CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 39195/98
by Harke JAGER
against the Netherlands

The European Court of Human Rights (First Section), sitting on 14 March 2000 as a Chamber composed of

Mrs E. Palm, *President*,
Mr J. Casadevall,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mrs W. Thomassen,
Mr R. Maruste, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced on 13 November 1997 and registered on 6 January 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1958, currently serving a prison sentence in The Hague. He is represented before the Court by Ms G.E.M. Later, a lawyer practising in The Hague.

A. Particular circumstances of the case

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

On 24 November 1994, the partially undressed body of the nine-year-old girl F. was found on a path along a railway near allotments in The Hague. The *post mortem* examination carried out on the same day resulted in a finding that it was likely that she had died on 24 November 1994 between 7.30 and 9.30 a.m. from a loss of blood caused by stab wounds. The autopsy conducted on 25 November 1994 confirmed this finding.

On 25 and 28 November 1994 respectively, the deputy public prosecutor (*hulpofficier van justitie*) ordered the police to conduct a search of the crime scene and the adjacent allotments. A plaster cast was made of the bicycle tire tracks found at the crime scene. No other traces were found.

On 25 November 1994, Ms A. gave a statement to the police to the effect that, at around 8.20 a.m., she had seen the victim, a friend of her daughter, sitting on the back of a pink lady's bicycle ridden by a man. She gave a description of this man's features and clothes.

Given certain factual similarities of the killing of F. and the killing of a young girl in 1980 of which the applicant had been found guilty, the police placed him under observation as from 26 November 1994. On 6 December 1995, upon request of the public prosecutor, a preliminary judicial investigation (*gerechtelijk vooronderzoek*) against the applicant was opened. On 20 December 1994, the applicant was arrested and detained on remand. On that occasion the police also seized, amongst other items, a coat and a pink and white lady's bicycle found in the applicant's home.

The police interrogated the applicant repeatedly. During some of these interrogations in January 1995, the interrogating police officers used a specific interrogation technique; the so-called "*Zaanse verhoormethode*". The applicant did not make any confession statement.

Upon the order of the deputy public prosecutor, the ditches in the area of the crime scene were searched on 18 January 1995, which resulted in the finding of a blade, apparently broken off a pocket knife. Furthermore, on 23 January 1995, a pocket knife with a missing blade was found in a ditch.

On 25 January 1995, the forensic laboratory informed the investigating authorities that the bicycle tire tracks found on the crime scene globally corresponded with the rear tire of a bicycle seized in the applicant's home, but that no characteristic similarities had been found. The front tire of the bicycle seized did not correspond with the tracks found.

On 16 February 1995, the forensic laboratory informed the investigating authorities that fibres discovered in the pocket knife found on 23 January 1995 corresponded, given the colour and material, with a coat seized in the applicant's home and that the blade found on 18 January 1995 could have caused the stabbing holes in the victim's clothes.

According to a report of 16 March 1995 by the forensic laboratory on the investigation of fibres found on the coat seized in the applicant's home on 20 December 1994 and the coat of the victim, it was very well possible that both coats had been in contact with each other.

At some unspecified point in time, the applicant was summoned to appear before the Regional Court (*Arrondissementsrechtbank*) of The Hague on charges in relation to F.'s killing.

By judgment of 6 April 1995, following adversarial proceedings, the Regional Court convicted the applicant of murder and sentenced him to life imprisonment. The applicant filed an appeal with the Court of Appeal (*Gerechtshof*) of the Hague.

On 27 September 1995, the Court of Appeal took evidence from the applicant, from the witness Ms A. and from the expert-witness H., an official of the forensic laboratory.

On 22 November 1995, the Court of Appeal granted the request of the defence to be provided with copies of the tapes of the applicant's interrogations by the police. It further ordered the applicant's examination at the Psychiatric Observation Clinic of the Prison System (*Psychiatrische Observatiekliniek van het Gevangeniswezen*).

On 3 April 1996, the Court of Appeal rejected a request by the defence to make funds available to the defence in order to enable the defence to commission one or more experts.

In its report dated 1 May 1996, the Psychiatric Observation Clinic stated, *inter alia*, that the applicant was suffering from a serious personality disorder with narcissistic, dependent and anti-social features. It was further found that he was incapable of adequately expressing his aggression and to regulate his aggression when such feelings would emerge. Consequently, his behaviour could be both impulsive and explosive. The report also stated that there continued to be a distinct likelihood of repetition of aggressive behaviour towards women and girls.

On 22 May 1996, the Court of Appeal took evidence from Ms B., a psychologist who had examined the applicant in the Psychiatric Observation Clinic over a period of seven weeks. She declared, *inter alia*, that the applicant's examination had disclosed a great discrepancy between his verbal and performal IQ, which expressed itself in the applicant's case by a specific disorder, i.e. a nearly total inability to read and write. In her opinion, there were no indications that this disorder caused mental problems in other areas. She stated that, for instance, his capacity for concentration was very good and that he was able to compensate his handicap by a reasonably good memory.

On the same day, the Court of Appeal took evidence from two police officers who had been involved in the applicant's interrogations and from Mr H. Hoenderdos, the communication expert who had assisted the police in their interrogations of the applicant.

By judgment of 5 June 1996, following adversarial proceedings, the Court of Appeal quashed the judgment of 6 April 1995, convicted the applicant of homicide and sentenced him to fourteen years' imprisonment with deduction of the time spent in pre-trial detention. In addition, the Court of Appeal imposed a post-sentence confinement order ("TBS-order"; *terbeschikkingstelling*) with compulsory treatment at public expense (*met bevel tot verpleging van overheidswege*).

The Court of Appeal rejected the request by the defence for an adjournment of the court's examination in order to seek further evidence from experts as to the applicant's mental health, interrogation techniques and the forensic findings. It held on this point that this concerned in fact requests for a counter-expertise and considered that the defence had had sufficient opportunity to obtain this. It concluded that the criminal investigation authorities had carried out sufficient investigations and that it considered itself to be sufficiently informed.

As regards the admissibility of the prosecution, the judgment of 5 June 1996, insofar as relevant, reads:

<Translation>

"The examination of the arguments submitted by the defence consist of two parts, those submitted by Mr Sandberg (I) and those submitted by Ms Later (II).

(I). According to Mr Sandberg, the public prosecution department must be declared inadmissible in its prosecution, because the actions of the police and the prosecution in the criminal investigation are, to a too large extent, contrary to the requirements of a fair trial.
In the first place, the combination of a) premature investigatory activities and b) the manner of interrogation (use of the "*Zaanse verhoormethode*") constitutes a gross violation of the prohibition of pressure set out in Article 29 of the Code of Criminal Procedure (*Wetboek van Strafvordering*) and of the requirements of a fair trial (Article 6 of the Convention).
Secondly, by keeping secret the use of the "*Zaanse verhoormethode*" and the calling in of the expert Hoenderdos, the finding of truth has suffered to such an extent that, also on that ground, it can no longer be held that there has been a fair trial.
…
1.a. As from 26 November 1994, the suspect has been observed for about one month, during which several "indications" have been gathered. This observation was an unlawful act of investigation, as on that moment the suspicion of guilt was absolutely insufficient. The suspicion of <the applicant> was only based on the fact that there appeared to be similarities in the *modus operandi* between the present fact and the fact of 1980. This comparison is, however, incorrect.

1.b. Although the defence suspects that the "*Zaanse verhoormethode*" has been used as from the outset, the objections of the defence are aimed in particular at the interrogations having taken place on 14 and 15 January 1995 under the direction of Mr Hoenderdos. At the beginning of the interrogation on 14 January 1995, the birthday of the suspect's daughter who is about the same age as the victim (creative extension of the collage of photographs of family and victim), the first hours are spent talking about trivialities. Subsequently the thumbscrews are tightened and the suspicion is brought up. By sitting close to the <suspect>, by the interrogators' encircling of the <suspect>, unbridled pressure is exerted on the <suspect>. Despite the emotionally deplorable situation of the suspect, the interrogators have pursued the interrogations in as much as possible. The particular personality features of the suspect have in no way been taken into account.
This manner of interrogation is unlawful and in violation of the prohibition of pressure.

2. According to the defence, the police and justice <department> consider the named Hoenderdos as an expert. His appointment only becomes apparent in the public prosecutor's official report of 14 May 1996; also the investigation judge, who was aware of the calling in of Hoenderdos, has remained silent about this. Both the police officers involved and the investigation judge should have recorded in minutes the activities of Hoenderdos - the judge (and also the defence) need to be enabled to verify the application of methods and means of investigation - and further Hoenderdos should have made a report. …

The court rejects these arguments.

Ad 1.a. The following has appeared during the trial:
On 24 November 1994, near the allotments complex Loolaan … in The Hague, the victim was found, the upper part <of the body> dressed, jeans and underpants pulled down. She was killed by a large number of stab wounds, no traces of sexual violence were found. A partially broken off bush was found at a distance of some meters. The girl had been seen some hours earlier with a man <sitting> on the back of a bicycle. On 26 November 1994, one of the police officers involved in the investigation checked the police administration for facts that, *qua modus operandi*, were similar to the present case. He found the following: In 1980, in the dunes near …, a seven-year-old girl was found dead, she was partially undressed, pants and underpants had been pulled down. She had been killed by stab wounds, no traces of sexual violence were found. The girl was covered with branches. In relation to these facts, the accused was placed at the Government's disposal (*ter beschikking van de regering gesteld*).
It was subsequently determined that the applicant's home is located at a distance of about four kilometres from the <present> crime scene. Two police officers involved in the investigation … on 26 November 1994 … saw the applicant looking outside through the window <of his home> and found that he resembled a composition drawing made on the basis of a witness statement. The court considers that the foregoing constituted a sufficient suspicion of guilt for further investigatory activities against the suspect. In that context … the suspect was observed for some time on 9 and 19 December 1994. … There is no question of a premature prosecution activity, so that the <applicant's> observation by the police neither in itself nor in combination with the manner of interrogation constitutes a violation as argued.

Ad 1.b. As to this <point> the following has appeared during the trial:
In January 1995 Hoenderdos, a communication expert, has become involved in the case because the team that interrogated the accused had internal problems and because the investigation had reached deadlock.
In the week before the weekend of 14 and 15 January 1995 Hoenderdos has spoken for the first time with the team and has offered his assistance in the interrogation of the suspect. The only time he had available for this was this weekend. In that weekend, the suspect has been interrogated at length during which the team members sat close to him. In an adjacent room, the interrogation was watched and listened to by Hoenderdos, who drew the police officers' attention to various communication signals. During this interrogation use was made of collages of photographs in which, *inter alia*, three photographs of the suspect's family members were displayed around a photograph of the victim. The court considers this use of family photographs in a collage of this kind contrary to the requirements of a fair trial. The infringement of these requirements thus made is - also in the light of the exceptional seriousness of the fact - in the court's opinion neither in itself nor in connection with what has appeared in respect of the interrogations of such gravity that this should lead to the inadmissibility of the prosecution.

Ad 2. It has not appeared from the case-file or otherwise that the police and justice <department> (and the investigating judge) considered Hoenderdos as an expert within the meaning of Article 227 of the Code of Criminal Procedure. A report by Hoenderdos is therefore not required.
The court further considers that - apart from the question whether this was required - that the suspect's rights have not been neglected as argued by the failure to mention the assistance by Hoenderdos, as the use of the contested collage of photographs appears already sufficiently from the case-file.

Counsel has referred in various places, in support of his pleadings, to the European Convention of Human Rights and the case-law of the European Court of Human Rights. Also considered along those lines, the court does not reach other findings than those set out above.

(II) Apparently in the context of her primary argument that the public prosecution should be declared inadmissible, counsel Ms Later, in addition to what Mr Sandberg has already submitted in relation to the European Convention of Human Rights, has argued that in this case various other provisions of the Convention have been violated.

a) Counsel has placed the manner of interrogation of the suspect by the police and the use of the so-called method "Hoenderdos" in the context of Article 3 of the Convention; inhuman treatment.
…
d) Article 6 para. 3 sub b would be violated because the defence has insufficient facilities. This provision is submitted in conjunction with

e) Article 6 para. 1, access to court, which provision is violated because, for lack of financial means, the suspect has in fact not been enabled to defend himself in the proceedings.

f) By the withholding of information, in particular information about the method "Hoenderdos", the principle of fair trial and in particular <the principle of> equality of arms, Article 6 para. 1, has been violated, also by the public prosecutor's selection of investigation data, the public prosecutor's approaching of the judges' chamber about a judicial on-site inspection and the conducting of a search of the premises of the Social Fund for the Building Industry without informing the defence of this.

g) Finally a violation of Article 5 of the Convention is argued, because there was insufficient indication of guilt, so that the <suspect's> situation of detention must be considered as contrary to this provision.

Ad a. The court has already expressed itself about the use of the method "Hoenderdos" in the present case and the consequences to be attached to this.
Noting the seriousness of the act committed, the court considers the intensity of the interrogations not of such a nature that these <interrogations> justify the qualification of inhuman treatment.
…
Ad d and e. After the preparation of the case before the court, it has been examined for the first time on 27 September 1995. Subsequently, on 22 November 1995 and 22 May 1996, further examinations on the substance have taken place. Taking into account that the case must be dealt with within a reasonable time, the court considers that the defence has been provided with sufficient facilities during that period to investigate what it wished to investigate.
The counter-investigations at the expense of <the> justice <department>, as wished by the suspect, have been refused by the court, since the contention that the suspect has a right to a counter-expertise at the State's expense finds no support in the law. On that ground, the absence of facilities and financial means cannot have as consequence the inadmissibility of the prosecution.

Ad f. It has not been established that information, essential for his defence, has been withheld from the suspect. As to the withholding of information about the method "Hoenderdos" the court refers to it remarks already stated above. It has also not been established … that there has been an unbalanced compilation of the case-file. That the defence was not informed of a request by the prosecutor for a judicial on-site inspection and <that the defence> has not been informed, prior or during this search, of the search of the premises of the Social Fund for the Building Industry cannot lead to the inadmissibility of the prosecution. The circumstances are thereto of insufficient weight.

Ad g. In the light of the following decision of the court, this <point> does not warrant examination."

The Court of Appeal based the applicant's conviction on, *inter alia*, his evidence to the trial courts, statements made by the witness Ms A. to the police and the court, and on police and forensic reports. On the basis of the cruelty of the facts, the applicant's diminished responsibility at the time of the offence and the high risk that the applicant would repeat aggressive behaviour towards women and girls, the Court of Appeal decided to impose not only a criminal sanction but also a post-sentence confinement order with compulsory treatment at public expense.

The applicant's subsequent appeal in cassation was rejected by the Supreme Court (*Hoge Raad*) on 13 May 1997.

As to the applicant's complaint that the Court of Appeal had unjustly held that there had been a fair trial and equality of arms between the public prosecution and the defence, the Supreme Court held that the Court of Appeal had correctly found that the use of the "*Zaanse verhoormethode*" was incompatible with the requirements of a fair trial. It further accepted as correct the Court of Appeal's findings as to the question whether there were sufficient suspicions against the applicant to justify further investigatory measures.

As regards the manner in which the applicant had been interrogated by the police, the Supreme Court did not exclude that, under certain circumstances, unlawful activities of the criminal investigation and prosecution authorities could result in such a serious violation of the principles of a fair trial that these should lead to the inadmissibility of the prosecution. However, such a far reaching sanction could only follow where it would concern serious violations of those principles by, deliberately or with gross negligence, disrespecting the suspect's interests in his right to a fair hearing of his case. In the impossibility to give a general rule on this point, this question needed to be examined on a case to case basis.

After having noted the Court of Appeal's findings in the present case as to the interrogations at issue and in particular the specific part which the Court of Appeal had correctly found to be in violation of the requirements of a fair trial, the Supreme Court accepted the Court of Appeal's conclusion that these interrogations were not of such a nature that it should result in the inadmissibility of the prosecution.

The Supreme Court further considered the applicant's complaint that the defence had not sufficiently been enabled to avail itself of investigatory possibilities in that the Court of Appeal had rejected his request to make funds available to him in order to allow him to take initiatives aimed at obtaining a counter-expertise whereas he did not have any funds himself to do so. He explained that he had wished to submit counter-expert evidence in relation to the investigation made of his personality, on some material evidence and on the interrogation method used by the police.

The Supreme Court noted that the applicant had had several possibilities during the pre-trial stage of the proceedings to obtain, at the State's expense, further investigations and further counter-expert evidence. The Supreme Court further noted that the experts, who had carried out an examination of the applicant's personality or the material evidence, had been heard before the trial court and that the defence had been able to put questions to them. As regards the interrogation technique used by the police, the Supreme Court noted that the applicant's statements used in evidence were statements given either before the investigating judge or before the trial court.

The Supreme Court held that, in these circumstances, the Court of Appeal's rejection of the applicant's requests for further expert evidence on the basis of a finding that the investigation had been sufficient could not be regarded as unreasonable. It further considered that the Court of Appeal had correctly held that the applicant's contention that the State has to bear the costs of any investigation requested by the defence, in its generality, is not supported by the law and that this is not in conflict with Article 6 of the Convention.

The Supreme court also considered that the Court of Appeal had rejected on correct grounds the arguments raised by the defence about withholding information to the defence and the compilation of the case-file.

B. Relevant background and domestic law

Article 29 of the Code of Criminal Procedure, insofar as relevant, reads:

<Translation>

"1. In all cases where a person is heard as a suspect, the questioning judge or civil servant shall refrain from everything which could have the effect of obtaining a statement of which it could be said it was not freely made. The suspect is not obliged to answer.

2. Before the hearing the suspect is informed that he is not obliged to answer.

…"

On 15 May 1996, following the national broadcast of a television programme in which the "*Zaanse verhoormethode*" was discussed, a Member of Parliament put questions about this interrogation technique to the Minister of Justice, who decided to seek the views of the Criminal Investigation Advice Commission (*Recherche Adviescommissie*; hereinafter "RAC") as to the lawfulness and functionality of this method.

On 21 August 1996, the Minister of Justice informed Parliament that, once she would have taken notice of the final outcome of two trials in which the lawfulness of this method had been raised as well as the RAC advice, she would take a final decision as to the acceptability of this interrogation technique. In the meantime, she had instructed the public prosecution department to suspend the use of this technique. In November 1996, in conformity with the advice contained in the RAC report of 1 November 1996, the Minister of Justice decided to prohibit the use of the "*Zaanse verhoormethode*".

The RAC report describes the "*Zaanse verhoormethode*" as an interrogation technique based on the so-called CASE 36 (Communication Analysing System Europe 36) communication method. The method was developed by a communication expert and was further elaborated for police practices.

CASE 36 is described in the report as a communication method focussing in particular on the way in which a person internally perceives the outside world. The application of the CASE 36 technique allows to obtain a very accurate picture of the behaviour of a person and the internal processes on which this behaviour is based, thus enabling to communicate effectively (a correct statement by the suspect) and efficiently (within a short time).

The CASE 36 technique is based on Neuro Linguistic Programming (NLP); originally a form of psychotherapy. NLP has been defined as "the study of the structure of subjective experience". NLP provides a model of human behaviour and communication which answers questions like "How does a person behave in relation to his environment, how does he take in information and how does he process this information?" An interrogation according to the CASE 36 communication method is aimed at the creation of a tie between the suspect and interrogators through which an optimal communication must become possible and thus to attain the truth via communication.

The actual interrogation is prepared by planning certain steps to be taken during the interrogation. This planning includes, amongst other things, the allocation of individual roles (father figure, specialist, analyst, person of confidence) to each member of the interrogation team. Furthermore, a preliminary meeting with the suspect takes place in order to find out which pattern of thought (in detail or global) he uses and what his "focal points" are, i.e. to what points he looks when he is not specifically asked to look at something. A determination of "focal points" is relevant for the making of "visual chronological lines".

In having the suspect draw (visual) chronological lines during the interrogation, it is attempted to verify when what has taken place. This takes place, *inter alia*, by making a suspect relive an experience in his mind. If a suspect has a auditive preference, there is a bigger chance of communication and a reliving when he is made to listen to recordings, like telephone conversations. Has the suspect a sensory preference, the chance of communication is bigger when having him touch an object found at the crime scene, whereas in case of a visual preference, he can be shown photographs of the crime scene.

In case a suspect has a "focal point" on a particular spot on a wall, it is possible to place photographs there. He will unconsciously look at them after which, as the intention is, he will remember facts insofar as he has been responsible for them. The showing of photographs includes both photographs connected to the offence and photographs linked to the suspect's person, like photographs of his spouse or children. These two kinds of photographs are either shown separately or combined with each other.

The interrogation team leader and the external communication expert watch and listen to the interrogation in another room. There are four hidden cameras covering the entire interrogation room and one hidden camera aimed at the suspect's face. The suspect is informed that the interrogations are recorded but does not know where the cameras are. The interrogators receive instructions via earphones from the team leader or the external communication expert during the interrogation. The interrogation is constantly adapted to the suspect's behaviour. The suspect's non-verbal communication is followed and whether his behaviour is congruent, i.e. whether his body language is in conformity with his verbal expressions. Other features of this interrogation technique are the copying of a suspect's physical behaviour which is intended to reassure the suspect and the so-called "pushing in", i.e. to push one by one and at a deliberate moment the chairs of each interrogator close to the suspect until in the end all interrogators sit intimately around the suspect.

The interrogations are conducted within a couple of days, lasting on average ten hours per day depending on how the interrogation proceeds.

Under Article 37a-e of the Code of Criminal Procedure, a trial court may - in addition to a criminal sanction and if the protection of public order so requires - issue a confinement order (TBS order) in respect of a perpetrator of an offence, who has been found guilty and who has been found to have a mental disorder and to be dangerous. A TBS order can include a separate order for compulsory treatment at public expense.

COMPLAINTS

1. The applicant complains that his taking into detention was contrary to Article 5 § 1(c) of the Convention in that there was no reasonable suspicion that he had committed an offence. He submits that, insofar as evidence could be derived from his statements - despite the fact that he has denied the charges throughout - it should be taken into account that he cannot read and write, suffers from dyslexia and therefore should not be pinned down on words.

2. The applicant complains under Article 6 § 1 in conjunction with Article 5 § 1 of the Convention of a violation of the principle of equality of arms in the criminal proceedings against him.

3. The applicant finally complains that the lengthy interrogations, the fact that he has been detained for too long in a police station and the manner in which he was interrogated, i.e. the use of the so-called "*Zaanse verhoormethode*" - including his confrontation with collages of photographs of the victim's body in the middle surrounded by photographs of his wife and children - constitute treatment contrary to Article 3 of the Convention.

THE LAW

1. The applicant complains that his arrest and detention was contrary to Article 5 § 1(c) of the Convention in that there was no reasonable suspicion that he had committed an offence.

Article 5 § 1 of the Convention, insofar as relevant, reads:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
…
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence …"

The Court recalls that the "reasonableness" of the suspicion on which an arrest must be based forms an essential element of the safeguard against arbitrary arrest and detention. Having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (cf. Fox Campbell and Hartley v. United Kingdom judgment of 30 August 1990, Series A no. 182, p. 16, § 32).

As to the level of "suspicion", Article 5 § 3(c) of the Convention does not presuppose that the investigating authorities should have obtained sufficient evidence to bring charges, either at the time of the arrest of while the arrested person is in custody. The object of questioning during detention under Article 5 § 3(c) of the Convention is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next

Commented [Note1]: In your reasoning specify: Complaint / Article of the Convention [/ Succinct summary of Government's submissions / Succinct summary of applicant's submissions in communicated case] / Court's [Commission's] case-law, if any / Application of case-law to facts of particular case or considerations for specific facts of case.

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stage of the process of criminal investigation. The existence or not of a reasonable suspicion in a concrete instance depends ultimately on the particular facts (cf. Murray v. United Kingdom judgment of 28 October 1994, Series A no. 300-A, p. 27, §§ 55 and 57).

The Court notes that, in its judgment of 5 June 1996, the Court of Appeal held that at the relevant time there were a number of elements which constituted a sufficient suspicion of guilt for further investigatory measures against the applicant. Having noted the elements referred to by the Court of Appeal, the Court cannot consider this finding to be unreasonable or arbitrary. It has not been alleged nor has it appeared that the applicant's arrest or subsequent detention was otherwise contrary to the requirements of Article 5 § 1 of the Convention.

It follows that this complaint must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicant complains under Article 6 § 1 in conjunction with Article 5 § 1 of the Convention of a violation of the principle of equality of arms in the criminal proceedings at issue.

Article 6 § 1 of the Convention, insofar as relevant, provides:

> "In the determination of .. any criminal charge against him, everyone is entitled to a fair … hearing … by a …tribunal …"

The Court recalls that the principle of equality of arms is only one feature of the wider concept of a fair trial, which also includes the fundamental right that proceedings should be adversarial. This implies that both the prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (cf. Belziuk v. Poland judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II No. 67, p. 570, § 37).

The Court finds no indication in the case-file that the applicant's defence rights under Article 6 of the Convention have been breached as regards the evidence submitted to the trial courts. The Court notes that the domestic courts held that the manner in which the applicant had been interrogated was contrary to the prohibition to exert pressure on suspects as set out in Article 29 of the Code of Criminal Procedure and that the applicant's conviction was not based on any statement made by him during those interrogations.

As to the rejection by the Court of Appeal of the applicant's request to seek further evidence, the Court considers that the requirements of a fair trial do not impose an obligation on a trial court to order an expert opinion or any other investigative measure merely because a party has sought it. It remains for the court to judge whether such a measure would serve any useful purpose (cf. H. v. France judgment of 24 October 1989, Series A no. 162-A, p. 23, §§ 60-61). Furthermore, Article 6 or any other provision of the Convention does not, as such, guarantee a right for accused that trial courts make public funds available to the defence for commissioning experts in the context of criminal proceedings.

Noting the grounds given by the Court of Appeal for rejecting the applicant's requests to seek further evidence from experts, the Court does not find that this refusal can be regarded as unreasonable or arbitrary or that it, as such, deprived the applicant of a fair hearing within the meaning of Article 6 of the Convention.

Having regard to the fact that the applicant has been convicted following adversarial proceedings, in the course of which he has been provided with ample opportunity to state his case, to submit whatever he found relevant to the outcome and to challenge the evidence against him, the Court finds no indication that the proceedings at issue fell short of the requirements of Article 6 of the Convention.

Finally, the Court is of the opinion that this complaint raises no separate issue under Article 5 § 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 35 § 3 of the Convention.

3. The applicant finally complains that the lengthy interrogations, the fact that he has been detained for too long in a police station and the manner in which he was interrogated, i.e. the use of the so-called "*Zaanse verhoormethode*" - including his confrontation with collages of photographs of the victim's body in the middle surrounded by photographs of his wife and children - constitute treatment contrary to Article 3 of the Convention.

Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court recalls that Article 3 of the Convention enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. Acts which arouse in the victim feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance may be sufficiently serious to render such treatment inhuman and degrading within the meaning of Article 3 of the Convention (cf. Assenov and Others v. Bulgaria judgment of 28 October 1998, *Reports* 1998-VIII, p. 3288, §§ 93-94; and Selmouni v. France judgment of 28 July 1999, § 99).

The Court notes that, in the present case, the applicant was subjected to the "*Zaanse verhoormethode*" on 14 and 15 January 1995. After having noted the characteristic features of this interrogation technique and the manner in which it was used in the applicant's case, the Court considers that it is a sophisticated method from a psychological point of view and therefore objectionable in the context of a criminal investigation in that it is apparently aimed at attaining, by seeking to create an atmosphere of intimacy between the suspect and the interrogators through mental stimulation, an optimal level of communication as a result of which the interrogated person is incited, on the basis of a perceived relation of trust, to confide in the interrogators in order to seek relief from a mentally burdensome memory.

The Court does not find it established that the use of this method has resulted in mental pain and suffering for the applicant to such an extent that it amounts to inhuman treatment within the meaning of Article 3 of the Convention. The Court therefore cannot find that this interrogation method, as such, or the manner in which it has been applied in the present case attains the minimum level of severity required under Article 3 of the Convention.

Insofar as the applicant alleges a violation of Article 3 of the Convention in relation to other facts, the Court considers that, insofar as this part of the complaint has been substantiated, these other facts do not disclose a violation of Article 3 of the Convention.

It follows that this part of the application must also be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Michael O'Boyle
Registrar

Elisabeth Palm
President