AS TO THE ADMISSIBILITY OF

Application No. 25212/94
by Martin KLERKS
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 4 July 1995 the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. 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

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 6 June 1994 by Martin KLERKS against the Netherlands and registered on 20 September 1994 under file No. 25212/94;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1951, and currently resides in Leiderdorp, the Netherlands.

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

The eldest of the applicant's two children, Ruben, born in 1981, is almost entirely deaf. From 1985 until May 1987 he went to a special school for the deaf in the town of Voorburg. As his parents were of the opinion that he made no progress at this school and they did not agree with the teaching methods, they sent Ruben to a special school for the hard of hearing in the town of Rijswijk in May 1987.

Ruben's parents were very pleased with the progress made by their son at this school. However, following two assessments of Ruben during the school year, his parents were informed on 17 June 1988 that he would not be allowed to continue at the school. It was held that Ruben should go to a school for the deaf.

The applicant and his wife filed an objection with the school board against the decision of 17 June 1988. In August 1988 the school board decided to allow Ruben to stay on for one more year but, unless significant progress was shown, he would not be allowed to continue at the school after that time.

On 19 July 1989 the school again informed the parents that Ruben would not be allowed to continue at the school. An objection filed by his parents against this decision was rejected on 26 September 1989. On 2 October 1989, Ruben was refused entry to the school upon which his parents instigated summary proceedings with the President of the Regional Court (Arrondissementsrechtbank) of The Hague in order to obtain an injunction forcing the school to admit Ruben.

The President refused to grant an injunction on 17 October 1989. An appeal was filed against this decision and pending the appeal proceedings Ruben was admitted to a regular denominational primary school in his home town. It appears that the appeal was later withdrawn.

In the spring of 1990 the applicant attempted to register his son at another special school for the hard of hearing in the town of Leiden. This school required Ruben to undergo certain tests before deciding whether he could be admitted. As Ruben's parents felt that their son had already undergone too many tests they requested the Inspector General for Special Primary and Secondary Education of the Ministry of Education and Science (Hoofdinspecteur Speciaal Onderwijs/Voortgezet Speciaal Onderwijs van het Ministerie van Onderwijs en Wetenschappen) on 3 May 1990 to decide that Ruben be admitted to the school without taking the required tests.

The Inspector General, by reply of 15 May 1990, informed the applicant that he was not competent to make such a decision and advised to have Ruben undergo the required tests. On 25 May 1990 the applicant filed an appeal against this decision with the Judicial Division of the Council of State (Afdeling Rechtspraak van de Raad van State).

On 29 October 1990 the President of the Judicial Division declared the appeal inadmissible in simplified proceedings (vereenvoudigde behandeling). The President held that, since the Inspector General was not competent to order the admittance of the applicant's son to a school, his letter of 15 May 1990 could not be regarded as a decision against which an appeal could be filed.

The applicant filed an objection against the President's decision with the Judicial Division on 2 November 1990, but this was rejected by decision of 21 February 1991.

In the meantime, Ruben's parents requested the board of the denominational primary school in his home town that he be allowed to continue there after the summer holidays of 1990 as they were of the opinion that their son benefited greatly from being educated among able children. On 13 August 1990 the school board refused this request, holding that the school was unable to cater sufficiently for Ruben's needs without disrupting the educational needs of the other pupils.

The applicant and his wife filed an objection with the school board and informed the school that, given the short period of time between the school's refusal and the beginning of the new school term, Ruben would be sent to the school. On 3 September 1990, Ruben was refused entrance to the school and taken home by police.

On 11 September 1990, the applicant requested the Municipal Executive (College van Burgemeester en Wethouders) of Leiderdorp to ensure Ruben's registration at a regular State primary school in that town. The Municipal Executive refused to comply with this request by letter of 19 November 1990. The Municipal Executive subsequently informed the Child Care and Protection Board (Raad voor de Kinder-bescherming) and the Prosecution Department (Openbaar Ministerie) of the fact that Ruben was not attending school contrary to the provisions of the Compulsory Education Act (Leerplichtwet).

The applicant was convicted on 2 December 1991 by the Leiden

District Court (Kantongerecht) for not registering his son at a school contrary to the Compulsory Education Act and sentenced to a fine of 1,000 Dutch guilders, of which 900 Dutch guilders were suspended on the condition that the applicant cooperate in an examination of which type of school would be most appropriate for Ruben's needs. The applicant filed an appeal against this decision with the Regional Court of The Hague.

Following assessments of Ruben on 14 February and 13 March 1992 it was concluded that he should go to a school for the deaf. Ruben's parents did not agree with the methods and result of the assessment but consented to their son going to a school for the deaf in Amsterdam as of September 1992, while they would continue to look for a school which, in their opinion, would be better suited to Ruben's needs. For this reason, the Juvenile Court Judge (Kinderrechter) of The Hague Regional Court did not issue a family supervision order (ondertoezicht-stelling) as requested by the Child Care and Protection Board.

On 13 April 1993, the Regional Court of The Hague, in the criminal proceedings against the applicant, quashed the decision of the Leiden District Court of 2 December 1991, convicted the applicant of contravening the Compulsory Education Act and sentenced him to a fine of 3,000 Dutch guilders, of which 2,000 Dutch guilders suspended.

The applicant filed an appeal in cassation against the Regional Court's judgment of 13 April 1993. On 1 March 1994 the Supreme Court (Hoge Raad) rejected the appeal in cassation.

A request for a pardon (gratie) was rejected by the Minister of Justice (Minister van Justitie) on 25 January 1995.

At present Ruben attends a denominational Technical School in Voorhout, close to his home town; this is apparently the only regular school willing to admit him.

COMPLAINT

The applicant complains that his son was not allowed to be educated at a regular school in his home town. He invokes Article 2 of Protocol No. 1 to the Convention.

THE LAW

The applicant complains under Article 2 of Protocol No. 1 (P1-2) of not being allowed to send his disabled son to a regular school of his choice.

Article 2 of Protocol No. 1 (P1-2) to the Convention provides:

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

The Commission leaves open the question whether the applicant's disagreement with the education authorities about the appropriate school for Ruben could be said to be based on philosophical convictions rather than a difference of view as to the best way of providing Ruben with an education. Even assuming that the applicant's philosophical convictions may be at issue in the present case, the Commission refers to the dominant character of the child's right to education in Article 2 of Protocol No. 1 (P1-2)to the Convention (cf. Eur. Court H.R., Kjeldsen, Busk Madsen and Pedersen judgment of 7 December 1976, Series A no. 23, p. 25, para. 52).

The second sentence of Article 2 (P1-2) requires the State in

exercising any educational function to ensure that the education and teaching of a child is as far as possible in conformity with the parents' religious and philosophical convictions. This requirement extends not only to the matter taught but to other aspects of the educational function (cf. Eur. Court H.R., Campbell and Cosans judgment of 25 February 1982, Series A no. 48, p. 14, para. 33). It does not, however, require the State to provide special facilities to accommodate particular convictions though it may affect the use of existing facilities (cf. No. 13887/88, Dec. 5.2.90, D.R. 64 p. 158).

The Commission observes that there is an increasing body of opinion which holds that, whenever possible, disabled children should be brought up with normal children of their own age. The Commission recognises, however, that this policy cannot apply to all handicapped children. It further recognises that there must be a wide measure of discretion left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of disabled children generally. While these authorities must place weight on parental convictions, it cannot be said that the second sentence of Article 2 (P1-2) requires the placing of a child with a serious hearing impairment in a regular school (either with the expense of additional teaching staff which would be needed or to the detriment of the other pupils) rather than in an available place in a special school (cf. No. 14135/88, Dec. 2.10.89, D.R. 62 p. 292).

In the present case the Commission notes that on several occasions and by different authorities it was found that Ruben's needs would be best catered for in a school for the deaf. Although it has not been disputed that Ruben functioned well in the regular primary school in his home town where he was admitted on a temporary basis, the Commission finds that this did not preclude the school's authorities from having regard to the available resources and the interests of the other children in the school when they decided not to allow Ruben to continue at the school. Furthermore, it appears that Ruben at present attends a regular school without experiencing opposition from any educational authority.

In these circumstances, the Commission finds that the domestic authorities have respected the applicant's views, as well as Ruben's right to have as effective an education as possible. The Commission concludes that the present case does not disclose any appearance of a violation of Article 2 of Protocol No. 1 (P1-2) to the Convention.

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

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)