AS TO THE ADMISSIBILITY OF

Application No. 25982/94
by Sylvin Clifford FLANDERS
against the Netherlands

The European Commission of Human Rights sitting in private on 15 January 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

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 29 July 1994 by Sylvin Clifford FLANDERS against the Netherlands and registered on 19 December 1994 under file No. 25982/94;

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 Dutch national born in 1953. At the time of the introduction of the application he was detained in the remand centre of St. Maarten (Netherlands Antilles). In the proceedings before the Commission he is represented by Mr. Th.A. de Roos, a lawyer practising in Amsterdam.

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

It appears that, on 4 July 1992, N.N. arrived on the isle of St. Maarten carrying an amount of 56.000 US$ intended for the purchase of cocaine. He had been informed by his friend K.J. that such a purchase would be possible. The applicant's brother B. was their contact. In the evening of the same day, the car driven by the applicant's brother B. was stopped by two police officers in uniform. The applicant, N.N. and K.J. were passengers in the car. With their arms drawn, the two police officers seized from the car a bag belonging to N.N., allegedly containing 51.000 US$. They also seized 3.000 US$ from N.N.'s backpack and 2.000 US$ they found on N.N.

In the subsequent criminal investigation of the robbery, the applicant's brother B. and the police officers R.G. and H.G. stated that the taking of the money had been previously planned between them. According to H.G. the applicant was present when this plan was made. No criminal charges were brought as regards the intended drug purchase.

On 19 February 1993, in respect of unrelated facts, the Court of First Instance of the Dutch Antilles (Gerecht van Eerste Aanleg van de Nederlandse Antillen) of Curaçao convicted the applicant of offences against the Netherlands Antilles Opium Act 1960 (Opiumlandsverordening 1960) and sentenced him to six years' imprisonment.

On 24 February 1993 the Court of First Instance of the Dutch Antilles of St. Maarten, following adversarial proceedings in which the applicant was represented by a lawyer, convicted the applicant of theft, preceded, accompanied and followed by violence, and threat with violence, and sentenced him to one year's imprisonment.

In the determination of its sentence, the Court of First Instance of St. Maarten took into consideration that the applicant had only played a minor part in the events of 4 July 1992 and that the prosecution authorities had made the undertaking not to prosecute the victims, who were effecting a drug deal contrary to the Netherlands Antilles Opium Act.

Both cases were joined in the subsequent appeal proceedings before the Joint Court of Appeal of the Netherlands Antilles and Aruba (Gemeenschappelijk Hof van Justitie van de Nederlandse Antillen en Aruba).

Following adversarial proceedings in which the applicant was represented by a lawyer and in which, on 24 June 1993, a hearing was held, the Joint Court of Appeal, by judgment of 25 June 1993, quashed the judgments of 19 and 24 February 1993, convicted the applicant of theft, preceded and accompanied by threat of violence, committed together and in association with others, and of several offences against the Netherlands Antilles Opium Act. It sentenced the applicant to four years' imprisonment subject to deduction of the time spent in pre-trial detention.

The Joint Court of Appeal rejected the applicant's argument that, as regards the charges of which he had been convicted in first instance on 19 February 1993, either the prosecution or the evidence should be declared inadmissible as the victim and his companion (N.N. and K.J.) did not make any formal statement until after the prosecution authorities had made the undertaking that they would not be prosecuted for a possible offence against the Netherlands Antilles Opium Act. It held on this point that:

<translation>
> "According to the documents in the case-file, there were substantial indications that two officers belonging to the police force of St. Maarten were involved in a serious misfeasance.
> It has become plausible that that misfeasance could only be brought to light if the undertaking at issue was made to

N.N. and K.J. By making this undertaking the prosecution authorities pursued a reasonable aim, namely the promotion of an irreproachable police force on St. Maarten. As there are no indications that the credibility of the statements by N.N. and J.K. has been - negatively - affected by this course of action, there is no ground to declare the prosecution inadmissible or to disregard the statements at issue for having been obtained unlawfully."

The Joint Court of Appeal based the applicant's conviction on these charges on the same means of evidence as the Court of First Instance of St. Maarten, namely a statement by the applicant, the statements of the victims K.J. and N.N., and the confessing statements of the applicant's brother B. and of the two police officers R.K. and H.G.

The applicant's subsequent appeal in cassation was rejected by the Supreme Court (Hoge Raad) on 15 February 1994. Insofar as the applicant complained that the Joint Court of Appeal had unjustly rejected the argument that the prosecution should be declared inadmissible as the statements by N.N. and K.J. had been obtained as a result of an investigation tool contrary to the principle of a fair hearing within the meaning of Article 6 para. 1 of the Convention, namely immunity from prosecution, the Supreme Court held that the Joint Court of Appeal had rejected this argument on correct grounds.

COMPLAINT

The applicant complains under Article 6 para. 1 of the Convention that he did not receive a fair trial in the criminal proceedings against him in that the trial courts used in evidence the statements of N.N. and K.J. which the prosecution had obtained by granting them immunity from prosecution. He submits that it does not appear that the trial courts in their assessment of the evidence have applied special safeguards as regards the questionable reliability of these statements.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention of the use in evidence of statements of N.N. and K.J. who had been granted immunity from prosecution.

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

"In the determination of (...) any criminal charge against him, everyone is entitled to a fair (...) hearing (...) by a (...) tribunal (...)."

The Commission recalls that the admissibility of evidence is primarily governed by the rules of domestic law, and that as a general rule it is for the domestic courts to assess the evidence before them (cf. Eur. Court H.R., Saïdi judgment of 20 September 1993, Series A no. 261-C, p. 56, para. 43).

The Commission recalls that the question whether a trial is in conformity with the requirements of Article 6 para. 1 (Art. 6-1) of the Convention must be considered on the basis of an examination of the proceedings as a whole and not one particular aspect of such proceedings only (cf. No. 12002/86, Dec. 8.3.88, D.R. 55 p. 218). It must, therefore, be ascertained whether the proceedings in their entirety, including the way in which evidence was taken, were fair (cf. Eur. Court. H.R., Edwards judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, para. 34).

The Commission is of the opinion that the use in evidence of statements obtained from an accomplice in exchange for immunity from

prosecution may put in question the fairness of the hearing granted to an accused and thus raise an issue under Article 6 para. 1 (Art. 6-1) of the Convention (cf. No. 7306/75, Dec. 6.10.76, D.R. 7 p. 115; and No. 18666/91, Dec. 30.11.94, unpublished).

However, this situation does not arise in the present case as the statements at issue were not made by accomplices but by the victims of the offence with which the applicant was charged, although it appears that the victims themselves had been involved in the preparation of different illegal activities. The Commission notes that no charges were brought in respect of the intended drug transaction.

The Commission considers that there are sufficient elements in the proceedings at issue indicating that the applicant had a fair hearing.

In the first place, the fact that N.N. and K.J. had obtained immunity from prosecution was fully disclosed as from the start of the proceedings before the trial courts, which is illustrated by the fact that the Court of First Instance of St. Maarten took this specific feature into account in the determination of its sentence.

Secondly, the trial courts did not base the applicant's conviction solely on the statements by N.N. and K.J. They also relied on the confessing statements of three accomplices, who had not been granted immunity from prosecution, and whose statements corroborated the version of events as related by N.N. and K.J.

Thirdly, the Commission finds no indication in the present case that in the adversarial proceedings against the applicant, who was represented by a lawyer throughout these proceedings, he was restricted in or prevented from exercising his defence rights guaranteed by Article 6 (Art. 6) of the Convention.

In these circumstances the Commission finds no appearance of a violation of the applicant's right to a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) 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 Commission — President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)