AS TO THE ADMISSIBILITY OF

Application No. 12170/86
by Jon KRISTINSSON
against Iceland

The European Commission of Human Rights sitting in private on 13 October 1987, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. JÖRUNDSSON
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER Secretary to the Commission

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

Having regard to the application introduced on 10 April 1986 by Jon Kristinsson against Iceland and registered on 20 May 1986 under file N° 12170/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 6 February 1987 and the observations in reply submitted by the applicant on 16 March 1987 as well as the submissions of the parties at the hearing held on 13 October 1987;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is an Icelandic citizen, born in 1916. He is a superintendent and resides at Akureyri, Iceland. Before the Commission he is represented by Mr. Eirikur Tomasson, a lawyer practising in Reykjavik, Iceland.

The particular facts of the case

On 20 June 1984 two police officers engaged in monitoring traffic speed by radar in the vicinity of Akureyri concluded that the applicant had driven his vehicle at a speed of 68 km/h in a zone where the official speed limit was 50 km/h. The applicant did not dispute the result of the radar check, although he considered the measurements improper, since they were conducted at the foot of a steep hill.

On 26 June 1984 two police officers again stopped the applicant in his car when they concluded that he had not observed a stop sign at an intersection in Akureyri. The applicant protested that he had in fact brought his vehicle to a halt on this occasion.

In two letters from the chief of police of Akureyri, dated 10 and 12 July 1984, the applicant was offered the chance of settling both of the above cases by paying a fine determined by the chief of police for the alleged breaches of the Traffic Act. The letters stated that no further action would be taken by the authorities if payment were received within a specified period. Both letters were signed by Mr. SJ, acting as the deputy of the chief of police of Akureyri.

The applicant, however, did not accept this offer to settle the alleged breaches of the Traffic Act, and was therefore summoned before the Akureyri District Criminal Court, where he appeared on 30 August 1984. The judge in charge was Mr. SJ, the same person who had earlier dealt with the applicant's case as the deputy of the chief of police, but now representing the town magistrate of Akureyri. The applicant declined to settle the cases in court without being formally indicted. He did not contradict the radar speed measurement. On the other hand, he claimed that he did stop at the stop sign.

Following this court hearing, the police officers who had brought the complaints against the applicant were called to appear in court to give testimony. The judge in charge was again Mr. SJ. At the conclusion of the preliminary inquiry the case documents were sent to the public prosecutor, who subsequently issued an indictment of 23 November 1984 against the applicant for his alleged violations of the Traffic Act, i.e. (1) exceeding the speed limit, and (2) failing to observe a stop sign.

Mr. SJ, representing the town magistrate of Akureyri, heard the case on 4 and 10 December 1984 and pronounced judgment in the case on 27 December 1984. The applicant was found guilty on both counts and ordered to pay a fine of 3,000 Icelandic crowns to the Icelandic State Treasury as well as all costs.

The applicant refused to accept this sentence and appealed against it to the Icelandic Supreme Court. Before the Supreme Court the applicant's primary claim was that the judgment be set aside and the case sent back to the District Criminal Court for a retrial. The applicant argued that the inquiry in the District Criminal Court had been quite inadequate, and that the case had not been heard by an impartial judge since the procedure whereby the same official was involved in a case both as chief of police (deputy chief of police) and as judge (deputy judge) conflicted with the principles stated in Articles 2 and 61 of the Icelandic Constitution and Article 6 of the European Convention on Human Rights.

On 25 November 1985 the Supreme Court pronounced its judgment by which the applicant was acquitted of the charge of non-observance of the stop sign. The ruling of the District Criminal Court as regards the charge of exceeding the speed limit was, however, upheld and the applicant was sentenced to pay 1,500 Icelandic crowns. He was also ordered to pay all costs of the appeal proceedings. Regarding the applicant's claim concerning the impartiality of the judge of the District Criminal Court the Supreme Court stated:

> "Under the Icelandic court system, judicial powers in district courts outside Reykjavik are vested in town and county magistrates who serve collaterally as chiefs of police. The criminal court decision cannot be set aside on the grounds that the deputy town magistrate of Akureyri tried the case in question. Furthermore, no specific facts have been established which would

disqualify the town magistrate or his deputy."

Relevant domestic law and practice

According to Section 59 of the Icelandic Constitution the judicial system shall be regulated by law. Act no. 74 of 27 April 1972 on District Judicial Organisation, Police and Customs Administration regulates the judicial system.

The Act describes in its Sections 1 - 6 the judicial organisation as well as the police and customs administration in Reykjavik. Judicial duties are distributed among three offices with judicial authority. The sections describe the type of cases dealt with by each office, the offices of the chief of police and the offices of the director of customs.

Section 7 of the Act provides that outside Reykjavik the type of cases enumerated in Sections 2 - 6 come under the duties of the offices of town and county magistrates, unless otherwise provided by law.

Section 7 furthermore provides that the Minister of Justice may decide that district court judges shall serve with the offices of some particular town and county magistrates outside Reykjavik. These offices include Akureyri.

Section 15 of the Act provides that as many deputies as the Minister of Justice considers necessary shall serve with the above offices. The deputies shall fulfil certain conditions prescribed by law.

According to sub-section 2 of Section 15 the Minister of Justice may grant to the deputies appointed according to sub-section 1, and who fulfil the conditions prescribed by law for permanent engagement as judges, a special commission for performing independently and on their own responsibility the judicial functions entrusted to them.

Act no. 85 of 23 June 1936 concerns the district court procedure and includes provisions concerning judges.

Section 29 provides that judicial functions in civil cases are performed by county magistates in the counties, town magistrates in the townships, specially designated district court judges in counties and townships, city magistrates and criminal court judges in Reykjavik, and the chief of police at Keflavik Airport.

Section 33 concerns the judges' deputies. According to sub-section 4 the Minister of Justice can authorise deputies of a district court judge to perform on the judge's responsibility, in his absence or owing to his workload, all judicial functions. The deputies shall fulfil the same conditions as the judges themselves, except as regards age and seniority.

Chapter 2 of the Code of Criminal Procedure of 21 August 1974 contains provisions concerning district court judges. Section 4 of the Code provides that county magistrates outside townships, town magistrates in townships outside Reykjavik, other judges appointed to serve within these offices, and criminal court judges in Reykjavik, conduct the investigation of criminal cases in court, hear them, and pass judgment. Section 15 of the Code provides that a judge can have his authorised deputy conduct the investigation of criminal cases in court and pass judgments if the deputy fulfils the same conditions as set out in Section 33 of Act no. 85 of 23 June 1986 mentioned above.

Chapter 5 of the Code of Criminal Procedure includes provisions concerning police officers and the initial police

investigation. Section 32 concerns chiefs of police and provides that county magistrates are chiefs of police outside townships, town magistrates in townships outside Reykjavik, and specially appointed chiefs of police where they have been designated. This last provision refers to the Keflavik Airport jurisdiction.

Chapter 14 of the Code of Criminal Procedure is entitled "Juvenile cases, fines set by chiefs of police and police officers, settlements in court, and indictments". This chapter concerns the treatment of various minor offences.

Section 112 sub-section 2 provides that if a chief of police receives information concerning a traffic offence or other types of offences, and he considers that the sanction would not exceed a fine of 12,000 Icelandic crowns he can make an offer in writing to the accused within one month of receiving the information whereby the matter can be settled against the payment of a suitable fine if the accused accepts this by his signature. If the accused does not accept the offer, the chief of police shall refer the matter to a judge.

According to Section 112 sub-section 1, a judge can settle a criminal case without involving the prosecutor, if an offence is conclusively proven and it is considered that the penalty would not exceed a fine if the case was adjudged. The judge can then determine a suitable fine, if the accused accepts this decision by his signature in the record.

If the accused does not accept that the case be settled in this way, the judge refers the case to the public prosecutor, who then may either decide to drop the charge or issue an indictment (cf. Section 115). The public prosecutor sends an indictment to the judge, who then proceeds with the case in accordance with the provisions of the Code of Criminal Procedure.

When judgment is given the parties, i.e. the public prosecutor and the defendant, can appeal the case to the Supreme Court of Iceland, if either of them or both do not wish to abide by the judgment of the District Court. The Supreme Court then reviews the case, and decides on issues of fact as well as sanctions. The judgment of the Supreme Court is final.

COMPLAINTS

The applicant submits that according to the Supreme Court judgment there seems to be no provision in Icelandic law to prevent the same person from first acting as chief of police and subsequently as judge in the same case. He complains that in the criminal case brought against him the same official performed both these functions. Accordingly, the applicant maintains that he was not heard in the District Criminal Court by an impartial tribunal. He invokes Article 6 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 10 April 1986 and registered on 20 May 1986.

On 13 October 1986 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits.

Having been granted an extension of the time-limit the Government submitted their observations on 6 February 1987. The applicant's observations in reply were submitted on 16 March 1987.

On 13 July 1987 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application.

On 18 September 1987 the President of the Commission, acting in accordance with Rule 7 of the Addendum to the Commission's Rules of Procedure, decided that legal aid should be granted to the applicant for the representation of his case before the Commission.

At the hearing, which was held on 13 October 1987, the parties were represented as follows:

The Government

Mr. Thorsteinn Geirsson, secretary general of the Ministry of Justice, Agent.

Mr. Gunnlaugur Claessen, solicitor general.

The applicant

Mr. Eirikur Tomasson, lawyer, applicant's representative.

SUBMISSIONS OF THE PARTIES

The Government

The Icelandic system where investigative and judicial powers are combined has a historical and geographical origin and it should be emphasised that the conditions prevailing in Iceland are significantly different from those of other member States of the Council of Europe.

The combination of judicial and administrative authority is based on a legal tradition of long standing. The institution of "syslumenn" (county magistrates) dates back to the year 1281. Ever since the beginning they have exercised executive and administrative powers within their areas or counties. For almost 300 years they have also exercised judicial powers. As regards town magistrates they have exercised the same powers after towns were founded in Iceland. This applies to the town magistrate of Akureyri as well as to other town magistrates in the country.

The small population of Iceland, now and over the centuries, is also an explanation to the particular development of the Icelandic judicial system. Today, Icelanders number about 240,000 which is three times as many as at the turn of the century. Furthermore, the geographical conditions are different. Iceland is divided by mountains and large rivers and the climate is harsh for more than half of the year. All these facts have rendered communications difficult and for a long time many local communities have had to live in isolation. In addition, there were almost no roads or bridges in Iceland at the turn of the century, and communications have only been significantly improved during the past few decades. Thus, the isolation of many rural communities has just recently been broken.

All these particular Icelandic conditions, Iceland's history, its geography and the density of its population, form the background for the legal system. In spite of this, attempts have been made to separate judicial and administrative authority in Iceland. An evolution in this direction has been going on for quite a considerable period of time.

It started in Reykjavik, where almost 40% of the population live today, and the separation of judicial and administrative

authority in Reykjavik is now complete. Outside of Reykjavik this evolution has progressed at a much slower pace. Nevertheless, important steps in this direction have been taken.

Firstly, Section 7 of Act No. 74 of 1972 now provides for the appointment of independent and impartial judges with the offices of many county and town magistrates in the more populous areas. These judges have no police authority. They may be charged with administrative duties, but this is not done in practice.

Secondly, the system of the State Criminal Investigation Police Agency was changed in 1976 and an independent Agency was established operating in Reykjavik and other municipalities in the south-western part of the country where about two-thirds of the population live. This step in the direction of separating investigative and judicial authority was not taken in full as the State Investigation Police Agency does not serve other parts of the country except at the request of the local authorities.

The explanation why this evolution has progressed so slowly outside the capital is varied. Among the factors is that Icelandic society has been undergoing drastic changes during the past few decades. People have moved in large numbers from rural areas to the urban south-west. The rural communities differ in character and many of the communities, which are large in area, have a low population density.

With regard to the continuation of this evolution a new Government came to power in Iceland on 8 July 1987. The programme of the new coalition Government states that they will initiate an overall revision of the judicial system and carry out a separation of judicial and administrative duties. A committee is now preparing a Bill with the aim of separating judicial and executive functions and thereby securing the independence of the courts.

Turning to the applicant's complaint in the present case the Government maintain that it is incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 since the applicant cannot be considered to be a victim of a violation of the rights set forth in the Convention within the meaning of Article 25.

Viewing separately the two alleged offences dealt with by the Supreme Court of Iceland, the Court acquitted the applicant of the charge of having violated the stop sign as the offence was not regarded as proved. As the applicant accordingly sought and gained redress under the national system available to him, he cannot in accordance with the established case-law of the Commission claim to be a victim of any possible violation of the Convention.

Regarding the other offence, the offence of speeding, the applicant was never a victim within the meaning of Article 25. He confessed to that offence and was offered to have the matter settled against the payment of a fine, which is a routine procedure. Before the Supreme Court he did not claim acquittal but only a reduction in the penalty and this was granted by the Supreme Court. In these circumstances the Government are of the opinion that the complaint is incompatible with the provisions of the Convention within the meaning of Article 27 para. 2.

In the alternative the applicant's complaint should be regarded as being manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

When looking at the present case in the light of the judgment of the European Court of Human Rights in the case of De Cubber (Eur. Court H.R., De Cubber judgment of 26 October 1984, Series A no. 86) there are obviously significant parallels, but also significant

differences. In particular the applicant in the present case had never been convicted previously and the authorities had not taken any sort of action against him, at least not for 25 years. Furthermore, what actually happened were two things: firstly, police reports on the alleged offences were prepared; secondly, letters were sent to the applicant on printed forms with the appropriate entries where he was offered to have his case settled against the payment of a fine.

By these routine letters of the deputy of the chief of police the applicant was offered to pay a fine of 950 Icelandic crowns for the speeding offence and 770 crowns for the non-observance of the stop sign. In doing this, the deputy of the chief of police followed exactly the guidelines issued by the public prosecutor to the Icelandic chiefs of police concerning the handling of minor offences. The treatment of the applicant's case was in no way different from the treatment any other citizen would have received under the same circumstances. These letters were disregarded by the applicant and he was never called upon to appear before the chief of police or his deputy. The case was not dealt with any further by the police.

Bearing this in mind, it is evident that the procedure followed by the police was a matter of routine. No aspect of the procedure could have influenced the attitude of the chief of police or his deputy when the case was later brought up in court. Accordingly, the case of Mr. De Cubber and this case are fundamentally different. Furthermore, the applicant's case was never referred to the public prosecutor at this stage.

The same deputy who signed the letters of the chief of police received the case for treatment in court. However, there is no indication at all of partiality in his treatment of the case, and this applies to all stages of the examinations of the court, both before and after the issuance of the indictment. The conclusion is therefore that the applicant received fair treatment by an impartial tribunal in conformity with Article 6 of the Convention.

The applicant

The main facts of this case are not in dispute. The applicant was charged with two alleged violations of the Traffic Act and he was offered to settle both of the charges by paying a fine determined by the chief of police of Akureyri. Both of these charges were signed by Mr. SJ, a deputy of the chief of police. The applicant refused to settle the case and was therefore summoned before the Criminal District Court of Akureyri where he strongly protested against the allegation of having failed to observe the stop sign. Furthermore, and contrary to what the Government have submitted, he did not confess to the charge of exceeding the speed limit but he chose not to contradict the radar speed measurement made by the police.

After the case had been sent to the public prosecutor of Iceland an indictment was issued against the applicant who was subsequently found guilty of both charges by the Criminal District Court and sentenced to pay a fine of 3,000 Icelandic crowns as well as all legal costs. The judge in charge was Mr. SJ, the same person who had earlier handled the case as deputy chief of police. The applicant appealed against the judgment to the Supreme Court of Iceland where his primary claim was based on the argument that the case had not been tried by an impartial judge. The Supreme Court however, dismissed the argument, found the applicant guilty of one of the charges brought against him and sentenced him to pay a fine of 1,500 Icelandic crowns as well as all legal costs.

As can be seen from the above the judicial system of Iceland provides that, outside the capital of Reykjavik, the town and county magistrates act both as chiefs of police and judges in criminal proceedings. The applicant is of the opinion that Article 6 para. 1

of the Convention was violated when the same person acted first as deputy chief of police and later as judge in the criminal case brought against him.

The Government maintain that the applicant cannot claim to be a victim of a violation of the Convention since there were no deficiencies in the treatment of his case before the Supreme Court of Iceland. Furthermore, the Government maintain that the applicant was awarded all the material relief he sought by the Supreme Court.

There is no doubt that the present case concerned the determination of a criminal charge within the meaning of Article 6 of the Convention. This is also the way the case was treated under Icelandic law. It would, however, be absurd and contrary to the object and purpose of Article 6 para. 1 if everyone in Iceland charged with a criminal offence would have to appeal his case to the Supreme Court in order to receive impartial treatment. This also follows from the case-law of the European Court of Human Rights, for example the judgment in the case of De Cubber v. Belgium. Furthermore, it is not quite true that the applicant was awarded all the material relief he sought because he was found guilty by the Supreme Court of the charge of exceeding the speed limit and sentenced to pay a fine.

It is important, however, that the Supreme Court rejected the applicant's primary claim and with reference to the above-mentioned De Cubber judgment the defect involved matters of internal organisation which were not cured by the higher court. Therefore, the applicant may claim to be a victim within the meaning of Article 25 of the Convention.

The Government have furthermore submitted that the judicial system in Iceland could be justified by the special circumstances there, for example the historical and geographical situation. This is, however, of no relevance since Iceland is, as any other High Contracting Party, obliged to comply with the Convention. The applicant thus maintains that his case was not determined by an independent and impartial tribunal within the meaning of Article 6 para. 1 of the Convention.

According to the established case-law of the European Court of Human Rights the question of impartiality can be tested in various ways. Hence, one can distinguish between a subjective approach, that is endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that is determining whether he offered a guarantee sufficient to exclude any legitimate doubt in this respect.

The judge in the present case did not display any personal hostility or ill-will towards the applicant. However, the fact that the case was decided by a person who earlier in the same case had acted as deputy chief of police must lead to the conclusion that the applicant's case was not heard by an impartial tribunal. A judge who one day is working closely with the police as its superior and the next day is deciding a case where the police is clearly on the other side, cannot be seen to do justice. In the present case the judge in question, in his capacity as deputy chief of police, had earlier sent the applicant two letters offering him to settle the case by paying a fine. By doing this he must have made up his mind and decided by himself that the applicant was guilty of both charges. He cannot therefore be considered an impartial judge when he afterwards is called upon to decide in the case as a judge.

Due to the similarity between the present case and the case of De Cubber, it is finally interesting to compare the status of the chief of police or deputy chief of police in Iceland with the role of the investigating judge in Belgium. According to the applicable Icelandic legislation the public prosecutor of Iceland orders

investigations in criminal cases, directs and supervises them. He may issue orders and instructions to the police carrying out an investigation and may attend it personally or have his deputy attend. Furthermore, the chiefs of police shall, when they consider it appropriate or necessary, commence an investigation owing to suspected offences, whether or not they have received a request. In this regard they are subject to the orders of the public prosecutor.

Accordingly, as regards the criminal investigation, it is clear that the chiefs of police in Iceland are placed under the orders and instructions of the public prosecutor. This comparison of the status of the investigating judges in Belgium and the chiefs of police in Iceland reveals that the chiefs of police in Iceland are more dependent on the public prosecutor than the investigating judges in Belgium. Therefore, they should be considered more partial as judges in criminal proceedings because of their close ties with one of the parties to the proceedings.

In the light of the above the applicant is of the opinion that he can claim to be a victim of a violation of Article 6 of the Convention, in that he was not tried in the District Criminal Court of Akureyri by an impartial tribunal as guaranteed by Article 6.

THE LAW

The applicant maintains that he may claim to be a victim of a violation of the Convention in that he never confessed to the charge of exceeding the speed limit, but chose not to contradict the radar speed measurement and was subsequently convicted of the charge. Furthermore the applicant submits that the same person acted first as chief of police and subsequently as judge in the criminal case brought against him and that there is nothing in Icelandic law to prevent the same official from performing both these functions. He complains of a breach of Article 6 para. 1 (Art. 6-1) of the Convention alleging that the criminal charge against him was not determined by an impartial tribunal in these circumstances.

The relevant part of Article 6 para. 1 (Art. 6-1) of the Convention reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Government contend that the applicant cannot claim to be a victim of a violation of the Convention, as required by Article 25 (Art. 25), since he in fact confessed to the charge of exceeding the speed limit and since, on his appeal, the Supreme Court of Iceland acquitted him of the remaining charge. In the alternative the Government maintain that the applicant's complaint should be rejected as being manifestly ill-founded. The case should be considered in the light of the historical and geographical background of Iceland. Mr. SJ, when representing the chief of police, merely followed routine procedures used in all cases of this kind. Impartiality was accordingly observed in full during this stage of the proceedings. Similarly there was no indication that Mr. SJ, when serving as deputy judge, acted in a way which could lead to the conclusion that the applicant's case was not heard by an impartial tribunal. The treatment of the applicant's case was therefore in conformity with Article 6 (Art. 6) of the Convention.

The Commission has taken cognizance of both parties' submissions and has made a preliminary examination of the applicant's complaint. It has come to the conclusion that the case raises serious issues as to the application and interpretation of Article 6 (Art. 6) of the Convention, and that these issues can only be determined after an examination of the merits.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Secretary to the Commission — President of the Commission

(H.C. KRUGER) — (C.A. NØRGAARD)