AS TO THE ADMISSIBILITY OF

Application No. 15643/89
by J.C.
against the Netherlands

The European Commission of Human Rights sitting in private on 19 May 1992, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
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
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 23 August 1989 by J.C. against the Netherlands and registered on 18 October 1989 under file No. 15643/89;

Having regard to the Commission's decisions of 7 November 1990 and 17 October 1991 to request information from the applicant and the applicant's replies of 18 December 1990, 7 November 1991 and 28 January 1992;

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 1955, is a Dutch citizen residing at Zevenaar, the Netherlands. He is unemployed. Before the Commission he is represented by Mr. G. Spong, a lawyer practising in The Hague.

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

On 3 April 1986, the applicant was convicted of fraud and sentenced to eight months' imprisonment, of which four months conditional, by the Arnhem Regional Court (Arrondissementsrechtbank). He appealed. In an interlocutory judgment of 2 March 1987, the Arnhem Court of Appeal (Gerechtshof) ordered the Arnhem Probation and

After-Care Organisation (Stichting Reclassering) to draw up a report concerning the possibilities for the applicant's social resettlement.

On 25 May 1987, in a further interlocutory judgment, the Court of Appeal decided that the applicant should carry out service activities (dienstverlenende werkzaamheden) as an alternative penalty and that the Probation and After-Care Organisation should report on their progress. A report of 11/4 pages, dated 18 January 1988, was submitted to the Court sometime between 18 January 1988 and 21 March 1988. It mentioned the fact that the applicant had discontinued his service activities after two days alleging that there was insufficient work for him to do. The report further stated that the probation officer (reclasseringsambtenaar) had extensively discussed this problem with the applicant. The report concludes that, in view of the applicant's negative attitude and the probation officer's efforts to help him, it would not be advisable to grant the applicant a second opportunity to perform service activities.

On 21 March 1988 at the hearing before the Court of Appeal, the applicant declared that he "just received" the report and that he disagreed with parts of it. Counsel for the applicant requested the Court to adjourn the hearing in order to have the report clarified by the probation officer concerned. The Court of Appeal rejected this request and confirmed the Regional Court's judgment by decision of 31 March 1988.

On 2 May 1989 the Supreme Court (Hoge Raad) dismissed the applicant's plea of nullity on the ground that the Court of Appeal had not deprived the applicant of the possibility of preparing his defence by refusing to adjourn the hearing.

COMPLAINTS

The applicant complains under Article 6 para. 3 (b) of the Convention that he did not have adequate time for the preparation of his defence before the Court of Appeal.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 August 1989 and registered on 18 October 1989.

On 7 November 1990 the Commission decided to ask additional information from the applicant. The applicant's reply was received by letter dated 18 December 1990.

On 17 October 1991 the Commission decided to ask further information from the applicant. The applicant submitted the information on 7 November 1991 and 28 January 1992.

THE LAW

The applicant complains that the Court of Appeal's refusal to adjourn the hearing in order to have the report on the applicant clarified violated his rights of defence in that he had insufficient time to prepare his defence. He invokes Article 6 para. 3 (b) (Art. 6-3-b) which reads:

> "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 the determination of a criminal charge, within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention, includes not only the determination of the guilt or innocence of the accused, but also in principle the determination of his sentence; and the expression "everyone charged with a criminal offence" in Article 6 para. 3 (Art. 6-3) includes persons who, although already convicted, have not been sentenced (No. 4623/70, Dec. 9.2.72, Collection 39, p. 66, 74).

In this respect the Commission notes that the report drawn up by the Probation and After-Care Organisation was relevant to the determination of the penalty to be imposed on the applicant and that the Court of Appeal took the report into account for that purpose.

The Commission notes, however, that notwithstanding the Commission's explicit requests for further clarification of the question when he or his representative received the report or which were the points of the report with which he disagreed, the applicant failed to substantiate his complaint.

It follows that the application must be rejected for being 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)