CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 29759/96
by Nikola KITOV
against Denmark

The European Court of Human Rights (Second Section) sitting on 16 March 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mr G. Bonello,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 10 September 1992 by Nikola Kitov against Denmark and registered on 8 January 1996 under file no. 29759/96;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Bulgarian citizen, born in 1945. It appears that he is presently residing in Aalborg, Denmark. Before the Court the applicant is represented by Mr Christophe Darbois and Mr Olivier Gutkes, both lawyers practising in Strasbourg, France.

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

A. Particular circumstances of the case

On 25 September 1990 the applicant was arrested in Spain on the basis of an international arrest warrant issued by the Danish authorities in order to obtain his extradition to Denmark. He was suspected of having committed drug offences contrary to Danish law.

The applicant was extradited to Denmark in May 1991 where he was placed in pre-trial detention.

On 20 and 21 August 1991 the applicant and seven witnesses were heard by the Criminal Court of Silkeborg (*Kriminalretten i Silkeborg*). The applicant was assisted by counsel at the hearing. On 21 August 1991 the Court convicted the applicant of having committed drug offences contrary to Section 191 of the Danish Penal Code (s*traffeloven*). He was sentenced to three years' imprisonment. On the same day the applicant appealed against the judgment to the High Court of Western Denmark (*Vestre Landsret*) which had competence to determine the case on points of law as well as on facts. The Criminal Court decided to release him during the appeal proceedings. It appears that the applicant left Denmark upon his release.

The prosecution appealed against the decision to release the applicant to the High Court which decided, on 22 August 1991, that he was to be detained until 19 September 1991 pursuant to Section 762, subsection 1, of the Administration of Justice Act (*retsplejeloven*), as there was specific reason to believe that he would leave the country and evade prosecution if he remained at large. On 28 August 1991 the State Prosecutor of Viborg (*Statsadvokaten i Viborg*) requested the High Court not to fix the length of the applicant's detention as the applicant was presumed not to reside in Denmark any longer. On 30 August 1991 the High Court decided in accordance with the State Prosecutor's request.

The hearing in the High Court was scheduled to take place on 9 December 1991. Prior to the hearing the applicant was appointed a Danish lawyer, S.M., who put forward several requests to the State Prosecutor on 19 November 1991 in order, *inter alia*, to prepare for the hearing.

On 6 December 1991 a Dutch lawyer, N.M., sent a fax to the High Court whereby the court was informed, *inter alia*, that N.M. had been approached by the applicant, who had chosen his domicile at N.M.'s office address. N.M. requested that the hearing be adjourned due to the applicant's alleged illness. A notice impressed with the hallmark of the Prinsengracht Hospital (*Prinsengrachtziekenhuis*) in Amsterdam, in a

Dutch and an English version, was enclosed with the letter. According to the notice the applicant was admitted to "a general medical check-up" lasting three days. From N.M's letter it transpires that the purpose of the medical check-up was the applicant's alleged heart decease and a severe flu. N.M. stressed that the applicant wished to appear before the court to defend himself against the charges brought against him.

On 10 December 1991 N.M. faxed a medical statement to the High Court signed by "Dr. P. Stevens Cardiologist" that described - in medical terms - the applicant's alleged heart decease and the envisaged cure.

On 9 January 1992 the applicant's Danish counsel, S.M., sent a letter to N.M., which read as follows:

> "...
>
> Since [the applicant] has not reacted to my letters forwarded to his PO address, I ask you to try to obtain his comments to the following:
>
> At the court meeting held at [the High Court of Western Denmark] on December 9, 1991, the Prosecutor requested a refusal of [the applicant's] appeal claiming that there was not sufficient documentation that his absence was unavoidable. However, the Court sustained my claim that the trial was to be postponed as it was not found that the information contained in your letter of December 6, 1991, and the enclosed letter of admission from Prinsengrachtziekenhuis of December 1, could be disregarded. As previously informed the trial was then postponed until Thursday April 30 and Friday May 1, 1992, both days at 9.00 hours.
>
> However, the Public Prosecutor has again made a request to [the High Court] that the [appeal] be dismissed. In support of this request the Public Prosecutor maintains that the letter of admission of December 1, 1991 is false. The police have contacted the management secretary of the hospital and [the] chief physician who have stated that [the applicant] has never been admitted. And the hospital does not know him, neither [by] name or the file number mentioned in the letter. Besides, the hospital has stated that it has never used letter paper as the one [used for] the letter of December 1, 1991 ... However, until May 1991, the printed letterhead on the invoices of the hospital has been used. Finally, the hospital has stated that the signature on the letter of admission does not belong to anybody employed at the hospital.
>
> The letter sent later by you of December 9, 1991, from Doctor P. Stevens the police have submitted to the only Dutch doctor of this name. And in [a] letter of December 12, 1991 ... he has stated that also this statement is false.
>
> [The High Court] has postponed the decision of the claim made by the Public Prosecutor for a dismissal, awaiting my comments on the information provided. If possible, please obtain and send to me as soon as possible [the applicant's] comments to the claim that the two letters are false.
> ..."

On 7 February 1992 N.M. sent a letter to the State Prosecutor, which read, *inter alia*, as follows:

"...

As I already informed you, [the applicant] was not able to travel to Denmark because of problems with his health in December last year.

Because of his health [the applicant] was not able to visit me at my office and for that reason he sent some friends. I pointed out to these gentlemen that it was necessary that I should receive a medical statement about the state of health of [the applicant] in order to send this statement to Denmark.
...

Shortly after I received the statement of dr. Stevens, known by you, which appeared to be false. I can tell you that I was unpleasantly surprised by this false statement and I informed [the applicant] about this matter immediately.

[The applicant] was also unpleasantly surprised and [he has in the meantime learned] that the abovementioned gentlemen - entirely without his knowledge - tried to help him with a misplaced [enthusiasm] in an illegal way.

[The applicant realises] that he has been brought in a very difficult situation, but requests the Court for understanding, all the more because he has been really ill and was not able to travel. [The applicant] refers to the enclosed medical statement of his physician dr. Klein...

[He] should like to have the opportunity to defend himself in appeal and should like to appear in court.
...

Finally I want to inform you that I want to declare formally that I will be the lawyer in this matter and that I will prepare the defence together with a Danish lawyer. I request you to send me a copy of the entire criminal file.
..."

It appears that the medical statement from Dr Klein - a short hand written note in Dutch, dated 23 December 1991 - was faxed to the State Prosecutor by a colleague to N.M., on 19 January 1992.

On 13 February 1992 S.M. sent a letter to the High Court of Western Denmark, reading, *inter alia*, as follows:

(Translation)

> "...
>
> The State Prosecutor has, by letters of 12 December 1991 and 11 February 1992 with enclosures ... requested [the High Court] that [the applicant's] appeal be dismissed.
>
> As appointed defence counsel for [the applicant] I hereby object to [the Prosecutor's proposal].
>
> Immediately upon receipt of the State Prosecutor's letter of 12 December 1991 I sent a letter to [the applicant] on 13 [December 1991], addressed to the P. O. box address abroad of which he had informed me - which is the only address I know of - and asked him to inform me what was the actual position as regards his admission to the Prinsengrachtziekenhuis on 6 December 1991 and the received statement from dr. P. Stevens. As [the applicant] did not react I requested [N.M.] to obtain and forward [the applicant's] views on the material from the State Prosecutor, by letter of 9 January 1992. Subsequent to my receipt, on 28 January 1992, of the court transcripts of 20 [January 1992], I informed [N.M.] of their contents by letter of 29 [January 1992]. On 7 February 1992, I have received a copy of [N.M.'s] letter of the same date with enclosures to the State Prosecutor.
>
> In support of my objection against the State Prosecutor's proposal I have only the possibility of referring to the contents of [N.M.'s] letter of 7 February 1992 from which it appears that it cannot be ruled out that [the applicant] had a lawful excuse for his absence at the hearing in the High Court, on 9 December 1991.
> ..."

On 25 February 1992 N.M., *inter alia*, requested the High Court to appoint a new Danish lawyer as the applicant had no longer confidence in S.M. and as he was informed that S.M. had recommended the High Court that the latter's appointment as counsel for the applicant be withdrawn. N.M. further requested the High Court to adjourn the case until a new lawyer had been found. In addition N.M. requested the Court to inform him whether it would "acknowledge [him] as lawyer in [the applicant's] case" and to send him copies of the State Prosecutor's letters of 12 December 1991 and 11 February 1992 with enclosures. On 9 and 13 March 1992 N.M., *inter alia*, repeated his request for access to the file and for acknowledgement as counsel for the applicant. He also requested that the Dutch lawyer, L.K., be acknowledged as counsel for the applicant.

In the meantime, on 27 February 1992, S.M. informed N.M. that the State Prosecutor had decided on 26 February 1992, pursuant to Section 745 of the Danish Administration of Justice Act (*retsplejeloven*), not to hand over copies of the aforementioned letters in the file to N.M. or the applicant.

On 13 March 1992 the High Court, sitting with three professional judges and three lay judges, decided to dismiss the applicant's appeal. Neither the applicant - or any of his representatives - nor the prosecutor was present at the court meeting. The decision was made on the basis of the written material in the case, including the medical statement of 23 December 1991 from Dr Klein, N.M.'s letters of 7 and 25 February and 9 March 1992, S.M.'s letters of 13 and 25 February 1992, a report of 14 January 1992 from the Chief of Police of Silkeborg, and the letter of 11 February 1992 from the State Prosecutor. The Court transcripts read, *inter alia*, as follows:

(Translation)

> "...
>
> The hearing is public.
> ...
>
> On the basis of the material now available it must be considered established that the admission notice from the Dutch hospital was false. In addition, subsequent to that, a false medical certificate allegedly issued by Dr P. Stevens has been submitted. On this background - notwithstanding ... the medical certificate issued by a doctor, N.F.M. Klein - the submission that [the applicant] had a lawful excuse [for his absence] at the beginning of the hearing, on 9 December 1991, must be rejected. The High Court therefore, pursuant to Section 222 of the Administration of Justice Act, reverses its decision of 9 December 1991 as to the adjournment of the case.
>
> On the basis of the information provided by the prosecution about the efforts made to have the indictment and summons served on the applicant, the Court is satisfied that it has been impossible to serve these documents in the usual manner because he has changed address or place of residence without giving due notice thereof.
>
> For these reasons the prosecution's request for dismissal of [the applicant's] appeal is sustained pursuant to section 965c, subsection 3, second part.
>
> It is decided:
>
> This appeal is dismissed.
>
> In accordance with [S.M.'s] recommendation of 25 February 1992 the High Court withdraws the appointment of [S.M.] as defence counsel for [the applicant].
>
> The High Court has not found any reason to appoint a new counsel for [the applicant] before the decision to dismiss [the applicant's] appeal was made.
> ..."

On 14 April 1992 the High Court rejected the applicant's request to reopen the case.

Upon the applicant's request, the Ministry of Justice granted him leave to appeal to the Supreme Court (*Højesteret*) on 29 July 1992. Enclosed with the letter from the Ministry was, *inter alia,* a copy in English of Section 730 of the Administration of Justice Act, which sets out the conditions a lawyer must fulfil in order to be appointed counsel for an accused person.

Following several requests from the applicant for access to the file, the Ministry notified him on 23 November 1992 that it did not consider itself competent to grant access to the file as long as the case had not been finally decided upon. However, the Ministry informed the applicant that it had forwarded his request for access to the file to the Supreme Court.

On 11 February 1993 the Supreme Court decided that the lawyers [N.M. and L.K.] could have access to the file, (cf. Section 745 of the Administration of Justice Act). However, in order to secure that the Danish rules concerning access to files in criminal cases were observed, the permission was subject to the condition that the lawyers were assisted by a Danish lawyer in the sense that the latter would receive a copy of the file for the use of the Dutch lawyers.

On 2 November 1993 the Supreme Court appointed the Danish lawyer T.R. to assist N.M. and L.K. in the aforementioned manner. On 2 February 1994 T.R. informed N.M. and L.K that he was not entitled to send the file or copies of the documents of the file to them or to the applicant but they were welcome to go through the file at his office and that he was willing to give them oral explanations regarding the contents of the documents.

On 7 March 1994 T.R. asked the Supreme Court for permission to forward the file to the applicant's Dutch lawyers.

On 23 March 1994 the Supreme Court rejected the request and emphasised, by reference to its decision of 11 February 1993, that only T.R. was permitted to receive copies of the file for the Dutch lawyers' use.

After the parties' submission of written statements, the Supreme Court decided, on 10 April 1995, as follows:

(Translation)

> "...
> Notwithstanding [S.M's] request of 25 February 1992 for withdrawal, which request was granted at the date of the order of dismissal, the Supreme Court holds that it has not been established to the satisfaction of the court that [the applicant] has been deprived of an adequate and effective defence in connection with the High Court's decision of 13 March 1992 to dismiss his appeal or that the decision of the High Court is wrong. On those grounds the Supreme Court rejects [the applicant's] claim for remission of the case for retrial. As no other allegations have been submitted which can lead to a reversal of the High Court's decision, the Supreme Court [dismisses the appeal against the High Court's decision].
> ..."

The applicant was arrested in Germany in September 1995 and expelled to Denmark. It appears that he has now served his prison sentence.

B. Relevant domestic law

Appointment of defence counsel

Section 730 of the Administration of Justice Act reads, in so far as relevant, as follows:

(Translation)

> Subsection 1
> "Any person who is charged with a crime shall have the right to choose a defence counsel to assist him in accordance with the rules laid down below..."
>
> Subsection 2
> "Only lawyers who have a right to appear before the court concerned or who have been appointed by the Ministry of Justice to act as public defence counsel before the court concerned may be chosen to act as defence counsel. However, the court may, if it considers it justified, taking into account the nature of the case and other special circumstances, allow the choice of a lawyer from another Nordic country to act as defence counsel..."

Access to the file

Section 745, subsection 1, of the Administration of Justice Act reads, *inter alia*, as follows:

(Translation)

> "Counsel must have access to the material which is in the possession of the police ... Counsel is not allowed to hand over the material to the accused without the approval of the police."

The last part of subsection 1 serves to prevent misuse of the case file. However, the accused is not prohibited from acquainting himself with the file at his counsel's office.

Dismissal of appeal

A person convicted in a criminal case tried by a city court is free, in principle, to appeal against the judgment to the High Court in the district of which the city court in question belongs. Immediately upon pronouncement of the judgment, the convicted person can give notice orally to the court records that he wants to appeal against the judgment.

As soon as possible after receipt of the notice of appeal, the State Prosecutor sees to it that attempts are made to serve a notification (notice of appeal and indictment) on the appellant in the usual manner, (cf. Sections 963 and 948 of the Administration of Justice Act).

When an appeal also comprises assessment of the evidence, the State Prosecutor arranges for a summons containing information on the time and place of the hearing to be served on the appellant at a notice of at least four days, (cf. Section 965 and Section 840 of the Administration of Justice Act). If a summons is not served or if a summons is served on the appellant at a notice of less than four days, the effect is that the appellant is not lawfully summoned to the hearing and therefore, as a point of departure, the hearing cannot be held if the appellant fails to appear at the hearing.

However, Section 965c, subsection 3 of the Administration of Justice Act reads as follows:

(Translation)

> "If the accused fails to appear without stating a lawful excuse for his absence in proceedings where the appeal was raised by him and comprises the assessment of evidence, the court can dismiss his appeal by order if it finds that the hearing cannot usefully proceed in his absence. Furthermore, the accused's appeal can be dismissed if it has not been possible to serve the indictment or the summons upon him in the usual manner because he has changed his address or place of residence without giving due notice thereof."

The usual manner to serve indictments and summons on somebody are by postal or by personal service, (cf. Sections 155 until 158 and Section 948, subsection 2, of the Administration of Justice Act). In criminal cases documents cannot be served upon the accused's lawyer.

COMPLAINTS

1. The applicant complains that the evidence produced before the Criminal Court of Silkeborg did not provide sufficient basis for his conviction.

2. The applicant furthermore complains, under Article 6 §§ 1 and 3 (b), (c) and (d) of the Convention that he was denied a fair trial in that

a) neither he, nor his Dutch lawyers were summoned to the hearing in the High Court, on 13 March 1992, which was not adversarial and public and in that he did not have effective legal assistance in the proceedings prior to the decision being taken;

b) his appeal was arbitrarily dismissed by the High Court;

c) his Dutch lawyers were not appointed as counsel for him during the proceedings before the High Court and the Supreme Court;

d) he and his Dutch lawyers were denied direct access to the complete file by the Danish authorities.

3. The applicant finally complains that he did not have an effective remedy against the Criminal Court's judgment. In this respect he invokes Articles 6 and 13 of the Convention and Article 2 of Protocol No 7 to the Convention.

THE LAW

The applicant complains that, in numerous respects during the course of the proceedings taken against him in Denmark, he was denied a fair trial, that he was arbitrarily deprived of appeal to a higher court and that his defence rights were violated contrary to Article 6 §§ 1 and 3 (b) and (c) of the Convention.

Before examining the various complaints made by the applicant the Court recalls that it follows from Article 35 § 1 of the Convention that it may, *inter alia*, only deal with the matter after all domestic remedies have been exhausted. The Court also recalls that the applicant's appeal was dismissed on procedural grounds for which reason the High Court did not examine that appeal as to its merits. In such circumstances an issue may arise as to whether, at least in respect of some of the complaints, the applicant has exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention. The Court does not, however, find it necessary to pursue this question as it finds that the application is in any event inadmissible for the following reasons.

1. The applicant first complains that the evidence produced in the Criminal Court of Silkeborg did not provide sufficient basis for his conviction.

However, according to Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (cf. e.g. Eur. Court HR, Schenk v. Switzerland judgment of 12 July 1988, Series A no. 140, p. 29, § 45) and Garzia Ruiz v. Spain judgment of 21 January 1999, § 28, to be published in the Court's official reports).

2. As indicated above the applicant also complains of a number of violations of Article 6 of the Convention which in so far as relevant reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...
> ...
>
> 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 or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;..."

The Court recalls that the guarantees in paragraph 3 of Article 6 represent constituent elements of the general concept of a fair trial embodied in paragraph 1. In view of the nature of the violations alleged by the applicant, the Court therefore considers it appropriate to group related matters of complaint and to take the relevant paragraphs of Article 6 together.

a) A hearing in one's presence and the principle of equality of arms

The applicant complains that he was not summoned to the hearing before the High Court, on 13 March 1992, when the Court decided to dismiss his appeal. Furthermore, he complains that the hearing was not adversarial and public and that he did not have effective legal assistance in the proceedings.

In support of his complaint the applicant submits that by his Dutch lawyer's letter of 6 December 1991, the High Court had been notified of the fact that he had chosen residence at his lawyer's office and that he wished to attend the hearing. He further submits that he did not have effective legal assistance in the proceedings before the High Court as his Danish counsel had announced, on 25 February 1992, that he wished to withdraw and no new counsel was appointed before the High Court's decision of 13 March 1992 was made. Moreover, he alleges that neither he nor his Dutch legal representatives were provided access to certain documents in the file, which *inter alia* formed the basis of the High Court's decision.

The Court notes that the High Court based its decision of 13 March 1992 to dismiss the applicant's appeal on a twofold reasoning. First, it re-examined its decision of 9 December 1991 to adjourn the case on the basis of the new information that the admission of the applicant to the Dutch hospital and the medical certificate from Dr P. Stevens were false; facts which the Court notes is not contested by the applicant. Notwithstanding the medical certificate issued by Dr Klein the High Court decided to reverse its decision to adjourn the case. Second, the High Court decided to dismiss the applicant's appeal on the basis of the information provided by the prosecution that it had not been possible to serve the indictment and the summons on the applicant in the usual manner because he had changed address or place of residence without giving due notice thereof.

The Court recalls that a person charged with a criminal offence should, as a general principle of a fair trial, be entitled to be present at the first instance trial hearing. However, the personal attendance of the defendant does not necessarily take on the same significance for an appeal hearing. Indeed, even where an appeal court has full jurisdiction to review the case on questions both of fact and law, Article 6 does not always entail rights to a public hearing and to be present in person. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the

appellate court, particular in the light of the issues to be decided by it and their importance for the appellant (see, *inter alia*, Eur. Court HR, Belziuk v. Poland judgment of 25 March 1998, Reports of Judgments and Decisions 1998-II, p. 570, § 37).

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 criminal proceedings should be adversarial. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party. National law should ensure that the other party is aware that observations have been filed and has a real opportunity to comment thereon.

The Court notes at the outset that the applicant was present and assisted by counsel at the hearing in the Criminal Court of Silkeborg on 20 and 21 August 1991 when he was convicted and sentenced to three years' imprisonment.

The High Court's decision of 13 March 1992, although involving assessment of facts as well as of law, concerned by its nature a very limited procedural question; namely whether the applicant had had lawful excuse for not attending the hearing scheduled to take place on 9 December 1991 and whether it had been possible for the prosecution to serve the indictment and summons on the applicant in the usual manner. The Court considers that this issue was of a kind that could adequately be resolved on the basis of the case-file (cf. Eur. Court HR, Jan-Åke Andersson v. Sweden judgment of 29 October 1991, Series A no. 212-B, p. 46, § 29 and Fejde v. Sweden judgment of 29 October 1991, Series A no. 212-C, p. 69, § 33).

Furthermore, the Court notes that the applicant had a Danish counsel, S.M., during the proceedings before the High Court. It has not been alleged that S.M. did not receive all observations filed by the prosecution. From the contents of S.M's letters of 9 January and 13 February 1992 and the applicant's Dutch lawyer's letter of 7 February 1992 the Court is satisfied that the defence had adequate opportunity to comment on the observations filed by the prosecution. Finally, the Court notes that it appears from the court transcripts that none of the parties were present or represented at the hearing, which was open to the public.

In conclusion, the Court have found no appearance of a breach of Article 6 §§ 1 and 3 (c) of the Convention with regard to the requirement that an accused person is entitled to a hearing in his presence and to the principle of equality of arms, at the High Court hearing.

b) A right of review

The applicant claims that he was denied the exercise of his right of review of the Criminal Court's judgment on an arbitrary and unreasonable basis. In support of his complaint the applicant alleges that he was ill at the time of the first hearing in the High Court, on 9 December 1991, which Dr Klein's note serves to prove. He had, on the other hand, not taken part in the production of the false admission to the Dutch hospital

and the false medical certificate from Dr P. Stevens. Furthermore, the police has not proved that they attempted to summon the applicant. He argues that the fact that the High Court, on 13 March 1992, merely refused Dr Klein's certificate without stating reasons violated Article 6 § 1 of the Convention.

The Court recalls, firstly, that Article 6 § 1 of the Convention does not compel the Contracting States to set up courts of appeal. Nevertheless, a State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6 (cf. Eur. Court HR, Delcourt v. Belgium judgment of 17 January 1970, Series A no. 11, p. 14, § 25).

Furthermore, the Court recalls that the reference to the exercise of the right of review to be governed by law gives the Contracting States a discretion as to the modalities for the exercise. The States may thus regulate the review in various ways provided that such regulation is for the good administration of justice. In this respect they enjoy a margin of appreciation. However, limitations must not restrict exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (cf. Eur. Court HR, Guérin v. France judgment of 29 July 1998, § 37, to be published and Eur. Court, Omar v. France judgment of 29 July 1998, § 34, to be published).

In the present case the applicant could appeal to the High Court and in fact did so. The Court notes that the High Court had competence to determine the applicant's appeal on points of law as well as on facts. Furthermore, the applicant had in the letter of 6 December 1991 expressly stated that he wished to appear before the court in order to defend himself against the charges brought against him.

The Court recalls, moreover, that the hearing was scheduled for 9 December 1991. It was, however, adjourned due to a medical certificate and an admission note to a Dutch hospital forwarded by the applicant's Dutch lawyer, who apparently prior to this, had personally been in contact with the applicant. Subsequently both of these documents proved to be false. On 13 March 1992 the High Court therefore decided to dismiss the applicant's appeal by reference to Section 965c, subsection 3, second part of the Administration of Justice Act, despite the medical statement from Dr Klein, which was dated 23 December 1991 and forwarded to the Danish authorities on 19 January 1992.

Having regard to these circumstances the Court considers that the decision of 13 March 1992 was not arbitrary or unreasonable. The Court finds that the second sentence of Section 965c, subsection 3, when read in its context, served the good administration of justice - namely the attendance of the accused where his presence is necessary and the hearing is in his own interest, and the prompt and thorough examination of a case. Furthermore, the Court considers that the application of the rule, in the particular circumstances of the case, was proportionate in order to achieve this aim bearing in mind the margin of appreciation conferred on the national court. As regards the High Court's reasoning the Court recalls that Article 6 § 1 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, Hiro Balani v. Spain judgment of 9 December 1994, Series 303-B, p. 29-30, § 27).

Notwithstanding the consequences for the applicant, the Court therefore considers that the High Court's decision to dismiss the applicant's appeal did not disclose any appearance of a violation of Article 6 of the Convention.

c) The right to be defended by counsel of his own choosing

The applicant complains, under Article 6 §§ 1 and 3 (c) of the Convention, that his Dutch lawyers were not appointed as counsel for him at any stage during the national proceedings. He submits that the Danish authorities had been notified of his wish of legal representatives several times prior to the decision of the High Court on 13 March 1992 as well as in subsequent proceedings, but had not reacted to this.

The Court recalls that Article 6 § 3 (c) of the Convention entitles "everyone charged with a criminal offence" to be defended by counsel of his own choosing. Nevertheless, and notwithstanding the importance of a relationship of confidence between lawyer and client, this right cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defence counsel the national courts must certainly have regard to the defendant's wishes. However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (cf. Eur. Court HR, Croissant v. Germany judgment of 25 September 1992, Series A no. 237-B, p. 33, § 29).

It is true that the applicant requested that his Dutch lawyers be appointed counsel for him in several letters to the High Court prior to the Court's decision of 13 March 1992. It appears from the court transcripts of the meeting, on 13 March 1992, that the High Court had found no grounds for appointing a new counsel for the applicant before the decision to dismiss the applicant's appeal was made. Subsequently, the applicant requested the Ministry of Justice that his Dutch lawyers be appointed as counsel for him. It appears that the Ministry did not expressly address this issue. However, on 29 July 1992, the Ministry forwarded to the applicant a copy of Section 730 of the Administration of Justice Act, which sets out the conditions a lawyer must fulfil to be appointed as counsel for an accused person. Furthermore, the Ministry forwarded his request to the Supreme Court, which, on 2 November 1993, appointed a new Danish counsel, who was to act in co-operation with the applicant's Dutch lawyers. On 10 April 1995 the Supreme Court finally decided the case.

The Court notes that Section 730, subsection 2, of the Administration of Justice Act apparently serves the purpose of requiring that lawyers who is to be appointed as counsel for accused persons have sufficient knowledge of the Danish legal system and the Danish language in order for them to carry out their duties as appointed counsel before Danish courts.

The Court considers that this purpose overrides the applicant's wish to have his Dutch lawyers appointed as counsel.

Thus, having regard to the Court's conclusion above under a), that the applicant had an effective legal assistance in the proceedings before the High Court and, moreover, the fact that the Supreme Court, on 11 February 1993, provided for the arrangement of a certain co-operation between the applicant's Dutch lawyers and his then appointed Danish counsel, the Court considers that no appearance of a violation of Article 6 §§ 1 and 3 (c) has been established in relation to appointment of counsel before the High Court and the Supreme Court.

d) Access to the file

The applicant complains, under Article 6 § 3 (b) and (c) of the Convention, that he and his Dutch lawyers were denied direct access to the complete file by the Danish authorities. He submits that, prior to the Supreme Court's decision of 11 February 1993, he and his Dutch lawyers were denied access to the file. The Supreme Court's decisions of 11 February 1993 and 23 March 1994 granted the applicant and his Dutch lawyers an indirect access, i.e. they were restricted to examine the file at the office of the applicant's appointed Danish counsel. However, he maintains firstly that at this stage only procedural matters remained. Secondly, the restriction put on his access to the file made the applicant's defence impossible in practice as he could not travel to Denmark with his Dutch lawyers without running the risk of being arrested and detained.

The Court notes that restriction of the right to inspect the court file to an accused's lawyer is not considered incompatible with the rights of defence under Article 6 (cf. for example Eur. Court HR, Kremzow v. Austria judgment of 21 September 1993, Series A, no. 268-B, p. 42, § 52 and Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, p. 39, § 88).

The Court recalls that the applicant had a Danish appointed counsel during the proceedings before the High Court as well as before the Supreme Court. It has not been submitted that his Danish counsel did not have full access to the file. Furthermore, before the Supreme Court the applicant as well as his Dutch lawyers were permitted to inspect the file at his Danish counsel's office. However, in order to secure that the Danish rules concerning access to files in criminal cases were observed, neither the applicant nor his Dutch lawyers were permitted to receive a copy of the file.

Having regard, *inter alia*, to the Court's findings above under a) and to the arrangement made by the Supreme Court in order to counterbalance the difficulties experienced by the defence, the Court finds that a reasonable balance has been struck between, on the one hand, the purpose of preventing misuse of the case file and, on the other, a proper defence for the applicant. Thus, the Court finds that the applicant's complaints in this respect do not disclose any appearance of a violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention.

In sum, the Court has found no appearance of a violation of the complaints submitted under Article 6 of the Convention taken individually. Nor does the Court find cause for holding that taken cumulatively the procedural deficiencies alleged by the applicant disclose any appearance of unfairness within the meaning of Article 6 § 1, the proceedings considered as a whole.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

3. Finally, the applicant complains that he did not have an effective remedy against the Criminal Court's judgment in accordance with Articles 6 and 13 of the Convention and that he did not enjoy his right to appeal under Article 2 of Protocol No 7 to the Convention.

Having regard to its conclusions above under 1. and 2., the Court finds that the applicant had an effective remedy against the Criminal Court's judgment and, in principle, was guaranteed a right to appeal against the judgment.

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

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President