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 28 May 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
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
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

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



Having regard to the Commission's decision of 5 October 1990 to declare the application admissible and to ask for further information and observations from the parties;

Having regard to the information given by the applicant on 31 October 1990;

Having regard to the further observations on the merits submitted by the respondent Government on 29 November 1989 and the observations in reply submitted by the applicant on 6 February 1991 and 10 April 1991;

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 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 adjourned 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 on 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 23 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 first 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.

In their further observations on the merits, the Government moreover state that, according to a note made at the registry of the Supreme Court, the applicant's counsel before that Court was informed by telephone on 18 December 1986 that the judgment would be given on 23 December 1986. Invited to submit comments on this point, the applicant's lawyer observes that this counsel sent a letter to the applicant on 23 December 1986 informing him that the appeal had been rejected. Nevertheless, he explains that the address to which the

letter was sent was not the right one.

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 given proper reasons 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.

Subsequently, the proceedings against the co-defendants were discontinued by the Court of Appeal of Arnhem on 2 July 1987, the Court declaring the public prosecutor's case inadmissible.

On 2 June 1988, the applicant addressed a petition to the Queen of the Netherlands, requesting remission of the prison sentence imposed on him by the 's-Hertogenbosch Appeal Court. 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 remission of the part of the one year's prison sentence that was not suspended (which was six months, less the period already spent in custody) was granted.

## 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 Commission decided on 5 October 1990 to declare the application admissible and to ask for further information and observations from the parties.

The applicant's further information was received on 31 October 1990.

The Government's further observations were received on 29 November 1990. The applicant's observations in reply were received on 6 February 1991 and 10 April 1991.

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 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.

The Commission recalls its decision of 5 October 1990 to declare the application admissible.

In their further observations of 29 November 1990, the Government submitted that the applicant had not lodged a complaint with the Commission until 2 June 1988, while it appears from a note made at the registry of the Supreme Court that the applicant's counsel before that Court had been informed by telephone on 18 December 1986 that the judgment of the Supreme Court would be given on 23 December 1986. The six months' time-limit should therefore be calculated from 23 December 1986. The Government therefore ask the Commission to apply Article 29 (Art. 29) of the Convention and to reject the application on the basis of the six months rule.

The applicant admits that his counsel before the Supreme Court had sent him a letter on 23 December 1986 informing him that his appeal had been rejected. Nevertheless he explains that the address to which the letter was sent was not the right one and that the letter therefore did not reach him. Consequently, it cannot be said that he was aware of the judgment of the Supreme Court before he contacted the Supreme Court in January 1988. Accordingly, he considers that he complied with the six months' rule stipulated in Article 26 (Art. 26).

Article 29 (Art. 29) of the Convention provides:

"After it has accepted a petition submitted under Article 25 (Art. 25), the Commission may nevertheless decide by a majority of two-thirds of its members to reject the petition if, in the course of its examination, it finds that the existence of one of the grounds for non-acceptance provided for in Article 27 (Art. 27) has been established.

In such a case, the decision shall be communicated to the parties."

The Commission 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, it appears from the information provided by the applicant on 6 February 1991 and 10 April 1991 that the lawyer who was representing him in the proceedings before the Supreme Court was aware of the Supreme Court's judgment on 23 December 1986, i.e. on the same day as it was given. In these circumstances, the Commission considers that - irrespective of when the applicant himself became aware of the judgment - the six months' time-limit has to be calculated from 23 December 1986.

The application would therefore fall to be rejected on the ground of inadmissibility provided for in Article 27 para. 3 (Art. 27-3) of the Convention.

Under these circumstances, the Commission is of the opinion that the application should be rejected under Article 29 (Art. 29) of the Convention since one of the grounds for non-acceptance provided for in Article 27 (Art. 27) of the Convention has been established.

For these reasons, the Commission, unanimously and thus by the majority required in Article 29 (Art. 29)

REJECTS THE APPLICATION.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)