AS TO THE ADMISSIBILITY OF

Application No. 25206/94
by Evert HOLS
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 19 October 1995, the following members being present:

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

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 16 December 1993 by Evert HOLS against the Netherlands and registered on 20 September 1994 under file No. 25206/94;

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 citizen, born in 1939, and residing in Velp, the Netherlands. Before the Commission he is represented by Mr. L.J.L. Heukels, a lawyer practising in Haarlem, the Netherlands.

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

a. Particular circumstances of the case

In or around August 1990, the police started investigating accusations of rape and sexual abuse, lodged by three sisters: A. (born in 1968), B. (born in 1972), and C. (born in 1974). The sisters alleged that they had been raped and sexually abused over a long period of time by several relatives.

The police investigation was initially not directed against the applicant. However, at the end of 1990 or in the beginning of 1991, the three sisters also lodged accusations against the applicant, who is their uncle by marriage. Subsequently, the police started investigating these allegations as well.

It appears that, as a result of the complaints by the three sisters, criminal proceedings were brought against at least seven persons, amongst whom the applicant, Mrs. B.K., the mother of A., B. and C., four of Mrs. B.K.'s brothers and Mr. H.W. who is married to a sister of A., B. and C.

The applicant was arrested on 15 January 1991 and subsequently detained on remand. Requests for his release were rejected on 21 May 1991 and 14 August 1991. He was released on 26 February 1992.

During interrogations by the police on 16 and 17 January 1991, he confessed that he had raped B. When he was interrogated by the investigating judge (rechter-commissaris) on 18 January 1991, he withdrew his confessions. The next day, however, he again confessed to the police that he had raped B.

In January and February 1991, the investigating judge heard A., B. and C., two of their sisters and their mother. The applicant and his lawyer were given the opportunity to submit written questions to the investigating judge, who then would put these questions to the witnesses. They were not allowed to question the witnesses directly. The applicant and the public prosecutor could follow the examinations on a TV-monitor in a separate room. The investigating judge also heard the police officers who had interrogated the applicant. They denied that they had exerted unacceptable pressure on the applicant and stated that a doctor had checked the applicant's health.

On 22 March 1991, the applicant was summoned to appear before the Regional Court (Arrondissementsrechtbank) of Arnhem on 9 April 1991. He was charged with the multiple rape of B. between 1979 and 1986.

On 9 April 1991, the Regional Court adjourned its examination of the case until 21 May 1991. On 21 May 1991 the Regional Court examined a social worker, who had been in contact with the applicant and his wife, and adjourned its further examination until 13 August 1991.

On 13 and 14 August 1991, the Regional Court examined the case. The applicant, referring to his bad state of health and his limited intellectual capacities, stated that his confessions were incorrect and that they were the result of pressure exerted by the police during his interrogations by the police.

On 27 August 1991, the Regional Court convicted the applicant of multiple rape of B. and sentenced him to two years and six months' imprisonment. The Regional Court used in evidence statements made by B. to the police and before the investigating judge and the confessions of the applicant to the police. It considered that it had not been established that the applicant's confessions were the result of pressure exerted on him by the police. The applicant filed an appeal with the Court of Appeal (Gerechtshof) of Arnhem.

On 13 and 14 January 1992, the investigating judge heard a number of witnesses, including B., in the related criminal proceedings against some of the other accused. A video recording was made of the examination of these witnesses. B. was not heard in connection with the proceedings against the applicant.

The Court of Appeal began its examination of the applicant's case on 25 February 1992. At that time, the separate cases of all accused, except Mr. H.W. who had not filed an appeal against his conviction by the Regional Court, were all pending before the Court of Appeal. The Court of Appeal dealt with the cases on 25 and 26 February, 6 May and 2, 3, 5, 10, 17 and 19 June 1992. Although all cases were dealt with simultaneously, they remained formally separated. In the proceedings on appeal, the applicant again denied the accusations against him.

On 25 February 1992, the Court of Appeal heard police officers K., M. and S. These police officers had been involved in the examinations of B. and/or the interrogations of the applicant. The Court of Appeal questioned them, inter alia, on the interrogation tactics used, on how the applicant's confessions had come about and whether they had exerted pressure on the applicant.

On 26 February 1992, at the applicant's request, the Court of Appeal heard Mr. P., a psychologist having a certain expertise as regards the particular problems surrounding incest.

Also on 26 February 1992, the Court of Appeal viewed the video recording that had been made of the examination of B. by the investigating judge the previous month. Subsequently, the applicant requested that B. be summoned before the Court of Appeal.

The Procurator General (Procureur-generaal) objected to an examination of B. in view of the mental stress this would cause her. She stated that B. had been advised by her psychiatrist not to testify again. The Court of Appeal, however, decided to summon B. and adjourned its further examination of the case until 6 May 1992.

On 6 May 1992, the Court of Appeal adjourned its further examination of the case until 2 June 1992 as the Procurator General could not attend the hearing and as it had not been possible for a colleague to get acquainted with the extensive case-file in time.

On 2 June 1992, the Court of Appeal resumed its examination of the case. Despite objections by the defence, the Court of Appeal decided to hear B. in camera and in the absence of the applicant. It considered, inter alia:

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> "... that the hearing of the witness B. ... shall take place behind closed doors, for the weighty reason that the interest of the investigation and the finding of the truth so require. After all, the witness must be enabled to respond as freely and frankly as possible to the questions that will be put to her about the charges against the suspect, knowing that her statements will not directly come to public notice ... that, furthermore, the hearing shall take place in the absence of the suspect, since a direct confrontation between the witness and the suspect is psychologically and emotionally too burdensome for the witness...."

B. was heard in a separate room, in the presence of the three judges of the Court of Appeal, the Registrar to the Court of Appeal, the Procurator General, the applicant's lawyer, as well as B.'s lawyer and a social worker. The applicant remained in the court room, where he could follow the examination on a TV-monitor. In addition to the applicant, the lawyers of the other accused, Mr. P. and a number of court officers (parketpolitie) were present in the court room. They too could follow the examination on the TV-monitor.

Before the examination started, the President of the Court of Appeal informed B. that she was not obliged to retrieve from her memory different kinds of details from repressed events from the past, in view of the considerable emotional strain these questions had caused in previous examinations in the other related criminal cases.

The Court of Appeal put the questions that had been submitted beforehand in writing by the applicant to B. The Court of Appeal gave the applicant's lawyer and the Procurator General the opportunity to put questions to the witness directly. The examination of the witness was interrupted to give the applicant's lawyer the opportunity to consult his client to see if he wished to put additional questions to the witness.

After B. had been heard, the three judges, the Registrar, the Procurator General and the applicant's lawyer returned to the court room, where the President of the Court of Appeal gave a summary of the statements of the witness. The applicant stated that he had been able

to follow the hearing on the TV-monitor and that he did not have any additional questions.

Also on 2 June 1992, the Court of Appeal heard A. and C. in the cases of some of the other accused. At the applicant's request, the transcripts of their examinations were added to his case-file.

On 3 June 1992, the Court of Appeal heard a number of witnesses in the cases of some of the other accused. At the applicant's request the statements of these witnesses were added to his case-file. These witnesses had occasionally gone swimming with A., B. and C. between 1986 and 1988 or 1989.

On 3 June 1992, the applicant requested the Court of Appeal to hear B. again. He wished to confront her with statements made by the witnesses on the same day. He wished to ask B. when exactly she went swimming and what kind of bathing attire she then wore.

The Procurator General objected to a new hearing of B. The request by the defence to be allowed to react to the objection of the Procurator General was rejected by the Court of Appeal. Its President stated that the Court of Appeal was aware of the opinion and arguments of the defence. After having deliberated, the Court of Appeal rejected the request to hear B., considering, inter alia:

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> "... that the defence has been given ample opportunity to question the witness. The court itself has observed that the recollection of the events produced very burdensome negative emotions on the part of the witness. The interest of the defence in an additional examination does not, in the court's opinion, outweigh the detriment to be experienced by the witness as a result of this [an additional hearing]. The court finds a further hearing of B. ... neither desirable nor necessary."

The Court of Appeal subsequently heard Mr. P. He said that he had seen the examinations of A., B. and C. on 2 June 1992 via a TV-monitor. He stated that his first impression was that the examinations had been very burdensome, painful and emotional for them, that they had repeatedly been unable to answer a question because of their emotions, and that these emotions appeared to be genuine.

In the course of Mr. P.'s examination, the applicant's lawyer mentioned that in April 1988, B. and C. had reported to the police that Mr. W., at that time a friend of their mother, had raped them. Police officer M. had been involved in the case against Mr. W.

On 5 June 1992, as his own lawyer Mr. P.R. Wery was not present, the applicant was represented by Mr. L.J.L. Heukels, who informed the Court of Appeal that he had recently been informed, by one of the lawyers representing one of the other accused in the related cases, of the case-file on the criminal proceedings against Mr. W., whom C. and B. had accused of rape in 1988. That case-file contained two medical certificates from the gynaecologist Dr. H.-K., who had examined B. and C. on 27 April 1988. In the certificates, Dr. H.-K. stated that B.'s hymen was ruptured and C.'s hymen appeared not to be ruptured. Mr. W.'s case-file also contained a procès-verbal in which B. stated that she did not know much about sex and that she supposed that her hymen had been ruptured by Mr. W. when she had intercourse with him for the first time in 1987 or 1988, because she had lost blood on that occasion.

The Court of Appeal decided to add the case-file of Mr. W. to the applicant's case-file and to summon Dr. H.-K. as an expert witness. That same afternoon, the testimony of Dr. H.-K. was heard.

Dr. H.-K. stated that it is practically impossible to state with 100% certainty whether intercourse has taken place on the basis of an inspection of the hymen. Dr. H.-K. had had the impression, given the state of B.'s hymen and the state of B.'s vaginal secretion, that B. had had frequent sexual intercourse. She further stated that B.'s behaviour had given her the impression that she had "a complete life behind her". As regards C. she had had the impression that C. had not had frequent sexual intercourse.

On 10 June 1992, the applicant's lawyer informed the Court of Appeal that, in accordance with an agreement concluded between the lawyers representing the other accused in the related cases simultaneously pending before the Court of Appeal, the defence wished to submit a general defence plea. This general plea was subsequently submitted by one of the lawyers, Mr. L.J.L. Heukels. The defence, inter alia, drew attention to the apparent discrepancies between B.'s accusations against the applicant and the contents of Mr. W.'s case-file. The defence requested the Court of Appeal to appoint one or more experts, such as a psychiatrist, a clinical psychologist, an incest expert and/or a traumatologist, to investigate the mental health of the alleged victims.

The Court of Appeal decided to hear the testimony of another gynaecologist. It rejected the request by the defence to appoint other experts since it did not consider this necessary. The Court of Appeal decided to summon the gynaecologist Professor H., who had been proposed by both the Procurator General and the defence.

On 17 June 1992, the Court of Appeal heard Professor H. and Dr. H.-K. The applicant was given the opportunity to put questions to both witnesses.

On 19 June 1992, the Court of Appeal, at the applicant's request, heard another gynaecologist, Professor E., as an expert witness. He stated that Dr. H.-K.'s method of inspection was reliable and that he had no reason to doubt her conclusions.

Also on 19 June 1992, the Court of Appeal heard the Procurator General's closing speech, in which she demanded a sentence of three years' imprisonment, and the applicant's final pleas. The applicant's final pleas consisted of a general plea concerning all the accused in the related cases, presented by Mr. L.J.L. Heukels, an additional final plea in all cases and a final plea concerning the applicant's case in particular. The latter two pleas were presented by the applicant's lawyer Mr. P.R. Wery.

The defence argued, inter alia, that the prosecution should be declared inadmissible for a number of reasons. It alleged that the police, for whose actions and failures the prosecuting authorities are responsible, had intentionally withheld Mr. W.'s case-file, including the medical certificates on B. The defence further complained that, during a recess of one of the hearings before the Court of Appeal, the Procurator General had entered the judges' chambers, where the fully-robed judges were present. The defence also complained that the rights of the defence, as regards the examination of the victims had been restricted to such an extent that it could not be held that the applicant had received a fair trial. In particular, the Court of Appeal had refused to summon other experts as witnesses, the Court of Appeal had told B. before she was heard that she was not obliged to go into details, the applicant had had inadequate opportunity to interrogate B. directly. He had had no opportunity to question her after the case-file of Mr. W. had been added to his case-file. The applicant also complained that on 2 June 1992, contrary to (Section 415 in conjunction with Section 290 of) the Code of Criminal Procedure, the Court of Appeal had excused B. from further examination without the consent of the defence. The defence requested the Court of Appeal to hear B. again.

In its judgment of 3 July 1992, the Court of Appeal quashed the Regional Court's judgment of 27 August 1991, convicted the applicant of multiple rape of B. and sentenced him to one year and eight months' imprisonment. It used in evidence the statements of B. to the police and before the Court of Appeal, and the confessions of the applicant made to the police. It held that the methods used in the police investigations had not been incorrect and that it had not been made plausible in any way that the police had acted improperly and without due care.

As regards the alleged withholding of documents, the Court of Appeal considered, inter alia:

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> "The argument that the police intentionally failed to add to the case-file [the reports made by B. and C. against Mr. W. and the medical certificates on them of 27 April 1988] lacks foundation, because both in the ... procès-verbal in the present criminal proceedings nr. M 9932/AB/1991 of March 1991 ... and in the procès-verbal of the examination of C. dated 29 January 1991, nr. M 9931/G/1991 ... the police officers explicitly referred to the case-file of the criminal case against Mr. W., mentioning both the date of the criminal complaint and the registration number of the case-file."

As regards the presence of the Procurator General in the judges' chambers, the Court of Appeal held:

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> "The court considers on this point that the Procurator General entered the judges' chambers during a recess of the trial only in order to hand a number of letters from the lawyers in the present and other cases to the members of the court. This happened while no deliberations were taking place in the judges' chambers, which, as is correctly stated in the [defence's] written plea, has been stated by the President [of the Court of Appeal].
>
> In the opinion of the court there were, under these circumstances, no reasonable grounds to fear that the Procurator General was involved in any way in deliberations in chambers."

Regarding the applicant's complaint that he was not given an adequate and proper opportunity to question B., the Court of Appeal considered, inter alia:

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> "The court itself has observed that the examination in general, and some of the questions put by the defence in particular, entailed a strong emotional burden for B. The examination had to be interrupted several times because the witness, as a result of intense emotions, was not capable to reply to the questions put to her. At certain moments the witness B. lapsed into fits of crying. This was apparently the result of the confrontation with, and the recollection of, the suffering experienced in her youth.
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> The court finds that with this the limit had been reached of what could be required of this obviously traumatised young woman - who, in the course of the present criminal proceedings had already been heard repeatedly about the

experiences in her youth - as regards the interest of the defence. For that reason it was in the opinion of the court unacceptable to require this witness to stay in the court room after the examination, or after a recess of the hearing to be present again the next day(s), so that possibly she could be subjected again to an examination. For the same reason it was undesirable to comply with the request of the defence, which was made at a subsequent stage of the trial, to summon this witness once again.

Insofar as the defence was not allowed to put a question, or insofar as the witness was allowed not to answer a question, this was done because, in the opinion of the court, the question at issue implied a confrontation with, and the recollection of suffering experienced in [her] youth, which could not be done in view of the emotional state of the witness."

Regarding the applicant's argument that he had not been given adequate time and facilities to prepare his defence, the Court of Appeal considered, inter alia:

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"In the course of the various court hearings, the defence has been able to submit whatever it considered relevant. As a result of the addition of documents to the case-file at the court hearing of 5 June 1992, an expert witness was heard on the same day and two additional experts were heard during the court hearings of 17 June and 19 June 1992, respectively. Those additional hearing dates were determined in consultation with, and with the approval of the defence and the Procurator General. The court finds that the suspect - in view of this procedure - cannot have been harmed in his defence and that there has been no violation of the principle of a fair trial."

The Court of Appeal rejected the applicant's request to appoint experts to investigate the mental health of B. and her faculty of memory, or to hear further witnesses, considering that it did not find it necessary to do so. It also rejected the request to hear B. again, considering that it did not find it necessary or desirable to do so.

The applicant subsequently lodged an appeal in cassation with the Supreme Court (Hoge Raad). In the proceedings in cassation he was represented by Mr. L.J.L. Heukels, who submitted nine complaints:

- that the decision to hear B. in camera had not been taken in accordance with the law;

- that on 2 June 1992 the President of the Court of Appeal informed B. before she was heard that she was not obliged to retrieve from her memory different kinds of details from repressed events from the past, whereas such questions were essential for the defence;

- that on 3 June 1993 the defence was not allowed to react to the Procurator General's objection to the defence's request to hear B. again;

- that the Court of Appeal rejected the request of the defence to hear B. again;

- that, contrary to Section 290 of the Code of Criminal Procedure, B. did not remain in the court room until she was given formal permission to leave with the consent of the defence and the Procurator General;

- that after being heard B. was not notified that she should be present

when the Court of Appeal resumed its examination the next day;

- that the Court of Appeal did not reply to the complaint that the charges against the applicant were not in conformity with Section 261 of the Code of Criminal Procedure in that they were too vague;

- that the Court of Appeal did not reply to the complaint that the prosecution should have been declared inadmissible because the public prosecutor had instituted an additional investigation without having informed the applicant and the Regional Court; and

- that at some point in time the Procurator General had been present in the judges' chambers, where at that moment fully-robed judges were present.

On 27 April 1993, the Advocate General (Advocaat-Generaal) to the Supreme Court submitted his written conclusions, which were transmitted to the applicant.

On 22 June 1993, the Supreme Court rejected the applicant's appeal in cassation. It upheld the reasoning of the Court of Appeal. It considered, inter alia, that on 2 June 1992 the applicant had not objected when B. did not appear in the court room after her she had been heard. Moreover, the applicant had not objected when the President of the Court of Appeal gave the names of the persons who had to be present again on 3 June 1992 and did not mention B.'s name.

Insofar as the applicant complained that the Court of Appeal had failed to reply to the complaint of the re-opening of the police investigation, the Supreme Court held that this omission did not have to result in a cassation of the Court of Appeal's judgment. The Supreme Court stated that it was, ex officio, aware of the fact that Mr. L.J.L. Heukels had raised this same complaint before the Court of Appeal in the six other related cases and that the Court of Appeal in all cases had rejected it on identical grounds. The Supreme Court noted that, apparently due to an error - which according to the Supreme Court should have been clear to Mr. Heukels - the Court of Appeal overlooked this complaint in its judgment in the present and one other case. The Supreme Court accepted the Court of Appeal's grounds, as stated in its respective judgments in the other cases, for rejecting this complaint.

The Supreme Court further found that the Court of Appeal had not acted contrary to the applicable sections of the Code of Criminal Procedure, and that the proceedings at issue were in conformity with the requirements of Article 6 para. 1 of the Convention.

b. Relevant domestic law

Pursuant to Section 24 of the Judicial Organisation Act (Wet op de Rechterlijke Organisatie) it is prohibited for members of the judiciary to have private contacts about pending or future proceedings with the parties to those proceedings. Non-compliance with this prohibition may result in a disciplinary reprimand (Section 14 of the Judicial Organisation Act) or, if it concerns a second time, even dismissal (Section 11 d.3 of the Judicial Organisation Act). Pursuant to Section 28 of the Judicial Organisation Act members of the judiciary are obliged to keep deliberations secret.

COMPLAINTS

1. The applicant complains that, during the proceedings before the Regional Court, the public prosecutor ordered the police to re-open the police investigation, without informing the Regional Court or the defence whilst the results of the re-opened investigation were added to his case-file after he had lodged his appeal with the Court of Appeal.

2. The applicant complains that the Court of Appeal failed to reply to the previous complaint. After having acknowledged that this constituted a failure, the Supreme Court corrected this omission without giving the defence the opportunity to react to this point.

3. The applicant complains that the Court of Appeal heard B. in camera and in his absence.

4. The applicant complains that his defence rights were unduly restricted in the examination of B., as the President of the Court of Appeal told her before her examination on 2 June 1992 that she was not required to answer questions that were emotionally burdensome.

5. The applicant complains that, contrary to the Code of Criminal Procedure, after being heard B. did not remain in the court room until she was given formal permission to leave with the consent of the defence and the Procurator General and that she was not notified that she should be present when the Court of Appeal resumed its examination the next day.

6. The applicant complains that, on 3 June 1992, his lawyer was not allowed to reply to remarks of the Procurator General in respect of the request of the defence to hear B. again.

7. The applicant complains that the Court of Appeal rejected his request to hear B. again after new - exculpating - facts had become known whereas it does not appear from the procès-verbal or the Court of Appeal's judgment that a further examination was unacceptable from a medical or psychological point of view.

8. The applicant complains that the Court of Appeal unjustly failed to summon witnesses in respect of whom new facts had appeared in the course of the proceedings on appeal.

9. The applicant complains that the Court of Appeal used B.'s statements in evidence although the defence had had insufficient opportunity to challenge or verify these statements in the light of the exculpating facts which appeared after her examination.

10. The applicant complains that the Court of Appeal added statements made by the other alleged victims in the related criminal proceedings to his case-file on the understanding that these were not to be considered as having been made in the applicant's case.

11. The applicant complains that the Procurator General was present in the judges' chambers of the Court of Appeal while the judges of that court were there to deliberate. The Court of Appeal thus gave the impression of allowing itself to be influenced by the Procurator General and therefore of not being impartial.

12. The applicant complains that the Supreme Court unjustly rejected his complaint of the vagueness of the charges against him.

The applicant invokes Article 6 paras. 1, 2 and 3 of the Convention.

THE LAW

1. The applicant has lodged a number of complaints under Article 6 (Art. 6) of the Convention. This provision, insofar as relevant, reads:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ... the press and public may be excluded from all or part of the trial in the interest of morals, ..., where the interests of juveniles or the protection of the private life of the parties so require, or to the extent

strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;
...

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
..."

2. Insofar as the applicant alleges that the proceedings against him were not in conformity with Article 6 para. 2 (Art. 6-2) of the Convention and insofar as this complaint has been raised in the domestic proceedings, the Commission considers that it has remained fully unsubstantiated.

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

3. The Commission will examine the applicant's complaints under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) taken together, since the guarantees in paragraph 3 of Article 6 (Art. 6-3) represent constituent elements of the general concept of a fair hearing set forth in paragraph 1 (Art. 6-1) of this provision (cf. Eur. Court H.R., Lala judgment of 22 September 1994, Series A no. 297-A, p. 12, para. 26).

4. The applicant complains that, during the proceedings before the Regional Court, the public prosecutor ordered the police to re-open the police investigation, without informing the Regional Court or the defence whilst the results of the re-opened investigation were added to his case-file after he had lodged his appeal with the Court of Appeal.

The Commission notes that it does not appear from the facts submitted by the applicant that, pending the proceedings against him before the Regional Court, the public prosecutor ordered the police to re-open its investigation. This complaint, therefore, lacks foundation.

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

5. The applicant complains that the Court of Appeal failed to reply to the previous complaint. After having acknowledged that this constituted a failure, the Supreme Court corrected this omission without giving the defence the opportunity to react to this point.

The Commission notes that the Supreme Court dealt with this point in reply to the applicant's own complaint and cannot find that the way this was done violated the applicant's rights under Article 6 (Art. 6) of the Convention.

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

6. The applicant complains that, on 2 June 1992, B. was allowed not to answer emotionally burdensome questions, and that she was heard in camera and in his absence.

The Commission recalls that, according to the second sentence of Article 6 para. 1 (Art. 6-1) of the Convention, the public may be excluded from part of the trial on one or more of the grounds mentioned in that sentence. In view of the nature of the charges against the applicant, the Commission considers that the decision of the Court of Appeal to hear B. in camera was in conformity with the exceptions mentioned in Article 6 para. 1 (Art. 6-1) of the Convention.

Insofar as the applicant complains that B. was heard in his absence and that she was allowed not to answer emotionally burdensome questions, the Commission recalls that the rights secured by Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention are those of the accused and the defence in general. In order to determine whether these rights were respected, it is not sufficient to consider the situation in which the accused himself is placed. Consideration must rather be given to the situation in which the defence as a whole is placed. In exceptional circumstances there may be reasons for hearing a witness in the absence of the accused on condition that his lawyer is present (cf. No. 11219/84, Dec. 10.7.85, D.R. 42, p. 287), or to allow a witness not to answer certain questions.

The Commission has also regard to the special features of criminal proceedings concerning rape and other sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. In the assessment of the question whether or not in such proceedings an accused received a fair trial, account must be taken of the right to respect for the victim's private life. Therefore, the Commission accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence (Baegen v. the Netherlands, Comm. Report 20.10.94, para. 77).

In the present case, the Court of Appeal heard B. in the absence of the applicant, but in the presence of the applicant's lawyer, who could and in fact did question her directly. The applicant could follow B.'s examination via a TV-monitor. The Court of Appeal interrupted B.'s examination in order to allow the applicant's lawyer to consult the applicant to see if the latter wished to put additional questions to the witness. After B.'s examination the applicant informed the Court of Appeal that he had no further questions to B.

In these circumstances the Commission finds that the defence was provided with sufficient opportunity to hear B. on 2 June 1992. It further finds that the interests of the defence could be safeguarded just as well by the applicant's lawyer as by the applicant himself. The Commission therefore finds that B.'s examination in camera and in the applicant's absence was not contrary to Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention.

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

7. The applicant further complains that, although the defence had not formally waived its right to question B., she did not return to the court room after she had been heard before the Court of Appeal, and that the Court of Appeal, contrary to the Code of Criminal Procedure, failed to notify her that she should be present when the Court of Appeal would resume its examination. The applicant also raises a number of complaints in respect of his unsuccessful request to the Court of

Appeal to hear B. again and to hear other witnesses in connection with new and allegedly exculpating facts which had appeared after her examination on 2 June 1992. He complains in particular that his lawyer was not allowed to reply to the Procurator General's objections against a new hearing of B., that the Court of Appeal used B.'s statements in evidence whereas it had rejected the request by the defence to hear her again and to hear other witnesses, thereby depriving the defence of the opportunity to challenge these statements in the light of the facts which had appeared after B.'s examination before the Court of Appeal.

Insofar as the applicant complains that the Court of Appeal violated the Code of Criminal Procedure by failing to tell B., following her examination on 2 June 1992, that she had to be present at the next court hearing as the defence had not formally waived its right to question her, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its task is to ensure the observation of the obligations undertaken by the parties to the Convention. It is not competent to deal with a complaint alleging that errors of law or fact have been committed by domestic authorities, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (cf. No. 12013/86, Dec. 10.3.89, D.R. 59, p. 100).

It remains to be examined whether the applicant's rights under Article 6 paras. 1 and 3 (b) (Art. 6-1, 6-3-b) of the Convention have been respected as regards the administration of evidence in his case.

The Commission notes that, immediately after B.'s had been heard, the applicant informed the Court of Appeal that he had no further questions to B. Moreover, it was open for the applicant to request the Court of Appeal to hear B. a second time, which the applicant did, although unsuccessfully.

In these circumstances the Commission does not find that the fact that B., after she had been heard, did not return to the court room and was not told to be present at the next session of the Court of Appeal harmed the applicant in his defence.

As regards the complaint that, before the Court of Appeal, the defence was not allowed to react to the Procurator General's objections to the request of the defence to hear B. again, the Commission finds no indication that this violated the principle of equality of arms or harmed the applicant in his defence.

As regards the Court of Appeal's rejection of the applicant's request to hear B. again and to hear other witnesses, the Commission recalls that Article 6 (Art. 6) does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a witness (cf. No. 8231/78, Dec. 6.3.82, D.R. 28, p. 5, No. 10563/83, Dec. 5.7.85, D.R. 44, p. 113; and Eur. Court H.R., Bricmont judgment of 7 July 1989, Series A no. 158, p. 31, para. 89).

The Commission, recalling its finding that B. was heard before the Court of Appeal in accordance with the requirements of Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention (see para. 6 above), notes that Mr. P., a psychiatrist, stated before the Court of Appeal that he had the impression that the examination before the Court of Appeal had been extremely burdensome, painful and emotional for B. and her sisters. Also the Court of Appeal itself had observed that B.'s examination before it had been emotionally very burdensome for her and had found that the limit had been reached of what could be required of her in respect of the interest of the defence.

In these circumstances, and taking into consideration the special features of criminal proceedings concerning rape and other sexual offences and, in particular, the situation of victims of such offences,

the Commission cannot consider the Court of Appeal's decision not to hear B. again as arbitrary or unreasonable.

The Commission further notes that, after the case-file of Mr. W. had been admitted as evidence, three gynaecologists were extensively heard before the Court of Appeal in connection with the information contained in that case-file, and that the Court of Appeal did not find it necessary to appoint further experts to investigate the mental health of B. and her faculty of memory, or to hear further witnesses.

The Commission also notes that B.'s statements were not the only evidence on which the Court of Appeal based the applicant's conviction as regards the charges involving her. It had regard in particular to the confessions the applicant had made to the police. It is true that the applicant withdrew his earlier confessions before the trial courts, but, where a court is confronted with a contradiction between an earlier statement and subsequent evidence at the trial, it is the task of this court to consider the credibility of the various declarations concerned (cf. No. 8414/78, Dec. 4.7.79, D.R. 17, p. 231).

The Commission, therefore, cannot find that the Court of Appeal's refusal to hear B. again or to summon further witnesses deprived the applicant of a fair hearing within the meaning of Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention.

Furthermore, noting that the applicant was convicted on the basis of evidence which was debated in the course of adversarial proceedings in which the applicant was represented by a lawyer, who, in the course of nine hearings before the Court of Appeal, was provided with ample opportunity to state the applicant's case and to challenge the evidence against the applicant, the Commission finds that the proceedings against the applicant, considered as a whole, were in conformity with the requirements of Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention.

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

8. The applicant complains that the Court of Appeal added statements made by the other alleged victims in the related criminal proceedings to his case-file on the understanding that these were not to be considered as having been made in the applicant's case.

The Commission has already examined the administration of evidence in the criminal proceedings against the applicant and the fairness of those proceedings as a whole (see paras. 6 and 7 above). The Commission does not find that the present complaint requires a separate examination.

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

9. The applicant further complains of the Procurator General's presence in the judges' chambers of the Court of Appeal during an interruption of the court hearing. He submits that this cast a doubt on the impartiality of the Court of Appeal.

The Commission recalls that the existence of impartiality for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (Eur. Court H.R., Hauschildt judgment of 24 May 1989, Series A no. 154, p. 21, para. 46, and Padovani judgment of 26 February 1993, Series A no. 257-B, p. 20, para. 25).

The Commission notes that the applicant has not expressed doubts as to the personal impartiality of the members of the Court of Appeal.

As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused. It follows that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the opinion of the accused is important but not decisive. What is decisive is whether his fear can be regarded as objectively justified (Padovani judgment, loc. cit., p. 20, para. 27).

In its judgment of 3 July 1992, the Court of Appeal stated on this point that during an interruption of the trial, the Procurator General entered the judges' chambers only in order to hand a number of letters to the members of the Court of Appeal and that no deliberations took place at that time. The Commission has no reason to doubt the accuracy of this statement. Having regard also to Section 24 in conjunction with Sections 14 and 11 of the Judicial Organisation Act, the Commission finds no elements that warrant misgivings about the objective impartiality of the Court of Appeal.

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

10. As regards the applicant's complaint that the charges against him were not in conformity with Section 261 of the Code of Criminal Procedure in that they were too vague, the Commission recalls that it is not competent to review whether domestic courts have correctly applied national law. It can only examine complaints under the Convention (see para. 6 above). The Commission finds that the charges against the applicant, as stated in the summons of 22 March 1991, were sufficiently clear for the purposes of Article 6 para. 3 (Art. 6-3) of the Convention (cf. Chichlian and Ekindjian v. France, Comm. Report 16.3.89, paras. 49-50, Eur. Court H.R., Chichlian and Ekindjian judgment of 28 November 1989, Series A no. 162-B, p. 49).

It follows that this complaint 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

(M.-T. SCHOEPFER) — (H. DANELIUS)