AS TO THE ADMISSIBILITY OF

Application No. 12645/87
by R.
against the Netherlands

The European Commission of Human Rights sitting in private on 12 December 1988, the following members being present:

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

Mr. J. RAYMOND, Deputy 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 1 October 1986 by R. against the Netherlands and registered on 19 January 1987 under file No. 12645/87;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Dutch national, born in 1924 and currently resident in K., the Netherlands. Before the Commission he is represented by Mr. J. Bijkerk, a lawyer practising in Utrecht, the Netherlands.

The applicant is a general practitioner with a small local practice. He also serves as the local dispensing chemist. To supplement his income he also treats patients from outside his community.

In respect of these outside patients, he had become the subject of complaints by patients and other doctors. These had allegedly discovered that the applicant had prescribed non-existent and/or non-registered medicines, which he himself prepared, and that he had ordered un-orthodox treatments, all without consulting the other doctors dealing with these patients. On two previous occasions the applicant had been fined for having committed similar acts.

On 22 June 1979 a complaint against the applicant was lodged with the Medical Disciplinary Board (Medisch Tucht College) of Zwolle. The complaint was deposited by both the Regional Medical Inspector of Public Health (Geneeskundig Inspecteur voor de Volksgezondheid) and the Regional Public Health Inspector for Medicines (Inspecteur van de Volksgezondheid voor de Geneesmiddelen). It was alleged that the applicant had committed acts which undermine public faith in the medical profession and had exhibited serious incompetence in the practice of medicine and the preparation of medicines.

On 29 September 1984 the Medical Disciplinary Board of Zwolle ruled that the applicant be suspended from practising medicine for one year.

The applicant appealed against this decision to the Court of Appeal (Gerechtshof) of Arnhem. On 26 June 1985 this Court overruled the decision of the Medical Disciplinary Board and declared inadmissible the complaint of the Public Health Authorities against the applicant, because the complaint had not been dealt with within a reasonable time as required by Article 6 of the Convention.

Thereupon, the Public Health Authorities appealed to the Supreme Court (Hoge Raad). On 7 February 1986, the Supreme Court quashed the decision of the Court of Appeal of Arnhem and referred the case to the Court of Appeal of Leeuwarden. The Supreme Court considered that the right to practise medicine was a civil right and that therefore Article 6 para. 1 of the Convention applied to the proceedings in question. However, the Supreme Court considered that, although the determination of the applicant's right to continue to practise medicine had not taken place "within a reasonable time", the consequence of this delay was not to render the original complaint inadmissible, but solely to inhibit the application of a disciplinary measure. The Supreme Court added that the interests of general public health and those of the applicant's patients require that the Court of Appeal investigate and form an opinion on the merits of the complaints as presented by the Public Health Inspectors.

Apparently, the Court of Appeal of Leeuwarden, which has been instructed by the Supreme Court to give a decision on the merits of the complaint against the applicant, has suspended its proceedings pending the outcome of this application before the Commission.

COMPLAINTS

The applicant complains that disciplinary proceedings against him, begun in 1979, are still pending. The determination of his case has therefore not been made within a reasonable time. He invokes Article 6 para. 1 of the Convention. The applicant argues that, although the currently pending proceedings cannot culminate in a disciplinary measure, they nevertheless have a negative, if not damaging, effect on his right to practise medicine.

THE LAW

The applicant has complained that the disciplinary proceedings against him have not been terminated within a reasonable time. He invokes Article 6 para. 1 (Art. 6-1) of the Convention. He alleges that, although a disciplinary measure can no longer be applied to him, his civil right to practise medicine remains affected by the proceedings.

Article 6 para. 1 (Art. 6-1) of the Convention provides, inter alia, as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Commission notes that the Dutch courts concluded that Article 6 para. 1 (Art. 6-1) of the Convention applied to the initial disciplinary proceedings. It further notes that the Supreme Court found that the determination of the applicant's right to continue practising medicine had not been made within a "reasonable time", as required by Article 6 para. 1 (Art. 6-1) of the Convention. The Supreme Court, therefore, decided that no disciplinary measure could be imposed on the applicant. However, the Supreme Court considered that, in the interest of public health, it was essential that a court pronounce an opinion on the legality of the practices in which the applicant had engaged. Consequently, it ordered that the Court of Appeal of Leeuwarden examine the merits of the complaints against the applicant. The issue which arises is whether Article 6 para. 1 (Art. 6-1) of the Convention also applies to the continued proceedings before the Court of Appeal.

The Commission recalls that disciplinary proceedings against a medical practitioner which may result in a suspension of the right to practise medicine amount to a determination of a civil right within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see Eur.Court H.R., König judgment of 23 April 1977, Series A no. 27, para. 95 p. 32, and Albert and Le Compte judgment of 24 October 1983, Series A no. 58, para. 28, p. 15).

The applicant has alleged that the pending proceedings before the Court of Appeal, which will culminate in a pronouncement on the merits of the public health complaint concerning his professional conduct, have and will have a direct and damaging effect on his practice of medicine.

However, the Commission observes that in the present case, the proceedings before the Court of Appeal of Leeuwarden concern a determination of the merits of public health complaints regarding the applicant's professional conduct and, as such, will only result in a declaratory judgment. The Commission recalls the specific character of the medical profession - a profession which is exercised in the general interest - and the special duties incumbent on its members (see for example the above-mentioned Albert and Le Compte judgment, para. 28, p. 16).

The Commission considers that the determination on the merits of the public health complaints against the applicant concern the public obligations of the applicant as a member of the medical profession. Although the declaratory judgment by the Court of Appeal may have an effect on the applicant's medical practice and to his professional reputation the proceedings are meant to specify the rules applicable in the interest of public health and, therefore, do not directly involve a determination of civil rights and obligations of the applicant within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission President of the Commission

(J. RAYMOND) (C.A. NØRGAARD)