AS TO THE ADMISSIBILITY OF

Application No. 10808/84
by S.
against the Netherlands

The European Commission of Human Rights sitting in private on 7 May 188, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

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 12 August 1983 by S. against the Netherlands and registered on 8 February 1984 under file No. 10808/84;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

- the decision of 11 March 1985 to communicate the application for observations on its admissibility and merits;

- the Government's observations of 29 May 1985 and the applicant's reply of 21 June 1985;

- the decision of 18 October 1985 to adjourn the examination of the case;

- the decision of 14 October 1987 to request further observations;

- the Government's supplementary observations of 26 November 1987 and the applicant's reply of 18 December 1987;

Having deliberated;

Decides as follows:

THE FACTS

The facts which appear not to be in dispute between the parties may be summarised as follows:

The applicant is a Dutch citizen, born in 1924 and at present residing at V., the Netherlands.

In the proceedings before the Commission he is represented by Mr. J. Slangen, a lawyer practising in V.

Until 15 January 1979 when he had a serious car accident and had to spend several months in a hospital, the applicant was working as a legal adviser. On 8 February 1979 an administrator was appointed with a view to reaching a compromise with the applicant's creditors. As apparently no such compromise could be reached, the applicant was adjudged bankrupt on 22 February 1979.

On 19 and 26 March 1979 the V. Municipal Police received two written requests for an investigation into the applicant's activities on the ground that money belonging to the informers had allegedly been embezzled by him. Consequently, investigations against the applicant were started and it was discovered that many other people who had entrusted considerable sums of money to the applicant in the course of the last four years might also be victims of embezzlement. These injured parties were heard in the course of the investigation.

On 11 February 1980 the applicant was arrested and questioned by the police in V. on suspicion of embezzlement of Dfl. 550,000.- He was released after several days.

On 15 February 1980 the R. Public Prosecutor applied for a preliminary judicial examination and on 21 August 1980 the R. Regional Court (Arrondissementsrechtbank) summoned the applicant to stand trial on the following day. The applicant raised objections against the summons arguing that the investigations had lasted too long and invoking his bad health. The Regional Court rejected these objections on 28 August 1980 and decided that the applicant be tried (verwijzing naar de terechzitting).

The applicant, thereupon, appealed against this decision to the Court of Appeal (Gerechtshof) of H. but his appeal, was, after the hearing, rejected on 1 October 1980.

The applicant then appealed to the Supreme Court (Hoge Raad).

By the end of 1980 the applicant was treated for three months in a psychiatric hospital as a result of his wife's death on 11 April 1980, his car accident and other factors, mainly the criminal proceedings.

On 10 February 1981 it was discovered that the prosecution file had been lost. A duplicate prosecution file had to be drawn up to replace the missing file.

On 15 June 1982, the Supreme Court quashed the decision of the Court of Appeal of H. on the formal ground that the procès-verbal of the hearing of 1 October 1980 was not included in the case file. The Supreme Court, therefore, referred the applicant's original appeal to the Court of Appeal of A. to be again decided. Thereupon, on 17 December 1982, the Court of Appeal of A. rejected the applicant's appeal. The court considered, inter alia, that, although the disappearance of the applicant's file was to the applicant's detriment insofar as irreplaceable documents were at issue, the defence could base itself on the documents in the "reconstructed" file.

Furthermore, the court found the applicant's allegation that

he was summoned only the night before the Regional Court's hearing on 21 August 1980 to be unfounded, since the applicant's initial objections to the summons had been introduced three weeks before the hearing and because the applicant's lawyer, apparently, had not, at the time, objected to the time limit within which the applicant was summoned.

With regard to the applicant's complaints under Art. 6 para. 1 of the Convention that the requirement of a "reasonable time" was not met, the court held, that although it could be admitted to the applicant that the period of time which had elapsed, particularly between the decision of the Court of Appeal of 's Hertogenbosch of 1 October 1980 and the decision of the Supreme Court of 15 June 1982, had been longer than desirable, this did not, in connection with the particular circumstances of the case, amount to a violation of the above provision. In addition, the court noted that the delay was a direct result of the objections which the applicant filed against his summons, and which demanded a closer examination of the applicant's personal circumstances, with the possible suspension of proceedings pending improvement of the applicant's health, rather than a decision to terminate the criminal proceedings against the applicant.

The applicant, thereupon, again appealed to the Supreme Court, but his appeal was rejected on 21 June 1983. The Court held, with regard to the applicant's complaints under Art. 6 para. 1 of the Convention, that although the delay resulting from the disappearance of the file could not be attributed to the applicant, the Court of Appeal decided without violating the said provision of the Convention that a delay of a year and eight and a half months did not imply that the applicant's case would not be decided within a reasonable time.

Meanwhile, pending the applicant's last appeal to the Supreme Court, he was summoned on 28 March 1983 to appear before the Regional Court of Roermond on 19 April 1983. The summons was however withdrawn on 8 April 1983.

The applicant, subsequently, initiated summary proceedings (Kort geding) before the President of the Regional Court of the Hague to obtain a decision that he would not be summoned again until the Commission would have decided on his complaints. However, on 4 October 1983, the President rejected the applicant's request.

On 10 November 1983 the applicant was again summoned and on 24 November he was convicted of embezzlement committed between 1 January 1976 and 11 February 1980. He was sentenced to one year imprisonment. The applicant did not attend his trial.

His appeal against conviction and sentence, lodged on 13 Februry 1983, was rejected by the 's-Hertogenbosch Court of Appeal on 13 May 1985 after a hearing on 29 April 1985 which the applicant did not attend.

On 24 May 1985 the applicant lodged an appeal in cassation. The appellate court's written judgment became available in September 1986.

The appellate court stated, inter alia, that the period which elapsed since criminal proceedings were instituted against the applicant (11.2.1980) was considerably longer than desirable, but this did not lead to the conclusion that the case had not been dealt with within a reasonable time within the meaning of, inter alia, Article 6 of the Convention. As regards the period from February 1980 to June 1983, the appellate court referred to the reasons given by the Supreme Court in its decision of 21 June 1983. As regards the subsequent period, the appellate court considered that its length was mainly due to the fact that the applicant lodged an appeal and requested an adjournment of the hearing of his appeal on account of his bad state of health. As regards the sentence, the appellate court stated that

the length of the proceedings was partly not attributable to the applicant and had been considered as a mitigating factor.

On 31 March 1987 the Supreme Court dismissed the appeal in cassation.

COMPLAINTS

The applicant complains about the length of the criminal proceedings against him and argues that as a result he did not have a fair trial within the meaning of Article 6 para. 1 of the Convention. He alleges that the loss of the original file on his case rendered an adequate defence impossible and, consequently, infringed upon the principle of "equality of arms". He further alleges defects in the decisions of the Regional Court of Roermond of 28 August 1980 and the Court of Appeal of 's-Hertogenbosch of 1 October 1980.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 12 August 1983 and registered on 8 February 1984. On 11 March 1985 the Commission decided to communicate the case to the respondent Government for observations on its admissibility and merits.

On 12 July 1985 the applicant was granted legal aid.

The Government's observations were submitted on 29 May 1985, the applicant's observations in reply on 21 July 1985.

On 18 October 1985 the Commission adjourned the examination of the case pending the outcome of the domestic appeal proceedings.

On 14 October 1987 the Commission decided to reject a request made by the applicant on 14 September 1987 to take measures in accordance with Rule 36 of the Commission's Rules of Procedure with a view to stopping the execution of sentence. The Commission decided to invite the parties to submit further observations. The Government submitted further observations on 26 November 1987 and the applicant replied on 18 December 1987.

SUMMARY OF THE PARTIES' OBSERVATIONS

1. The Government

It is first submitted that before the applicant's arrest on 11 February 1980 no measures were taken which might have "substantially" affected his situation. This was also held by the 's-Hertogenbosch Court of Appeal.

As regards the pretrial investigations it is pointed out that a large number of injured parties had to be heard and the applicant's activities during the preceding four years had to be examined. Another reason for the length of the investigation proceedings was that, owing to the applicant's illness, it took the administrator in the applicant's bankruptcy a certain time to supply a number of relevant details such as the number and identity of all injured parties.

As regards the length of the proceedings judged as a whole, it is admitted that the proceedings were unusually and undesirably protracted and that this was partly due to the loss of the case file, which was consequently not available for approximately twenty months. It was, however, mainly the applicant himself who substantially prolonged the proceedings objecting to or appealing against every decision which was not in his favour. While he was entitled to do so the State could not be held responsible for the delays resulting therefrom. Thus, about sixteen months had to be imputed to the

applicant's objections against the summons for his trial. Also the period between his conviction in absentia on 24 November 1983 and the hearing of his appeal on 29 April 1985 was entirely attributable to the applicant whose defence counsel had requested a postponement of the appeal hearing on account of the applicant's bad state of health. Taking into account the delays caused by the applicant, it had to be concluded that the case was disposed of up to the higher judicial level within a reasonable time.

2. The Applicant

The applicant denies that the investigations covered a period of four years. He submits that his difficulties started in 1977 when he was himself the victim of blackmail. After his car accident in January 1979 his family furnished to the administrator a complete list of the amounts of moneys embezzled and the names and addresses of the clients concerned. The applicant himself allegedly confessed his mistakes to the administrator. Consequently, all relevant facts were known already by the end of February 1979. At that time the administrator told him that criminal investigations against him had started. However, as all facts were known in February 1979 these investigations lasted for too long and therefore he objected to the summons which he received one and a half years later.

The proceedings relating to his objection against the summons were likewise unduly delayed, mainly on account of the disappearance of the case file. In these circumstances, taking into account the unreasonable length of the proceedings and the loss of important documents which could not be replaced he should not have been tried as an adequate defence and a fair trial was no longer possible. Therefore, and not only because of his bad state of health, he did not attend his trial. Also, after his conviction he requested the adjournment of the appeal proceedings not only because of his bad health but because he had submitted his case to the Commission considering that it would violate his human rights if the criminal proceedings were continued.

The appeal proceedings of more than three years were likewise excessively long. There was no explanation why the appellate court's decision of 13 May 1985 was not available in writing before September 1986.

Even taking into account the time which would normally have been needed to deal with all the remedies of which he availed himself, the applicant considers that the charges levied against him could and should have been determined by final judgment before the end of 1982.

THE LAW

The applicant complains that the time taken to examine the charges exceeded the reasonable time referred to in Article 6 para. 1 (Art. 6-1) of the Convention.

That article provides that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

In the present case it appears from the allegations of the parties that the date of the commencement of the proceedings instituted against the applicant is at the latest the date on which he was arrested, namely 11 February 1980. The proceedings were terminated on 31 March 1987 when the applicant's appeal to the Supreme Court against conviction and sentence was dismissed and the trial court's judgment became final.

On the basis of those dates the proceedings therefore lasted a full seven years.

The Government submitted that the regrettably long duration of the proceedings was mainly due to the applicant who availed himself of all possible remedies in order to avoid having to stand trial. Also after his conviction, in first instance, he asked to adjourn the appeal proceedings on account of his bad health.

The applicant argued that despite the remedies lodged by him, the proceedings were unreasonably delayed by the authorities who could and should have brought him to trial much earlier.

The applicant also considered that the loss of the case file caused an important delay and that the appeal proceedings were, inter alia, delayed by the fact that the appellate court's judgment of 13 May 1985 did not become available in writing before September 1986.

In the light of the foregoing, the Commission considers that the application raises complex issues of law and facts under the Convention, the determination of which should depend on an examination of the merits of the application.

It follows that these complaints cannot be declared manifestly ill-founded and are therefore admissible, no other ground for inadmissibility having been established.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE without prejudging the merits.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)