AS TO THE ADMISSIBILITY OF

Application No. 29841/96
by Jacob Willem VAN VLIET
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 3 December 1997, the following members being present:

Mrs G.H. THUNE, President
MM J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the 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 24 November 1995 by Jacob Willem VAN VLIET against the Netherlands and registered on 19 January 1996 under file No. 29841/96;

Having regard to:

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 21 March 1997 and the observations in reply submitted by the applicant on 8 April 1997;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch citizen, born in 1957, and residing in Sitges, Spain. Before the Commission he is represented by Mr G. Spong, a lawyer practising in The Hague, the Netherlands.

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

On 14 March 1989 the applicant's premises were searched. On 12 December 1989 the applicant was arrested and taken into custody on remand until 23 December 1989.

On 27 March 1992 the Regional Court (Arrondissementsrechtbank) of Rotterdam convicted the applicant of having participated in an organisation which aimed to commit criminal acts and sentenced him to a partially suspended term of two years' imprisonment with deduction

of the time spent in pre-trial detention.

On 27 March 1992 both the applicant and the prosecution filed an appeal with the Court of Appeal (Gerechtshof) of The Hague. On 15 October 1993 the Court of Appeal quashed the Regional Court's judgment and convicted the applicant of having participated in an organisation which aimed to commit criminal acts, sentenced him to 12 months' imprisonment, six months of which to be suspended and with deduction of the time spent in pre-trial detention, and imposed a fine of 25,000 Dutch guilders or, in case of non-payment, 120 days' imprisonment. The Court considered that the proceedings had taken undesirably long but that they had not exceeded a reasonable time. Although the Court of Appeal did not disagree with the sentence which had been imposed by the Regional Court, it decided that in view of the lapse of time, a lighter custodial sentence in combination with a fine was more appropriate.

On 20 October 1993 the applicant filed an appeal in cassation against this decision with the Supreme Court (Hoge Raad). On 30 September 1994 the case-file was received by the Supreme Court's Registry (i.e. after eleven months and ten days).

On 23 January 1995 the applicant's representative lodged a cassation memorial. He complained inter alia of the length of the proceedings but only in respect of the time elapsed between the filing of the appeal in cassation and the examination by the Supreme Court. On 31 January 1995 the first hearing before the Supreme Court took place (i.e. one year, three months and eleven days after the lodging of the appeal). On 30 May 1995 the Supreme Court rejected the appeal in cassation (i.e. one year, seven months and ten days after the lodging of the appeal).

Relevant domestic law and practice

Pursuant to Section 433 para. 3 of the Code of Criminal Procedure (Wetboek van Strafvordering) the Registrar of the Court of Appeal sends the case-file to the Registrar of the Supreme Court as soon as possible.

Prior to 1 May 1992 this provision stipulated that the case-file should be transmitted within thirty days after the time-limit for the prosecution to file its written statement containing its grounds for an appeal in cassation had expired or after it had filed a written statement earlier. One of the reasons for abolishing this time-limit was that in practice it was only rarely met and that it appeared inappropriate to maintain a provision which "in relation to the - speedy - pursuit of the proceedings before the Supreme Court creates expectations which in practice can hardly if at all be fulfilled" (see also Eur. Court HR, Abdoella v. the Netherlands judgment of 25 November 1992, Series A no. 248-A, pp. 11-12, para. 11).

Pursuant to Section 433 para. 2 of the Code of Criminal Procedure a cassation memorial, containing the grounds for the appeal in cassation, may be submitted at the latest on the day before the hearing of the case by the Supreme Court.

COMPLAINT

The applicant complains of the length of the criminal proceedings against him in that the Registry of the Court of Appeal of The Hague did not forward the case-file to the Registry of the Supreme Court until more than eleven months after he had lodged an appeal in cassation. He invokes Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 November 1995 and registered on 19 January 1996.

On 15 January 1997 the Commission decided to communicate the application to the respondent Government and it invited the Government to submit written observations on the admissibility and the merits of the application and in particular on the period of time which elapsed between the lodging of the appeal in cassation and the forwarding of the case-file to the Registry of the Supreme Court.

The Government's written observations were submitted on 21 March 1997. The applicant replied on 8 April 1997.

THE LAW

The applicant complains of the length of criminal proceedings against him. In particular he submits that the period of more than eleven months which elapsed between the lodging of his appeal in cassation and the forwarding of the case-file to the Registry of the Supreme Court exceeded the reasonable time requirement contained in Article 6 para. 1 (Art. 6-1) of the Convention. This provision, insofar as relevant, reads as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by a ... tribunal established by law."

1. The Commission recalls that it requested the Government to submit written observations particularly on the period of time which elapsed between the lodging of the appeal in cassation and the forwarding of the case-file to the Registry of the Supreme Court. The Commission requested the Government to specify whether this delay had occurred solely or mainly as a result of a practice whereby a Court of Appeal only produces a complete judgment if and when an appeal in cassation is filed. If this was indeed the case, the Government were further invited to comment on the question whether this practice in itself raised an issue in respect of the fairness of proceedings as required by Article 6 para. 1 (Art. 6-1) of the Convention.

The Government submit that there exists in the Netherlands a long-standing and generally accepted practice of not producing a complete judgment which contains all the means of evidence until and unless an appeal or an appeal in cassation has been lodged. In their opinion this practice constitutes a more efficient mode of operation which saves a great deal of time. If every judgment, with all the means of evidence fully set out, had to be made available at the moment that judgment is given, this would take up an unnecessarily long time in view of the fact that many cases do not go to appeal. Thus, the time saved by the prevailing practice, which has, moreover, been given a statutory basis in 1996, benefits the judiciary and the general public alike.

The applicant has not addressed this particular issue.

The Commission recalls in the first place that the European Court has held that national courts must indicate with sufficient clarity the grounds on which they based their decision, allowing the accused, inter alia, to exercise usefully the rights of appeal available to him (Eur. Court HR, Hadjianastassiou v. Greece judgment of 16 December 1992, Series A no. 252, pp. 16 - 17, paras. 33 - 37; and, mutatis mutandis, Worm v. Austria judgment of 29 August 1997, Reports 1997-V, No. 45, para. 33), as well as enabling him to ascertain whether a court has considered his submissions and, if that was the case, the reasons why these were dismissed (Eur. Court HR, Hiro Balani and Ruiz Torija v. Spain judgments of 9 December 1994, Series A no. 303, respectively p.

30, para. 28 and p. 12, para. 30).

The Commission observes that since Section 433 para. 2 of the Code on Criminal Procedure provides for the possibility that the grounds for the appeal in cassation are submitted as late as the day before the hearing of the case by the Supreme Court, the practice referred to above does not prevent the accused from usefully exercising the rights of appeal available to him.

The question remains, however, whether a system whereby it is necessary to lodge an appeal in order for the accused to be able to acquaint himself with all the reasons for a judgment is (efficient and) in conformity with the requirements of Article 6 (Art. 6) of the Convention. The Commission considers, nevertheless, that it is not necessary to resolve this issue in view of the fact that the applicant has neither raised this question himself, nor has he submitted that there is a causal link between the impugned delay and the Dutch practice of not producing a complete judgment unless an appeal is lodged. The Commission recalls in this respect that pursuant to Article 25 (Art. 25) of the Convention it may only deal with petitions if an applicant claims that he is the victim of a violation of the rights and freedoms guaranteed by the Convention. The Commission further recalls its constant case-law according to which it is only competent to examine the compatibility of a law or national practice with the Convention where this law or practice is applied to the applicant's detriment in a concrete case, but not in abstracto.

2. As regards the length of the proceedings, the Government argue in the first place that the applicant was only held in pre-trial detention for eleven days whereas if an accused spends the entire period spanned by the proceedings against him in detention it is of greater importance that a final judgment in his case be given with all due speed. According to the Government, a heavy sentence may likewise increase the importance to an accused of certainty about his situation but the present case concerns a term of imprisonment of six months plus a fine. Moreover, this was a complicated case involving fraud and having international ramifications. They thus conclude that the reasonable time referred to in Article 6 para. 1 (Art. 6-1) was not exceeded, either in relation to the time taken to forward the file or in relation to the standard practice of not fully elaborating a judgment until an appeal has been lodged.

The applicant maintains that a period of eleven months to forward the case-file to the Registry of the Supreme Court should even in a complex case be considered as excessive. In his opinion, the claim that this delay was due to the need to elaborate the judgment is not tenable since at the time that the judgment was handed down the Court of Appeal had already deliberated on the content of the relevant evidence and the means of evidence should therefore not require any further processing.

The Commission notes that the applicant only complains of the length of time which it took for the case-file to be sent to the Registry of the Supreme Court following his lodging of an appeal in cassation on 20 October 1993.

The Commission recalls that in its Abdoella v. the Netherlands judgment, the Court examined the question of "reasonable time" in that case where the proceedings had lasted fifty-two months in total and where the time required on two occasions for transmission of the case-file to the Supreme Court had accounted for two periods of inactivity of more than twenty-one months. The Court held that such protracted periods of inactivity were unacceptable and went "well beyond what can still be considered 'reasonable' for the purposes of Article 6 para. 1 (Art. 6-1)", especially where the accused was detained (op. cit., p. 17, para. 24). The Court similarly came to a finding of a violation of Article 6 para. 1 (Art. 6-1) in the later case of Bunkate v. the Netherlands where it took a period of fifteen and a half months for the

case-file to be sent to the Registry of the Supreme Court (judgment of 26 May 1993, Series A no. 248-B, p. 31, para. 23).

In the light of the above and the criteria established in the case-law of the organs of the Convention concerning "reasonable time" (complexity of the case, conduct of the parties and conduct of the authorities dealing with the case), the Commission considers that the complaint concerning the length of the proceedings raises issues of fact and law which cannot be resolved at the present stage of the examination of the application, but calls for an examination of the merits.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION ADMISSIBLE, without prejudging the merits of the case.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber