AS TO THE ADMISSIBILITY OF

Application No. 12128/86
by Theodora Kathleen DIJKSTRA
against the Netherlands

The European Commission of Human Rights sitting in private on 8 April 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ

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 30 November 1985 by Theodora Kathleen DIJKSTRA against the Netherlands and registered on 29 April 1986 under file No. 12128/86;

Having regard to the Government's observations dated 20 January 1989 and the applicants' replies dated 6 April 1989;

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 facts as submitted by the parties may be summarised as follows.

The applicant, born in 1945, is of Dutch nationality and lives in Maastricht, the Netherlands.

On 20 October 1983, the applicant was stopped for having committed a traffic offence in Willemstad, Curaçao, in the Netherlands Antilles. As she disagreed with the accusation, the policeman handed out to her a summons to appear in court on 2 December 1983.

On 23 November 1983, the applicant wrote to the Registry of the Regional Court (Gerecht in Eerste Aanleg) of Curaçao, requesting an adjournment of the case in view of her imminent hospitalisation, which was likely to prevent her from being present at the hearing.

The Public Prosecution Department informed the applicant on 28 November 1983 that her request would be submitted to the judge and that, should the judge comply with her request, she would be notified

of the new date of the hearing. On the same date, an officer in the Public Prosecution Department annexed a short note to the case-file, requesting the judge to adjourn the case.

However, on 2 December 1983 the Regional Court nevertheless gave judgment in the presence of an officer of the Public Prosecution Department. The applicant was convicted by default and sentenced to a fine of 50 N.A. guilders, or, as a subsidiary punishment, to two days imprisonment.

It appears that the applicant only learned of her conviction on 25 May 1984, when she received a notification thereof. On 1 June 1984, the applicant, after payment of 25 N.A. guilders registry fees, lodged an objection (verzet) against the judgment with the Regional Court of Curaçao.

The Court on 15 June 1984 declared the objection inadmissible, since, contrary to Section 213 d juncto 239 g of the Netherlands Antilles' Code of Penal Procedure, it had not been introduced within fourteen days after the judgment of 2 December 1983. The Court considered that an accused, who has requested an adjournment of the hearing, might reasonably be expected to inform himself of the judicial decision on his request. Furthermore, the Court considered that the judge who convicted the applicant was under no obligation to grant the requested adjournment: Article 6 paras. 1 and 3 (c) of the Convention merely obliged him to weigh the interest of an accused in attending the hearing in person against other interests of a proper administration of criminal justice, such as the determination of a criminal charge within a reasonable time.

The Court finally considered that the Public Prosecution Department had made no promise to the applicant that her case would be adjourned, but, indeed, had reserved itself on this issue.

On 26 June 1984, the applicant appealed to the Court of Appeal of the Netherlands Antilles (Hof van Justitie van de Nederlandse Antillen). On 11 September 1984, the Court upheld the judgment of 15 June 1984. It agreed with the applicant that the court of first instance should have granted, under the circumstances of the case, the requested adjournment. However, the applicant had no reason to assume that her request would be granted. Since she had made her request in writing and not, e.g. by means of a representative, at the hearing itself, it was for her to bear the risk that her request would not reach the competent authority or would not be given sufficient consideration. It had not been shown that it was impossible for the applicant or a representative to inform herself after the hearing of the outcome of the proceedings.

The applicant's appeal to the Supreme Court of the Netherlands (Hoge Raad) was rejected on 11 June 1985. The Supreme Court's reasoning was similar to that of the Regional Court and of the Court of Appeal.

COMPLAINTS

The applicant complains that the summons which was handed out to her on 20 October 1983 did not satisfy the requirement of Article 6 para. 3 (a) of the Convention that everyone charged with a criminal offence shall be informed in detail of the nature and cause of the accusation against him.

The applicant further alleges that the Public Prosecution Department intercepted her letter to the registry of the Curaçao Regional Court as a result of which the judge was unable to properly consider her request for an adjournment. Consequently, there was, according to the applicant, no opportunity for her to defend herself in person. She invokes Article 6 para. 3 (c) of the Convention in

this respect.

As a third complaint, the applicant states that the courts have wrongly assumed that the fact that the time-limit for lodging an objection against her conviction by default had lapsed by the time she filed her objection was to be attributed to herself. In support of this, the applicant contends that she was, at the time, certain that the European Convention obliged the judge to comply with her request, the reason for which was properly founded and easily verifiable, and which would have caused no unreasonable delay in the proceedings. She further contends that she could reasonably have believed that the Public Prosecution Department had transferred her motivated request to the judge, as this was promised to her, and that she had no reason, let alone obligation, to inform herself after the hearing of 2 December 1983 whether the judge had indeed adjourned the case. The applicant concludes that the Regional Court should have declared her objection admissible instead of rejecting it for being out of time. In doing the latter, the court has, according to the applicant, violated Article 6 para. 3 (c) of the Convention, since she could not defend herself in person.

Finally, the applicant alleges that the obligation to pay the sum of 25 N.A. guilders for registry fees when lodging an objection against a conviction by default constitutes a violation of her right of access to a court, guaranteed by Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 30 November 1985 and registered on 29 April 1986.

On 11 October 1988, the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and the merits of the application.

The Government's observations were received by letter dated 20 January 1989 and the applicant's observations were dated 6 April 1989.

THE LAW

1. The applicant has first complained that the summons which was handed out to her on 20 October 1983 did not satisfy the requirement of Article 6 para. 3 (a) (Art. 6-3-a) of the Convention that everyone charged with a criminal charge shall be informed in detail of the nature and cause of the accusation against him. She has also complained that the registry fees she had to pay in order to lodge an objection against her conviction by default violated her right of access to a court, guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 (Art. 6) states insofar as relevant:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.

...

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

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

...

(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;..."

Under Article 26 (Art. 26) of the Convention the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of internationl law.

The Commission has first examined the applicant's complaints about the summons and the registry fees.

The Commission recalls that the mere fact that the applicant has submitted her case to the various competent courts does not of itself constitute compliance with the rule of exhaustion of domestic remedies. It is also required that the substance of any complaint made before the Commission should have been raised during the proceedings concerned. In this respect the Commission refers to its constant jurisprudence (see e.g. No. 10307/83, Dec. 6.3.84, D.R. 37 p. 113).

In the present case the applicant did not raise either in form or in substance, in the proceedings before the Netherlands Antilles' courts or the Supreme Court of the Netherlands the complaints which she now makes before the Commission. Moreover, an examination of the case does not disclose the existence of any special circumstances, which might have absolved the applicant, according to the generally recognised rules of international law, from raising her complaints in the proceedings referred to.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention and that her application must in this respect be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant has further complained that she has had no opportunity to defend herself in person in the criminal proceedings before the Curaçao Regional Court. She invokes Article 6 para. 3 (c) (Art. 6-3-c) of the Convention.

The applicant argues in particular that she had a right to have her case adjourned since her absence from the hearing was due to specific circumstances beyond her control. Moreover, the Public Prosecution Department had promised her to submit her request to the Court which gave her the impression that she had proceeded correctly.

The Government observe that the applicant could have arranged for a representative to represent her at the hearing.

The applicant further submits that the Public Prosecution Department was responsible for her objection being dismissed for non respect of the time limits. Since the Public Prosecutor, and not she, should have ascertained the Court's decision, she cannot be blamed for lodging an objection beyond the time-limits.

The Government contend that, since the applicant knew that criminal proceedings had been instituted, it was her responsibility to find out what decision had been taken. Moreover, the applicant should not have assumed from the Public Prosecutor's reply that the requested adjournment would be granted, as such a decision can only be taken by the Court.

The Commission, having regard to the parties' submissions in this respect considers that this complaint raises complex issues of fact and law which can only be resolved by an examination of the

merits. This complaint cannot, therefore, be declared 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 ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint that the proceedings before the Curaçao Regional Court took place in her absence;

unanimously DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President to the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)