AS TO THE ADMISSIBILITY OF

Application No. 19139/91
by J.C.
against the Netherlands

The European Commission of Human Rights sitting in private on 30 March 1992, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
G. SPERDUTI
E. BUSUTTIL
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
A.V. ALMEIDA RIBEIRO
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 19 November 1991 by J.C. against the Netherlands and registered on 28 November 1991 under file No. 19139/91;

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 is a Moroccan citizen, born in 1968 and residing at Nijmegen, the Netherlands. He is represented before the Commission by Mr. E.Th. Hummels, a lawyer practising at Utrecht.

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

On 24 August 1991 at 20.00 hours, the applicant was arrested as being suspected of theft perpetrated with violence and threats. On 25

August 1991 at 11.00 hours, he was brought before the public prosecutor, who ordered his provisional detention (inverzekeringstelling). On 28 August 1991 at about 15.00 hours, he was heard by the investigating judge (rechter-commissaris) at the Regional Court (Arrondissementsrechtbank) of Utrecht, which ordered the applicant's further detention (bevel tot bewaring). The applicant's request to be set free on the ground that the public prosecutor's request for his further detention had been made more than three days after his own order for provisional detention, this being contrary to certain guidelines issued on 22 March 1989 by the Advocate-General, was rejected by the investigating judge.

On 3 September 1991, the Regional Court of Utrecht issued an order for the applicant's detention on remand (bevel gevangenhouding) for a period of 30 days. The applicant's objection based on failure to respect the time-limit indicated in the guidelines of the Advocate-General was rejected by the Regional Court. On 3 October 1991, the Regional Court prolonged the applicant's detention on remand for a further period of 30 days.

COMPLAINT

The applicant complains of a violation of Article 5 para. 3 of the Convention in that he was not brought promptly before a judge after his arrest on 24 August 1991.

THE LAW

The applicant complains that, following his arrest on 24 August 1991, he was not brought promptly before a judge as required by Article 5 para. 3 (Art. 5-3) of the Convention.

The Commission notes that the applicant was arrested on 24 August 1991 at 20.00 hours and was brought before the investigating judge on 28 August 1991 at about 15.00 hours. Consequently, the time between the arrest and the moment when he was brought before a judge was about 91 hours.

In its previous case-law, the Commission has considered that a period of four days in cases concerning ordinary criminal offences could be considered compatible with the requirement of promptness in Article 5 para. 3 (Art. 5-3) (No. 2894/66, Yearbook 9 p. 568, and Case of Brogan and others v. the United Kingdom, Comm. Rep. 14.5.87). In a recent case (No. 18090/91, Dec. 4.7.91, unpublished), the Commission accepted a period of between 72 and 73 hours as being in conformity with Article 5 para. 3 (Art. 5-3).

The Commission further notes that, in the case of Brogan and others, the European Court of Human Rights stated that it was not called upon to determine "whether in an ordinary criminal case any given period, such as four days, in police or administrative custody would as a general rule be capable of being compatible with the first part of Article 5 para. 3 (Art. (5-3)" (Eur. Court H.R. judgment 29.11.1988, para. 60). The Court considered, however, that in that particular case, even the shortest of the periods of detention at issue, namely four days and six hours, was too long to comply with Article 5 para. 3 (Art. 5-3) (same judgment, para. 62).

While emphasising the importance of keeping the period of detention prior to the first appearance before a judge as short as possible, the Commission accepts, having regard to its previous case-law, that in the present case the applicant was brought promptly before a judge and that there has not been any violation of Article 5 para. 3 (Art. 5-3) of the Convention.

It follows that the application is 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)