AS TO THE ADMISSIBILITY OF

Application No. 19959/92
by Samir Riadh JAMAL-ALDIN
against Switzerland

The European Commission of Human Rights sitting in private on 23 May 1996, the following members being present:

MM. H. DANELIUS, Acting President
S. TRECHSEL
C.L. ROZAKIS
E. BUSUTTIL
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
M.P. PELLONPÄÄ
B. MARXER
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
E. BIELIUNAS

Mr. M. de SALVIA, Deputy 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 23 April 1992 by Samir Riadh Jamal-Aldin against Switzerland and registered on 11 May 1992 under file No. 19959/92;

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 4 April 1995 and the observations in reply submitted by the applicant on 12 July 1995;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swiss national born in 1955, resides in Zurich. Before the Commission he is represented by Mr F. Schumacher, a lawyer practising in Zurich.

A. Particular circumstances of the case

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

I.

In the course of 1981 numerous street demonstrations and riots took place in Zurich.

In the evening of 10 July 1981 a car was overturned in a street in Zurich. When minutes later two police cars arrived at the scene, a large crowd of people gathered. The police attempted to arrest two persons. According to the applicant, one of them had suffered a head injury, whereupon onlookers, among them the applicant, suggested bringing the person to hospital rather than to arrest him. The police officers declined, whereupon the applicant protested. According to the subsequent decisions of the Swiss authorities, the applicant grabbed a policeman from the back and tried to pull him into a side street.

The applicant and another person unknown to him, R.S., were arrested. They were then brought by police car to the U. police station, where police officers awaited them. Subsequently, R.S. and the applicant were allegedly ill-treated; R.S. was apparently beaten unconscious, though the applicant could protect his face. Later in a cell a policeman allegedly hit the applicant with his fist, and the applicant had to undress. Whenever he asked for the name of the policeman, he was beaten.

The applicant was remanded in custody for one night. In the afternoon of 11 July 1981, after having been brought before the District Attorney, he was released from detention. Upon his release he went to a doctor who noted various injuries.

Criminal proceedings were instituted against the applicant inter alia on the ground of having obstructed police officers in the exercise of their duties. On 7 October 1982 the Zurich District Court (Bezirksgericht) acquitted the applicant of the charges, though he had to bear the costs of the proceedings.

R.S., who instituted compensation proceedings, eventually obtained damages of 10,500 SFr for the ill-treatment suffered at the police station. The courts concerned relied inter alia on the applicant's evidence.

II.

On 3 August 1981 the applicant requested the institution of criminal proceedings against seven police officers on the ground of ill-treatment on 10 July 1981. He claimed that upon his arrest and at the police station he had been severely beaten (massiv geschlagen) and insulted (beschimpft). Threats had been used to obtain his photographs and fingerprints.

The criminal proceedings were discontinued on 6 March 1984.

III.

On 20 November 1985 the applicant filed an action against the Zurich municipality, claiming compensation of 10,000 SFr for the ill-treatment and 3,400 SFr for costs arising from the proceedings which he had attempted to institute against the police officers.

The Zurich District Court dismissed the action on 4 September 1987. The decision stated, inter alia:

"2. The plaintiff claimed that he had been arrested unlawfully

and without reasonable grounds (...). According to him, at about 10.45 p.m. (22.45 hours) he noticed a group of people on Limmatquai, slightly to the north of the City Hall. When he reached the group he witnessed a married couple, a doctor and his wife, asking police officers to take a girl with a forehead injury to hospital (...). He stated that he saw a nervous police officer, allegedly called Eg., threatening these passers-by with a rubber bullet gun. Another officer, allegedly called St., intervened. The doctor was allegedly pushed aside, as was the plaintiff, who says he fell. As he got up again, he states that he was overpowered by, in all, six policemen - as a spectacle-wearer, he was pretty defenceless. He was then taken to the police station with another person who had been arrested (...). The plaintiff adhered to this version of his arrest in all his interviews with the police and the investigating judge. He states that as he was pushed away, a brawl broke out and he no longer had an overall view of the situation. He says that the policeman mentioned above then shouted "arrest him - he was holding me". When he heard this, he says, he tried to run away, whereupon five more policemen went for him, dragged him around, hit and kicked him. He claims that he was then pushed into the police van (...). He says that it is not true that he grabbed police officer Eg. from behind and tried to drag him in the direction of Metzgergasse (...). In another place, he says that considerable confusion broke out, so that he can no longer remember details. He is still sure that the police officer shoved him away with a gun. Somehow, he says, he fell - he does not know how or whose fault it was. As he was getting up, he was grabbed by the above-mentioned police officer and another one, whom he had not seen come up. Then, as he remembers it, both policemen hit him (...). He says that he was very surprised, especially as neither of the police officers had said anything to him (...). He claims that Eg. grabbed him from behind and shouted "hold on to him" (...). In another place he says that it is not true that he attacked police officer St. It is true that he fell once; he can no longer say why (...). In another statement, the plaintiff says that police officer Eg. then allegedly forced people back with the rubber bullet gun. He says that this caused a brawl. He says that he then thought that he should go home since he had no particular interest in the matter. He says that then, in the course of the brawl, the police officer shouted, "hold on to him". Thereupon, other policemen allegedly appeared from under the arcades. He says he walked away in the direction of Metzgergasse and then fell over, he does not know why. He does not know whether someone tripped him up or whether he was grabbed. As he was lying on the ground, he says, all hell broke loose. He states that he was beaten as he lay on the ground, following which they tried to take him to the police van (...).

In this evidence, the plaintiff seeks to portray himself as a mere passer-by who was arrested by the police for no reason at all. He called three witnesses to support his version of events."

The Court first examined the statements of witness R.S., in respect of which it drew the following conclusions:

"It emerges from these statements that the witness S. was dazed at the time that he was in the police van, and therefore that his mental faculties of perception were impaired. Further, his ability to see out of the van was considerably limited, so that he could see only a small area outside the police van because the rear doors were only half open. The witness himself had the impression that something must have already happened to the plaintiff before he first saw him. The witness also failed to mention that the plaintiff fell down before his arrest,

something which he would have been bound to have seen. However, it appears from the plaintiff's own evidence that he was arrested, not right next to the police van, but a certain distance away - according to the plaintiff's evidence, in Metzgergasse (...), which the witness S. could not see from where he was in the police van. Therefore the plaintiff cannot derive any benefit, as far as his arrest is concerned, from this witness's evidence.

In respect of the witness H.W. the Court found: "the witness saw the plaintiff for the first time by the police van and consequently cannot have seen the plaintiff's actual arrest, so that the plaintiff cannot derive any support for his claim that his arrest was wrongful from this witness's evidence either".

In respect of the third witness Sci., the Court found: "This witness's evidence cannot be relied upon, as it diverges so sharply from that of the plaintiff. As set out above, the plaintiff himself states that he fell over before his arrest, as he was trying to move away from the group of people, and that while he was still lying on the ground, people started to beat him up. The witness, however, depicts none of this. Therefore his evidence cannot advance the plaintiff's case in any way."

The Court also examined in detail the statements of various police officers, but again it found that they did not confirm the applicant's allegations:

"As regards the statements of the various police officers referred to above, it should be noted that these arose, partly in their individual police reports, partly in their witness evidence and partly when they were being questioned as defendants. When the various statements are put together, it can be seen that not all the officers described the relevant events in exactly the same way and that different statements made by the same policeman are not always entirely consistent. However these circumstances cannot invalidate the police officers' statements. It is noteworthy that each officer was observing the relevant events from a different place and that the dates on which each individual statement was made vary considerably in time.

What is more significant in the present case is rather that the plaintiff could be precisely identified and that all the statements agree as to the most essential point: that is, that the plaintiff grasped Eg. around the body from behind, that the plaintiff attempted to drag Eg. into an alley and that the plaintiff put up a very strong resistance (a point which will be dealt with in more detail below). It is extremely unlikely that five policemen should have agreed on this version of events in detail with each other, especially as their original reports had to be drafted immediately after the events in question, that very night. Such an agreement could only mean that there was a conspiracy between the various police officers against the plaintiff. There is absolutely no evidence of this, given that the policemen had no previous knowledge of the plaintiff and that they could not initially have guessed that they themselves would face prosecution.

In the light of the different statements, we can, therefore, regard it as established that, at midnight, in the course of a demonstration during the youth unrest in Zurich, the plaintiff grabbed a policeman from behind and tried to drag him into an alley. This was sufficient cause for the plaintiff to be arrested and taken in a police van to the relevant police premises for the purposes of establishing his identity and questioning him about the said occurrence. ...

3. However, the plaintiff also submitted that his arrest had been carried out in an unlawful manner ...

a) The plaintiff's arrest and the process of putting him into the police van

In this regard, the plaintiff stated that five more policemen rushed up to him and dragged him around. He stated that he was also struck and kicked. He was then pushed into the police van. He says that he wanted to speak to the policemen because he objected to the way in which they had acted, so he jumped out of the police van again. He says that he was then grabbed and beaten again (with a rubber truncheon on the head, he thinks) and dragged by the hair. He was then allegedly picked up by the hands and feet by four policemen and bundled into the police van. When the question was put to him directly as to whether he had resisted, he had to admit that he had balked, although he stressed that it was impossible to talk about "resisting" six police officers (...). In another place, he says that while he was getting up, two policemen grabbed him and he was then, as far as he remembers, beaten by both of them (either with their fists, their hands or their truncheons - that is, he is sure that he was beaten with truncheons, amongst other things) (...). He was then taken to the police van, still being beaten. He says he "balked" against being arrested by the police officers. He was no longer sure whether he tried to pull himself away. He said that, even as he was being taken to the police van, more policemen came up to him and beat him too, including with truncheons, and ("kicked") him. Thereupon, he says, he was pushed in through the open doors of the police van. He immediately jumped out of the police van again to speak to the officers. He was then allegedly beaten again by several officers, who grabbed him and pushed him back into the police van (...). Elsewhere, he has stated that he did not resist being arrested by police officer Eg.; he simply had not managed. The other policemen came up too quickly. They started to hit him immediately. He was hit after being grabbed by the policemen. He says that they then tried to drag him into the police van. While being dragged away, he was still being beaten up - in particular, kicked. Before being put into the police van he was also punched. At that point, he said he should amplify his statement: he had certainly been punched several times (...). He says that in Metzgergasse he was struck at least once with a rubber truncheon on the head. He admits that he jumped out of the police van again. He alleges that he was then beaten by the policemen again (...). Elsewhere, he says that while he was lying on the ground, he was struck. He was beaten on the head and the back. He was punched and beaten with rubber truncheons. He was also beaten on the way to the police van. He says he asked to be told why he was being arrested and that he received no answer; he was only beaten, not spoken to (...). As far as he could tell, the blows were coming from all directions. He had to assume that he was not being beaten by just one person (...). He said that if you defined protecting yourself as "resisting", then you could say that he had resisted. He claims that he was beaten after being dragged up from the ground and taken to the police van. He was then thrown into the police van by his hands and feet. Because the doors of the police van were open, he jumped out again to ask why he had been arrested. The only answer he received was a blow. Then he was again thrown into the police van (...). He also says that when he was lying on the ground, he was still being kicked (...).

The plaintiff cannot derive any benefit from these statements which he made as a witness in the criminal proceedings since, for the purposes of the present civil proceedings, they have merely the status of assertions made by a party to the case.

In relation to this aspect of the case, R.S. gave evidence that the plaintiff was grabbed by police officers, wrestled to the ground with a headlock and so put into the van with him [R.S.] (...)."

After examining R.S.'s statements in detail, the Court concluded:

"With regard to these statements, which R.S. partly repeated as a witness in the present case, it must be observed that he himself is bringing civil proceedings against the defendant because he was also allegedly treated unlawfully when arrested. Further, at the time when S. first saw the plaintiff, he was dazed. It is also significant that he could not confirm that the plaintiff had jumped out of the police car again. He also says that he did not see the plaintiff "jibbing" and balking at his arrest, as the plaintiff himself admits he did. These circumstances already considerably reduce his reliability as a witness. But what is decisive is that S. in no way confirms the plaintiff's description of a severe and excessive physical assault. Rather, he describes the plaintiff's arrest simply as rough and carried out with the use of force. He says the plaintiff was grabbed, wrestled down with a headlock, dragged to the police vehicle in a stranglehold as well as being held with the officers' hands, pushed around, punched and thrown into the police vehicle."

The Court next found that all the police officers denied having committed the assaults against the applicant alleged by him. Thus, the statements by the officers were on this aspect of the case very consistent. They admitted that the applicant had been grabbed roughly when he was arrested and that there had been a struggle on the ground. It was also expressly admitted that they were not at all gentle about putting the applicant into the police van. They made no attempt to gloss over their conduct. However, the applicant could not derive any benefit from these admissions since, according to the credible statements of the police officers, he was vehemently resisting arrest and made repeated attempts to escape from the police van. This justified the strong measures resorted to by the police.

The Court considered that the applicant could not derive any benefit from the statements of other witnesses either. The decision continues:

"b) The point at which the plaintiff got out of the police van and was taken into the police station

In this regard, the plaintiff stated that as he got out of the police van he was insulted and beaten (...). He says that in the few metres from the van to the door he was severely beaten and also verbally abused (...). Elsewhere, he says that after getting out of the van in front of the police station, he was kicked and punched (...). Then, again, he says that as they went through the police cordon they were beaten with rubber truncheons and punched. He was beaten, but not as badly as the man who was with him. Then he was held in an arm lock and dragged into the police station by his hair (...). In another place, he says that he was the second person out of the police van, that he was beaten too, that he was beaten with rubber truncheons and punched, that a policeman held him under the arms and dragged him by the hair (...).

As set out above, the plaintiff cannot rely on his own statements, even those made when he was being questioned as a witness in previous proceedings.

R.S. was with the plaintiff at the time. His evidence was

that he climbed out of the vehicle first. ...

The plaintiff can derive no benefit from these statements by S., since the witness S. did not see the plaintiff getting out of the vehicle and immediately lost consciousness. Admittedly, what he heard and sensed suggested blows being struck, but this evidence is not sufficient to prove that the plaintiff was unlawfully treated. As the relevant police officers testified, the plaintiff was just as uncooperative when he got out of the vehicle as he was at the time of his arrest, so that force had again to be used against him. ... In the light of these considerations, we find that the plaintiff cannot establish any claim for damages or compensation against the defendant on the basis of this aspect of the police officers' conduct either.

c) The period spent by the plaintiff at the police station

The plaintiff claims that while at the police station he repeatedly - but in vain - asked for the names of the police officers involved. He says he repeated this request after he had been in the cell for a few moments and three men, including Eg., took away his personal effects. Shortly afterwards, he says, a fat police officer whose first name appeared to be Hugo appeared and punched him for no reason. The plaintiff also asked him for his name but in vain. He states that he was forced to undress. He again asked for names. He says he was then ordered to remove his glasses and was again repeatedly punched. He claims to have suffered a heavy blow to the right kidney, which felled him. His glasses were taken away from him. He again asked for names. Thereupon one of them grabbed him, pushed him up against the wall and started to throttle him with both hands, saying, "Now you're nice and quiet". Again, he asked for the man's name, but the only response he got was a punch in the face, with the words, "That's my name". He says he was asked for his address, which he gave. He was called a "dirty swine" in response. After he had been out of the cell again for half an hour, he asked for his glasses back (...). He says he is very short-sighted, needing lenses of 5.5 and 6 dioptres. His request was allegedly refused (with the words) "dirty swine, filthy pig, go back where you come from" (...). In another place, he says that, when he was in the police station, he again asked for the names of the police officers and the reason for his arrest. He says he was punched in the face by a policeman whose first name was Hugo; moreover, he had to undress in the cell, was again repeatedly punched and kicked in the kidneys and punched in the face while being verbally abused (...). In another statement, he says that as he got out of the van he was kicked and punched. This treatment continued in the police station and his glasses were taken away (...). In another place, he says that on his way to the cell he was verbally abused by the police officers (...). He says that when he asked for the names of the police officers, he was beaten. He says that a police officer punched him or boxed his ears. When he refused to take off his glasses, the policeman frequently hit him. The policeman seemed to be aiming at his glasses. He was mainly punched. Suddenly, the fat policeman thumped him in the kidneys (...). He says that as a result of the blow to the kidneys, he fell to the ground. He again asked this policeman for his name and the policeman continued to beat him. As he was lying on the ground, this policeman grasped him by the neck, pulled him up by the neck and pushed him up against the wall, starting to throttle him. After letting him go, the policeman again punched him and remarked that that was his name. The other policemen did not intervene physically, but simply looked on and abused him verbally (...). In another place, he says that he was then dragged past the entrance to the police station and taken to a cell. He says he was verbally abused, with fairly crude language. He says he is no longer able to

remember in detail what was said (...).

It has already been explained that the plaintiff cannot derive any benefit from these statements. However, solely on the question of the plaintiff's credibility, we would point out that he also asserted that the same police officers were present at the offices of the Criminal Investigations Police as had been at Limmatquai. However, that is correct only in relation to the two policemen who went with the police van, since the other police officers had to wait on Limmatquai because the keys to one of the cars had gone missing.

The plaintiff's version of events was disputed by all the police officers. R.S., who was taken to the police station with the plaintiff, did not see the latter any more once they got to the police station; he did not see what happened there (...).

Hence it is established that the plaintiff has been unable to provide any proof of the alleged events in the police station, so that he cannot claim any damages or compensation from the defendant in relation to them.

d) The period spent by the plaintiff at the offices of the Criminal Investigations Police

In this regard, the plaintiff gave evidence that he was taken into a room where there was a camera tripod and told to take off his windcheater so as to be photographed. He says that he refused and repeated his request for names. He says he was threatened with beating if he did not let himself be photographed. The next morning he was processed by the Criminal Identification Division. He says he refused to be processed. He says he finally agreed, under threat, to have his fingerprints taken and to be photographed (...). In another place, he says that he was forced, by threats, to let himself be photographed and to allow himself to be processed by the Criminal Identification Division (...). In another place, he says that he refused to be photographed. He says that he was told that he could always refuse but then they would have to force him. He says that he also refused to be processed by the Criminal Identification Division. He says he was told that it was not for him to say anything, he had no right to refuse. He says they explained to him that he already knew what could happen (...). In another place, he says that he said that he would not let himself be photographed, nor would he go into the room. He says that Ha. told him, either you go into the room or you'll be forced to go into the room. He states that he was still afraid, because of the preceding events. He feared that he would be beaten up again (...). He says that Ha. pointed out that he had already been beaten in the police station and that the same thing could happen to him again if he didn't submit to being photographed (...). In another place, he said that Ha. coerced him, in a way which he could no longer remember, to be photographed. When he refused to be photographed, police officer Ha. allegedly threatened him in some way, saying that he (the plaintiff) had to do it or else something would happen to him. He said that he could no longer remember the exact terms of the threat (...).

The plaintiff's own statements are - as has already been explained on several occasions - not probative.

The police officers in question dispute the plaintiff's version of events.

R.S., who was taken with the plaintiff to the offices of the Criminal Investigations Police, did not observe what happened

to the plaintiff there. He says that in the Criminal Investigations Police offices they were taken to a sort of reception area, where red forms had to be filled out. After that he had no further contact with the plaintiff (...). In oral evidence, he stated that once inside the offices of the Criminal Investigations Police, he did not see the plaintiff again and could not say what had happened to him there (...).

The plaintiff cannot, therefore, for lack of evidence, claim damages or compensation from the defendant in relation to these events either.

e) Medical evidence

The plaintiff has also sought to prove that he was unlawfully treated by the police by means of two medical reports by Thomas Walser, a practising doctor.

On 11 July 1981, the doctor noted the following physical injuries to the plaintiff:

1. minor haematoma and pressure-sensitivity over the right ear;

2. minor haematomas under the left eye and on the nose;

3. haematomas and contusions on the upper third of the outer left upper arm;

4. minor haematoma on the right side of the torso, above the lowest rib; rib very sensitive when pressed; and

5. long abrasion and considerable haematoma in the hollow of the left knee.

The report goes on to note: "According to the patient, these injuries were caused on 10-11.7.81 by the police (truncheon blows, punches and kicks). In my view, this account of the causes of the injuries is perfectly plausible (...)."

In his medical report of 7 May 1982, Thomas Walser describes the injuries which he found in exactly the same way, adding that it was unlikely that there would be any lasting injury, that the plaintiff was treated as an out-patient and was given a medical certificate for two days' absence from work (...).

Admittedly, the doctor considers it possible that the plaintiff's injuries were caused by the police in the way he described. However, it must be noted that - as has already been established - the plaintiff put up an unjustified, and very strong, resistance to his arrest - so strong indeed, that it led to a brawl and a struggle on the ground. The plaintiff could simply have injured himself in the manner found by the doctor through his refractory behaviour, for which he himself is responsible. In the circumstances, the plaintiff cannot derive any benefit from the two medical reports.

4. In the light of all the above considerations, all the plaintiff's claims are dismissed."

IV.

The applicant's appeal was dismissed on 5 September 1989 by the Court of Appeal (Obergericht) of the Canton of Zurich. In its decision the Court regarded it as established that the applicant had attempted to grab a policeman, who was undertaking an arrest, from behind; the

policeman then had forcibly to be freed. As a result, the applicant's arrest was justified as he was suspected of having committed inter alia the criminal offence of obstructing police officers in the exercise of their duties; as the applicant himself had admitted, there was also a danger of fleeing.

The decision continued:

"Correctly, the burden of proof in relation to the excesses allegedly committed by the police officers was placed on the plaintiff (...). In examining the evidence, the court below helpfully divided the events into four sections according to time and place, namely:

a) the plaintiff's arrest and the process of putting him into the police van;

b) the point at which the plaintiff got out of the police van and was taken into the police station;

c) the period spent by the plaintiff at the police station; and

d) the period spent by the plaintiff at the offices of the Criminal Investigations Police.

a) The plaintiff asserts that the police committed serious excesses in the course of arresting him and putting him into the police van (dragging him around, kicking him, beating him with their hands, fists and a truncheon on the head, back and torso, pushing/throwing him into the police van (...)).

In order to assess the value of these assertions, we must refer to the relevant deliberations of the court below (...). In summary, the following emerges: S., who was one of the witnesses, did not see fundamentally important aspects of the plaintiff's arrest, aspects admitted by the plaintiff himself (his jumping out of the police van and his "jibbing"/balking at being arrested), so that his [S.'s] observations appear unreliable. Moreover, he does not in any way confirm the serious excesses allegedly committed by the police. On the contrary, he describes an arrest which was, certainly, rough and forceful - as the police officers admitted - but which was reasonable in the light of the plaintiff's proven, extremely refractory, conduct. The witness W. also appears unreliable because he claimed not to have seen certain of the plaintiff's actions at the time of his arrest, actions which are of fundamental importance and which are admitted by the plaintiff. The witness Sci. comes over as entirely unreliable, since he portrays the plaintiff's arrest in a way diametrically opposed to the plaintiff's own description (Sci. saying that a policeman held the plaintiff from behind, whereupon two other policemen came up, one of whom hit the plaintiff on the head with a truncheon, whereas the plaintiff speaks of his attempt to run away and his fall). Further, Sci. claims that he did not see the plaintiff doing the things which he [the plaintiff] has admitted doing.

The plaintiff has not succeeded in proving that the police officers acted unlawfully in relation to this phase of the incident.

b) The plaintiff also alleged that the police had committed serious excesses at the time when he got out of the police van and was taken into the police station. Summarising the deliberations of the lower court (...), we find that, according to the credible police statements, when the plaintiff was taken out of the van, he behaved just as uncooperatively as

he had at the time of his arrest (hitting out wildly, struggling with his hands and feet, he practically had to be carried). Therefore, it was necessary for the police to resort to severe measures. S., who raises similar allegations against the police in relation to the time when he himself got out of the van (...), did not see any violence being used against the plaintiff, as he had already been taken around the corner of the building. If he felt and heard someone being beaten behind him, as he alleges, this could perfectly well have been due to the plaintiff's refractory behaviour and wild hitting out.

The plaintiff has not succeeded in establishing that the police acted unlawfully in relation to this phase of the incident either.

c) The plaintiff's allegations of ill-treatment in the police station were not supported by any evidence (...).

The same applies in relation to the alleged attacks in the offices of the Criminal Investigations Police (...).

d) In relation to the two medical reports (...) produced by the plaintiff in evidence of his alleged wrongful treatment, we have nothing to add to the findings of the court below (...).

e) To summarise, the plaintiff has not succeeded in proving that he was wrongfully and unlawfully treated in the context of the arrest in question, so that the defendant has no liability to pay him compensation or damages under this head.

5. a) On appeal, the plaintiff's representative offered himself as a witness of the fact that, as early as the moment when the plaintiff signed the form appointing him as his representative, on 14 July 1981, the plaintiff described the material events in exactly the same way as he did when he filed his crime report on 3 August 1981 (...) and as he had in the statement made immediately after his arrest (...). Firstly, it must be pointed out that the plaintiff's representative can testify only as to what the plaintiff told him; this, however, will not render the plaintiff's story more credible when compared with the evidence adduced by the other side in the form of several eye-witnesses. In particular, it is also noteworthy that the plaintiff, when he was originally questioned (...), stated that the subsequent incident and disturbance were caused (apart from the discussion about the injured "girl") by the above-mentioned policeman pushing the doctor's wife back with a rubber bullet gun. The plaintiff said that, since he was standing behind the doctor's wife, he was also pushed away (...). However, Ms. Ey., an independent witness and the person directly affected, does not confirm this story about being pushed with the weapon (...).

b) In the course of the appeal proceedings, the plaintiff renewed his application for the above-mentioned doctor and his wife, Dr. M. and Ms. A. Ey., to be called as witnesses (...). This court granted his application in a decision of 13 April 1989 (...). However, only Annamarie Ey. responded to the witness summons (...). Whereas the plaintiff insisted that evidence should be taken from M. Ey. (...), the defendant submitted that this was not necessary for the case.

Ms. Ey., who was never separated from her husband on the evening in question (...), saw nothing germane to the essential issues in the case - thus she did not see anyone being threatened with a rubber bullet gun, nor falling over, nor being arrested; and in particular, she did not see the plaintiff at any time on the evening in question (...). The plaintiff's submissions

regarding what the witness saw (...) are mere surmise.

Nothing different can be expected to emerge if Dr. M. Ey. is examined. For one thing, he was always next to his wife, so that he must have seen the same things as she, and for another thing, he "was concentrating all his attention on the injured person" (...), so that he would have been unable to observe anything, or hardly anything, of what was going on around him; in which context it must be remarked that the unmarked police car and the police van were not parked next to each other (...). In addition, there is also the following consideration. It has been established that the doctor was busy examining the injured person, so that his other observations could only be fragmentary. Even if he could confirm, in whole or in part, the plaintiff's assertions under argument I, this would not undermine the corroborated evidence adduced by the defendant in relation to argument I/1, since - as has already been mentioned - the two accounts are not mutually exclusive, but could easily complement each other in time. Therefore, it can be stated with certainty that evidence from Dr. Ey. could not alter the thrust of the evidence (set out above) relating to argument I, and the court can justifiably dispense with further descriptions of the incident as a whole since these cannot be decisive. Therefore, we hereby review our interlocutory decision of 13 April 1989 and decide not to call Dr. Ey. as a witness (...).

6. The plaintiff's remaining grounds of appeal are not significant and could not be decisive for the outcome of the case, so that no examination of them is required. This is particularly true of:

(i) the very odd distinction drawn by the plaintiff between an "unauthorised demonstration" on the one hand and, on the other, provocation involving criminal damage and assemblies of persons, not constituting a demonstration (...);

(ii) the plaintiff's original, fallacious representation of the object of the judicial investigation into his behaviour (...);

(iii) the repetition of the plaintiff's version of events (...);

(iv) the plaintiff's alleged connection with the well-known television personality "Frau Müller" (...);

(v) the plaintiff's sweeping declaration to the effect that it is completely incomprehensible "that the police should chase down anybody they like, batter them with truncheons and arrest them ..." (...); and

(vi) details of the course of the investigation (...)."

V.

The applicant's plea of nullity (Nichtigkeitsbeschwerde) against this decision was dismissed by the Court of Cassation of the Canton of Zurich (Kassationsgericht) on 10 October 1990.

VI.

Against the decision of the Court of Cassation the applicant, who was represented by a lawyer, filed a public law appeal (staatsrechtliche Beschwerde) with the Federal Court (Bundesgericht).

He invoked the Convention and complained in particular of ill-treatment upon his arrest and subsequently at the U. police station in Zurich. He stated that there were issues, first in respect of the

arrest, "later beating and taking away of the glasses in the cell" ("später Schläge und Wegnahme der Brille in der Zelle"), and then the occurrences in the police building. He noted that the Zurich Court of Appeal and the Court of Cassation had mainly concentrated on the arrest and the incidents at the entrance of the U. police station. The applicant also pointed out that often the victim did not even know who had attacked him: "for instance the example of the unknown fat officer with the first name Hugo who very severely attacked the applicant in the cell at the U. police station and took away his glasses" ("im vorliegenden Beispiel etwa der unbekannte dicke Beamte mit dem Vornamen Hugo, welcher den Kläger in der Zelle in der Hauptwache ganz massiv angriff und ihm die Brille wegnahm").

The public law appeal was dismissed by the Federal Court on 20 August 1991, the decision being served on 23 October 1991.

In its decision the Court found that the applicant had insufficiently substantiated his complaints under Articles 3 and 5 of the Convention. He had in particular not demonstrated how the cantonal courts had breached these provisions. In this respect the public law appeal was inadmissible.

Nevertheless, the Court found that in any event the public law appeal was also unfounded. The decision states, inter alia:

> "cc) The complaint that the Court of Cassation breached the right to a fair trial and the prohibition on arbitrariness is unfounded, for the following reasons:
>
> It is true that the District Public Prosecutor stated, on page 7 of his suspension order of 6 March 1984, that despite certain doubts, "the complainant's description of the alleged incidents in front of U. police station can be presumed to be accurate". However, the courts hearing the appellant's civil liability action against Zurich City were not bound by the District Public Prosecutor's opinion (...). Rather, these courts had to weigh the existing evidence independently and freely (...). Therefore, when the cantonal courts did not examine the above-mentioned suspension order, this did not amount to a denial of a fair hearing; the Court of Cassation's decision on this point is in no way untenable.
>
> Moreover, the cantonal courts explained in detail why the statements of the appellant's witnesses S., Sci. and W. were of no assistance or could only be considered with caution. Thus, according to his own statement, R.S., who was arrested on the same occasion [as the appellant], did not or could not observe precisely the key aspects of what happened to the appellant; furthermore, he himself states that his faculties of perception had been impaired by his injuries. The courts did not believe the witness Sci. because his description of events differed, not only diametrically from that of the police officers but even substantially from that of the appellant himself. Similar observations were made regarding the weight to be accorded to W.'s testimony (...). As regards the appellant's view that the cantonal courts erred in law in not basing their decision on R.S.'s account, the grounds of appeal merely repeat the submissions made in the grounds of appeal to the Court of Cassation, without analysing the relevant portions of the Court of Cassation judgment. Therefore, we cannot deal with this part of the appeal (...). Nor did the appellant's witness A. Ey. personally observe what happened to the appellant himself; moreover, certain parts of this witness's evidence are in striking contrast to the appellant's version of events. The latter stated, in his first police interview, that immediately before his arrest Ms. Ey. was pushed away by a policeman with a rubber bullet gun, so that he himself was pushed backwards and,

after a struggle, arrested (...). However, when questioned by the court, the witness expressly denied having been pushed away by a policeman with a rubber bullet gun.

There is no arbitrariness to be discerned in the relevant findings of the cantonal courts as to the probative value of the witness evidence called by the appellants. The corresponding complaint is therefore unfounded. The appellant's other submissions on this point merely amount to a rhetorical criticism of the assessment of the evidence reached by the cantonal courts. The appellant does not set out the concrete findings of fact which are alleged to be obviously incorrect. Therefore, this Court cannot deal with this part of the complaint either, for lack of evidence.

b) As regards the facts of the case, the Court of Appeal regarded it as established that the appellant had grasped P.C. Eg. (who was engaged in making another arrest) from behind and tried to pull him into an alley; that Eg. had to use force to free himself, assisted by other police officers; and that together they succeeded in taking the appellant, who was resisting violently, into police custody (...).

aa) On page 6 of his grounds of appeal to the Court of Cassation, the appellant described these findings as "entirely arbitrary, indeed, perverse". The Court of Cassation, nevertheless, dismissed this complaint, referring to the statements of police officers Eg., St., Wo. and B. and observing that, in order to succeed in a claim of arbitrariness, the appellant would have had to analyse the relevant sections of the Court of Appeal judgment.

In his grounds of appeal, the appellant criticises these sections of the Court of Cassation judgment, quoting at length from his grounds of appeal to the Court of Appeal in which he claims to point out contradictions in the statements made by the police officers. He comes to the conclusion that it was never demonstrated that there were any grounds for his arrest. Again, these arguments do not fulfil the criteria enabling this Court to examine a complaint of arbitrariness in the form of a public law appeal; they fail to set out in detail what manifestly untenable findings of fact were allegedly made (...). In addition, the complaint appears to be unfounded in any event. It is certainly not absolutely untenable to regard the - essentially consistent - depiction of events contained in the different police reports as proven despite a few, rather unimportant, discrepancies between the statements. The fact that these were unimportant discrepancies and not serious contradictions was already explored in detail in the judgment of the single judge sitting as Zurich District Criminal Court of 7 October 1982.

bb) The appellant's claim that the Court of Cassation acted arbitrarily in finding that differences between the police officers' statements were explained by the fact that they were standing in different places is unfounded. No such finding is made in the impugned judgment; rather, in the relevant passage, the Court of Cassation is criticising the appellant for failing to devote so much as one word to explaining why the differences between the police officers' statements could not be explained by the fact that they were standing in different places (...). The assertion that the Court of Cassation did not deal with the question of the admissibility of the police officers' testimony is also incorrect. Remarks on this point are to be found on page 13 ff. of the Court of Cassation judgment, with particular reference to the principle of the courts' freedom to assess the evidence.

cc) Before the Court of Appeal, the appellant applied for Dr. M. Ey. and Ms. A. Ey., who had been present during some of the events of the evening of 10 July 1981 on Limmatquai, to be called as witnesses. Only Ms. Ey. responded to the summons, and she was examined as a witness. The Court of Appeal summoned Dr. Ey. once more and then abandoned the attempt, having found that it was certain that his testimony would not be able to change the thrust of the evidence, a conclusion which was explained in more detail in the reasoning of the judgment.

In the cassation proceedings, the appellant claimed that the fact that Dr. Ey.'s testimony had not been taken by the Court of Appeal constituted a refusal of justice. The Court of Cassation did not consider this complaint, because the appellant failed to provide a detailed criticism of the presumptions reached by the Court of Appeal as to [Dr. Ey.'s} evidence. The appellant claims that the Court of Cassation acted arbitrarily in this respect. The complaint is unfounded, in so far as this Court can deal with it at all. The fact that the Court of Cassation will deal only with substantiated complaints certainly does not breach the provisions of Clause 4 of the Federal Constitution, and the appellant does not explain how the Court of Cassation's view that his complaint of refusal to examine an issue was insufficiently substantiated can be called untenable. The appellant merely claims that, before the Court of Appeal, he made out grounds for Dr. Ey. to be called as a witness; on the other hand, he does not assert, nor could he do so, that he made out grounds before the Court of Cassation to show that the early assessment of the evidence carried out by the Court of Appeal was unlawful.

dd) In summary, we find that the Court of Cassation judgment under appeal complies with Article 4 of the Federal Constitution.

4. - In the light of the above considerations, the appeal must be dismissed in so far as it has been possible to deal with it substantively."

COMPLAINTS

The applicant raises the following complaints under Articles 3 and 5 of the Convention:

He complains that he was ill-treated by the Zurich police upon his arrest and later in police custody, i.e. when leaving the police van and at the police station, in particular in a police cell. Although he was short-sighted, his glasses were taken away and not returned, despite his request.

The applicant submits that it might still be acceptable that he and R.S. were groundlessly and unlawfully arrested and ill-treated. However, on their way to the U. police station both were subjected to the same treatment; they were welcomed at the police station with a beating whereupon R.S. became unconscious. The District Attorney then artificially separated the proceedings against R.S. and the applicant. In the case of R.S. the Zurich courts accepted on the basis of his statements that there had been ill-treatment, whereas his statements had not sufficed as evidence in his own case. Either both stories were true, or both persons were liars and the Zurich municipality was right, that nobody had been ill-treated. Either the police officers lied, or the witnesses R.S., Ey., W. and Sci.

Under Article 6 of the Convention the applicant complains that the evidence which he adduced was not considered, in particular that the witness Dr. Ey. was not heard, and that the proceedings were

unfair.

Under Article 13 of the Convention the applicant complains that he did not have an effective remedy at his disposal.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 23 April 1992 and registered on 11 May 1992.

On 17 January 1995 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 4 April 1995. The applicant replied on 12 July 1995.

THE LAW

1. The applicant complains that the Zurich police ill-treated him contrary to Article 3 (Art. 3) of the Convention.

According to this provision, "no one shall be subjected to torture or to inhuman or degrading treatment of punishment".

a) Under Article 26 (Art. 26) of the Convention, "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

The Government contest that the applicant has complied with the requirements of Article 26 (Art. 26) of the Convention.

The Government submit that the applicant had two sets of domestic remedies at his disposal, namely a criminal complaint against the police officers, and the compensation proceedings. The Government do not hold it against the applicant that he failed to pursue the criminal proceedings.

On the other hand, the Government point out that the applicant's public law appeal was declared inadmissible by the Federal Court. The Government recall the Commission's case-law according to which there is no exhaustion of domestic remedies when a domestic appeal has not been admitted because of a procedural mistake. In the present case, however, the Federal Court found that the applicant's public law appeal, insofar as it concerned the complaint at issue, had not complied with the statutory requirements for filing such an appeal.

The Government note that the Federal Court nevertheless examined the applicant's complaint. However, in their view this does not alter the conclusion that the applicant has not exhausted domestic remedies. Any other interpretation would render obsolete the requirements under Article 26 (Art. 26) of the Convention. In particular, it would no longer be necessary for applicants to comply with the procedural requirements under domestic law. It would then suffice if they invoked, without further substantiation, a breach of the Convention.

The applicant submits that in fact he did comply with the requirements under Article 26 (Art. 26) of the Convention. Thus, the Federal Court dealt with his complaints in substance, while dismissing them as being unfounded. Moreover, in his public law appeal he duly set out the material facts as well as the constitutional and legal provisions which had allegedly been violated.

The Commission notes that the Federal Court, in its judgment of 20 August 1991, found that the applicant had insufficiently substantiated his complaints under Articles 3 and 5 (Art. 3, 5) of the

Convention, and that in this respect his public law appeal was inadmissible. However, the Commission notes that the Federal Court then nevertheless examined the applicant's complaints as a result of which it concluded that in any event the public law appeal was unfounded.

The Commission is therefore satisfied that the Federal Court in fact dealt with these complaints in substance, and that the applicant has, therefore, complied with the requirement as to the exhaustion of domestic remedies. The applicant's complaints cannot therefore be rejected under Article 26 (Art. 26) of the Convention.

b) The Government contend that in any event this part of the application is also manifestly ill-founded. Thus, the facts at issue were carefully examined in detail by various authorities. It transpires from the decisions that the various authorities did not merely try to get rid of an embarrassing affair. On the contrary, they devoted all the necessary care to establish the facts as they had really happened. In this context, it is recalled that during the unrest in Zurich in 1981 many complaints were filed with the authorities about alleged abuse of police force. The authorities dealt individually with each case. Some complaints were upheld and compensation was granted, for instance in the case of R.S. who was arrested together with the applicant. The fact that there were differing results indicates that the authorities, rather than deciding arbitrarily as alleged by the applicant, dealt carefully and individually with each case.

The Government recall in this context the Convention organs' case-law according to which it is not within their province to substitute their own assessment of the facts for that of the domestic courts and, as a general rule, it is for the domestic courts to assess the evidence before them (see Eur. Court H.R., Klaas judgment of 22 September 1993, Series A no. 269, p. 17, para. 29).

In view of the medical certificate issued in respect of the applicant, the Government also question whether the minimum level of ill-treatment has been reached for the present case to fall under Article 3 (Art. 3) of the Convention. Thus, Dr. Walser had stated that the wounds which the applicant had suffered would not lead to any lasting damage; that the wounds did not require hospital treatment; and that the applicant had been unfit to work for two days.

The applicant submits that the various authorities merely glossed over the facts. Indeed, the criminal complaint filed by R.S. was also ignored, just as in the case of the applicant. R.S. only obtained compensation in last resort, and the sole reason herefor was the testimony of the applicant. Thus, the applicant's statements were good enough to help R.S. to obtain compensation for precisely the incident which took place on arrival at the police station, whereas his testimony about exactly the same incident is to have no probative value in his own case.

The applicant submits that his injuries were substantial, and were consistent with his description of the events. Nevertheless, the Government miss the point in relying solely on the medical evidence. The medical evidence is concerned mainly with listing the physical injuries, or what was still visible of them.

In the applicant's view, however, treatment contrary to Article 3 (Art. 3) of the Convention is not confined to physical effects. It is principally a matter of psychological effects. Someone who is arrested without apparent reason, who is taken to a police station and immediately severely beaten up, who is forced to watch while a co-detainee is beaten unconscious, who is obliged to strip in a cell and is then beaten by a police officer, who is forced to hand over his spectacles during this time, who is forced to allow himself to be

photographed like a criminal and to have his fingerprints taken, and who is constantly insulted and threatened throughout all these events, such a person spends a very fearful night.

According to the Convention organs' case-law, ill-treatment must attain a certain level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (Eur. Court H.R., Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65 et seq., paras. 162 et seq.).

Moreover, in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (Art. 3) of the Convention (see Eur. Court H.R., Ribitsch judgment of 4 December 1995, Series A no. 336, para. 38).

In the present case, after the applicant's release from detention on remand on 11 July 1981, he obtained on the same day a medical certificate according to which he had sustained various haematomas on various parts of his body. The report found that it was unlikely that there would be any lasting injury and that the applicant had been given a medical certificate for two days' absence from work. The report regarded it as plausible that the injuries had been caused by truncheon blows, punches and kicks from the police.

In the Commission's opinion, these injuries reach a level of severity sufficient to bring them within the scope of Article 3 (Art. 3) of the Convention.

As regards the various occurrences during which the injuries had allegedly originated, the Commission notes that it is not normally within the province of the Convention organs to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see Eur. Court H.R., Klaas judgment, loc. cit., p. 17, para. 29). On the other hand, the Convention organs' vigilance must be heightened when dealing with rights such as those set forth in Article 3 (Art. 3) of the Convention (see Eur. Court H.R., Ribitsch judgment, loc. cit., para. 34).

Moreover, where a person alleges that the injuries resulted from treatment during custody, the Government are under an obligation to provide a complete and sufficient explanation of how the applicant's injuries were caused (Ribitsch judgment, loc. cit.).

In the present case, it appears that in the night from 10 to 11 July 1981, a car was overturned in a street in Zurich. Two police cars arrived at the scene, and many onlookers gathered. According to the applicant, he protested when the police declined to bring a wounded person to the hospital, whereupon he, the applicant, and another person were allegedly beaten by the police and arrested.

According to the judgment of the Zurich District Court of 4 September 1987, however, the Court regarded it as established that in the course of a demonstration in Zurich, the plaintiff had grabbed a policeman from behind and tried to drag him into an alley. The police thereupon attempted to arrest the applicant. However, as he vehemently resisted his arrest, a struggle ensued with various policemen on the ground which resulted in the injuries later mentioned in the medical report.

The District Court relied for its conclusion on the consistent statements of various police officers who had undertaken the arrest.

Its judgment was confirmed, upon appeal, by the Zurich Court of Appeal, the Zurich Court of Cassation and the Federal Court. The various courts found that the witnesses adduced by the applicant could not serve to change these conclusions. Thus, according to the judgment of the District Court, the witness R.S. had been dazed and was sitting in the police van. The witness H.W. had not seen the applicant, and the statements of the witness Sci. differed sharply from those of the applicant. The Court of Appeal in its judgment of 5 September 1989 explained why Mr and Mrs. Ey. could not usefully serve as witnesses.

Moreover, the applicant has adduced no material before the Commission which would call into question the findings of the national courts and add weight to his allegations (see Klaas judgment, loc. cit., para. 30, p. 17).

In the Commission's opinion, therefore, the domestic authorities gave sufficient explanation for the applicant's injuries which did not appear disproportionate to the circumstances of the applicant's arrest.

However, the applicant also complains that, after his arrest, he was beaten, punched and threatened in police custody. He alleges that such ill-treatment occurred when he was leaving the police van and entering the police station as well as overnight at the police station, in particular in a police cell. He claims that although he was very short-sighted, his glasses were taken away from him and not returned, despite his requests.

The District Court in its judgment of 4 September 1987 denied any ill-treatment. It considered, on the one hand, the consistent statements of the police officers, and, on the other, that no other persons had been able directly to witness the events. The District Court furthermore found that the injuries sustained by the applicant stemmed from his struggle with the policemen upon his arrest. These conclusions were again confirmed, upon appeal, by the Zurich Court of Appeal, the Zurich Court of Cassation and the Federal Court.

The Commission has found that the authorities gave sufficient explanations in respect of the applicant's injuries. It furthermore notes that no additional, or particular, injuries have been made out which occurred solely during police custody and which would have required further explanations on the part of the domestic authorities.

It follows that it has not been sufficiently made out that the applicant was afforded treatment contrary to Article 3 (Art. 3) of the Convention by the authorities concerned. This part of the application is, therefore, manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 5 (Art. 5) of the Convention of his arrest and detention.

The Commission notes that the applicant has not explained, other than in the context mentioned above under Article 3 (Art. 3) of the Convention, in what respect the arrest and detention were in his view unlawful. In any event, and even assuming that the applicant has complied with the requirement as to the exhaustion of domestic remedies within the meaning of Article 26 (Art. 26) of the Convention, the Commission notes the decision of the Zurich Court of Appeal of 5 September 1989 according to which the applicant was suspected of having committed the criminal offence of obstructing police officers in the exercise of their duties, and, as the applicant himself had admitted, that there existed a danger of his fleeing. Subsequently criminal proceedings were instituted against the applicant, though these were eventually terminated.

The Commission is therefore satisfied that the applicant was lawfully arrested "for the purpose of bringing him before the competent

legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his ... fleeing after having done so" within the meaning of Article 5 para. 1 (c) (Art. (-1-c) of the Convention.

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. Under Article 6 (Art. 6) of the Convention the applicant complains of the proceedings and their outcome. He submits that evidence which he adduced was not considered, and that the proceedings were unfair.

a) Insofar as the applicant may be understood as complaining about the criminal proceedings which he attempted to institute against the police officers, the Commission recalls that the Convention guarantees no right to introduce criminal proceedings against third persons, and that such proceedings do not fall under Article 6 (Art. 6) of the Convention. In this respect the application is therefore incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b) The applicant complains about the proceedings concerning his action for compensation, in particular that R.S. obtained compensation whereas he did not.

The Commission recalls that under Article 19 (Art. 19) of the Convention its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, 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. The Commission refers on this point to its established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

It is true that the applicant invokes Article 6 para. 1 (Art. 6-1) of the Convention which states, insofar as relevant, that "in the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing by (a) tribunal ...".

The Commission recalls that, as a rule, it is for the national courts to assess the evidence before them. The Convention organs' task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see Eur. Court H.R., Asch judgment of 26 April 1991, Series A no. 203, p. 10, para. 26).

Insofar as the applicant generally complains that his evidence was not considered and that the proceedings were unfair, the Commission has just found that the domestic courts carefully examined the applicant's case. The Commission finds no indication that in these proceedings the applicant, who was represented by a lawyer, could not sufficiently put forward his point of view, or that they were otherwise unfairly conducted.

Insofar as the applicant complains that Dr. Ey. was not heard as a witness, and even assuming that the applicant has exhausted domestic remedies in this respect within the meaning of Article 26 (Art. 26) of the Convention, the Commission notes the reasons given by the Court of Appeal in its judgment of 5 September 1989, not contested by the applicant, that Mrs. Ey. had been heard as a witness, and that Dr. Ey., who was next to his wife during the events, could not have said more than she had; that, moreover, Dr. Ey. was busy nursing wounded persons during the events and that his observations could therefore have been fragmentary.

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

4. Insofar as the applicant complains under Article 13 (Art. 13) of the Convention that he did not have an effective remedy, the Commission recalls that the requirements of this provision are less strict and accordingly absorbed by Article 6 (Art. 6) of the Convention (see Eur. Court H.R., Philis judgment of 27 August 1991, Series A no. 209, p. 23, para. 67). It follows that no separate issue arises under this provision.

The remainder of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Deputy Secretary to the Commission	Acting President of the Commission
(M. de SALVIA)	(H. DANELIUS)