AS TO THE ADMISSIBILITY OF

Application No. 12241/86
by L.
against the Netherlands

The European Commission of Human Rights sitting in private on 13 October 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
J. CAMPINOS
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 16 April 1986 by L. against the Netherlands and registered on 26 June 1986 under file No. 12241/86;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a candidate-notary public (kandidaat-notaris) of Dutch nationality residing in Breda, the Netherlands.

In 1980 the applicant was recommended by the Supervisory Board of (candidate-) Notaries Public (Kamer van Toezicht over de notarissen en kandidaat-notarissen) to the Deputy Minister of Justice to be appointed notary public in Terheijden, which office was vacant at the time. After having exercised that office for nine months as a substitute, the applicant withdrew his application for the function in December 1980 in order to await the outcome of a criminal investigation which had in the meantime been instituted against him. The applicant was suspected of having fraudulently signed a deed of conveyance. For the same reason, the applicant was discharged as a substitute notary public as of 1 March 1981.

On 28 April 1982 the Breda Regional Court (Arrondissements-rechtbank) sentenced the applicant to two months' imprisonment and three years' disqualification from holding office as notary public.

On appeal, the 's-Hertogenbosch Court of Appeal (Gerechtshof) quashed the judgment of the Regional Court and acquitted the applicant on 4 July 1983. The Court of Appeal considered that, although a fraud had taken place, it had not been proven that the applicant had intended to commit fraud or that he had even been aware of doing so.

It appears that the applicant has since unsuccessfully applied for several vacant posts as a notary public. The Supervisory Board apparently each time refused to recommend the applicant to the Deputy Minister of Justice.

On 4 April 1985, the applicant complained to the Deputy Minister and asked her to appoint him as notary public in Oosterhout, a vacant post for which the applicant had applied but for which he had not been recommended by the Supervisory Board.

Upon her request, the president of the Supervisory Board - who was president of the Regional Court that had originally convicted the applicant - informed the Deputy Minister of Justice in a letter dated 8 July 1985, that the Supervisory Board had no confidence in the applicant as a result of the careless and negligent behaviour which had led to the criminal proceedings against him.

On 12 July 1985 the applicant's lawyer wrote a letter to the Deputy Minister complaining that the Supervisory Board had wrongly failed to recommend the applicant since it had apparently based itself on damaging facts unknown to the applicant and against which he had no opportunity to defend himself.

The Deputy Minister of Justice informed the applicant's lawyer in writing on 23 August 1985 that the Supervisory Board in refusing to recommend the applicant had properly balanced the various interests

involved and that she therefore had decided not to nominate him to the office of notary public. The letter does not reveal the reasons underlying the refusal of the Supervisory Board to recommend the applicant, but refers to "facts and circumstances which have otherwise been established" in the criminal proceedings against him. The letter states that the fact that the applicant was acquitted by the Court of Appeal does not exclude the possibility that the facts which led to the criminal proceedings against the applicant might stand in the way of an appointment as notary public.

On 18 October 1985 the applicant visited the Deputy Minister of Justice to discuss her refusal to appoint him, but without success. She did not disclose the contents of the Supervisory Board's letter of 8 July 1985 to the applicant.

In December 1986, in connection with a new application for a post as notary public by the applicant, the Supervisory Board sent the applicant a copy of its letter of 8 July 1985.

On 11 May 1987 the National Ombudsman found that the Deputy Minister of Justice had not acted properly in not enabling the applicant to examine and to comment upon, the letter of the Supervisory Board of 8 July 1985.

COMPLAINTS

The applicant complains of the fact that the Supervisory Board refuses to recommend him to the Deputy Minister of Justice for appointment as notary public and that the Deputy Minister herself has refused to nominate him for that office. He claims that in spite of his acquittal by the Court of Appeal, the attitude of these authorities constitutes a de facto conviction in that he is not

considered eligible for the office of notary public. Against this "conviction", the applicant had no opportunity to defend himself. In this respect, the applicant alleges violations of Article 6 para. 2 and Article 7 para. 1 of the Convention.

THE LAW

1. The applicant has complained that, in spite of his acquittal, the Dutch authorities do not consider him eligible for the office of notary public. In this respect he has invoked Article 6 para. 2 (Art. 6-2) of the Convention which provides:

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

The Commission first notes that it might not be required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of these provisions, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ..... within a period of six months from the date on which the final decision was taken".

In the present case, it is open to doubt whether the Deputy Minister of Justice's letter of 23 August 1985 should be regarded as the "final decision" for the purposes of the six months' rule in Article 26 (Art. 26) or whether it gave rise to a continuing situation to which the six months' rule is inapplicable.

However, even assuming that the latter is the case, the Commission does not consider, for the reasons set out below, that the facts submitted by the applicant disclose any appearance of a violation of the presumption of innocence.

The Commission recalls its established jurisprudence that the presumption of innocence is not only a guarantee applicable to criminal proceedings but also a fundamental principle which protects everybody against being treated by public officials as being guilty of an offence before this is established according to law by a competent court (see e.g. No 7986/77, Dec. 3.10.78, D.R. 13 p. 73 and No 9295/81, Dec. 6.10.82, D.R. 30 p. 227). In its last-mentioned decision, the Commission has in particular held that after a person has been acquitted, the authorities may not continue to rely on the charges which have been raised before the criminal court but which have been proved to be unfounded. In this connection the Commission has held:

> "This rule also applies to courts which have to deal with non-criminal consequences of behaviour which has been subject to criminal proceedings. They must be bound by the criminal court's finding according to which there is no criminal responsibility for the facts in question although this naturally does not prevent them to establish e.g. a civil responsibility arising out of the same facts" (No.9295/81, loc. cit.).

The Commission notes that, in the present case, the negative attitude of the Supervisory Board and of the Deputy Minister of Justice as to the applicant's eligibility for the office of notary public appears to have been based on the same facts which were the subject of the criminal proceedings against him in the course of which the applicant was eventually acquitted.

However, the Commission considers that it is apparent from the reasons given by the Deputy Minister of Justice, that the refusal to nominate the applicant as notary public is not based on the criminal charge of which he was acquitted. The Deputy Minister has interpreted

the facts which led to the criminal charge in the light of the special responsibilities incumbent on the office of notary public. Thus, a clear distinction was drawn between the effects of his behaviour in criminal law and those in the context of the applicant's suitability to exercise this office.

Consequently, the Commission considers that the position of the Supervisory Board and the Deputy Minister of Justice does not even indirectly amount to a finding of criminal guilt on the part of the applicant. The Commission, therefore, does not find any appearance of a violation of the presumption of innocence in this complaint.

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

2. The applicant has also complained that the fact that he is not considered eligible as notary public constitutes a violation of Article 7 para. 1 (Art. 7-1) of the Convention.

It is true that Article 7 para. 1 (Art. 7-1) of the Convention provides that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

However, the Commission recalls with respect to the applicant's complaint under Article 6 para. 2 (Art. 6-2) of the Convention, that the facts complained of did not amount to a finding that he had committed a criminal offence. There is thus no indication that the applicant has been held guilty of a criminal offence within the meaning of Article 7 para. 1 (Art. 7-1) of the Convention.

An examination of this complaint as it has been submitted does not therefore disclose any appearance of a violation of the above Article. 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.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)