AS TO THE ADMISSIBILITY OF

Application No. 14502/89
by Henricus Johannes DANKERS
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 2 September 1992, 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
MM. F. MARTINEZ
L. LOUCAIDES
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 5 December 1988 by Henricus Johannes DANKERS against the Netherlands and registered on 5 January 1989 under file No. 14502/89;

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 1933 and residing in Goirle, the Netherlands. He has been a director of a construction company. Before the Commission the applicant is represented by E.Th. Hummels, a lawyer practising in Utrecht.

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

On 25 October 1983, the Eindhoven municipal police drew up an official report on the applicant concerning a charge of libel.

On 18 November 1983 the applicant was summoned to appear before the Magistrate (politierechter) on 25 November 1983 on the charge of having libelled three State officials. At this hearing the applicant requested that his case be adjourned as he wished to call a number of witnesses to be examined by the investigating judge (rechter-commissaris). He also requested that his case be referred to the full bench division of the Regional Court (Arrondissementsrechtbank). The applicant's requests were granted and his case was adjourned for an unspecified period of time.

On 15 August 1984 the applicant was summoned to appear on 20 November 1984 before the full bench of the Regional Court of 's-Hertogenbosch. On 20 November 1984, at the applicant's request, the

proceedings were adjourned in order to hear two witnesses who had not appeared. Following a hearing on 12 April 1985, the Regional Court, on 26 April 1985, convicted and sentenced the applicant for libel.

On 8 May 1985 the applicant filed an appeal against this judgment with the Court of Appeal (Gerechtshof) of 's-Hertogenbosch.

Also by judgment of 26 April 1985 the Regional Court of 's-Hertogenbosch acquitted the applicant in respect of an alleged violation of Article 31 of the Copyright Act (Auteurswet).

On 10 May 1985 the public prosecutor filed an appeal against the acquittal with the Court of Appeal of 's-Hertogenbosch.

On 23 October 1985 the Regional Court of Breda convicted and sentenced the applicant for an offence against the Road Traffic Act (Wegenverkeerswet). On 4 November 1985 the applicant filed an appeal against this judgment.

The Attorney General (procureur-generaal) at the 's-Hertogenbosch Court of Appeal joined the three appeals in order to facilitate a simultaneous hearing of these criminal cases pending against the applicant before the Court of Appeal. On 24 October 1986 the Attorney General submitted the applicant's file to the President of the Court of Appeal, requesting him to determine a date for the hearings.

Due to the Court of Appeal's backlog in criminal cases, it set certain priorities. Cases, in which the accused was in pre-trial detention, were dealt with first and subsequently the remaining cases in order of the registration date.

Following a hearing on 26 January 1987, the Court of Appeal on 9 February 1987 quashed the Regional Court's judgment of 26 April 1985 for procedural reasons and following a new examination of the facts and evidence convicted and sentenced the applicant for libel. The Court of Appeal rejected the applicant's complaint under Article 6 of the Convention that his case had not been heard within a reasonable time. The Court considered that in this case it could not be said that solely on account of the passing of time the appeal had not been heard within a reasonable time and that there were no special circumstances which would justify a different conclusion.

The applicant's subsequent appeal to the Supreme Court (Hoge Raad) was rejected on 21 June 1988. The Supreme Court held, inter alia, that the delay between the judgment of the Regional Court and the judgment of the Court of Appeal was not unreasonably long and subscribed to the Court of Appeal's reasoning on this point.

COMPLAINT

The applicant complains that the delay between his appeal against the judgment of the Regional Court of 's-Hertogenbosch of 26 April 1985 and the judgment of the Court of Appeal of 9 February 1987, i.e. one year and nine months, violates the requirement of "reasonable time" set forth in Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 December 1988 and registered on 5 January 1989.

On 20 October 1989 the respondent Government was invited, pursuant to Rule 40 para. 2 (a) (former version) of the Commission's Rules of Procedure, to submit factual information on matters connected with the application.

The Government submitted their information on 27 November 1989 and the applicant's comments on this information were submitted on 4 January 1990.

On 17 October 1991 the Commission, acting under Rule 48 para. 2 (b) of its Rules of Procedure, decided to invite the Government to submit written observations on the admissibility and merits of the application.

The Government submitted their observations on 6 January 1992 and the applicant's observations in reply were submitted on 27 February 1992.

On 30 March 1992 the Commission referred the application to the Second Chamber.

THE LAW

The applicant complains that the delay between his appeal against the judgment of 26 April 1985 by the Regional Court of 's-Hertogenbosch and the judgment of 9 February 1987 by the Court of Appeal of 's-Hertogenbosch violates the requirement of "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, provides as follows:

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

The Government submit that the Attorney General joined the three criminal cases pending against the applicant before the Court of Appeal, in order that these cases might all be dealt with at the same time. The Government further state there was an additional problem, in that, despite various measures taken a few years earlier at organisational and staffing levels, the Court of Appeal had an excessively full schedule as a result of an accumulated backlog in criminal proceedings. This backlog resulted in priorities being set, cases in which the accused was in pre-trial detention being dealt with first, and then the remaining cases in order of the date of registration.

The Government agree with the Supreme Court's finding that the criminal case against the applicant was heard within a reasonable time.

The applicant is of the opinion that it was a relatively straightforward case, which was fully prepared for a hearing on appeal.

The Commission recalls that the case-law of the Convention organs in respect of the length of proceedings is based on the fundamental principle that the reasonableness of the length of proceedings is to be determined by reference to the particular circumstances of the case (cf. Eur. Court H.R., Obermeier judgment of 28 June 1990, Series A no. 179, para. 72).

As regards the Court of Appeal's schedule, the Commission recalls that under Article 6 para. 1 (Art. 6-1) of the Convention everyone has the right to a final decision within a reasonable time in the determination of a criminal charge against him. It is for the Contracting Parties to organise their legal systems in such a way that their courts can meet this requirement (cf. Eur. Court H.R., Vocaturo judgment of 24 May 1991, Series A no. 206-C, para. 17).

In the present case, the Commission notes that the applicant's appeal at issue was joined with two other appeals concerning criminal

charges against the applicant, which were also pending before the same Court of Appeal. The Commission further notes that the libel charges against the applicant were completely re-examined by the Court of Appeal.

The Commission considers that those circumstances may have had a certain influence on the duration of the criminal proceedings against the applicant and that a delay such as the one at issue is, in general,

undesirable. However, having regard to all the circumstances of the case the period complained of is not so long as to warrant the conclusion that the total duration of the proceedings was excessive (cf. mutatis mutandis Eur. Court H.R., Vernillo judgment of 20 February 1991, Series A no. 198, para. 39).

The Commission is, therefore, of the opinion that the examination of the case does not disclose that the criminal charges against the applicant were not determined within a reasonable time within the meaning 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)