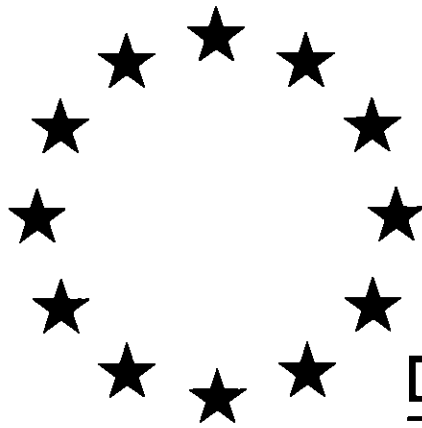


COUNCIL
OF EUROPE



CONSEIL
DE L'EUROPE

Or. English

EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 12633/87

Smith Kline and French Laboratories Ltd.
against
the Netherlands

Report of the Commission

(Adopted on 10 July 1991)

Strasbourg

INTRODUCTION

1. This Report relates to the application introduced under Article 25 of the European Convention on Human Rights by Smith Kline and French Laboratories Ltd. against the Netherlands on 12 December 1986. It was registered on 16 December 1986 under file No. 12633/87.

2. The applicant company was originally represented before the Commission by Mr. A. Pickford, the company's Legal Director, succeeded by Mr. J.A. Stoop and Mr. D.H. De Witte, advocates, Messrs. De Brauw Blackstone Westbroek, the Hague, the Netherlands. The respondent Government were represented by their Agent, Mrs. D.S. van Heukelom, succeeded by Mr. K. de Vey Mestdagh, both of the Ministry of Foreign Affairs.

3. On 4 October 1990 the European Commission of Human Rights declared the application partially admissible (*). The Commission then proceeded to carry out its task under Article 28 para. 1 of the Convention which provides as follows:

"In the event of the Commission accepting a petition referred to it:

a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;

b. it shall at the same time place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

4. The Commission found that the parties had reached a friendly settlement of the case and on 10 July 1991 adopted this Report which, in accordance with Article 28 para. 2 of the Convention, is confined to a brief statement of the facts and of the solution reached.

(*) This decision is public and can be obtained from the Secretary to the Commission.

5. The following members were present when the Report was adopted:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.C. GEUS
M.P. PELLONPÄÄ
B. MARXER

PART I

STATEMENT OF THE FACTS

6. The applicant company is a pharmaceutical research and manufacturing company registered in the United Kingdom. It owned a Netherlands Patent No. 162073 relating to the manufacture in commercial form of an entirely new class of drug, cimetidine, the H₂ receptor antagonist labelled Tagamet, which is of particular value in treating gastric and duodenal ulcers. The applicant company refused to grant a patent licence to a Dutch company, Centrafarm BV, working in the same field with a related patent. The Dutch company petitioned for and obtained the grant of a compulsory licence pursuant to section 34 (4) of the Patent Act (Rijksoctrooiwet) 1910, as amended by the Act of 13 December 1978. The compulsory licence was authorised by the Special Division and Appeal Division of the Patent Office and the validity of Centrafarm's related patent was partially upheld by the District Court (Arrondissementsrechtbank) of the Hague. As a result of the grant of the compulsory licence the applicant company lost the exclusive right to exploit its patent. The appeal by the applicant company to the Hague Court of Appeal (Gerechtshof) was never decided because it accepted Centrafarm's offer to surrender the competing patent on payment of NLG 50,000.

7. The applicant company complained to the Commission that the compulsory licence procedure before the Patent Office failed to observe the requirements of a fair hearing before an independent and impartial tribunal in the determination of its civil rights, as required by Article 6 para. 1 of the Convention. It also complained that the grant of the compulsory licence had constituted an unjustified interference with its property rights, ensured by Article 1 of Protocol No. 1 to the Convention, and that there had been no effective domestic remedies for its Convention claims, contrary to Article 13 of the Convention.

8. On 4 October 1990, following a hearing, the Commission declared the application partially admissible, retaining the complaints of the applicant company under Articles 6 and 13 of the Convention, but rejecting its complaint under Article 1 of Protocol No. 1.

PART II**SOLUTION REACHED**

9. Following its decision on the admissibility of the application, the Commission placed itself at the disposal of the parties with a view to securing a friendly settlement in accordance with Article 28 para. 1 (b) of the Convention and invited the parties to submit any proposals they wished to make.
10. In accordance with the usual practice, the Secretary, acting on the Commission's instructions, contacted the parties to explore the possibilities of reaching a friendly settlement.
11. Between December 1990 and June 1991, there were negotiations between the parties concerning a friendly settlement of the case. On 24 May 1991 the Government, through its Agent, Mr. de Vey Mestdagh, proposed that the intended reform of the relevant legislation, vesting in the civil courts the decision making power for the grant or refusal of compulsory licences, be deemed the settlement of the case. This legislative reform will be presented to the Second Chamber of the States General in the autumn of 1991, with the intention that it shall come into force as of 1 January 1993. A possible element of the legislative reform may be the inclusion of a clause authorising grants of compulsory licences only in cases where the dependent, competing patent involves substantial technical progress in the field. The Government also offered to make an ex gratia payment of NLG 15,000 to the applicant company as compensation for the cost of filing and defending the application to the Commission.
12. On 24 June 1991 the representative of the applicant company, Mr. Stoop, informed the Commission as follows:
- "Having discussed the matter with my clients I can now inform you that they have decided to accept the settlement as proposed by the Netherlands Government in its entirety."
13. At its session on 10 July 1991 the Commission found that the parties had reached agreement regarding the terms of a settlement. It further considered, having regard to Article 28 para. 1 (b) of the Convention, that the friendly settlement of the case had been secured on the basis of respect for Human Rights as defined in the Convention.
14. For these reasons, the Commission adopted the present Report.

Secretary to the Commission


(H.C. KRÜGER)

President of the Commission


(C.A. NØRGAARD)