

AS TO THE ADMISSIBILITY OF

Application No. 30936/96  
by Yvonne Th. M. VAN SCHIJNDEL,  
Lutgarde VAN DER HEYDEN and  
Dirk J. LEENMAN  
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 10 September 1997, the following members being present:

Mrs. G.H. THUNE, President  
MM. J.-C. GEUS  
A. GÖZÜBÜYÜK  
J.-C. SOYER  
H. DANELIUS  
F. MARTINEZ  
M.A. NOWICKI  
I. CABRAL BARRETO  
J. MUCHA  
D. SVÁBY  
P. LORENZEN  
E. BIELIUNAS  
E.A. ALKEMA  
A. ARABADJIEV

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 23 October 1995 and registered on 2 April 1996 under file No. 30936/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The first applicant is a Dutch national, born in 1949, who resides in Eindhoven, the Netherlands. The second applicant is a Belgian national, born in 1946, and resides in Mechelen, Belgium. The third applicant is a Dutch national, born in 1956, and resides in Namen, Belgium. They are represented by Mr H.D.L.M. Schruer, a lawyer practising in Rotterdam, the Netherlands.

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

On 15 May 1991 the applicants, accompanied by a group of other persons, entered an abortion clinic in the Netherlands and proceeded to pray on their knees in a corridor in the clinic. The director of the clinic unsuccessfully requested them to leave as they were blocking the thoroughfare. Shortly after the applicants and the other persons involved were forcibly removed from the clinic by the police and brought before the assistant public prosecutor. They were subsequently charged with breach of the peace.

In three separate judgments of 7 September 1992, the Magistrate

(politierechter) of the Regional Court (Arrondissementsrechtbank) of 's-Hertogenbosch convicted the applicants of breach of the peace and sentenced each of them to payment of a fine of 250 Dutch guilders, suspended pending a probation period of two years.

In three separate judgments of 23 August 1993, the Court of Appeal (Gerechtshof) of 's-Hertogenbosch rejected the applicants' respective appeals and upheld the judgments of 7 September 1992.

Each of the applicants filed an appeal in cassation to the Supreme Court (Hoge Raad). They submitted, *inter alia*, that the Court of Appeal had unjustly rejected their argument that their acts were based on compelling reasons of conscience, i.e. the right to life of the unborn child, constituting force majeure (*overmacht*) and thus a ground for impunity (*strafuitsluitingsgrond*).

In his conclusions, the Procurator General (Procurator-Generaal) to the Supreme Court advised the Supreme Court to reject the applicants' arguments.

Although the applicants had not raised this issue in their appeals in cassation, the Procurator General advised the Supreme Court to mitigate the applicants' sentences *ex officio* in view of the 12½ months which had elapsed between the introduction of the appeal in cassation and the transmission of the applicants' case-files to the Supreme Court and the additional four months it would take before the Supreme Court would examine the appeals.

By three separate judgments of 9 May 1995, the Supreme Court rejected the applicants' appeals in cassation under Article 101a of the Judicial Organisation Act as not prompting a determination of legal issues in the interest of legal unity and development. It found no grounds to quash the challenged judgments *ex officio*.

## COMPLAINTS

1. The applicants complain that their convictions are contrary to Article 9 in conjunction with Articles 2, 3 and 4 of the Convention. They argue that their conscience, inspired by their religious beliefs, forced them to act as they did. They submit that they only meant to pray for the unborn lives that were being killed.
2. The applicants further complain under Article 6 para. 1 of the Convention of the length of the proceedings against them. They complain in particular of the delay between the judgment of the Court of Appeal and the examination of their appeal in cassation by the Supreme Court.

## THE LAW

1. The applicants complain that their conviction is contrary to Article 9 of the Convention in conjunction with Articles 2, 3 and 4 (Art. 9+2+3+4) of the Convention.

Article 9 (Art. 9) of the Convention reads as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or

for the protection of the rights and freedoms of others."

Insofar as the applicants complain that the domestic courts reached a wrong decision in that it rejected their arguments relating to force majeure and impunity, the Commission recalls at the outset that it is not competent to examine alleged errors of fact or law committed by national courts, except where it considers that such errors might have involved a possible violation of the rights and freedoms set forth in the Convention (cf. No. 25062/94, Dec. 18.10.95, D.R. 83, p. 77).

As regards Article 9 (Art. 9) of the Convention, the Commission recalls that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it (cf. Eur. Court HR, Kokkinakis v. Greece judgment of 25 May 1993, Series A no. 260-A, p. 17, para. 17).

The Commission further recalls that Article 9 (Art. 9) of the Convention does not always guarantee the right to behave in the public sphere in a way which is dictated by a belief. The term "practice" in Article 9 para. 1 (Art. 9-1) of the Convention does not cover each act which is motivated or influenced by a religion or belief (cf. No. 22838/93, Dec. 22.2.95, D.R. 80, p. 147).

The Commission notes that the applicant sought to manifest their religious convictions and beliefs by a communal praying session in a corridor of an abortion clinic without having obtained permission from and against the will of the clinic's direction.

Insofar as the applicants' activities at issue can be regarded as an expression of a belief within the meaning of Article 9 para. 1 (Art. 9-1) of the Convention, the Commission considers that the applicants' conviction of breach of the peace can reasonably be regarded as justified under paragraph 2 of this provision as a limitation prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others.

In the context of the present complaint, the Commission further finds no issues under Article 2, Article 3 or Article 4 (Art. 2, 3, 4) of the Convention.

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants complain under Article 6 para. 1 (Art. 6-1) of the Convention that the criminal proceedings against them have exceeded a reasonable time.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar 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 Commission finds that it cannot, at this stage, determine the admissibility of this part of the application and considers that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Commission's Rules of Procedure, to give notice of this complaint to the respondent Government.

For these reasons, the Commission,

DECIDES TO ADJOURN the examination of the applicants' complaint that the criminal charges against them have not been determined within a reasonable time;

unanimously,  
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER  
Secretary  
to the Second Chamber

G.H. THUNE  
President  
of the Second Chamber