

## THE FACTS

Whereas the facts as presented by the applicant may be summarised as follows:

The applicant is a citizen of the United Kingdom, born in 1940, and resident at Dagenham, Essex. When he submitted his application he was detained in prison at 's-Gravenhage in The Netherlands.

From his statements and from documents submitted by the applicant it appears that on .. June, 1967, he was arrested on the suspicion of having attempted to change counterfeit money, knowing it to be false, and remanded in custody. A provisional order for the applicant's detention pending trial (Bevel tot Bewaring) was made on .. June 1967, by the competent judge of the Rotterdam Regional Court (Arrondissementsrechtbank) and on .. June 1967, the Third Chamber of the said Regional Court issued an order for the applicant's continued detention on remand (Bevel tot Gevangenhouding) during a period of thirty days which, on .. August 1967, was extended for a further period of thirty days.

The applicant was tried on .. September 1967, by the Rotterdam Regional Court. On that day he was convicted for having passed off several false 100 Dollar bills knowing them to be false and sentenced to three years' imprisonment.

On appeal (Hoger Beroep) by the applicant to the Court of Appeal (Gerechtshof) at 's-Gravenhage this decision was set aside on .. January 1968 on the grounds that it did not emerge from the minutes of the proceedings before the District Court that the applicant, who was unable to speak or understand the Court of Appeal itself passed judgment on the applicant, finding him guilty of having passed off counterfeit bills knowing them to be false and sentenced him to two years' imprisonment.

The applicant now intended to lodge with the Supreme Court (Hoge Raad) a plea of nullity (Beroep in Cassatie) against the Court of Appeal's above decision. For that purpose he made an application to the Bar Association for assistance in Criminal Matters at the Dutch Supreme Court (Raad van Rechtsbijstand in Strafzaken bij de Hoge Raad der Nederlanden) requesting the assistance of a lawyer. As a result of this application, Mr. M, a lawyer practising at 's-Gravenhage, was appointed to represent the applicant during the appeal proceedings. On .. March 1968, Mr. M filed with the Supreme Court the grounds of appeal challenging the Court of Appeal's decision of .. January 1968 in principal, on the grounds that it had not been established that the applicant had known the bills to be false.

The Supreme Court heard the applicant's plea on .. March 1968, in the presence of the Attorney General (Advocaat-Generaal) acting on behalf of the Procureur-General at the Supreme Court, but in the absence of the applicant and his lawyer, who submitted written pleadings only. On .. May, 1968, the Supreme Court rejected the plea as being ill-founded. Subsequently, the applicant allegedly addressed himself to the Minister of Justice, H.M. the Queen and other authorities, but without success.

The applicant now complains that he was wrongly convicted and sentenced and that the Convention was violated by reason of the court proceedings concerned.

He explains that he did not know the Dollar bills which he had tried to change, to have been false and that certain statements to the contrary made by witnesses in England were untrue and misleading. He had asked for witnesses to be produced who would have given evidence in his favour but not all of these witnesses had been called by the Court.

He further complains that upon arrest he was taken to a police station where, on three occasions, he was asked to strip naked in order to be searched on and even inside his body. He immediately requested to see a lawyer and the British Consul in Rotterdam but his request was granted only seven days after he had been arrested. Subsequently he had not been allowed to see his lawyer regularly.

Finally, he complains that the decisions in his case had not been taken until two weeks after the trial and that the Supreme Court had dealt with his plea of nullity in his absence.

He alleges violations of Article 6, paragraphs (2) and (3) (c) and (d), and Article 8, paragraph (1) of the Convention. He also invokes Articles 25, 26 and 27. He requests the Commission to clear him of his conviction, to establish the true facts of his arrest and trials, and to show that it was impossible to prove him guilty.

The Commission examined the application on 1 December 1969 and considered that the practice in criminal proceedings before the Dutch Supreme Court in most cases not to deliver oral pleadings but to refer to the applicant's written pleadings and to hear the conclusions of the Attorney General might raise questions similar to those raised by the "Delcourt" Case against Belgium, which was pending before the European Court of Human Rights. It therefore decided to adjourn the examination of the application until the European Court of Human Rights had pronounced judgment in the "Delcourt" Case. This took place on 17 January, 1970.

#### THE LAW

Whereas, in regard to the applicant's complaints concerning his conviction and sentence, an examination of the case as it has been submitted, including an examination made *ex officio*, does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and especially in the articles invoked by the applicant;

Whereas, in respect of the judicial decisions complained of, the Commission has frequently stated that in accordance with Article 19 (Art. 19) of the Convention its only task is to ensure observance of the obligations undertaken by the Parties in the Convention; whereas in particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where the Commission considers that such errors might have involved a possible violation of any of the rights and freedoms limitatively listed in the Convention;

Whereas, in this respect, the Commission refers to its decisions Nos. 458/59 (*X. v Belgium* - Yearbook, Vol. III, p. 233) and 1140/61 (*X. v. Austria* - Collection of Decisions, Vol. 8, p. 57); and whereas there is no appearance of any such violation in the present case;

Whereas it follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

Whereas, the applicant further complains that the Supreme Court dealt with his plea of nullity in his absence but in the presence of the Attorney General acting on behalf of the Procureur-General attached to the Supreme Court; whereas the Commission considered this complaint under Article 6, paragraph (1) (Art. 6-1), of the Convention which provides that in the determination of any criminal charge everyone is entitled to a fair hearing;

Whereas, the Commission first had regard to the judgment of the European Court of Human Rights of 17 June, 1970 in the "Delcourt" Case;

Whereas, in that case, the applicant had made certain so-called "new complaints" to the effect that, during the proceedings before the Belgian Court of Cassation, he had not been able to reply to the submissions of the Procureur General's department at the Court of Cassation as he had not been informed of this submission before the hearing and also did not have the right to the "last word" at this respect that the fact that the Procureur General's department at the Court of Cassation in Belgium expresses its opinion at the end of the hearing, without having communicated it in advance to the parties, was not inconsistent with Article 6, paragraph (1) (Art. 6-1), of the Convention, since that provision did not require, even by implication, that an accused person should have an independent official attached to the highest court in Belgium as its assistant and advisor;

Whereas, the Commission next examined the situation in The Netherlands, with regard to the role of the Procureur-Generaal attached to the Supreme Court (Hoge Raad) and the procedure before that Court;

Whereas, with regard to the Procureur-Generaal at the Supreme Court, the Commission observes that he is a member of the Public Prosecutor's Department (Openbaar Ministerie) in accordance with Article 3 of the Judicature Act (Wet of de Rechterlijke Organisatie), 1827;

Whereas, under that provision, the Public Prosecutor's Department consists of the Procureur-Generaal attached to the Supreme Court, the Procureurs Generals attached to the Courts of Appeal and the Public Prosecutors attached to the Courts of first instance;

Whereas, the Public Prosecutor's Department is not an independent body since its members are bound by the orders given by the King through the Minister of Justice (see Article 5 of the Judicature Act) and it represents the executive in judicial proceedings;

Whereas, however, a special status is accorded to the Procureur-General attached to the Supreme Court; whereas, his functions are described generally in Article 52 of Ordinance No. 1, Chapter I, 1838, which states that the Procureur-Generaal at the Supreme Court ensures the maintenance and execution of the laws and ordinances by the courts;

Whereas, in this respect alone can he give instructions to the Procureur-General at the Courts of Appeal and the public prosecutors attached to the other courts (see Article 53 of Ordinance No. 1) whose main task it is to prosecute criminal offenses and to supervise the execution of criminal judgment; whereas the Procureur-Generaal at the Supreme Court is charged with the prosecution of only such criminal offenses which fall within the original jurisdiction of the Supreme Court (Article 7 of the Code of Criminal Procedure) eg offenses committed by ministers, secretaries of State, high State officials and members of Parliament in the exercise of their functions (see Article 92 of the Judicature Act);

Whereas otherwise his only function is to ensure the maintenance and execution of the laws and ordinances of the courts;

Whereas, he exercises his functions independently without any interference by members of the Government;

Whereas, his personal task is to assist the Supreme Court in reaching its decisions on pleas of nullity in cassation proceedings before that Court; whereas he accomplishes that task by submitting to the Court, as an impartial adviser, such conclusions on the case as he may consider necessary in the interest of maintaining and executing the laws and ordinances; whereas, in these conclusions the Procureur-Generaal will also draw the Court's attention to such grounds of cassation which have not otherwise been put before it; whereas it is also Procureur-General himself nor the Attorney General acting on

his behalf is present during the Supreme Court's deliberations in Chambers;

Whereas, with regard to the procedure before the Supreme Court, the Commission notes that, apart from the limited cases in which the Court has original jurisdiction, its main task is to decide on pleas of nullity in cassation proceedings; whereas the procedure concerning such proceedings is set out in Articles 432 et seq. of the Code of Criminal Procedure as follows:

1. If a convicted person wishes to lodge a plea of nullity he must deposit, within eight days after the challenged decision has been pronounced, a declaration with the clerk of the court that has taken that decision, to the effect that he wishes to make such plea to the Supreme Court (Article 432);
2. The papers are sent to the Clerk of the Supreme Court, and the applicant may submit, through his lawyer, written pleadings containing his grounds of nullity (Article 433);
3. Eight days after receipt of the written pleadings the Clerk of the Supreme Court hands them to the Procureur-Generaal who transmits them to the Court and proposes at the same time, a date for the hearing; the hearing is then fixed by the presiding judge who also appoints a rapporteur (Article 436);
4. The Procureur-Generaal informs the appellant at least eight days in advance of the date of the hearing (Article 437, para (1));
5. The hearing starts with a statement by the judge rapporteur concerning the facts of the case and the grounds of nullity as submitted by the appellant (Article 438);
6. Thereafter the appellant's counsel is given an opportunity orally to plead the case and may at that stage submit further grounds of nullity (Article 439);
7. Subsequently, the Procureur-Generaal submits his conclusions to the Supreme Court either at once or at a later session; when no lawyer appears on behalf of the appellant, the Procureur-Generaal submits his conclusions immediately after the judge rapporteur has reported the case; thereafter the presiding judge orally fixes the date on which the Supreme Court will pronounce its decision (Article 440);
8. The judgment is read by the presiding judge or one of the associate judges at a public session of the Supreme Court (Article 443);
9. The Procureur-Generaal gives notice to the appellant of the Supreme Court's decision (Article 444, para. (2)).

Whereas, in the present case, the applicant was informed, in accordance with the provisions of Article 437 of the Code of Criminal Procedure, of the date of the hearing before the Supreme Court; whereas he was further informed that, although he himself would not be allowed to address the Court, he could instruct counsel to plead his case and that, if necessary, he could apply for legal aid and the appointment of counsel; whereas, in fact, counsel was appointed in the applicant's case and, on .. March 1968, submitted to the Supreme Court on the grounds of nullity in writing; whereas, according to the practice normally observed by lawyers acting on behalf of appellants to the Supreme Court, counsel did not personally appear at the hearing of .. March 1968 when the Attorney General, acting on behalf of the Procureur-General, submitted, after the report of the judge rapporteur, his conclusions the effect that the plea of nullity should be dismissed; whereas, on .. May, 1968, the Supreme Court dismissed the plea of nullity and the applicant was so informed in accordance with Article 444 of the Code of Criminal Procedure;

Whereas, in these circumstances and having regard to the principles developed by the European Court of Human Rights in its judgment on the "Delcourt" Case, the Commission finds that there is not, in the proceedings concerned, any appearance of a violation of the applicant's right to a fair hearing within the meaning of Article 6, paragraph (1) (Art. 6-1), of the Convention; whereas it follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, the applicant further complains that the Court of Appeal at The Hague failed to hear all the witnesses who would have given evidence in his favour; whereas the Commission has consistently held that the provisions of Article 6, paragraph 3 (d) (Art. 6-3-d), of the Convention does not give an accused person a general right to call witnesses on his behalf; whereas, in particular, a court is justified in refusing to summon witnesses whose statements could not be of any relevance to the case (see, for instance, Applications Nos. 617/50, Yearbook, Vol. III, pages 390-392, and 2383/64, Collection of Decisions, Vol. 23, pages 26, 30);

Whereas, in the present case, the applicant failed to submit any indication as to the names of witnesses he intended to call or as to the nature of the evidence which these witnesses were expected to give; whereas, in these circumstances, the Commission finds that, even assuming the applicant has exhausted the domestic remedies in this respect, there has been no appearance of a violation of the right "to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him", as guaranteed by Article 6, paragraph (3) (d) (Art. 6-3-d), of the Convention;

Whereas, it follows that this part of the application is equally manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention;

Whereas, finally, in regard to the applicant's complaints that at the police station he was required to strip naked and be searched, it is to be observed that, under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law; and whereas, the applicant failed to show that he raised this complaint before any Dutch court or authority; whereas, therefore, he has not exhausted the remedies available to him under Dutch law;

Whereas, moreover, an examination of the case as it has been submitted, including an examination made *ex officio*, does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal; whereas, therefore, the conditions as to the exhaustion of domestic remedies laid down in Articles 26 and 27, paragraph (3) (Art. 26, 27-3), of the Convention has not been complied with by the applicant;

Now therefore the Commission DECLARES THIS APPLICATION INADMISSIBLE