

AS TO THE ADMISSIBILITY OF

Application No. 12516/86  
by Ary SPAANS  
against the Netherlands

The European Commission of Human Rights sitting in private  
on 12 December 1988, the following members being present:

MM. C.A. NØRGAARD, President

J.A. FROWEIN

S. TRECHSEL

G. SPERDUTI

E. BUSUTTIL

G. JÖRUNDSSON

A.S. GÖZÜBÜYÜK

A. WEITZEL

J.-C. SOYER

H.G. SCHERMERS

H. DANELIUS

J. CAMPINOS

H. VANDENBERGHE

Mrs. G.H. THUNE

Sir Basil HALL

MM. F. MARTINEZ

C.L. ROZAKIS

Mrs. J. LIDDY

Mr. J. RAYMOND, Deputy 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 6 June 1986  
by Ary SPAANS against the Netherlands and registered  
on 3 November 1986 under file No. 12516/86;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch citizen, born on 25 December 1948 and  
presently residing in The Hague. He is represented before the  
Commission by Mr. J. Schokkenbroek, a lecturer in Leiden.

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

Since 16 October 1981, the applicant had been employed by the  
Iran-United States Claims Tribunal as a Registry Clerk, also charged  
with translation work, on the basis of an oral employment contract.

The Tribunal had been established by the Claims Settlement  
Agreement between the Islamic Republic of Iran and the United States  
of America. This agreement is embodied in the Declaration of the  
Government of the Democratic and Popular Republic of Algeria  
concerning the settlement of claims by the Government of the United  
States of America and the Government of the Islamic Republic of Iran,

dated 19 January 1981. Article VI of the agreement provides that the seat of the Tribunal shall be The Hague, the Netherlands, or any other place agreed by Iran and the United States. The Tribunal has taken its seat in The Hague with the permission of the Netherlands Government. On 18 May 1981 it started to function.

At talks between representatives of the three governments concerned in November 1981 in which representatives of the Tribunal also participated, it was decided that the date of commencement for the privileges and immunities of the Tribunal should be set at 18 May 1981, pending the conclusion of a Host State Agreement. In a letter dated 2 February 1983, the Secretary-General of the Ministry of Foreign Affairs of the Netherlands sent a statement in writing to the Secretary-General of the Tribunal concerning the immunity from the jurisdiction of Dutch courts which would be enjoyed by the Iran-United States Claims Tribunal. In this letter the Secretary-General of the Ministry of Foreign Affairs stated:

"The rule that the Tribunal in its capacity as a body established under public international law enjoys certain immunities and privileges in the country where it has its seat is, in general terms, derived direct(l)y from the generally accepted principles of international law".

On 19 February 1982 the applicant was offered an employment contract in writing by the Tribunal. In this contract it was provided that the final decision in disputes on disciplinary measures between the Secretary-General, who represents the Tribunal in staff matters, and the employee concerned, would be taken by the Tribunal itself. The applicant refused the contract, since it implied a decrease in his salary of 6000 DFL a year.

The applicant remained employed by the Tribunal on the basis of the oral contract. By a letter dated 20 September 1982 the Tribunal informed the applicant, who was ill at that time, that his "services were no longer required" by the Tribunal. The applicant, considering this letter as a dismissal on the spot challenged the lawfulness of the dismissal. He appealed to the District Court (Kantongerecht) in The Hague and claimed that the Tribunal must pay his salary until his labour contract would have been terminated in accordance with the rules of Dutch law. The Tribunal invoked its immunity from jurisdiction and asked the District Court to declare itself incompetent. However, in its decision of 8 June 1983, the District Court declared itself competent to deal with the case.

The Tribunal appealed from this decision to the Regional Court (Arrondissementsrechtbank) in The Hague. In its decision of 9 July 1984, the Regional Court annulled the decision of the District Court and declared that it had no jurisdiction to deal with the case, despite the applicant's defence that at the moment of concluding the contract with the Tribunal no other legal remedy in labour disputes was available to employees of the Tribunal.

In its decision of 20 December 1985 the Supreme Court (Hoge Raad) confirmed the decision of the Regional Court. The Supreme Court held, *inter alia*, that under present international law an international organisation is, in principle, not subject to the jurisdiction of the courts in the Host State concerning disputes that have a direct connection with the fulfilment of the organisation's tasks.

## COMPLAINTS

The applicant complains of having had no access to a court or tribunal in the determination of the legal validity of the unilateral termination of his labour contract with the Iran-United States Claims Tribunal. He invokes Article 6 para. 1 of the Convention.

In addition the applicant complains that his dismissal put an end to the enjoyment of his salary, while he could not contest his dismissal before a national authority. He invokes Article 13 of the Convention in connection with Article 1 of Protocol No. 1.

The applicant holds the Netherlands responsible for the alleged violations of the Convention. He submits that it is doubtful whether the Iran-United States Claims Tribunal is an international organisation. Therefore, the Netherlands has granted immunities and privileges without there being any obligation to do so.

The applicant further submits that, even assuming that the Tribunal is an international organisation, it cannot be maintained that immunity from jurisdiction extends to disputes concerning labour contracts with lower, non-diplomatic staff members.

The applicant subsequently submits that the Netherlands, as the Host State, should have taken care that employees of the Tribunal had access to an independent and impartial tribunal in cases of labour disputes.

The applicant finally submits that, since the Netherlands has consented in the establishment of the Tribunal in the Netherlands, they have to bear the consequences of that decision and of the granting of immunities to the Tribunal, by paying financial compensation to the applicant.

#### THE LAW

The applicant complains that he had no access to an independent and impartial tribunal in respect of his dismissal. He invokes Article 6 para. 1 (Art. 6-1) of the Convention. Since the dismissal put an end to the enjoyment of his salary he also invokes Article 13 (Art. 13) of the Convention in connection with Article 1 of Protocol No. 1 (P1-1).

The Commission must first decide whether the Netherlands can be held responsible for the alleged violations of the Convention in the present case. Under Article 1 (Art. 1) of the Convention the High Contracting Parties to the Convention undertake to secure the rights and freedoms defined in Section I of the Convention to everyone within their jurisdiction. The question is, therefore, whether the applicant, being an employee of the Iran-United States Claims Tribunal, was within the jurisdiction of the Netherlands.

The Commission notes that the Netherlands granted the Tribunal immunity from suit before the Dutch Courts under a privileges and immunities agreement to take effect from the day the Tribunal started functioning. When the applicant brought the case concerning his dismissal before the Dutch courts, the Tribunal invoked its immunity from the jurisdiction of the Dutch Courts. The Regional Court and the Supreme Court found that they had no jurisdiction to entertain the dispute.

Because of the immunity enjoyed by the Tribunal, the administrative decisions of the Tribunal are not acts which occur within the jurisdiction of the Netherlands within the meaning of Article 1 (Art. 1) of the Convention and thus do not engage the responsibility of the Netherlands under the Convention (see No. 6231/73, Dec. 28.5.75, D.R. 2 p. 72).

The Commission notes that it is in accordance with international law that States confer immunities and privileges to international bodies like the Iran-United States Claims Tribunal which are situated in their territory. The Commission does not consider that such a restriction of national sovereignty in order

to facilitate the working of an international body gives rise to an issue under the Convention.

It follows that the application must be rejected as incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For this reason, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Deputy Secretary to the Commission

President of the Commission

(J. RAYMOND)

(C.A. NØRGAARD)