AS TO THE ADMISSIBILITY OF

Application No. 17647/91
by J.J.
against the Netherlands

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

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

Mr. K. ROGGE, Secretary to the Second Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 31 August 1990 by J.J. against the Netherlands and registered on 11 January 1991 under file No. 17647/91;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1942, and resides in W., the Netherlands.

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

On 12 March 1986 the applicant and an accomplice were arrested by a police patrol in a public telephone booth on the suspicion of attempting to steal the contents of the coin box. The applicant was detained in police custody in a cell, which, according to the applicant, was unsuitable for detention purposes in view of the temperature and the poor sanitary conditions. His shoes and coat had been taken away for examination and were not returned despite several requests of the applicant. After two days the applicant was transferred to another cell.

On 15 December 1986 the Chief Public Prosecutor (Hoofdofficier van Justitie) rejected the applicant's complaints about the conditions in the first cell in which he was detained following his apprehension and his allegations of incorrect behaviour of police officers during his detention in police custody.

In his report of 8 September 1987 the National Ombudsman concluded that the applicant's complaint concerning the cell in which he had been placed on 12 March 1986 were well-founded.

On 16 March 1987 the Magistrate (Politierechter) of the Roermond Regional Court (Arrondissementsrechtbank) convicted the applicant of wilful destruction and attempted theft and sentenced him to a fine of 700 Dutch guilders or, alternatively, two weeks' imprisonment.

Following the applicant's appeal, the Court of Appeal (Gerechtshof) of 's-Hertogenbosch in its judgment of 27 April 1988 quashed the judgment of 16 March 1987. After having considered the statements by the police officers, who arrested and later interrogated the applicant and his accomplice, a statement made before the police by a PTT serviceman, the accomplice's full confession before the police, a statement by a police officer who had investigated the working method and traces in respect of the attempted theft of the coin box contents and after having heard the applicant and his lawyer, the Court convicted the applicant of attempted burglary and sentenced him to four weeks' imprisonment with deduction of the time of his detention on remand and of which two weeks were suspended pending a probation period of two years.

The applicant's appeal in cassation was dismissed by the Supreme Court (Hoge Raad) on 22 May 1990. The Supreme Court rejected the applicant's complaint that the Court of Appeal had unjustly admitted a certain conclusion by a police investigator contained in a police statement as evidence. This statement read inter alia:

<Dutch>

> "Uit sporen en verdere aanwijzingen is met enige waarschijnlijkheid de navolgende werkwijze van de daders vast te stellen."

<Translation>

> "From traces and further indications the following working method of the perpetrators can be determined with some probability."

The Supreme Court considered that under Dutch law the Court of Appeal could admit and use as evidence a conclusion of a police officer as to the perpetrators' probable operating method based on traces and indications the officer himself had found.

COMPLAINTS

1. The applicant complains that the conditions under which he was detained in police custody constituted a treatment contrary to Article 3 of the Convention.

2. The applicant complains under Article 6 para. 2 of the Convention that his conviction was based on a particular police officer's conclusion founded on "probability". In the applicant's opinion this conclusion should not have been admitted as evidence by the Court of Appeal and he is therefore of the opinion that his guilt has not been proved "according to law".

THE LAW

1. The applicant complains that the conditions under which he was detained in police custody constituted a treatment contrary to Article 3 (Art. 3) of the Convention which prohibits torture and inhuman or

degrading treatment or punishment.

However, the Commission is not required to decide whether the facts alleged by the applicant with regard to his custody disclose any appearance of a violation of the Convention, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter after all domestic remedies have been exhausted (...) and within a period of six months from the date on which the final decision was taken". Even assuming that the applicant has exhausted all domestic remedies and that the Ombudsman's report of 8 September 1987 can be considered as the final decision regarding this complaint, the Commission notes that the application was submitted on 31 August 1990, which is more than six months later.

Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant further complains that his conviction is based on a particular police officer's conclusion founded on "probability" which, in the applicant's opinion, should not have been admitted as evidence by the Court of Appeal. The applicant relies in this respect on Article 6 para. 2 (Art. 6-2) of the Convention, which reads as follows:

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

The Commission has examined the above complaint both under para. 2 and under para. 1 of Article 6 (Art. 6-1, 6-2) of the Convention. The latter paragraph provides, insofar as relevant:

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

The Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Contracting States in 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 (cf. No. 11941/86, Dec. 5.10.88, D.R. 57 p. 100).

The Commission notes under Article 6 para. 1 (Art. 6-1) of the Convention that the applicant's conviction was in part based on the particular police investigator's declaration complained of and that the applicant and his lawyer were heard by the Court of Appeal on which occasion the applicant could challenge the declaration at issue and the other evidence against him, i.e. the statements by the police officers, who arrested and later interrogated the applicant and his accomplice, the statement made before the police by a PTT serviceman and the accomplice's full confession before the police.

The Commission further notes that the Supreme Court considered that the Court of Appeal's decision and assessment of the evidence before it were not contrary to Dutch law.

The Commission does not consider that the above complaint raises an issue under Article 6 para. 2 (Art. 6-2) of the Convention. In particular, it does not find that the opinion expressed by the police officer, as evaluated by the Court of Appeal, constituted a presumption

prohibited by this provision (cf., as regards presumptions in criminal proceedings, Eur. Court H.R., Salabiaku judgment of 7 October 1988, Series A no. 141-A, pp. 14ff., paras. 26ff.). In the circumstances of the present case the Commission does not find that the use of the statement complained of infringed the principle of a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Moreover, there is nothing in the case-file to support the contention that the proceedings at issue were otherwise unfair.

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

For these reasons, the Commission, by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)