PARTIAL

AS TO THE ADMISSIBILITY OF

Application No. 18266/91
by Kiymet DÜMAN
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 5 May 1993, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI

Mr. K. ROGGE, Secretary to the Second 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 22 February 1991 by Kiymet DÜMAN against the Netherlands and registered on 28 May 1991 under file No. 18266/91;

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 Turkish national, born in 1951, and is currently residing in Amsterdam. Before the Commission the applicant is represented by Mrs. M.D. van Aller, a lawyer practising in Amsterdam.

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

Until 3 December 1980, when the applicant fell ill, she worked as a kitchen help in a hospital. On the basis of the Sickness Benefits Act (Ziektewet) she received benefits for one year. As from 10 December 1981 these benefits were replaced by combined disability benefits under the General Labour Disablement Benefits Act (Algemene Arbeids-ongeschiktheidswet - "AAW") and the Labour Disablement Insurance Act (Wet op de Arbeidongeschiktheidsverzekering - "WAO"), on the basis of complete incapacity to work.

By letter of 25 April 1985, the Industrial Insurance Board for the Health, Mental and Social Interests Sector (Bedrijfsvereniging voor

de Gezondheid, Geestelijke en Maatschappelijke Belangen) informed the applicant of its decision to discontinue the payment of benefits under the AAW and WAO as from 1 April 1985, as she was considered able to perform adapted work.

The applicant, represented by a lawyer, filed an appeal with the Appeals Tribunal (Raad van Beroep) of Amsterdam. Following a hearing on 19 December 1986 where only the applicant and her lawyer appeared, and a hearing on 23 September 1987 where both parties appeared, the Appeals Tribunal, having examined the file, rejected the appeal as ill-founded on 12 October 1987.

The applicant, again represented by a lawyer, filed an appeal against this decision with the Central Appeals Tribunal (Centrale Raad van Beroep). By letter of 13 June 1990 the applicant was invited to attend the hearing of her case by the Central Appeals Tribunal on 12 July 1990. By letter of 21 June 1990 the applicant's lawyer requested the Central Appeals Board to postpone this hearing, stating that she had to attend another hearing at the same time, and informed the Central Appeals Tribunal of other dates on which she would also be unable to attend.

On 12 July 1990 the hearing before the Central Appeals Tribunal took place. Neither the applicant, who was on holiday in Turkey, nor the Industrial Insurance Board appeared at the hearing.

In its decision of 2 August 1990 the Central Appeals Tribunal rejected the lawyer's request of 21 June for a postponement and, after having considered the various reports on the applicant's physical and mental state of health and the applicant's comments on these reports, upheld the decision of the Appeals Tribunal of 12 October 1987. Concerning the lawyer's request to postpone the hearing of 12 July 1990, the Tribunal found no indication of circumstances preventing the applicant from appearing in person, either alone or assisted by another lawyer, at the hearing of 12 July 1990 in order to exercise her rights under the Appeals Act (Beroepswet). The Central Appeals Tribunal stated it had not found it necessary to summon the applicant to appear in person in order to provide information and noted that the Industrial Insurance Board was not represented at the hearing before the Tribunal either. No new facts or other elements on which the applicant should have been enable to comment had arisen. The Central Appeals Tribunal took into consideration that the case had already been examined on appeal before the Appeals Tribunal, where the applicant, with legal assistance, had appeared. The Central Appeals Tribunal finally held that in deciding upon requests to postpone a hearing regard must be had to the fact that to grant postponements generally results in delays in the large number of pending cases.

On 13 September 1990 a certified copy of the decision of 2 August 1990 by the Central Appeals Tribunal was sent to the applicant.

COMPLAINTS

The applicant complains that the refusal by the Central Appeals Tribunal of her lawyer's request to postpone the hearing of 12 July 1990 and the delay between the judgment of the Appeals Tribunal and the beginning of the examination of the case by the Central Appeals Tribunal violated her right to a fair hearing within a reasonable time as guaranteed by Article 6 para. 1 of the Convention.

THE LAW

1. The applicant complains that the refusal by the Central Appeals Tribunal of her lawyer's request to postpone the hearing of 12 July 1990 and the delay between the judgment by the Appeals Tribunal and the

beginning of the examination of the case by the Central Appeals Tribunal violated her right to a fair hearing within a reasonable time as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention. This provision, insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations (...) everyone is entitled to a fair and public hearing within a reasonable time by a (...) tribunal (...)."

The first question which arises is whether the proceedings at issue concerned the applicant's "civil rights and obligations". However, the Commission does not need to resolve this issue as, even if Article 6 para. 1 (Art. 6-1) applies, the complaint is inadmissible for the following reasons.

Insofar as the applicant complains that she did not receive a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention due to the refusal of the Central Appeals Tribunal to postpone the hearing of 12 July 1990, the Commission recalls that the right to a fair hearing implies that the interested party must be able to present his case under conditions which do not place him at a substantial disadvantage vis-à-vis his opponent (cf. No. 9938/82, Dec. 15.7.86, D.R. 48 p. 21). The Commission further recalls that the manner of application of Article 6 para. 1 (Art. 6-1) of the Convention to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (Eur. Court H.R., Helmers judgment of 29 October 1991, Series A no. 212-A, p. 15, para. 31).

The Commission notes that neither the applicant, who was on holiday in Turkey, nor the Industrial Insurance Board availed themselves of the possibility to appear before the Central Appeals Tribunal. The Commission further notes that the applicant with the assistance of her lawyer had participated in the hearings before the Appeals Tribunal on 19 December 1986 and 23 September 1987 respectively, and that the Central Appeals Tribunal stated in its decision of 2 August 1990 that no new facts or other elements had arisen in the proceedings before it. The Commission finally notes that both the Appeals Tribunal and the Central Appeals Tribunal took into account all the elements submitted to them by the parties in the context of adversarial proceedings. Finally, there is no indication that the applicant was prevented from submitting further evidence which could have shown her incapacity to work.

The Commission therefore considers that the Central Appeals Tribunal's refusal of the applicant's request for an adjournment did not infringe the principle of a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Moreover, there is nothing in the case-file to support the contention that the proceedings at issue were otherwise unfair.

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

2. Insofar as the applicant complains that her civil rights and obligations have not been determined within a reasonable time, the Commission decides to give notice of this complaint to the respondent Government in accordance with Rule 48 para. 2(b) of its Rules of Procedure and to invite them to submit their observations in writing on the admissibility and merits of the application.

For these reasons, the Commission, by a majority,

DECIDES TO ADJOURN the examination of the applicant's complaint that her civil rights and obligations have not been determined within a reasonable time;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Second Chamber President of the Second Chamber

(K. ROGGE) (S. TRECHSEL)