

THE FACTS

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

The applicant is a Netherlands citizen, born in 1928. He calls himself an anthropologist. When lodging the application, he was detained in the State Mental Clinic at U. He is presently detained at the mental institution at A.

On .. June 1969 he was arrested in A., on suspicion of having seduced a minor boy. He was kept in police custody for two days. On .. June 1969, the Investigating Judge ordered his detention on remand. From .. June 1969 onwards, the detention was renewed, each time for a thirty-day period, by order of the District Court (Arrondissementsrechtbank) at Amsterdam.

On .. October 1969, the District Court sentenced the applicant to six months' imprisonment, with reduction of the time spent in detention on remand.

The applicant appealed to the Court of Appeal (Gerechtshof) at Amsterdam. Pending the appeal, the detention on remand was continued. On .. January 1970, the hearing before the Court began. On .. January the Court decided to have the applicant examined by the State psychiatrist and adjourned the trial. On .. April 1970 the applicant asked, and was refused, release from the detention on remand. From .. to .. May 1970, the applicant was held in observation at the State Mental Clinic at U. On .. May 1970 the Director of the Clinic submitted a report to the Court. It described the applicant as a seriously deranged person who insisted that his own moral standards should prevail over those of society.

On .. May 1970, the hearing before the Court of Appeal was resumed. On .. June 1970 the Court confirmed the six months' imprisonment to which the applicant had been sentenced at first instance. As the psychiatric report and the applicant's own statements during the investigation revealed a strong inclination towards recidivism, the Court, acting in accordance with Articles 37 and 37a of the Criminal Code, ordered the applicant to be placed at the Government's disposal after the end of the prison term, in order to be treated in a mental institution.

The applicant's appeal on points of law (cassatie) was rejected by the Supreme Court (Hoge Raad) on .. October 1970.

It appears that subsequently he petitioned the Queen for an intervention in his favour without success. By letter of .. February 1971 from the Ministry of Justice he was informed that the decisions against him were final and could not be changed either by the Minister or by H.M. The Queen. The letter further explained that on .. October 1970, the date on which his conviction had become final, the six months' prison term was considered as having been served. However, from that date onward until .. November 1970 another sentence that had been pronounced in 1967 by the Police Magistrate of Amsterdam had been executed.

Finally, on .. November 1970, the period during which the applicant was placed at the Government's disposal in accordance with the decision of the Court of Appeal, dated .. June 1970, started to run.

Complaints

The applicant now complains to the Commission

- that he was wrongly convicted and sentenced;
- that before the Supreme Court he was not represented in that he had

no means to instruct a lawyer and legal aid had been refused;
- that his detention on remand has been unnecessarily long;
- that his confinement to the mental institution amounts to inhuman treatment.

He also seems to complain that the authorities at the mental clinic try to prevent him from writing to the Commission and that the judicial authorities refused him copies of the court decisions in his case. It appears that the Amsterdam authorities made the transmission of a copy of the District Court's decision of .. October 1969 dependent on his paying a fee of 8,- guilders and that the Registrar of the Supreme Court informed him by letter of .. April 1971 that he was prepared to transmit directly to the Commission the copies concerned after receipt of the necessary information.

The applicant alleges, in the first place, violations of Articles 3 and 8 (1) and (2), of the Convention and furthermore of Articles 5 (1) (a) and (b), (4) and (5), 6 (1), (3) (c) and (d), 7 (1), 9 (1) and 19 (1).

PROCEEDINGS BEFORE THE COMMISSION

The Commission considered the application on 13 December 1971 and, by partial decision, declared inadmissible as being manifestly ill-founded (Article 27 (2), of the Convention) all the applicant's complaints except that under Article 6 of the Convention relating to his representation before the Supreme Court. The Commission found that with regard to that complaint the further examination of the case should be adjourned and the parties should submit observations in writing on the admissibility of this part of the application in accordance with Rule 45, 3 b) of the Commission's Rules of Procedure. The Commission finally decided to take no action in respect of the alleged interference with the effective exercise of the applicant's right of individual petition.

Written submissions were obtained from the respondent Government on 28 February 1972 and from the applicant on 4 March 1972.

SUBMISSIONS OF THE PARTIES

1. The respondent Government, in its observations of 28 February 1972, first explained the rules regarding legal aid under Dutch law.

According to Article 38 of the Code of Criminal Procedure an accused person has the possibility of choosing himself counsel for his defence. On the other hand, Articles 40 et seq. of the Code provide for the appointment of an official defence counsel in accordance with the following rules:

If the accused person is detained on remand, the President of the Court concerned with his case is always required to appoint such counsel for the prisoner (Article 40), but if the accused person is otherwise deprived of his liberty the President of the Court must only appoint counsel if the applicant so requests. (Article 41a).

However, these rules are not applicable in cases before the Court of Cassation. In those cases and in all other criminal cases not mentioned above counsel is appointed by a Legal Aid Council (Article 41 (b)) which is established in each district and whose composition and tasks are set out in Articles 75 to 77 of the Act of 23 June 1952 (Advocatenwet) as amended by the Act of 16 March 1968.

The Councils are composed of lawyers nominated by the Court upon recommendation of the Bar Association in the district concerned. Like the Bar Association they are independent bodies.

The Legal Aid Council examines before appointing a lawyer whether there are sufficient grounds for granting legal aid. Indeed, legal aid can only be granted to a person who has sufficiently shown that he cannot

pay for a lawyer himself or that he could pay only by making considerable sacrifices (Article 41 (b)). If legal aid is granted the lawyer's fees and his expenses are paid by the State (Article 48).

The accused person is informed of the possibility of applying for legal aid (Article 44) at the time when he lodges his plea of nullity with the Court of Cassation (Article 41) and again when he is notified of the date of the hearing of his case which notification is given eight days in advance (Article 437).

The Government explained that in the present case the Court of Appeal pronounced judgment on .. June 1970 and on .. June the applicant lodged his plea of nullity with the Supreme Court. Subsequently, there had been considerable correspondence between the applicant and the Legal Aid Council at the Hague which resulted in a letter from the applicant, dated .. September 1970 (rather .. September) in which the applicant referred to the notification in accordance with Article 437 (1) of the Code of Criminal Procedure but made no request for the appointment of counsel. The Secretary of the Legal Aid Council therefore replied on .. September 1970 that the applicant apparently did not wish to be represented in the cassation proceedings. The applicant did not reply to that letter any more and on .. October 1970 the Supreme Court dismissed the plea of nullity.

The Government submitted that the applicant therefore clearly had the possibility of being represented either by a lawyer of his own choice or by counsel appointed under the legal aid system but that he chose not to avail himself of either possibility. In these circumstances there could be no question of any refusal by the Netherlands authorities of the appointment of counsel and his complaint in this respect was therefore manifestly ill-founded.

2. The applicant, in his observations of 4 March 1972, stated that he was not in a position to reply satisfactorily to the Government's observations. The Commission had shown no sign of proof that it had any confidence in him but, on the contrary, had made him feel that a man never had sympathy unless he showed himself obedient towards the magistrates.

The applicant then referred to various passages in the Commission's partial decision of 13 December 1971 which, in his opinion, proved his point.

He then continued to say that he was too tired to fight the Netherlands Government and suggested that the Government had already stated the Commission's final decision in concluding their observations on admissibility, that the application was manifestly ill-founded. He also said that, in the eyes of the Commission he was obviously not innocent but a mentally deranged person and a liar who committed abusive acts on young boys of the age of his son whom he had not seen for almost three years.

In conclusion the applicant thanked the Commission for having given him its attention but said that he neither requested a pardon nor confidence and that he had no further need for the Commission.

FINDINGS OF THE COMMISSION

The Commission considers that the terms of the applicant's submissions of 4 March in reply to the Netherlands Government's observations of 28 February 1972 on admissibility amount, in fact, to a withdrawal of the remainder of his application before the Commission.

It further finds that there are no reasons of a general character affecting the observations of the Convention which would necessitate a further examination of his complaint.

For these reasons, the Commission DECIDES TO STRIKE THIS APPLICATION
OFF ITS LIST OF CASES