AS TO THE ADMISSIBILITY OF

Application No. 30305/96
by Hubertus Johannes AIPASSA
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

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

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 30 November 1995 by Hubertus Johannes AIPASSA against the Netherlands and registered on 27 February 1996 under file No. 30305/96;

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 applicant is a Dutch citizen, born in 1969, and resides in Voorthuizen, the Netherlands. Before the Commission he is represented by Mr. J.B. Boone, a lawyer practising in Wijk bij Duurstede, the Netherlands.

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

On 14 October 1992 the applicant was arrested and subsequently detained on remand on suspicion of having assaulted Ms. B. on 11 October 1992. According to the procès-verbal of the interview conducted by an assistant public prosecutor, which took place immediately after the applicant's arrest, the applicant confessed to having beaten Ms. B. and he expressed his regret. The applicant was released on 15 October 1992.

The applicant was summoned to appear before the Regional Court (Arrondissementsrechtbank) of Arnhem on 9 March 1994. He was charged with the assault on Ms. B. and with three other offences relating to an assault on a different person and a serious traffic accident caused by him. These latter offences had taken place on 30 April 1993 and on 28 June 1993.

On 23 March 1994 the Regional Court convicted the applicant of all the charges and sentenced him to twelve months' imprisonment less the time spent in pre-trial detention, whereas of these twelve months four were suspended pending a probation period of two years. The Regional Court also disqualified the applicant from driving for a certain period.

Both the applicant and the prosecution filed an appeal against the Regional Court's decision with the Court of Appeal (Gerechtshof) of Arnhem. The applicant stated, inter alia, that the prosecution should be declared inadmissible in respect of the offence which had taken place on 11 October 1992, since in the determination of this charge he had not been granted a hearing within a reasonable time. He explicitly invoked Article 6 of the Convention.

Following a hearing on 3 October 1994, during which the Court of Appeal adjourned the examination of the charge of assault which had taken place on 30 April 1993, it quashed the Regional Court's judgment on 17 October 1994, convicted the applicant of the other charges and sentenced him to eighteen months' imprisonment less the time spent in pre-trial detention, whereas of these eighteen months six were suspended pending a probation period of two years. Also a longer period of disqualification from driving was imposed. As regards Article 6 para. 1 of the Convention, the Court of Appeal considered that the period of seventeen months which had elapsed between the applicant's arrest and the hearing before the Regional Court could not be regarded as unreasonable.

The applicant filed an appeal in cassation against this judgment with the Supreme Court (Hoge Raad). He repeated his submissions in respect of Article 6 para. 1 of the Convention. In support of hisappeal in cassation, he referred to the Commission's decisions on the admissibility in No. 20882/92, Dec. 11.5.94, Mangwa v. the Netherlands and No. 23073/93, Dec. 11.1.95, B. v. the Netherlands.

The Procurator General (Procureur-Generaal) advised the Supreme Court to reject the applicant's appeal in cassation. He noted that the Commission's decisions referred to could not be compared with the applicant's case, since they concerned the period of time which had elapsed between the filing of an appeal in cassation and the examination of that appeal by the Supreme Court. Furthermore, the accused in those cases, unlike the applicant, had been kept in detention on remand during the proceedings.

In its judgment of 6 June 1995 the Supreme Court rejected the applicant's appeal in cassation.

COMPLAINT

The applicant complains under Article 6 para. 1 of the Convention that the criminal charges against him were not determined within a reasonable time. In this respect he submits that nearly 17 months elapsed between his arrest and the hearing before the Regional Court, even though the facts of the case were not particularly complex since he had confessed to the offence he was charged with.

THE LAW

The applicant complains that the criminal proceedings against him exceeded a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. This provision, insofar as relevant, reads:

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

According to the constant case-law of the Court and the Commission, the reasonableness of the length of proceedings must be assessed in the light of the circumstances of each case and having regard in particular to the following criteria: the complexity of the case, the conduct of the applicant and that of the competent authorities (cf. Eur. Court H.R., Kemmache v. France judgment of 27 November 1991, Series A no. 218, p. 27, para. 60). Persons held in detention are further entitled to special diligence (cf. Eur. Court H.R., Tomasi v. France judgment of 27 August 1992, Series A no. 241-A, p. 35, para. 84).

In the present case, the proceedings started on 14 October 1992, when the applicant was arrested, and ended on 6 June 1995, when the Supreme Court rejected the applicant's appeal in cassation. The entire proceedings lasted thus slightly less than two years and eight months. It further appears that the applicant was not detained pending the proceedings against him.

Insofar as the applicant complains of the delay between his arrest on 14 October 1992 and the first hearing before the Regional Court on 9 March 1994, the Commission notes that in the proceedings at issue the applicant was not solely charged with the assault on Ms B., but also with other offences relating to facts which took place on 30 April 1993 and 28 June 1993.

In these circumstances, the Commission considers that the period of time which elapsed between 14 October 1992 and 9 March 1994 cannot be characterised as totally inactive. The Commission is, therefore, of the opinion that the delay complained of cannot be considered as having exceeded a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

As regards the total length of proceedings, i.e. slightly less than two years and eight months in the course of which the case has been dealt with at three levels of jurisdiction, the Commission cannot find either that this period was unreasonably long for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber