AS TO THE ADMISSIBILITY OF

Application No. 22125/93
by Majed Deb EL-ABTAH
against Norway

The European Commission of Human Rights (Second Chamber) sitting in private on 12 October 1994, the following members being present:

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

Mr. K. ROGGE, 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 4 June 1993 by Majed Deb EL-ABTAH against Norway and registered on 28 June 1993 under file No. 22125/93;

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

The applicant is a Lebanese citizen, born in 1952. He resides at Jönköping, Sweden, but is at present serving a prison sentence in Ullersmo prison, Norway. Before the Commission he is represented by Mr. Svein Duesund, a lawyer practising at Drammen, Norway.

On 29 April 1991 the applicant was arrested and accused of having infringed the Norwegian Penal Code by drug trafficking together with five others. The applicant hereafter remained in detention on remand during the investigations.

The case commenced in the Eidsivating High Court (Lagmannsretten) sitting with a jury on 10 June 1992. The Court heard the accused and twelve witnesses. However, during the hearing, on 17 June 1992, a witness disclosed certain evidence that was unknown to the prosecution as well as most of the defence lawyers. Hereafter two of the defence lawyers requested that the case be adjourned until further investigations of the new evidence had been carried out. Three defence lawyers, and among those the applicant's counsel, objected to an adjournment and requested that the case continue as the new evidence did not concern their clients. They submitted, inter alia, that an adjournment until 10 August 1992, which turned out to be the first

possible date for a further hearing, would make it impossible for the jury to remember the first part of the case clearly. However, the Court decided on 18 June 1992 to adjourn the case until 10 August 1992. In its decision the Court stated, inter alia, as follows:

(translation)

> "This (the additional investigation of the new evidence) will necessarily take some time and it will in no circumstances be possible to continue the hearings before 10 August 1992. The question is whether such an interruption will be too long. The alternative is obviously that the case would be discontinued in order to start again with a completely new examination. Such a new examination could in no circumstances take place before 1993. The detention on remand would presumably for one or all (of the accused) have to be correspondingly extended.
>
> The Court finds that when all circumstances have been taken into consideration it must be the best solution to continue the hearings on 10 August 1992 with the same judges and the same jury."

On 10 August 1992 the Court continued the hearings with a summary of the facts and the prosecution as well as the defence were given the possibility to sum up the facts established so far. From the court transcript it appears that the presiding judge furthermore inquired whether the jury wished to have a more profound elaboration of the facts or to hear any of the accused or the witnesses again. After having deliberated on the issue, the jury stated that there was no wish or need to complement the evidence obtained so far. Finally, the presiding judge directed the same question to the prosecution and the defence who also did not request any further explanations either from the accused or the witnesses previously examined.

The Court then examined the new evidence which had caused the adjournment and the prosecution as well as the defence were given the opportunity to examine those among the accused who were affected thereby.

On 19 August 1992 the Court pronounced its judgment. The applicant was found guilty of the charges brought against him and he was sentenced to 10 years' imprisonment, the 420 days spent in detention on remand being credited towards the sentence.

The applicant declared immediately in the High Court that he intended to appeal to the Supreme Court (Høyesterett) against the judgment. His appeal was directed against alleged procedural errors (saksbehandlingen) due to the unreasonably long interruption of the hearings at the moment when almost all the evidence had been produced. He maintained that in this complicated case the jury would have problems of comprehension after such a long break and, in addition, the risk of an influence on the jury from the outside had been increased. Finally, the applicant appealed against an alleged lack of reasoning in the judgment (mangelfulle domsgrunner) as well as against the sentence imposed.

By judgment of 14 January 1993 the Supreme Court rejected the applicant's appeal as a whole. Concerning the adjournment for a period of seven weeks justice Gjølstad stated on behalf of a unanimous court, inter alia, as follows:

(translation)

> "I note that the adjournment, which in the present case was more than seven weeks, is unusual and I consider it, per se, to be problematic. However, I find the examination of the case, as it has been conducted, justifiable.

> The assessment of whether a procedural error has been committed must take its starting point in the court's independent responsibility for the procedure. In a case like the present there are, in my opinion, reasons for emphasising how not only the court but also the parties - from their more detailed knowledge of the case - assessed the situation during the hearings. I have previously pointed out that no remarks were made to the summary after the adjournment and that the prosecutor and the defence did not consider that it was necessary to obtain additional explanations either from the accused or from the witnesses previously summoned and examined. Furthermore, I find it important that the jury, after having discussed the issue in private, declared that there was no wish or need to complement the evidence taken so far. Although it concerns a very serious and complicated case, I find that the adjournment, having regard to the examination the case underwent, did not mean that the limit for a justifiable procedure was exceeded. Thus there is no reason to quash (the judgment of the High Court)."

On 30 March 1993 the applicant requested the High Court to reopen his case. The applicant has not indicated whether the Court has taken any decision yet.

COMPLAINTS

The applicant complains, under Article 6 of the Convention, that he did not have a fair trial by an impartial tribunal. He submits that since the proceedings were adjourned for seven weeks the jury obviously must have forgotten, or at least only have an unclear picture of, the evidence taken before the adjournment and, furthermore, the possibility of undue pressure upon the jury had increased during the long adjournment. Consequently, the applicant claims that the jury was no longer impartial when determining the charge in his case.

THE LAW

The applicant complains, under Article 6 (Art. 6) of the Convention, that he did not have a fair trial by an impartial tribunal. Article 6 (Art. 6) reads, as far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal ... ."

a. The applicant has in particular raised the question of impartiality with regard to the jury, i.e. whether it remained impartial after the proceedings had been adjourned for a period of seven weeks.

The Commission recalls that the existence of impartiality for the purposes of Article 6 para. 1 (Art. 6-1) must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge or jury in a given case, and also according to an objective test, that is ascertaining whether the judge or the jury offered guarantees sufficient to exclude any legitimate doubt in this respect (cf. Eur. Court H.R., Fey judgment of 24 February 1993, Series A no. 255, p. 12, para. 28). As regards the subjective test, the Commission and the Court of Human Rights have constantly held that the impartiality of a judge or a juror must be presumed until the contrary is established (cf. for example, Eur. Court H.R., the Le Compte, Van Leuven and De Meyere v. Belgium judgment of 23 June 1981, Series A no. 43, p.25, para. 58).

In the present case the applicant claims that the jury in the High Court could no longer be regarded as impartial since the long adjournment must have increased the possibility of an outside influence

on the jurors.

The Commission notes that the jurors deliberate and vote in camera and are not required to state how the vote was actually cast or to state in any way in their verdict the reasons on which it is based. A possible outside influence on a jury will accordingly not be reflected in the jury's verdict. However, the Commission finds that a discontinuation of the proceedings, even for a considerable period, cannot per se reasonably be taken to affect the jury's impartiality and in the present case the Commission finds that no evidence has been adduced to show that the jury was influenced, or that there could be any legitimate suspicion of the jury being influenced, against the applicant during the discontinuation of the proceedings or any other evidence which could raise doubt as to its subjective or objective impartiality.

b. The Commission has also examined the applicant's complaints in so far as he maintains that he did not have a fair trial, in particular due to the seven week adjournment of the case. In this respect it recalls that the applicant was represented by a lawyer, that the High Court heard twelve witnesses and that the investigation of the evidence was carefully undertaken, giving the applicant the opportunity to be heard. When the proceedings continued on 10 August 1992 the High Court began the hearing by summing up the facts in which the defence could participate, and the jury, the prosecution as well as the defence were asked whether they wished to hear any of the accused or the witnesses again. Neither the jury nor the defence had any comments on the summary, nor did they request a further examination of the witnesses or the accused. Accordingly, the Commission finds no indication that the jury had problems with remembering or comprehending the evidence obtained during the hearing before the adjournment or that the proceedings otherwise continued in an unfair manner.

Subsequently, the case was examined by the Supreme Court which stated, in its judgment of 14 January 1993, that while such a long discontinuation was unfortunate and unusual it had appeared to be the best possible solution in the circumstances. In addition, the Supreme Court found that an examination of this particular case had disclosed no unfairness as to the applicant's trial. The Commission has not found any elements which could make it conclude that these proceedings did not comply with the requirement of fairness within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

c. In these circumstances the Commission concludes that an examination of the case does not disclose any appearance of a violation of Article 6 (Art. 6) 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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)