AS TO THE ADMISSIBILITY OF

Application No. 26668/95
by Frederik Karel Paul Maria VISSER
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 27 November 1996, 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

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 5 December 1994 by Frederik Karel Paul Maria VISSER against the Netherlands and registered on 8 March 1995 under file No. 26668/95;

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 is a Dutch citizen, born in 1947, and residing in Soest, the Netherlands. Before the Commission he is represented by Mr. H.H. Rieske, a lawyer practising in Amsterdam.

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

In April 1988 preliminary judicial investigations were initiated into allegations that the applicant and an accomplice had intentionally deprived another person of his liberty on 30 September 1987. The investigations were closed on 28 June 1988.

During this investigation the applicant was placed in detention on remand on 15 April 1988. He was released shortly afterwards.

On 17 August 1988 the applicant was summoned to appear before the Regional Court (Arrondissementsrechtbank) of Utrecht on 18 October 1988. He was charged with the following criminal offences:

I. being an accomplice to the offence of intentionally and unlawfully depriving another person of his liberty and keeping him deprived thereof;

II. intentionally making use of falsified documents as if they were genuine and unfalsified, whereas damage could arise from such use;

III. theft committed by two or more persons together by means of breaking and entering.

On 1 June 1989 the Regional Court acquitted the applicant of the charges under I. and II., convicted him of the charge under III. and sentenced him to ten weeks' imprisonment less the time spent in pre-trial detention, whereas of these ten weeks five were suspended pending a probation period of two years.

Both the applicant and the Prosecutions Department filed an appeal against the Regional Court's decision with the Court of Appeal (Gerechtshof) of Amsterdam.

Following a public hearing on 4 April 1991, the Court of Appeal quashed the Regional Court's judgment on 18 April 1991 and convicted the applicant of the charges under I., II. and III. As regards the charge under I., the statement of an anonymous witness which was contained in a procès-verbal drawn up by two police officers on 28 April 1988, was used in evidence. The applicant was sentenced to one year's imprisonment less the time spent in pre-trial detention.

The applicant filed an appeal in cassation against this judgment with the Supreme Court (Hoge Raad).

On 14 September 1992 the Supreme Court quashed the judgment of the Court of Appeal. As regards the charge under I., the Supreme Court considered that the way in which the facts had been established did not meet the legal requirements. It recalled that the statement of an anonymous witness could only be used in evidence if it had been taken down by a judge, i.e. the investigating judge, who knew the identity of the witness, who had expressed his opinion as regards the reasons for the witness' desire to remain anonymous and this witness' reliability, and who had provided the defence with ample opportunity to question the witness. The Supreme Court referred the case to the Court of Appeal of The Hague.

On 18 June 1993 a public hearing took place before this Court of Appeal and on 13 September 1993 the investigating judge interviewed the anonymous witness. This judge was aware of the identity of the witness. In the procès-verbal of the interview the judge noted that the statement of the witness appeared to be consistent and that it corresponded to the statement given earlier to the police. Furthermore the judge noted that the wish of the witness to remain anonymous was based on the ground that he feared for reprisals since the offence with which the applicant had been charged and in respect of which the witness was asked to testify in itself concerned an act of reprisal. The applicant's lawyer attended this interview in a different room and the witness responded to the questions put by the lawyer.

On 29 September 1993 the Court of Appeal quashed the Regional Court's judgment of 1 June 1989, acquitted the applicant of the charge under III. and convicted him of the charges under I. and II.

As regards the charge under I., it appears from the Court's judgment that it accepted the reasons for the anonymous witness' wish to remain anonymous and that it based its finding of guilt on a procès-verbal of 30 September 1987, drawn up by a police officer, containing statements of the victim and of the police officers who had found the victim, a procès-verbal of 20 October 1987 drawn up by the technical investigation department, a report by a forensic laboratory (Gerechtelijk Laboratorium) dated 14 December 1987, another procès-verbal of 14 March 1988 drawn up by a police officer, a procès-verbal

of 25 April 1988 drawn up by the officer who had been in charge of a scent-association test which had been carried out with sniffer dogs, the statement of the anonymous witness, and the statement which the applicant had made at the hearing before this Court.

In the determination of the sentence the Court of Appeal held that in view of the nature and the seriousness of the offences, a non-suspended prison sentence of two years and six months would be appropriate, but that, in view of the unreasonable length of the proceedings, the prison sentence should be considerably reduced: a sentence of one year's imprisonment less the time spent in pre-trial detention was imposed.

The applicant filed an appeal in cassation with the Supreme Court, in which he complained, inter alia, that the Court of Appeal should have declared the Prosecutions Department inadmissible instead of merely reducing the sentence for the violation of the "reasonable time" requirement contained in Article 6 of the Convention. He also complained that the statement of the anonymous witness could not be relied upon as it had been taken almost six years after the alleged offence. The Supreme Court rejected the appeal in cassation on 7 June 1994.

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that the criminal charges against him were not determined within a reasonable time.

2. The applicant also claims that the domestic courts violated Article 6 paras. 1 and 3 (d) of the Convention by using the statements of an anonymous witness in evidence whereas this witness had been interviewed by the investigating judge six years after the alleged offence had taken place. He argues that because of the time which had elapsed the veracity of the witness' account could no longer be relied upon.

THE LAW

1. The applicant complains that the criminal charges against him were not determined within a reasonable time as required by Article 6 para. 1 (Art. 6-1) of the Convention which, insofar as relevant, provides as follows:

> "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."

The Commission observes that the proceedings at issue started in April 1988, when preliminary judicial investigations were initiated and the applicant was placed in detention on remand, and ended on 7 June 1994, when the Supreme Court rejected his appeal in cassation. They thus lasted for about six years.

The question, however, 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.

In this respect the Commission recalls that an applicant can no longer claim to be a victim of the failure to observe the "reasonable time" requirement contained in Article 6 para. 1 (Art. 6-1) of the Convention when the national authorities have acknowledged, either expressly or in substance, the breach of that provision and if redress has been given (cf. Eur. Court HR, Eckle v. Federal Republic of Germany judgment of 15 July 1982, Series A no. 51, pp. 30-31, para. 66).

The Commission notes that in the present case the Court of Appeal

of The Hague, having convicted the applicant on two charges, imposed a prison sentence of one year although it considered a sentence of two years and six months' imprisonment more appropriate. It appears from the judgment that this mitigation was applied in view of the length of the proceedings, which the Court of Appeal found to have lasted an unreasonably long time.

The Commission concludes that the applicant can no longer claim to be a victim of a violation of his right to a hearing within a reasonable time as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention in respect of the length of the proceedings, since he received adequate redress at the domestic level.

It follows that this complaint must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that the domestic courts violated Article 6 paras. 1 and 3(d) (Art. 6-1, 6-3-d) of the Convention by using the statement of an anonymous witness in evidence.

Article 6 para. 3 (d) (Art. 6-3-d) provides as follows:

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

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"

The Commission finds that it cannot, on the basis of the file, determine the admissibility of this complaint at this stage and considers that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Commission's Rules of Procedure, to give notice of this complaint to the respondent Government.

For these reasons, the Commission

DECIDES TO ADJOURN the applicant's complaint concerning the use in evidence of a statement of an anonymous witness;

and, unanimously,

DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber