompanied by detailed reasons (cf. No. 8769/79, Dec. 16.7.81, D.R. 25 p. 240).

The Commission notes that the Supreme Court, referring to Article 101a of the Judicial Organisation Act authorising this procedure, rejected part of the applicant's complaints in cassation as not prompting a determination of legal issues in the interest of legal unity and legal development. The Commission cannot find this procedure to be contrary to the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

8. The applicant complains under Article 14 of the Convention in conjunction with Article 6 (Art. 14+6) of the Convention that he has been discriminated against for being a iatrosophic in that he was convicted and that such a high sentence was imposed.

Article 14 (Art. 14) of the Convention reads:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other

opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission finds that the facts of the case do not disclose any discriminatory treatment contrary to Article 14 (Art. 14) of the Convention in respect of any right protected by the Convention.

It follows that this complaint must also be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

9. The applicant complains that the proceedings in respect of both Daisy and Ms R. exceeded a reasonable time.

According to the constant case-law of the Court and the Commission, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of each case and having regard in particular to the following criteria: the complexity of the case, the conduct of the applicant and that of the competent authorities (cf. Eur. Court HR, Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 27, para. 60). Persons held in detention are further entitled to special diligence (cf. Eur. Court HR, Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, p. 35, para. 84).

The Commission considers that the proceedings started on 12 August 1988, when the applicant was interrogated by the police in connection with their investigation of the treatment of Daisey, and ended on 16 May 1995, when the Supreme Court rejected the applicant's appeal in cassation. The entire proceedings lasted thus slightly more than six years and nine months. The Commission notes that the applicant, apart from the period between 26 and 29 June 1990, has not been detained in the course of the proceedings at issue.

Insofar as the applicant complains of the delay between his questioning on 12 August 1988 and the first hearing before the Regional Court on 21 February 1992, the Commission notes that in the proceedings at issue the applicant was not solely charged with facts relating to the case of Daisy, but also with other offences relating to the facts concerning Ms R. which occurred in March and April 1990.

In these circumstances, the Commission considers that the relevant authorities during the period of time which elapsed between 12 August 1988 and 21 February 1992, cannot be considered as having been totally inactive. Furthermore, having regard to the specific circumstances of the present case and the fact that the Court of Appeal, in view of the lapse of time in the case of Daisy, mitigated its sentence, the Commission cannot find that this period of time exceeded a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (cf. Eur. Court HR, Boddaert v. Belgium judgment of 12 October 1992, Series A no. 235-D).

As regards the total length of proceedings before the courts between 21 February 1992 and 16 May 1995, i.e. slightly less than three years and three months in the course of which the case has been dealt with at three levels of jurisdiction, the Commission cannot find either that this period was unreasonably long for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention.

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

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber