AS TO THE ADMISSIBILITY OF

Application No. 18616/91
by G.D.
against the Netherlands

The European Commission of Human Rights sitting in private on 3 May 1993, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
M.A. NOWICKI

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 27 May 1991 by G.D. against the Netherlands and registered on 30 July 1991 under file No. 18616/91;

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 national, born in 1944, who, at the time of lodging the application, was detained in Amsterdam. Before the Commission the applicant is represented by Mr. J. de Hullu, a lawyer practising in Amsterdam.

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

While being watched by an informed police observation team, the applicant arrived on 14 October 1988 in the Netherlands by aeroplane from Thailand. He carried a suitcase which he later handed over to two Chinese men in an Amsterdam hotel. One of the Chinese men went with the suitcase to another address in Amsterdam, where it was unpacked. He then left with the apparently lighter luggage. The house was

subsequently searched by the police and a large quantity of heroin was found. The applicant was arrested on the same day.

On 9 February 1989 the Regional Court (Arrondissementsrechtbank) of Amsterdam convicted the applicant of the intentional importation of about 12 kg. of heroin and sentenced him to four years' imprisonment.

The applicant filed an appeal against this judgment with the Court of Appeal (Gerechtshof) of Amsterdam. At the hearing on 22 August 1989 the applicant's request to have heard as a witness, either before the Court or through a commission rogatory in Thailand, the Thai who had given the suitcase to him in Thailand was rejected by the Court of Appeal. The Court considered it improbable that a hearing of this man would reveal new facts or circumstances which would be important for the decision it had to take. It also rejected the request that it visit the house where the heroin was found. The Court considered that it was sufficiently informed of the situation there by the police report on the house search.

The Court of Appeal examined, inter alia, the police report of 15 October 1986 on the events of 14 October 1988, and a report of 17 October 1988 on the applicant's statement before the investigating judge (rechter-commissaris). It also heard two police officers as witnesses and the applicant. In its judgment of 5 September 1989, the Court of Appeal quashed the judgment of 9 February 1989, following a different approach to the evidence. It convicted the applicant of the intentional importation of about 12 kg. of heroin and sentenced him to five years' imprisonment.

The applicant's subsequent appeal in cassation to the Supreme Court (Hoge Raad) was rejected on 4 December 1990.

COMPLAINTS

The applicant complains that the Court of Appeal wrongly rejected his request to hear a particular witness, which seriously hindered him in his defence. The applicant further complains that the Court of Appeal's assessment of the evidence was unsatisfactory. He submits that it had not been shown that the heroin which was found durin search had been transported in his suitcase and that it had not been shown that he had purposely transported heroin. The applicant alleges violations of Article 6 paras. 1 and 3(d) of the Convention.

THE LAW

The applicant complains that the Court of Appeal wrongly rejected his request to hear a particular witness, which seriously hindered him in his defence. He further complains that the Court of Appeal's assessment of the evidence was unsatisfactory. The applicant alleges a violation of Article 6 paras. 1 and 3(d) (Art. 6-1, 6-3-d) of the Convention, the relevant parts of which read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal established by law...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;..."

With regard to the judicial decision of which the applicant complains, the Commission recalls that, in accordance with Article 19

(Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45). Accordingly, it cannot examine the applicant's general complaint that the Court of Appeal's assessment of the evidence in his case was unsatisfactory.

However, it may examine the applicant's complaint about the refusal to hear a witness from Thailand, because this is a matter falling within the scope of the guarantees laid down in para. 3 of Article 6 (Art. 6) of the Convention, which guarantees are specific aspects of the right to a fair trial ensured by para. 1 of this provision. The Commission will examine the complaint under the two provisions taken together (cf. Eur. Court. H.R., Isgrò judgment of 19 February 1991, Series A No. 194-A, p. 12, para. 31).

The Commission recalls that Article 6 (Art. 6) does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a witness (cf. No. 10563/83, Dec. 5.7.85, D.R. 44 p. 113, and Eur. Court H.R., Bricmont judgment of 7 July 1989, Series A No. 158, p. 31, para. 89). The Commission further recalls that, as a rule, it is for the national courts to assess the evidence
before them (cf. Eur. Court H.R., Asch judgment of 26 April 1991, Series A No. 203, p. 10, para. 26). The Commission's task is to ascertain whether the proceedings considered as a whole, including the way the evidence was taken, were fair.

As regards the facts of the present case, the Commission notes that the Court of Appeal based the applicant's conviction on, inter alia, official reports and the oral testimony of two police officers. The applicant was given the opportunity, of which he availed himself, to challenge the statements by these witnesses and the other evidence before the Court of Appeal. The Commission finds no evidence in the case to suggest that the applicant's hearing in this respect was unfair.

Moreover, the Court of Appeal had to take into account the considerable practical difficulties in arranging a hearing in Thailand of the Thai citizen concerned. It must have appeared doubtful whether such a hearing could at all be arranged and the value of a statement by that person must also have appeared highly questionable. In these circumstances, the court's refusal to grant the applicant's request for a hearing of that person cannot be considered to constitute an infringement of the applicant's rights under Article 6 (Art. 6) of the Convention.

Finally, the Commission finds no indication that, viewed as a whole, the criminal proceedings against the applicant were otherwise unfair.

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.

Secretary to the Commission President of the Commission

(H.C. Krüger) (C.A. Nørgaard)