AS TO THE ADMISSIBILITY OF

Application No. 14412/88
by D. M. and H. N.
against the Netherlands

The European Commission of Human Rights sitting in private on 13 July 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 15 November 1988 by D.M. and H.N. against the Netherlands and registered on 28 November 1988 under file No. 14412/88;

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 applicants are husband and wife, born in 1954 and 1961 respectively. They are Polish nationals and at present reside in Rotterdam, the Netherlands. The husband is a maritime engineer. Before the Commission they are represented by Mr. J. GROEN, a lawyer practising in The Hague.

The facts submitted may be summarised as follows.

Since 1980, the first applicant has been actively involved in the "Solidarity" trade union movement in Poland. Between 1980 and 1985 he was allegedly detained and beaten by the Polish police at least five times. On 10 October 1985 he was informed that if he were arrested again, he would not be released. The second applicant was four months' pregnant at that time.

On 28 December 1985 the applicants fled to the Netherlands. On 6 March 1986 they requested political asylum. On 15 October 1986 this was refused by the Deputy Minister of Justice. A request for a review of this decision was introduced and suspension of expulsion pending this review was granted. Under Dutch law, the lack of a reply

to a review request within a certain time is considered an "implicit" rejection.

On 2 March 1987 the applicants appealed to the Council of State (Raad van State) against the "implicit" rejection of the review. On 27 May 1988 the Council of State rejected this appeal.

The applicant introduced summary proceedings before the President of the Regional Court (Arrondissementsrechtbank) of The Hague requesting the right to remain in the Netherlands pending the examination of their case before the European Commission of Human Rights and pending a renewed request for a review which they had apparently lodged with the Deputy Minister of Justice.

On 20 June 1989, the President of the Regional Court rejected the request. He stated, inter alia, that it had become clear in the proceedings before the Council of State that there were no compelling humanitarian reasons for allowing the applicants to remain in the Netherlands. He also stated that, as the situation in Poland had changed considerably since the applicants had left, their application to the European Commission of Human Rights under Article 3 of the Convention had little chance of success.

COMPLAINTS

1. The applicants complain that by sending them back to Poland, the Netherlands would be submitting them to inhuman and degrading treatment, because, in Poland, the first applicant would be subject to arbitrary arrest and detention, and possibly murder, while the second applicant is dependent on her husband and is in very poor health. They invoke Article 3 of the Convention.

2. The applicants complain that neither in the review procedure before the Deputy Minister of Justice, nor in the appeal to the Council of State, did they have the opportunity to present new arguments concerning their request for political asylum. Therefore, they argue that they did not have a fair and public hearing. They invoke Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 15 November 1988 and registered on 28 November 1988.

On 28 November 1988 a request for an indication under Rule 36 of the Commission's Rules of Procedure was refused by the President.

THE LAW

1. The applicants complain that the Netherlands would be subjecting them to inhuman and degrading treatment by sending them back to Poland. They invoke Article 3 (Art. 3) of the Convention, which provides as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission notes that both the Council of State and the President of the Regional Court considered that the situation in Poland was no longer what it had been when the applicants fled, and that there was now no danger that they would be subject to inhuman treatment upon their return.

Furthermore, the Commission notes that the applicants have not adduced any evidence to contradict this evaluation of the current situation in Poland, but rely solely on a description of occurrances before they fled in 1985.

In these circumstances, the Commission finds no appearance of a violation of Article 3 (Art. 3). Therefore this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicants also complain that they were denied a fair and public hearing on their request for political asylum. They invoke Article 6 para. 1 (Art. 6-1) of the Convention.

The relevant parts of this provision read as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ...".

However, the Commission recalls its constant case-law according to which proceedings concerning residence permits for, or expulsion of aliens do not entail any determination of the alien's civil rights and obligations or of any criminal charge (see No. 9990/82, Dec. 15.5.84, D.R. 39 p. 119, and No. 9285/81, Dec. 6.7.82, D.R. 29 p. 205).

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)