AS TO THE ADMISSIBILITY OF

Application No. 19382/92
by A.T.
against Spain

The European Commission of Human Rights (Second Chamber) sitting in private on 10 February 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Mr. F. MARTINEZ
J.-C. GEUS

Mr. K. ROGGE, Secretary to the Second 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 2 December 1991 by A.T. against Spain and registered on 21 January 1992 under file No. 19382/92;

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 applicant is a Dutch citizen, born in 1959 and at present detained in prison in Vigo, Spain. He is a truckdriver by profession. Before the Commission he is represented by Mr. J.K. Gaasbeek, a lawyer practising in Haarlem, the Netherlands.

The facts as submitted by the parties may be summarised as follows.

In March 1989 a man unknown to the applicant asked him if he could transport and deliver an important amount (1.300 kilos) of tobacco to Bayona (Spain). He would receive, including expenses, 20.000 Dutch guilders for this. Eventually the applicant accepted. On 26 May 1989, just after delivery of the goods, the applicant was arrested by the Guardia Civil who also confiscated the pistol, a Browning 7.65, he kept in his truck.

The next day, the Guardia Civil seized 2.475 kilos of hashish in a shed at Cabreiros-Baredo (Bayona), which delivery involved at least eight persons. The amount of hashish seized in the applicant's truck and the shed respectively formed part of a total amount of 7.000 kilos of hashish which had been delivered at three stages during the previous days.

It appeared that the tobacco transported by the applicant was in

fact hashish, which he claimed to ignore. On 26 May 1989 he was detained on remand (prisión provisional). On 21 September 1989 the Public Prosecutor (Ministerio Fiscal) declared not to be opposed to the applicant's provisional release provided that he pay a bail of 500.000 pesetas and that he report daily to the police station. On 25 September 1989 the applicant filed a request for provisional release. However, on 18 November 1989 the Investigating Judge number 1 (Juez de Instrucción número Uno) of Vigo charged (auto de procesamiento) the applicant with drug trafficking and illegal possession of firearms. On 22 November 1989 the applicant appealed (recurso de reforma) against this decision whilst requesting his conditional release. He renewed this request on 22 December 1989, 20 April 1990, 28 May 1990, 19 July 1990 and 5 September 1990. By decision (auto) of 26 September 1990, the Investigating Judge rejected the requests. The applicant lodged an appeal against this decision on 1 October 1990, which appeal was dismissed by the Audiencia Provincial of Pontevedra on 9 October 1990.

The Spanish authorities became aware at some time of the existence of an important drug trafficking organisation against which they launched a nationwide operation (operation "Nécora").

On 29 October 1990, as the applicant's case appeared to be closely connected with that of several Spanish citizens also charged with drug trafficking as part of the operation "Nécora", the cases were joined. Accordingly the case was referred to the jurisdiction of the Audiencia Nacional in Madrid.

On 19 November 1990 the applicant again filed a request for provisional release but on 28 November 1990 the Public Prosecutor opposed this request. On 30 November 1990 the Central Investigating Judge number 5 accordingly rejected the applicant's request. Against this decision the applicant lodged an appeal (recurso de apelación) with the Audiencia Nacional which rejected the appeal on 30 April 1991. The applicant's subsequent constitutional appeal (recurso de amparo) was rejected by the Constitutional Court (Tribunal Constitucional) on 11 September 1991. It held that the charges justified the applicant's detention and that the detention was therefore not in violation of the presumption of innocence. With regard to the right to a trial within a reasonable time it held that it was not called upon to decide on the mere possibility that a certain delay might at some stage no longer be reasonable.

Meanwhile, by order (auto de procesamiento) of 8 January 1991, the Central Investigating Judge number 5 charged the applicant with illegal possession of firearms and, together with co-suspects, with participation in drug trafficking. On 12 January 1991 the applicant appealed against these charges to the Audiencia Nacional which dismissed the appeal on 8 July 1991.

On 25 February 1991 the Investigating Judge informed the applicant of the Public Prosecutor's intention to have his provisional detention prolonged up to the statutory maximum of four years as stipulated by Article 504, 4° of the Act on Criminal Procedure (Ley de Enjuiciamiento Criminal). By telegram of 30 January 1991 the applicant introduced another request for provisional release. On 28 February 1991 the applicant objected to the Public Prosecutor's intention to have his detention prolonged. On 6 March 1991 the Central Investigating Judge number 5 postponed his decision on the prolongation but maintained the applicant in provisional detention. On 8 May 1991 the Public Prosecutor requested that the maximum period of the applicant's detention be extended for two more years. The applicant's objections and request for release were dismissed by the Central Investigating Judge number 5 who, on 22 May 1991, extended the maximum period of the applicant's detention for two more years.

In connection with his requests for release the applicant has

offered bail.

During the preliminary investigations several of the fifty-four suspects appealed against various judicial orders. On 19 February 1992 the Central Investigating Judge number 5 closed the preliminary investigation.

Eventually, on 11 June 1992, the Audiencia Nacional ordered the applicant's provisional release on bail.

The Audiencia Nacional concluded the preliminary investigations and started the oral hearings (juicio oral) on 3 July 1992. On 15 July 1992 the Public Prosecutor submitted his provisional conclusions in which he demanded a prison sentence of 14 years and a fine of 60 million pesetas against the applicant for illegal weapon possession and for a crime against public health.

In July 1992 the final charges were being formulated. No further information has been provided about the continuation of the proceedings.

COMPLAINTS

1. The applicant complains under Article 5 para. 3 of the Convention that the period of his detention on remand was not reasonable.

2. The applicant further complains under Article 6 para. 1 of the Convention that the criminal charge against him has not been determined within a reasonable time.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 December 1991 and registered on 21 January 1992.

On 1 April 1992 the Commission (Second Chamber) decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits of the application.

On 7 July 1992 the plenary Commission decided that the application should remain before the Second Chamber.

The Government's observations were received by letter dated 23 July 1992, after an extension of the time-limit, and the applicant's observations by letter dated 2 November 1992 after an extension of the time-limit.

On 8 December 1992 the applicant was granted legal aid.

THE LAW

1. The applicant complains that the period of his detention on remand was not reasonable. He invokes Article 5 para. 3 (Art. 5-3) of the Convention which secures to "everyone arrested or detained in accordance with the provisions of paragraph 1 (c)" of Article 5 (Art. 5-1-c) the right to be "brought promptly before a judge or other officer authorised by law to exercise judicial power".

The Government submit that, having regard to the serious character of the offence the applicant is being charged with and the fact that the charges are also brought against 53 other suspects in a large scale drug traffic, the case is very complex. This is also shown by the fact that the criminal investigations included several

investigatory measures outside Spain and that the file of the investigations covers 22.000 pages. Moreover, due to a number of appeals lodged by several suspects during the investigations, the opening of the trial was delayed. The Government are therefore of the opinion that under these circumstances the time spent in detention on remand by the applicant is reasonable.

They further argue that under Spanish law, when the suspect faces a minimum prison sentence of 6 years, detention on remand can last up to 4 years if it is expected that the trial will not take place within 2 years and that there is a risk that the detained person may abscond.

The applicant submits in particular that the respondent Government's unfounded allegation that the case is unusual and complex in no way justifies such a long period of detention on remand. Moreover, the Spanish courts have rejected his numerous requests for provisional release, despite his repeated offers of bail. He points out that the purpose of bail is to diminish the risk of absconding. In any event, he denies any link or involvement with the 53 other suspects arrested in the framework of the operation "Nécora".

The Commission notes that the applicant was arrested on 26 May 1989 and was then detained until his release on 11 June 1992. His detention therefore lasted for more than three years.

The Commission has taken cognizance of the parties' observations and considers that this complaint raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. This complaint can therefore not be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other grounds for inadmissibility having been established, this complaint should accordingly be declared admissible.

2. The applicant further complains that he has not had a trial within a reasonable time. He relies in this respect on Article 6 para. 1 (Art. 6-1) of the Convention which reads insofar as relevant:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

The applicant argues that even in very complex cases a delay of 31/2 years between the arrest and the beginning of the trial is not "reasonable" in the light of the Convention. In addition, despite the Government's assurance that the case would be decided during the autumn of 1992, no decision has been taken yet and since the case is deemed to be so complex, this decision cannot be expected soon which makes the delay all the more unreasonable.

The Government contend that the case at issue is very complex. They submit that it concerns drug trafficking involving 54 suspects. The complexity is also shown by the fact that the investigation file covers 22.000 pages and that the investigations included several investigatory measures outside Spain. Under these circumstances the Spanish authorities have displayed particular diligence in bringing this case as soon as possible before the competent court.

The Commission considers that the period to be taken into consideration began on 26 May 1989, the day the applicant was arrested and detained on remand. The main proceedings in the case started in July 1992 and have not yet been concluded.

As to the reasonableness of the length of the proceedings, the Commission recalls that it is to be assessed in the light of the

particular circumstances of the case, having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and that of the competent authorities (see, inter alia, Kemmache judgment of 27 November 1991, Series A no. 218, para. 60).

The Commission considers that the length of the proceedings in the present case is mainly to be attributed to its complexity. The Commission notes that the investigation concerned a large scale drug traffic with international implications, that charges were brought against 54 persons and that the case-file regarding the preliminary investigation covered 22.000 pages. In these circumstances, the Commission considers that the period of more than three years which it took the Spanish authorities to complete the investigation and bring the accused to trial cannot be regarded as unreasonable and contrary to Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES ADMISSIBLE, without prejudging its merits, the applicant's complaint under Article 5 para. 3 (Art. 5-3) of the Convention as to the length of his detention on remand;

DECLARES THE REMAINDER OF THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)