CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 42323/98
by Hendrik Mathijs SNIEKERS
against the Netherlands

The European Court of Human Rights (Second Section), sitting on 22 January 2002 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 10 June 1998 and registered on 21 July 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, Hendrik Mathijs Sniekers, is a Dutch national, who was born in 1955 and lives in The Hague. He is represented before the Court by Mr Baumgardt, a lawyer practising in Spijkenisse, the Netherlands.

A. The circumstances of the case

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

On 14 January 1995 the applicant was arrested and taken into police custody (*verzekering*). He was subsequently placed in detention on remand (*voorlopige hechtenis*). He was charged with the offences of trafficking persons (*mensenhandel*), committing indecent acts with four named persons who were under the age of 16 (*ontucht*) and supplying cocaine to Messrs A, B and C (all of whom were under age) as well as to Ms D. The applicant admitted having committed indecent acts with the minors in question and having supplied cocaine to Ms D.

Following a hearing on 25 April 1995, the Regional Court (*Arrondissementsrechtbank*) of Rotterdam convicted the applicant on 6 October 1995 of all the offences of which he stood accused and sentenced him to five years' imprisonment, less the time spent in pre-trial detention. The applicant filed an appeal with the Court of Appeal (*Gerechtshof*) of The Hague on 17 October 1995.

The proceedings before the Court of Appeal commenced on 20 May 1996. A request by counsel for the applicant that a witness be heard was rejected. The examination of the case was subsequently adjourned until 25 July 1996 as the Court of Appeal wished to deal with the applicant's appeal at the same time as appeals lodged by two co-accused in view of the connexity of the cases. In those two other cases, a number of witnesses were yet to be heard by the investigating judge (*rechter-commissaris*). On 25 July 1996 the judge had not yet concluded his investigation into the other two cases. At the hearing on this date, counsel repeated his request for the hearing of a witness, and this time the Court of Appeal acceded to the request and ordered that the witness be heard by the investigating judge. It adjourned the proceedings until 15 October 1996.

The witness was heard by the investigating judge on 15 October 1996. However, at the hearing on that date the Court of Appeal further adjourned the proceedings until 19 November 1996 as the investigation in the other two cases had not yet been concluded. Counsel for the applicant submitted that his client's health was suffering as a result of the delay in the proceedings and he requested the Court of Appeal to deal with the applicant's appeal separately should it be the case that on 19 November 1996 the other two cases were still not ready for examination.

On 19 November 1996 the proceedings were adjourned until 10 December 1996, and then until 4 February 1997. The minutes of the hearings held on 19 November and 10 December 1996 state that counsel agreed to the adjournments ordered at those hearings.

On 4 February 1997 the Court of Appeal examined the appeal. The President read out a summary of the documents contained in the investigation file, including a statement by a witness to the effect that the applicant had provided cocaine to the boys working for him in his club.

In his pleadings, counsel argued that the reasonable time within the meaning of Article 6 § 1 of the Convention had been exceeded in the proceedings.

On 18 February 1997 the Court of Appeal quashed the judgment of the Regional Court. Noting, *inter alia*, that counsel for the applicant had agreed to the adjournments both in first instance and on appeal, it found that the reasonable time had not been exceeded. It convicted the applicant of trafficking persons, committing indecent acts with four named persons under the age of 16, and supplying Ms D with cocaine. The Court of Appeal did not consider it proved that the applicant had supplied cocaine to Messrs A, B and C and he was acquitted of those charges. The applicant was sentenced to a term of imprisonment of five years and six months, less the time spent in pre-trial detention. In its reasoning relating to the determination of the sentence, the Court of Appeal considered, *inter alia*, that the applicant had systematically abused and exploited the minors in question for financial gain without showing any sign of respect towards the boys. This paragraph in the judgment ends, "The accused has furthermore supplied cocaine to a vulnerable youngster" ("*De verdachte heeft tevens aan een kwetsbare jongere cocaïne verstrekt*").

The applicant lodged an appeal on points of law (*beroep in cassatie*) with the Supreme Court (*Hoge Raad*), arguing that the duration of the proceedings before the Court of Appeal had exceeded a reasonable time. He further complained that, despite the fact that he had always vehemently denied this charge and that he had been acquitted of it, the Court of Appeal had partially based his sentence on his having supplied cocaine to a vulnerable youngster.

On 7 April 1998 the Supreme Court rejected the applicant's appeal on points of law. In respect of the complaint relating to the Court of Appeal's reasoning on the determination of the sentence, the Supreme Court considered that the Court of Appeal had not found proved that the applicant had supplied cocaine to a youngster but that it had merely seen this element as a circumstance to be taken account in the determination of the sentence.

The Court of Appeal had been allowed to proceed in this manner in view of the fact that at the Court of Appeal's hearing on 4 February 1997 the President had summarised, *inter alia*, a witness statement contained in the investigation file to the effect that the applicant had supplied cocaine to the boys working in his club.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention that the proceedings before the Court of Appeal exceeded a reasonable time.

2. The applicant further complains under Article 6 § 2 of the Convention that the reasoning adopted by the Court of Appeal relating to the determination of the sentence reflected the opinion that he was guilty of an offence of which he had been acquitted.

THE LAW

1. The applicant complains of the length of proceedings before the Court of Appeal. He invokes Article 6 § 1 of the Convention, which, in so far as relevant, provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

The Court recalls that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of each case having regard to its complexity, the conduct of the applicant and that of the authorities dealing with the case (see, among other authorities, *Malinowska v. Poland*, no. 35843/97, 14.12.2000, § 38). Persons held in detention are further entitled to special diligence in the conduct of the proceedings against them (cf. Tomasi v. France, judgment of 27 August 1992, Series A no. 241-A, p. 35, § 84).

In the present case, the proceedings started on 14 January 1995 when the applicant was arrested, and ended on 7 April 1998 when the Supreme Court rejected the applicant's appeal on points of law. The entire proceedings thus lasted three years and almost three months. Noting, however, that the applicant's complaint refers only to the proceedings before the Court of Appeal, the Court observes that these started on 17 October 1995 when the applicant filed his appeal, and ended on 18 February 1997 when the Court of Appeal delivered its judgment. The proceedings before the Court of Appeal thus lasted 16 months.

The Court notes that the case had a certain complexity because of its connexity with cases of co-accused. As to the conduct of the parties, it is true that the Court of Appeal adjourned the proceedings on no less than five occasions. However, even though counsel for the applicant protested about the delay in the proceedings at the hearing on 15 October 1996, it appears that he agreed to the subsequent adjournments ordered on 19 November and 10 December 1996.

Having regard, moreover, to the total duration of the proceedings of about three years and three months, during which time an examination at three levels of jurisdiction took place, the Court cannot find that the facts of the case disclose an unreasonable delay within the meaning of Article 6 § 1. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant also complains that in the determination of the sentence to be imposed on him the Court of Appeal, in breach of Article 6 § 2 of the Convention, held that he had supplied cocaine to a youngster despite the fact that he had been acquitted of that offence. Article 6 § 2 reads:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint that the Court of Appeal's reasoning relating to the determination of the sentence to be imposed on him reflected the opinion that he was guilty of an offence of which he had been acquitted;

Declares inadmissible the remainder of the application.

S. DOLLÉ
Registrar

J.-P. COSTA
President