AS TO THE ADMISSIBILITY OF

Application No. 14056/88
by Martinus Godefridus AARTS
against the Netherlands

The European Commission of Human Rights sitting in private on 5 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

Mr. H.C. KRÜGER, Secretary to the Commission

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 June 1988 by Martinus Godefridus AARTS against the Netherlands and registered on 26 July 1988 under file No. 14056/88;

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

Having regard to the observations sumbitted by the respondent Government on 15 May 1990 and the observations in reply submitted by the applicant on 18 June 1990;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Dutch citizen born in 1945 and residing in 's-Hertogenbosch. He is unemployed. Before the Commission he is represented by Mr. H.H.M. van Dijk, a lawyer practising in Oss.

In early March 1982 the applicant was interrogated together with two co-defendants on charges of forgery and the illegal possession of a gun. They were subsequently prosecuted.

The two co-defendants were convicted by the Regional Court (Arrondissementsrechtbank) of Breda on 27 January 1983. The Regional Court delayed the applicant's case because he had become ill before the trial. The co-defendants appealed to the Court of Appeal

(Gerechtshof) of 's-Hertogenbosch on 27 January 1983.

On 26 April 1983 the Regional Court of Breda found the applicant guilty of several charges. He appealed to the Court of Appeal of 's-Hertogenbosch on the same day.

On 21 February 1985 a summons was served on the applicant to appear before the Court of Appeal on 14 March 1985. On 22 August 1985 the Court of Appeal quashed the decision of the Regional Court and convicted the applicant on only one charge of forgery. It sentenced him to one year's imprisonment of which six months were suspended with a probationary period of two years. It held, inter alia, that the lapse of time between the introduction of the appeal on 26 April 1983 and the summons on 21 February 1985 was longer than is generally regarded as appropriate. However, this alone could not constitute a violation of the requirement of reasonable time. Moreover, no special circumstances had been put forward which would justify a different view.

The two co-defendants were convicted by the Court of Appeal of 's-Hertogenbosch on the same day and received the same sentence. In the case of the first co-defendant the Court of Appeal rejected the complaint of the length of proceedings on identical grounds. The second co-defendant had not raised a complaint in this regard.

The applicant and the two co-defendants appealed in cassation to the Supreme Court (Hoge Raad).

On 13 December 1986 the Supreme Court rejected the applicant's appeal. It held, inter alia, that the applicant had only complained before the Court of Appeal of the length of the proceedings as from the introduction of the appeal. Therefore, the Court of Appeal only had to consider this period, which it correctly found to be in accordance with Article 6 of the Convention.

The applicant alleges that the judgment of the Supreme Court was not notified to him and that he only learned of the judgment after contacting the Supreme Court in January 1988.

The Government state that the judgment was communicated by means of a registered letter which on 6 February 1987 was handed to Mr. P. who lived in the same house as the applicant.

On 3 February 1987 the Supreme Court decided on the appeals of the two co-defendants. In the first case it stated that the Court of Appeal had not properly motivated why the delay between the appeal (on 27 January 1983) and the proceedings before the Court of Appeal (on 15 February 1985) was not in breach of Article 6 para. 1 of the Convention. Therefore, it quashed the decision of the Court of Appeal of 's-Hertogenbosch and referred the case back to the Court of Appeal of Arnhem. In the other case the Supreme Court also decided to refer the case back on the same ground, on its own motion, since this co-defendant had not raised this complaint either before the Court of Appeal, or before the Supreme Court.

On 2 July 1987, the Court of Appeal decided to declare the prosecution against the two co-defendants inadmissible.

On 2 June 1988, the applicant addressed a petition to the Queen of the Netherlands, requesting that the prison sentence imposed on him by the 's-Hertogenbosch Appeal Court be remitted. The reasons given for this petition for pardon were the same as those given in the present application. The 's-Hertogenbosch Appeal Court was asked to make a recommendation in connection with the petition. Given that the three criminal cases were dealt with at virtually the same time and with due regard to the principle of equality before the law, the Appeal Court recommended that the petition be granted. The applicant

was pardoned on 10 November 1988, in that the part of the 12 months' prison sentence that was not suspended (which was six months, less the period already spent in custody) was remitted.

COMPLAINTS

The applicant complains that he did not receive a fair hearing within a reasonable time contrary to Article 6 para. 1 of the Convention. In particular, he refers to the cases of his two co-defendants who were acquitted because their cases were not dealt with within a reasonable time. He suggests that the Supreme Court may have mistaken his case for that of the second co-defendant in which no complaint about the length of proceedings was made.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 2 June 1988 and registered on 26 July 1988.

The Commission decided on 12 March 1990 to bring the application to the notice of the respondent Government and to invite them to submit written observations on the applicant's complaint concerning the length of the proceedings.

The Government's observations were received on 15 May 1990 and the applicant's observations in reply on 18 June 1990.

THE LAW

The applicant complains that he did not receive a fair hearing within a reasonable time contrary to Article 6 para. 1 (Art. 6-1) of the Convention. In particular, he refers to the cases of his two co-defendants who were acquitted because their cases were not dealt with within a reasonable time. He suggest that the Supreme Court may have mistaken his case for that of the second co-defendant in which no complaint about the length of proceedings was made.

The Government have first submitted that the application should be rejected on the basis of the six months' rule stipulated in Article 26 (Art. 26) of the Convention, since the applicant did not lodge a complaint with the Commission until 2 June 1988, that is more than six months after the date when the Supreme Court's judgment was communicated to the applicant. Pursuant to Section 585 of the Code of Criminal Procedure (Wetboek van Strafvordering) the notification of a judicial decision should be done by means of an ordinary or registered letter delivered by mail. In the case concerned, a registered letter was delivered on 6 February 1987 at 13.40 hours at the applicant's address to Mr. P. who lived in the same house.

The applicant states that if the letter was so delivered, Mr. P. did not forward the letter to him. He submits that he did not learn about the judgment until he contacted the Supreme Court in January 1988.

The Commission first recalls that the six months' time-limit is respected when an application is introduced not more than six months after the applicant has become aware of the decision constituting the final decision within the meaning of Article 26 (Art. 26) of the Convention (No. 10107/82, Dec. 12.7.84, D.R. 38 p. 90). In the present case, the Government have stated that a letter containing the decision concerned was handed over on 6 February 1987 to a person living in the same house as the applicant. However, it has not been shown that the applicant himself became aware of the decision before January 1988.

Accordingly the Commission considers that the application should not be declared inadmissible for non-compliance with the six

months' rule.

As to the merits of the application, the Government state that, according to the Supreme Court's case-law, a period of two years between the lodging of an appeal and the date on which the case is heard may generally be said to be unreasonable. The Government observe that in the applicant's case, this particular period was less than two years, which makes his case different from the cases of the two co-defendants.

The Government further submit that the applicant was pardoned on 10 November 1988. The Government therefore considers that he cannot claim to be a victim of a violation of Article 6 para. 1 (Art. 6-1) of the Convention, within the meaning of its Article 25 (Art. 25). They refer to the Van Droogenbroeck judgment (Eur. Court H.R., Van Droogenbroeck judgment of 24 June 1982, Series A no. 50), the Eckle judgment (Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51) and the Commission's case-law (cf. Pannetier v. Switzerland, Comm. Report 12.7.85, D.R. 46 p. 5).

The applicant alleges that he is still a victim of the violation of Article 6 para. 1 (Art. 6-1) of the Convention, even though a part of his sentence was later remitted by way of a pardon. He notes that his criminal record still mentions the Appeals Court's sentence of 22 August 1985. This makes his situation different from those of his co-defendants who were finally acquitted.

The Commission considers that the complaint concerning the length of the proceedings raises difficult questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The application is therefore not manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention and no other grounds for declaring it inadmissible have been established.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)