AS TO THE ADMISSIBILITY OF

Application No. 22839/93
by Klaziena Wilhelmina DE HAAN
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 18 May 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

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 August 1993 by Klaziena Wilhelmina DE HAAN against the Netherlands and registered on 29 October 1993 under file No. 22839/93;

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 22 April 1994 and 29 July 1994 and the observations in reply submitted by the applicant on 24 May 1994 and 31 October 1994;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch citizen, born in 1966 and resident in Oude Pekela, the Netherlands. She is represented before the Commission by Mr. E.C.M. Roelvink, a lawyer practising at Winschoten, the Netherlands.

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

a. Particular circumstances of the case

On 14 May 1990, the Occupational Association for the Chemical Industry (Bedrijfsvereniging voor de Chemische Industrie) decided that the applicant could no longer be regarded as unfit for work and, therefore, was no longer entitled to sickness benefits under the Health Insurance Act (Ziektewet) as from 10 May 1990.

On 22 May 1990, the applicant lodged an appeal against this decision with the Appeals Tribunal (Raad van Beroep) in Groningen,

challenging the finding that she was fit to resume her work. On 11 September 1990 the Acting President of the Appeals Tribunal, Judge S., in conformity with the opinion he had obtained from the permanent medical expert (vaste deskundige) who had examined the applicant on 17 August 1990, decided, in simplified proceedings, that the appeal was unfounded.

The applicant filed an objection (verzet) against the Acting President's decision. Pursuant to an established policy, her objection automatically rendered the Acting President's decision void ab initio. She also requested that Judge S. should not participate in the further examination of her case by the Appeals Tribunal.

Following deliberations in Chambers (Raadkamer) in which Judge S. was replaced by another member of the Appeals Tribunal who acted as President, her request to replace Judge S. was rejected by the Appeals Tribunal on 8 August 1991. It stated on this point:

<Translation>

> "The procedure as laid down in the Appeals Act [Beroepswet] offers in itself already sufficient guarantees for an unprejudiced administration of justice i.e. possibilities for sufficient compensation in case of a possible suspicion of a too big involvement of the President concerned. In this it has been taken into consideration that an objection lodged renders the decision of the President (pursuant to Section 128/ Section 141 of the Appeals Act) void. The examination of the case will then be referred to a session where the Appeals Tribunal will take a decision. An unlimited appeal [onbeperkt hoger beroep] lies against all decisions of the Appeals Tribunal, except in certain cases concerning the Health Insurance Act (an exception which does not apply where there are for instance also complaints of a procedural nature [processuele grieven]). The Appeals Tribunal of Groningen applies the following policy.
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> In cases in which no further appeal is possible (for instance when a decision pursuant to Section 94 of the Appeals Act has been taken), i.e. where the objection which is examined can lead to a non-appealable judicial decision, an objection against a decision will be dealt with by another President than the one who has given the decision.
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> Cases, in which an objection lodged against a decision of the President renders that decision void and thus leads to a decision of the Appeals Tribunal against which an appeal lies, remain with the same President. In Health Insurance Act cases like the present one, which also raises complaints of a procedural nature (and which thus no longer exclusively concerns a dispute of a medical nature against which, pursuant to Section 75 para. 2 of the Health Insurance Act, no appeal lies), the Appeals Tribunal assumes that the Central Appeals Tribunal [Centrale Raad van Beroep] will receive the parties on appeal."

Thereafter, the case was dealt with at a public hearing before the Appeals Tribunal which was composed of Judge S. as President and two lay judges. On 21 August 1991, the Appeals Tribunal, so composed and following adversarial proceedings in which the applicant was represented by a lawyer, rejected the applicant's appeal.

The applicant lodged a subsequent appeal with the Central Appeals Tribunal. In her appeal she argued, inter alia, that the Appeals Tribunal had violated Article 6 of the Convention insofar as Judge S. had decided first on her appeal and then on her objections against his first decision. In her opinion, he could not on that second occasion be considered an impartial judge. She also challenged the decision at issue on other grounds.

In its judgment of 26 April 1993, the Central Appeals Tribunal referred to its reasoning in a case decided on the same day in which a similar complaint had been raised and in which it had noted that the Acting President of the Appeals Tribunal had not been involved in any decisions prior to the proceedings before the Appeals Tribunal and that his participation had remained limited to the proceedings before that Tribunal. It had therefore found no violation of Article 6 of the Convention. Thus, as regards the proceedings in the present application, the Central Appeals Tribunal also found that the fact that Judge S. had not been replaced did not violate the applicant's rights under Article 6 of the Convention.

As regards the other arguments raised by the applicant concerning, inter alia, her actual functions and working environment and the latter's alleged influence on her health, the Central Appeals Tribunal found that the Appeals Tribunal had taken these elements into consideration in a correct manner and that it could not be held that the Appeals Tribunal, in its assessment, had applied an incorrect standard. It consequently found the applicant's objections against the decision of the Industrial Board unfounded and it rejected the appeal.

b. Relevant domestic law

Until 1 January 1994, disputes arising out of the application of the Health Insurance Act were governed by the Appeals Act. For disputes concerning fitness or unfitness for work, a simplified procedure could be followed, known as the permanent-medical-expert procedure (see Eur. Court H.R., Feldbrugge judgment of 29 May 1986, Series A no. 99, p. 10, paras. 18-20). This procedure was followed in the present case.

Following the European Court's judgment in the case of Feldbrugge against the Netherlands (loc.cit.), the Presidents of the Appeals Tribunals, pending new legislation, established a policy guideline to the effect that appellants would be informed that an unlimited objection (onbeperkt verzet) can be lodged against a decision of the President of the Appeals Tribunal with the Appeals Tribunal and that an objection, provided it was filed in time, would automatically render a decision by a President void, and would lead to an ordinary examination of the case. This policy guideline was applied in the present case.

Pursuant to Section 23 of the Appeals Act, all decisions by an Appeals Tribunal are to be taken by a majority of the participating judges.

According to Section 75 of the Health Insurance Act, no appeal lies against a decision of the Appeals Tribunal. However, according to the case-law of the Central Appeals Tribunal, appeals are admitted when formal rules may have been disregarded, when an incorrect standard has been applied as regards the concepts of "labour" and "unfitness", or when the challenged decision, on the basis of the available facts, could not reasonably have been taken. An appeal to the Central Appeals Tribunal is only excluded in those cases in which exclusively and unambiguously disputes of a medical nature have been determined.

On 1 October 1991 certain amendments were made to the Appeals Act on the basis of the European Court's findings in its judgment in the case of Feldbrugge (loc.cit.).

On 1 January 1994 the General Administrative Act (Algemene Wet Bestuursrecht) entered into force, laying down new uniform rules of administrative law procedure, which also apply to cases like the present one. Under the new Act a party may lodge an appeal against a decision of an Occupational Association with the Regional Court (Arrondissementsrechtbank) and subsequently with the Central Appeals Tribunal.

COMPLAINT

The applicant complains of a violation of Article 6 para. 1 of the Convention in that her appeal before the Appeals Tribunal was allegedly not determined by an impartial tribunal.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 August 1993 and registered on 29 October 1993.

On 11 January 1994 the Commission decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure.

The Government's written observations were submitted on 22 April 1994, after an extension of the time-limit fixed for that purpose. The applicant replied on 24 May 1994.

On 5 July 1994 the Commission granted the applicant legal aid.

On 29 July 1994 the Government submitted further observations. The applicant replied to these further observations on 31 October 1994, after an extension of the time-limit fixed for that purpose.

THE LAW

The applicant complains of a violation of Article 6 para. 1 (Art. 6-1) of the Convention in that her appeal before the Appeals Tribunal was allegedly not determined by an impartial tribunal.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by an ... impartial tribunal ...".

The Government submit that the applicant's appeal was initially rejected by the Acting President of the Appeals Tribunal, without a hearing, on the basis of the applicant's written grounds of appeal and a medical report. Her subsequent objection rendered this rejection of her appeal void. Her appeal was subsequently examined by the full bench of the Appeals Tribunal, which - following adversarial proceedings, in which the parties made both oral and written submissions to the Appeals Tribunal and each party could challenge the submissions of the other party - rejected it in a reasoned decision. The applicant's appeal thus received a full examination in the ordinary way before the Appeals Tribunal. The fact that Judge S. was not replaced had no consequences for the judicial impartiality of the Appeals Tribunal in deciding the applicant's appeal, given that in his initial decision, as a single judge, regard was only had to the written grounds of appeal and a medical report, and not to the subsequent submissions to the full bench of the Appeals Tribunal. It can and may reasonably be expected of a judge in the position of Judge S. that he will examine the case in an unbiased manner.

The Government further submit that, although the Convention does not guarantee a right of appeal, an appeal to the Central Appeals Tribunal is possible, insofar as the appeal is not based on a dispute of a medical nature. In the present case such an appeal was in fact lodged and was examined on the merits by the Central Appeals Tribunal.

The applicant submits that the issue at stake is not whether or not Judge S. would make an unbiased judgment, but whether a given judge appears partial or not from an appellant's viewpoint. The applicant

considers that in this sense Judge S. cannot be regarded as impartial. She is of the opinion that, since only an appeal on specific points could be lodged against the decision of the Appeals Tribunal, Judge S. should have been replaced in the proceedings before the Appeals Tribunal following her objection.

The applicant confirms that the Central Appeals Tribunal fully examined her appeal against the decision of the Appeals Tribunal, however only within the limits set by the Central Appeals Tribunal's case-law. The matter falling outside the scope of that appeal, i.e. the alleged incorrect criterion used in defining the concept of illness, was not examined on the merits by the Central Appeals Tribunal, whereas Judge S. considered that point twice. The fact that the latter's decision became void after the applicant's objection is irrelevant. The opinion of Judge S. as regards the applicant's illness was obvious from his initial decision, and, therefore, he cannot be considered to have been impartial in the subsequent proceedings before the Appeals Tribunal.

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention applies to proceedings concerning the entitlement to benefits under the Health Insurance Act (see Eur. Court H.R., Feldbrugge judgment, loc. cit., pp. 12-16, paras. 26-40).

The Commission notes that the issue which arises in the present case is whether the Appeals Tribunal, in view of its composition, can be considered to have been an impartial tribunal when it decided on the applicant's appeal on 21 August 1991.

The Commission considers that the application raises issues of such complexity that they require an examination of the merits. The application cannot, therefore, be considered manifestly ill-founded, and there is no other ground on which it could be declared inadmissible.

For these reasons, the Commission, unanimously,

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

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)