AS TO THE ADMISSIBILITY OF

Application No. 24382/94
by Gerard Emile BARTO
against the Netherlands

The European Commission of Human Rights sitting in private on 3 March 1995, the following members being present:

MM. C. A. NØRGAARD, President
H. DANELIUS
C.L. ROZAKIS
G. JÖRUNDSSON
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
D. SVÁBY
E. KONSTANTINOV
G. RESS

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 17 November 1993 by Gerard Emile BARTO against the Netherlands and registered on 13 June 1994 under file No. 24382/94;

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 1946, and residing at Delft, the Netherlands. Before the Commission he is represented by Mr. R.J. Baumgardt, a lawyer practising in Spijkenisse, the Netherlands.

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

On 17 January 1990, the applicant was arrested and subsequently detained on remand. He was released on 12 April 1990.

On 10 April 1990, the applicant was summoned to appear before the Regional Court (Arrondissementsrechtbank) of Rotterdam on 25 April 1990

on five charges of theft and the illegal handling and sale of stolen goods.

On 25 April 1990, the Regional Court examined the facts of the applicant's case and adjourned its further examination until 23 May 1990, in order to examine the applicant's case at the same time as the case against the co-accused, Mr. B. The applicant stated that he did not wish an adjournment of his case. On 23 May 1990, the Regional Court resumed its examination.

On 6 June 1990, the Regional Court acquitted the applicant of three charges, convicted him of one charge of illegal handling of stolen goods and one charge of theft committed together with others, and sentenced him to twelve months' imprisonment, of which three months were suspended pending a probation period of two years.

On the same day, the applicant lodged an appeal against the judgment with the Court of Appeal (Gerechtshof) of the Hague. The Court of Appeal received the case-file on 4 September 1990.

The Court of Appeal started its examination on 25 May 1992. The applicant submitted, inter alia, that Article 6 para. 1 of the Convention had been violated given the unreasonably long delay between the judgment of the Regional Court and the hearing on appeal. He argued that on that basis the prosecution should be declared inadmissible. Following its examination and the parties' pleas, the Court of Appeal closed its examination and set a date for the pronouncement of its judgment.

In its interlocutory judgment of 5 June 1992, the Court of Appeal rejected the applicant's complaint under Article 6 para. 1 of the Convention, holding that, although the delay at issue was longer than desirable, it could not be regarded as unreasonable for the purposes of Article 6 para. 1 of the Convention. The Court of Appeal further decided to re-open its examination, as it had appeared to have been incomplete, and to examine three witnesses. On 31 August 1992, the Court of Appeal heard the three witnesses, including a certain Mr. B., who refused to make any statement.

In the appeal proceedings, the Procurator General (Procureur-Generaal) stated that he found four charges against the applicant proven and requested the court to sentence him to eighteen months' imprisonment.

On 14 September 1992, the Court of Appeal quashed the Regional Court's judgment, acquitted the applicant of three charges, convicted him of two charges of theft committed together with others and sentenced him to twelve months' imprisonment, of which three months were suspended pending a probation period of two years.

As to the sentence imposed, the Court of Appeal stated as follows:

<Dutch>

> "Verdachte heeft zich met anderen schuldig gemaakt aan diefstal van twee opleggers met containers waarvan de inhoud alleen al een waarde van enkele tonnen vertegenwoordigde.
>
> Het hof is van oordeel dat de ernst van deze feiten op zichzelf beschouwd het opleggen van een zwaardere straf dan door de eerste rechter is bepaald, zou rechtvaardigen. Rekening houdend met het tijdsverloop tussen het instellen van het hoger beroep door de verdachte en de behandeling in hoger beroep, zal het hof - (...) van oordeel (...) dat een redelijke termijn als bedoeld in artikel 6, eerste lid, van het Europees Verdrag tot bescherming van de rechten van de

mens en de fundamentele vrijheden niet is geschonden - echter volstaan met het opleggen van een straf die gelijk is aan die van de eerste rechter."

<translation>
"The accused is, together with others, guilty of the theft of two trailers with containers, the contents of which alone already represented a value of several hundred thousand guilders.

The court considers that the gravity of these offences would, in itself, justify the imposition of a more severe penalty than was determined by the court of first instance. Taking into account the lapse of time between the lodging of the appeal by the accused and the examination in appeal, the court will, however - ... finding ... that a reasonable time within the meaning of Article 6 para. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms has not been violated - limit itself to the imposition of a penalty equal to the one imposed by the court of first instance."

The applicant's subsequent appeal in cassation to the Supreme Court (Hoge Raad), in which he complained, inter alia, that the Court of Appeal had wrongly rejected his complaint under Article 6 para. 1 of the Convention in respect of the delay between the judgment by the Regional Court and the hearing before the Court of Appeal, was rejected on 29 June 1993.

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. He submits in particular that the delay between the judgment of the Regional Court and the hearing on appeal before the Court of Appeal cannot be regarded as reasonable.

THE LAW

The applicant complains that the criminal proceedings against him were not determined within a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads as follows:

"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."

The Commission observes that the proceedings at issue began on 17 January 1990, when the applicant was arrested, and ended with the Supreme Court's judgment of 29 June 1993. The proceedings thus lasted three years and five and a half months.

The Commission recalls that the reasonableness of the length of criminal proceedings is to be determined with reference to the criteria laid down in the Convention organs' case-law and in the light of the circumstances of the case, which in this instance call for an overall assessment (Eur. Court H.R., Vendittelli judgment of 18 July 1994, Series A no. 293-A, para. 22).

The Commission notes that the facts in the present case were not complex and that there is no indication that the applicant caused any delays. As regards the conduct of the competent authorities, the Commission observes that the present case was examined by three different courts and that, apart from the period between

17 January 1990 and 12 April 1990, the applicant was not detained pending the proceedings against him. Furthermore, the Court of Appeal took the delay in the proceedings into account when imposing a penalty which was less severe than it would have been without such delay.

In these circumstances the Commission cannot find that the proceedings, considered as a whole, exceeded the reasonable time envisaged by 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, by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H. KRÜGER) — (C. A. NØRGAARD)