AS TO THE ADMISSIBILITY OF

Application No. 13964/88
by K.
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 17 April 1991, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. SPERDUTI
G. JÖRUNDSSON
H.G. SCHERMERS
Mrs. G. H. THUNE
Mr. F. MARTINEZ RUIZ
Mrs. J. LIDDY
MM. J.-C. GEUS
M.P. PELLONPÄÄ

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 May 1988 by K. against the Netherlands and registered on 17 June 1988 under file No. 13964/88;

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 facts as submitted by the parties may be summarised as follows.

The applicant is a Dutch citizen, born in 1949 and living in W., the Netherlands. He is a company director. Before the Commission, the applicant is represented by Mr. P. Baauw, a lawyer practising in Utrecht.

In June 1981 the police authorities started an investigation concerning a large scale fraud relating to subsidies obtained from the European Communities for meat imported from third countries. This investigation involved some 15 suspects and several of the applicant's companies. It lasted until February 1982.

On 22 June 1981 the applicant was taken into custody and for the first time interrogated. The next day he was released.

From 23 February 1982 until 19 March 1984 preliminary judicial investigations (gerechtelijk vooronderzoek) were held following the police investigations. The Investigating Judge heard the applicant for the first time on 24 May 1982. He heard witnesses on 10, 11 and 13 May and 25 April and on 6 and 19 September 1983. Two suspects were questioned on 12 and 20 December 1983, and on 14 December 1983 and 10 January 1984 respectively.

From March 1982 to October 1983 separate proceedings took place to obtain testimonies from the companies' accountants who refused to

give evidence. One of the accountants, when asked for information by the National Criminal Investigation Department in early 1982, had refused to provide it and invoked his obligation of confidentiality. Shortly afterwards two accountants were arrested as suspects and documents were seized at their office on 17 March 1982. On 18 May 1982, in proceedings instituted against the seizure of documents of the accountants, the Regional Court (Arrondissementsrechtbank) of The Hague held that the accountants were not exempted from giving evidence. The plea of nullity introduced against this judicial order (rechterlijke beschikking) was dismissed by the Supreme Court on 25 October 1983.

The Public Prosecutor (Officier van Justitie) did not request the applicant's appearance in court until he had the opportunity to question the accountants. On 3 April 1984 the applicant was summoned to appear before the Regional Court (Arrondissementsrechtbank) of The Hague on 5 June 1984. However, on 4 June 1984 the summons were withdrawn. At the applicant's request, the date for the next hearing was not fixed before October, as he intended to travel abroad in the meantime. On 13 September 1984 the applicant received a new summons to appear in court.

On 2 October 1984 the hearing before the Regional Court took place. On 16 October 1984 the Regional Court found the applicant guilty on several charges of fraud and sentenced him to eighteen months' imprisonment. Both the applicant and the Public Prosecutor appealed to the Court of Appeal (Gerechtshof) of The Hague. This Court did not receive the case file until 4 February 1985.

On 25 September 1985 the applicant was summoned to appear before the Court of Appeal on 19 November 1985. On 3 December 1985 the Court of Appeal upheld the decision of the Regional Court on most charges of fraud but sentenced him to two years' imprisonment.

The applicant appealed to the Supreme Court (Hoge Raad), which received the case-file on 21 May 1986. He also complained about the length of the proceedings. He submitted that the period of 3 years and 4 months between his first interrogation on 22 June 1981 and the decision of the District Court of 16 October 1984 was too long.

The proceedings before the Supreme Court were adjourned once upon request of the applicant's lawyer for 11/2 months (16 December 1986 - 3 February 1987) in order to consult the case-file and twice upon request of the Attorney General for a total of 7 months (10 March - 13 October 1987) because of the complexity of the case.

On 24 November 1987 the Supreme Court confirmed the conviction and sentence by the Court of Appeal. It further found that the length of the proceedings was not unreasonable because the investigations were extremely complex, extensive and voluminous. The case was also very difficult to investigate and the Public Prosecutor's decision to wait for the testimonies of the accountants before requesting the applicant's appearance in court could not be regarded as unreasonable.

COMPLAINTS

The applicant complains that the proceedings in his case violated Article 6 para. 1 of the Convention because they were not concluded within a reasonable time, in particular as regards the proceedings up to the judgment of the Regional Court.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 May 1988 and registered on 17 June 1988.

On 2 October 1989 the Commission decided to communicate the application to the respondent Government and invite them to submit written observations on the admissibility and merits of the complaint under Article 6 para. 1 of the Convention concerning the length of proceedings.

The Government's observations were received by letter dated 6 December 1989 and the applicant's observations were dated 1 March 1990.

On 8 December 1990 the Commission decided to refer the application to the Second Chamber.

THE LAW

The applicant complains about the length of proceedings and alleges a breach of Article 6 para. 1 (Art. 6-1) first sentence of the Convention, which states:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time ..."

The applicant submits that the proceedings (22 June 1981 - 24 November 1987) were unreasonably long, even if account is taken of the separate proceedings concerning the accountants (17 March 1982 - 25 October 1983). Neither the investigations nor the proceedings before the Regional Court should have lasted so long. The Public Prosecutor was responsible for the adjournment in June 1984 since he withdrew on 4 June without prior consultation the summons for the hearing which was planned for 5 June.

The Government submit that, due to the complexity of the case, the number of suspects and the applicant's behaviour, the proceedings were long, but they took place within a "reasonable time". The applicant was responsible for a delay of 6 months since between June and October 1984 he was frequently abroad and his counsel requested the Supreme Court to grant a postponement of the proceedings.

The Commission recalls that, in criminal matters, in order to assess whether the "reasonable time" requirement in Article 6 para. 1 (Art. 6-1) has been complied with, the length of proceedings is to be calculated from the time when the applicant is substantially affected by the inquiries against him until the time when the criminal charge against him is finally decided (Eur. Court H.R., Foti and others judgment of 10 December 1982, Series A no. 56, p. 18, para. 52 in fine). In the present case, the Commission considers that the period to be taken into account began on 22 June 1981 when the applicant was taken into custody for one day and ended on 24 November 1987 when the Supreme Court delivered judgment. Consequently, the proceedings lasted six years and five months.

The reasonableness of the length of proceedings has to be assessed according to the circumstances of the case and having regard to the complexity of the case, the applicant's attitude and the conduct of the authorities (Eur. Court H.R., Baggetta judgment of 25 June 1987, Series A no. 119, p. 32, paras. 21-22).

As regards the proceedings up to the judgment of the Regional Court, which lasted 3 years and 4 months, the Commission notes that the case was exceptionally complex having regard both to the nature of the offence (the applicant was suspected of having fraudulently obtained important subsidies from the European Communities for meat imported from third countries) and to the structure of the applicant's companies, the number of suspects and the availability and the volume of the evidence to be considered. The applicant delayed the proceedings by his request for adjournment of 4 months in 1984. In

addition, his accountants' unwillingness to cooperate necessitated separate proceedings against them.

The applicant also complains that the appeal proceedings were unreasonably long. The Commission notes in particular that, after the judgment of the Court of Appeal of 3 December 1985, it was not until 21 May 1986 that the case file arrived at the Supreme Court although, under Section 433 of the Dutch Code of Criminal Procedure, the documents concerning the case should have been sent to the Supreme Court within a maximum of 54 days from the day of the decision of the Court of Appeal (cf. No. 12728/87, A. v. the Netherlands, Dec. 10.4.91).

The Commission considers, however, that its assessment of the reasonableness of the length of the proceedings under Article 6 para. 1 (Art. 6-1) of the Convention cannot be made dependent on time-limits stipulated in domestic law (cf. M. v. Austria, Comm. Report 10.3.88, p. 15 para. 71). It further notes that the proceedings before the Supreme Court were adjourned at the request of the defence for 11/2 months in 1986/87.

In conclusion, the Commission finds that some delays, for which the authorities were responsible, could probably have been avoided, but that they are not sufficiently serious to warrant the conclusion that the total duration of the proceedings was excessive, given the complexity of the case and the conduct of the applicant; the permissible limit was therefore not overstepped (cf. Eur. Court H.R., Pretto and others judgment of 8 December 1983, Series A no. 71, page 16, para. 37 in fine).

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

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	President of the Second Chamber
(K. ROGGE)	(S. TRECHSEL)