AS TO THE ADMISSIBILITY OF

Application No. 10060/82
by François Albert Jules TABOIS
against the Netherlands

The European Commission of Human Rights sitting in private on 3 September 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ
B. MARXER

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 14 August 1982 by François Albert Jules TABOIS against the Netherlands and registered on 19 August 1982 under file No. 10060/82;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to:

- the Commission's decision of 6 March 1984 to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits;

- the observations submitted by the respondent Government on 3 July 1984 and the observations in reply submitted by the applicant on 10 September 1984;

- the Commission's decision of 15 March 1985 to adjourn its examination of the application pending the outcome of the domestic proceedings;

- the Commission's decision of 11 October 1990 to invite the respondent Government to submit further observations concerning the length of the whole criminal proceedings;

- the observations submitted by the respondent Government on 2 May 1991 and transmitted to the applicant on 16 May for reply before 28 June 1991;

- the reminder sent to the applicant on 19 July 1991;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Dutch citizen, was born on 4 February 1948 and is presently residing in Schoorl, the Netherlands. In the proceedings before the Commission he is represented by Mr A. van Driel, a lawyer practising in Alkmaar.

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

Until 1 May 1979 the applicant was a regional inspector for an insurance company. In this function he committed certain fraudulous acts, forging documents necessary to obtain mortgage-loans from the applicant's company.

On 10 April 1979 the applicant was arrested; he was detained on remand for a period of four days. Apparently, he immediately confessed and offered to cooperate in the investigations to be carried out by the police. The investigation involved 26 other suspects, some of whom had themselves also been victims of the applicant's practices. It appears that these investigations were concluded on 22 January 1980.

A group of the numerous victims of the applicant's practices, headed by a local lawyer, tried to reach a settlement with their mortgagers, the former applicant's company. The public prosecutor considered the outcome of these efforts as relevant for the prosecution.

In December 1980 the applicant offered to render "social services" in order to enable his case to be closed, if only conditionally. The public prosecutor considered it advisable to wait for a report on this possibility, which then was in an experimental stage and became operative only in February 1981. He rejected this alternative in May 1981. The Government contend that the public prosecutor acted on the basis of a background report on the applicant.

The applicant was summoned to appear in court on 11 July 1981. The applicant's lawyer had, apparently, already received a copy of the summons on 19 June 1981.

The applicant filed an objection against this summons on 1 July 1981 with the Regional Court (Rechtbank) of Alkmaar, claiming that more than a reasonable time had passed since his arrest in April 1979 and invoking Article 6 para. 1 of the Convention.

On 16 July 1981 the Court rejected the applicant's objection, holding, inter alia, that the period which had elapsed before the applicant's case was brought before the Court, although longer than generally desirable, did not exceed the reasonable time required by Article 6 of the Convention.

The applicant appealed from the decision of 16 July 1987 to the Court of Appeal (Gerechtshof) of Amsterdam but his appeal was rejected on 30 October 1981. The Court of Appeal considered, inter alia, that the "reasonable time" as required by Article 6 para. 1 of the Convention had not been exceeded in view of the fact that the applicant's case was highly complex and of a serious nature. In addition, the damage done to third parties was taken into consideration by the Court.

The applicant appealed from this decision to the Supreme Court

(Hoge Raad). In his opinion to the Supreme Court the Advocate General submitted that the decision of the Court of Appeal ought to be quashed since it did not deal with the particular circumstances which had indeed made the delay unreasonably long. But the Supreme Court did not follow the opinion of the Advocate General and rejected the appeal on 9 March 1982.

On 14 August 1982 the applicant applied to the European Commission of Human Rights claiming that the summons on 11 July 1981 was in violation of Article 6 para. 1 of the Convention.

His objection to the original summons having been rejected in three instances, a new summons was issued to the applicant on 19 August 1982 ordering him to appear in court on 21 September 1982.

The applicant, again, filed an objection against the summons with the Regional Court of Alkmaar, arguing, inter alia, that the case should not be brought before the Dutch courts before the Commission had considered his complaint under Article 6 para. 1.

However, the Regional Court declared the applicant's objection inadmissible on 5 October 1982. It held that by the Supreme Court's rejection of the applicant's original objection against the decision to commit him for trial that decision had become final. The Court did not consider the pending application to the Commission to be a remedy in the sense of the Dutch Penal Code giving suspensive effect to the Supreme Court's decision of 9 March 1982.

The applicant appealed to the Court of Appeal of Amsterdam which confirmed the Regional Court's decision on 31 December 1982. The applicant appealed from this decision to the Supreme Court, but did not make any submissions before this Court. The appeal was rejected on 21 June 1983.

The applicant was, again, summoned, on 12 July 1984, to appear before the Regional Court of Alkmaar on 21 August 1984.

Thereupon, the applicant requested the President of the Regional Court of the Hague in summary proceedings (kort geding) to either terminate or suspend the criminal proceedings against him, pending the Commission's examination of his case. However, his request was refused on 14 August 1984.

In the meantime, by a telex of 7 August 1984, the applicant requested the Commission to apply Rule 36 of the Rules of Procedure and to invite the Netherlands Government to suspend criminal proceedings against him until the Commission would have decided on the admissibility of the application.

On 9 August 1984 the applicant was informed that the Acting President of the Commission had decided that the application was not of a nature as to warrant application of Rule 36 of the Commission's Rules of Procedure. He was also reminded that applications to the Commission do not have any general suspensive effect with regard to domestic proceedings.

On 21 August 1984 the Regional Court of Alkmaar, by an interlocutory decision, rejected the applicant's request either to declare the public prosecutor's action inadmissible or to suspend the proceedings pending the Commission's examination of his case.

It then convicted the applicant of forgery under Article 225 of the Dutch Penal Code, which provides for a maximum penalty of six years. The Regional Court sentenced him to a conditional prison term of one year. In fixing this sentence it took into account the considerable delay between the arrest of the applicant and his trial, without establishing, however, who was responsible for this delay.

The Court also had regard to detrimental effects of the applicant's action on his personal and social life.

As to the applicant's request to have the public prosecutor's action declared inadmissible, the Regional Court first stated that the Supreme Court's judgment of 9 March 1982 was the final decision on the question of the length of the proceedings until that date so that it could not examine the applicant's complaints about this period. The Regional Court then held that the applicant's complaints about the period between that decision and the summons of the public prosecutor of 19 August 1982 could not be examined again since the Supreme Court had given a final decision on this point on 21 June 1983. The Regional Court finally examined the period between that last decision and the summons of 12 July 1984. It considered that the public prosecutor had given a satisfactory explanation and that this delay, though long, was not unreasonable. The public prosecutor had first adjourned the case after he had been informed that the Commission could shortly deal with the present application. He had therefore asked the applicant's lawyer to provide further information on the proceedings before the Commission. In the meantime an investigation had started about new criminal offences of which the applicant was suspected. The public prosecutor had expected to be able to join both proceedings, but some administrative delay had prevented him from doing so within a reasonable time.

The public prosecutor appealed against the judgment of the Regional Court. The applicant, thereupon, also appealed, in particular against the Court's interlocutory decision.

On 1 July 1986 the Court of Appeal of Amsterdam found the applicant guilty on most counts stated in the charges of the public prosecutor. The applicant was sentenced to one year's imprisonment of which a term of nine months was suspended. In fixing this sentence the Court of Appeal took into account the considerable delay between the arrest of the applicant and his trial. It also noted that the public prosecutor's action against the applicant's co-accused had been declared inadmissible (niet-ontvankelijk-verklaring van de Officier van Justitie). On the other hand, the Court observed that the fraudulous acts had been committed on a large scale. It also observed that the applicant had been convicted twice in 1985 for other criminal offences and that he had been convicted on the same day on charges of forgery and cheque manipulations committed in 1983.

As to the applicant's request to have the public prosecutor's action declared inadmissible the Court of Appeal considered that the beginning of the period to be taken into consideration was the Supreme Court's decision of 21 June 1983 wereby the applicant's objection against this summons was, for the second time, rejected. It noted that, after this last decision, the applicant was not again summoned until 12 July 1984. It found that the applicant had repeatedly asked the public prosecutor to postpone the examination of the criminal case pending the decision of the European Commission of Human Rights. The public prosecutor could not therefore be blamed for this period. The Court of Appeal also noted that a long period had elapsed between the appeal and its decision. It found that this period, although longer than generally desirable, did not exceed the reasonable time required by Article 6 of the Convention, given the seriousness of the offences and the complexity of the facts. It further held that the length of the proceedings was for the most part due to the applicant who had repeatedly appealed during the proceedings or asked for postponements of the hearings.

The applicant appealed against this decision, arguing, inter alia, that the public prosecutor's action was inadmissible and that the Dutch courts should have suspended the proceedings pending the Commission's examination of his case.

On 22 September 1987 the Supreme Court rejected the applicant's appeal, considering that the judgment of the Court of Appeal was not unreasonable.

COMPLAINTS

The applicant complains that it took more than two years and three months after he had been informed of criminal charges against him until the public prosecution decided to take his case to court. He claims that this period exceeds the "reasonable time" guaranteed by Article 6 para. 1 of the Convention.

He submits that neither the complexity of the case, nor his own behaviour, or that of his lawyer, justified the delay that occurred. Moreover, as a result of the criminal charges against him he lost his job as an insurance inspector, became the victim of a local press campaign, and incurred severe financial losses. Since no further action was taken against him for a considerable time after his initial arrest, he was entitled to believe that either his case would be discontinued unconditionally or on the condition of his rendering certain social services, as he offered to do through the General Rehabilitation Association (Algemene Reclasserings Vereniging). In the meantime, he succeeded in finding a new, albeit much more modest, employment. He feared that as a result of a public trial he would lose his newly acquired position, irrespective of the outcome of the trial.

In his observations in reply submitted on 10 September 1984, the applicant also complains that, after the judgment of the Supreme Court on 9 March 1982, he was not summoned to appear before the Regional Court until 19 August 1982. Likewise, after the second decision by the Supreme Court on 21 June 1983, he was not summoned again until 12 July 1984.

The applicant finally complains that his trial took place before the Commission had an opportunity to examine his application. This interfered with his rights under Article 6 para. 3 (b) of the Convention. He submits that "adequate time and facilities for the preparation of his defence" include the opportunity to pursue an application to the Commission without having to prepare a defence in the criminal proceedings that he is complaining about.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 14 August 1982 and registered on 19 August 1982.

The Commission decided on 6 March 1984 to bring the application to the notice of the respondent Government and to invite them to submit written observations on the applicant's complaint under Article 6 para. 1 of the Convention concerning the delays which occurred during the preliminary investigations.

The Government's observations were received on 6 July 1984, and the applicant's observations in reply on 14 September 1984.

In the meantime, by a telex of 7 August 1984, the applicant requested the Commission to apply Rule 36 of the Rules of Procedure and to invite the Netherlands Government to suspend criminal proceedings against him until the admissibility of the application had been determined by the Commission

On 9 August 1984 the applicant was informed that the Acting President of the Commission had decided that the application was not of a nature as to warrant application of Rule 36 of the Commission's Rules of Procedure. He was also reminded that application to the

Commission do not have any general suspensive effect with regard to domestic proceedings.

The Commission considered the possibility that in their decision on the charges the national courts would take account of the length of the proceedings and therefore decided on 15 March 1985 to adjourn its examination pending the outcome of the domestic proceedings. On 20 March 1985 the parties were informed of this decision.

Documents concerning the domestic proceedings were received on 2 April 1987, and on 16 March, 6 April and 4 July 1989.

On 11 October 1990, the Commission decided to invite the respondent Government to submit further observations concerning the length of the criminal proceedings as a whole.

The Government's observations were received on 2 May 1991 and transmitted to the applicant on 16 May for reply before 28 June 1991. A reminder was sent to the applicant on 19 July 1991.

THE LAW

The applicant complains that it took more than two years and three months after he had been informed of criminal charges against him before the public prosecution decided to take his case to court. He claims that this period exceeds the "reasonable time" guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention, which provides :

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

In order to assess the reasonableness of the length of the proceedings the Commission must first ascertain both the commencement and the end of the period to be taken into account. It considers that the applicant's right to a hearing within a reasonable time came into being on 10 April 1979 when he was arrested and therefore substantially affected as a result of the suspicion against him (cf. Eur. Court H.R., Corigliano judgment of 10 December 1982, Series A no. 57, p. 13 para. 34). The Commission recalls that the period to be taken into consideration lasts until acquittal or until the sentence is definitely fixed (cf. Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 34 paras. 76, 77). The period at issue thus ended on 22 September 1987 when the Supreme Court dismissed the applicant's last appeal.

It follows that the period to be examined under Article 6 para. 1 (Art. 6-1) of the Convention lasted 8 years 5 months and 12 days.

The Government submit that the applicant cannot claim to be a victim of a violation of Article 6 para. 1 (Art. 6-1), within the meaning of Article 25 of the Convention. They refer to the Van Droogenbroeck case (Eur. Court H.R., Van Droogenbroeck judgment of 24 June 1982, Series A no. 50), the Eckle case (Eur. Court H.R., Eckle judgment, loc. cit.) and the Commission's case law (cf. Pannetier v. Switzerland, Comm. Report 12.7.85, D.R. 46, p. 5). The Government recall that both the Regional Court that heard the case at first instance and the Court of Appeal took into account the delay which had occurred between the applicant's arrest and his conviction. In view of this delay, the Regional Court sentenced the applicant to a conditional prison term of one year and the Court of Appeal sentenced him to one year's imprisonment of which a term of nine months was suspended, while the offences charged, forgery, could lead to a sentence of six years' imprisonment.

The Commission has examined whether the applicant can still claim to be a victim of a violation within the meaning of Article 25 (Art. 25) of the Convention after the Dutch courts have considered as a mitigating factor the length of the time which had elapsed between the day when the applicant was arrested and his convictions. However, the Commission does not find it necessary to determine this question since the application must be rejected as manifestly ill-founded on another ground.

According to the case-law of the Convention organs, the reasonableness of the length of the proceedings has to be assessed in each case according to its particular circumstances and having regard in particular to the complexity of the case and the conduct of the applicant and the judicial authorities (see Eur. Court H.R., Corigliano judgment of 10 December 1982, Series A no. 57, p. 14 para. 37).

As to the complexity of the case, the Commission notes that the applicant was charged with fraud in what appears to be a relatively complicated case concerning mortgages, involving numerous victims and 26 co-suspects, some of whom had themselves also been victims of the applicant's practices.

As to the conduct of the applicant, the Commission first notes that the applicant objected each time he was summoned to appear in court. It recalls that whereas Article 6 (Art. 6) does not require an applicant to co-operate actively with the judicial authorities and whereas no reproach can be levelled against an applicant who has made full use of the remedies available under national law, the applicant nevertheless is responsible for certain delays, which cannot be attributed to the respondent State (cf. No. 4597/71, Huber v. Austria, Comm. Rep. 8.2.73, para. 111, D.R. 2 p. 45; No. 8435/78, Dec. 6.3.82, D.R. 26, pp. 18, 20).

The Commission also recalls that the applicant has throughout the national proceedings asked the courts to suspend the criminal proceedings pending the Commission's examination of his case. Moreover, by a telex of 7 August 1984, he requested the President of the Commission to apply Rule 36 of the Rules of Procedure and to invite the Netherlands to suspend the criminal proceedings against him until the admissibility of the present application had been determined by the Commission. Furthermore, the Court of Appeal of Amsterdam noted that the applicant had repeatedly asked to postpone the hearings.

The Commission therefore considers that the applicant's conduct caused long delays in the proceedings.

As to the conduct of the judicial authorities, the Commission notes that the applicant alleges that three undue delays have occurred during the proceedings:

a. The applicant first complains that it took more than two years and three months after his arrest on 10 April 1979 until the public prosecution decided to take his case to court.

The Commission considers that the manner in which the judicial authorities conducted the case during the preliminary investigations cannot be considered as being unjustified. As already indicated above, the case was relatively complicated. The Commission further observes that the public prosecutor appears to have awaited the results of a possible settlement acceptable to all those involved in the fraud before he brought charges. The authorities also had to decide about the applicant's proposal of December 1980 to undergo a period of community service, on the basis of a new Community Service Experiment which became operative only in February 1981. In view of the above, the Commission considers that the length of the period

between the applicant's arrest and the summons of 11 July 1981 was not unreasonable.

b. The applicant then submits that, after the judgment of the Supreme Court of 9 March 1982, he was not summoned to appear before the Regional Court until 19 August 1982.

The Commission considers that this delay is not in itself unreasonable. It further observes that the applicant never complained about the length of this period before the Dutch courts. On the contrary, he argued that after the judgment of 9 March 1982, the case should not have been brought before the criminal courts before the Commission had considered the present application introduced on 14 August 1982. Accordingly, the Commission is of the opinion that this delay cannot be considered as being unjustified.

c. The applicant finally submits that, after the judgment of the Supreme Court of 21 June 1983, he was not again summoned until 12 July 1984.

The Commission finds that this is a lengthy period and that such a period cannot normally be regarded as reasonable, unless it is justified by some special feature.

The Regional Court of Alkmaar considered that this delay, though long, was not unreasonable; the Public Prosecutor had given a satisfactory explanation. He had first adjourned the case after he had been informed that the Commission could shortly deal with the present application. He therefore asked the applicant's lawyer to provide further information on the proceedings before the Commission. In the meantime an investigation had started about new criminal offences of which the applicant was suspected. The public prosecutor had expected to be able to join both proceedings, but some administrative delays had prevented him from doing so within a short time. The Court of Appeal of Amsterdam added that the applicant had repeatedly asked the public prosecutor to postpone the examination of the criminal case against him pending the decision of the Commission.

In view of the specific reasons given by the Dutch courts, the Commission is of the opinion that this period was not in itself unreasonably long.

The Commission finally finds that the overall length of the proceedings (almost eight and a half years) is indeed a long period. However, in view of the above-mentioned circumstances, it considers that this length is for the most part due to the applicant's conduct and the complexity of the case. Even if some delays are attributable to the judicial authorities, they are not so long as to warrant the conclusion that the total duration of the proceedings was excessive, having regard to all the circumstances of the case.

The Commission therefore concludes that the length of the criminal proceedings against the applicant did not exceed a reasonable time as required by Article 6 para. 1 (Art. 6-1) of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also complained that, since he was brought before the court before the Commission had examined his present application, he did not have adequate facilities for the preparation of his defence. He has invoked Article 6 para. 3 (b) (Art. 6-3-b) of the Convention, which provides:

"3. Everyone charged with a criminal offence has the following minimum rights:

(...)
(b) to have adequate time and facilities for the preparation of his defence;
(...)"

The Commission recalls that proceedings before it do not carry any suspensive effect with regard to domestic proceedings. Moreover, the Commission finds that the applicant has failed to substantiate his allegations that the facilities for his defence were inadequate because he was tried by the domestic tribunals before the Commission had dealt with his complaints.

It follows that this part of the application is also 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.C. KRÜGER) — (C.A. NØRGAARD)