AS TO THE ADMISSIBILITY OF

Application No. 17669/91
by Richard Johannes Joseph VAN LAAK
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 31 March 1993, 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
M. NOWICKI

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 30 October 1990 by Richard Johannes Joseph VAN LAAK against the Netherlands and registered on 14 January 1991 under file No. 17669/91;

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, born in 1952, is a Dutch citizen residing at Escharen, the Netherlands. Before the Commission he is represented by Mr. Th.J.H.M. Linssen and Mr. E. Beele, both lawyers practising in Tilburg.

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

On 27 August 1984 the applicant was summoned to appear before the Regional Court (Arrondissementsrechtbank) of The Hague on charges of several fraud offences. On 25 September 1984 the Regional Court convicted the applicant of these offences and sentenced him to two years and six months' imprisonment. The applicant appealed to the Court of Appeal (Gerechtshof) of The Hague within the statutory time-limit of 14 days. In November 1987 he was summoned to appear before the Court of Appeal on 17 December 1987. The applicant, who was hospitalised, could not attend the hearing and the Court of Appeal stayed the proceedings for an indefinite period.

By letter of 26 January 1988 the applicant's representative informed the Advocate-General (Advocaat-Generaal) that the applicant had been discharged from hospital. On 3 August 1988 the applicant was notified that a new hearing was fixed for 10 October 1988. At the

hearing the applicant's representative requested the Court of Appeal to declare the prosecution inadmissible in view of the period of 4 years that had elapsed between filing the appeal towards the end of September 1984 and the hearing on 10 October 1988, this delay being so excessive that a reduction of the sentence would not suffice. The applicant had deducted the period of hospitalisation and subsequent recovery from half November 1987 until May 1988 considering that it could not be attributed either to the Public Prosecution or to himself.

On 24 October 1988 the Court of Appeal upheld the applicant's conviction but reduced the sentence to eight months' imprisonment of which four months were suspended on probation. It found that the Regional Court had not drawn up its judgment pending the outcome of the criminal proceedings instituted against one of the co-suspects, that it appeared from the file that the case was complicated and thus time-consuming and that in addition the President of the Regional Court had not been able to work for one year due to illness. It further found a delay of one year between filing an appeal and the hearing acceptable and that in cases involving several suspects, some of whom had delayed the proceedings, an additional delay of one year could also be accepted. However, the Court of Appeal found that, having regard to all the circumstances of the case, the total delay, albeit exceeding the acceptable period of two years, was not such as to exclude prosecution and that a substantial reduction of the sentence would therefore suffice.

On 1 May 1990 the Supreme Court (Hoge Raad) dismissed the applicant's plea of nullity.

COMPLAINT

The applicant complains under Article 6 para. 1 of the Convention that he did not have a hearing within a reasonable time as 4 years elapsed between his appeal to the Court of Appeal and the hearing before this Court. He submits in particular that the delay cannot be explained either by the complexity of the case or by his own behaviour but that it is imputable to the judicial authorities. The illness of the President of the Regional Court may explain but cannot justify this delay and there is no justification for the delay which occurred after the introduction of his appeal.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that he did not have a hearing within a reasonable time as 3 years and 4 1/2 months elapsed between his appeal to the Court of Appeal and the hearing before this Court. He submits in particular that the delay cannot be explained either by the complexity of the case or by his own behaviour but that it is imputable to the judicial authorities. The illness of the President of the Regional Court may explain but cannot justify this delay and there is no justification for the delay which occurred after the introduction of his appeal. Article 6 para. 1 (Art. 6-1) of the Convention provides, insofar as relevant:

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

The Commission is of the opinion that the applicant's right to a hearing within a reasonable time came into being on 27 August 1984 when he was summoned to appear before the Regional Court of The Hague and therefore was substantially affected as a result of the suspicions 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 definitively 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 ended on 1 May 1990 when the Supreme Court dismissed the applicant's plea of nullity.

The period to be examined under Article 6 para. 1 (Art. 6-1) of the Convention thus lasted 5 years, 8 months and 4 days.

The question arises whether or not the applicant can still claim to be a victim of a violation within the meaning of Article 25 (Art. 25) of the Convention right after the Dutch authorities have, by a reduction of his sentence, afforded some redress as to the length of time which had elapsed between the day when he was summoned to appear before the Regional Court and the day when the sentence was fixed on appeal.

The Commission and the Court have held in the past that an applicant can no longer claim to be a victim of the failure to observe the "reasonable time" requirement in Article 6 para. 1 (Art. 6-1) of the Convention if the national authorities have acknowledged either expressly or in substance the breach of that provision and if redress has been given (see Eur. Court H.R., Eckle judgment, loc. cit., pp. 30-31, para. 66; No. 10232/83, Dec. 16.12.83, D.R. 35 p. 213).

The Commission observes that the Court of Appeal of The Hague explicitly took into account the time which elapsed between the introduction of the appeal and the hearing before it when reducing the sentence to eight months' imprisonment of which four months were suspended on probation. The Commission is therefore of the opinion that the Dutch authorities have, in substance, acknowledged a breach of Article 6 para. 1 (Art. 6-1) of the Convention. The Commission further considers that the mitigation of the sentence accorded on account of the length of the proceedings is considerable and offers redress for the violation complained of.

It follows that the applicant cannot claim to be a victim of a violation of his right under Article 6 para. 1 (Art. 6-1) of the Convention to a hearing within a reasonable time and his application is therefore inadmissible under 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)