CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 28972/95
by Erik NINN-HANSEN
against Denmark

The European Court of Human Rights (Second Section) sitting on 18 May 1999 as a Chamber composed of

Mr C. Rozakis, *President*,
Mr M. Fischbach,
Mrs V. Strážnická,
Mr P. Lorenzen,
Mrs M. Tsatsa-Nikolovska,
Mr A.B. Baka,
Mr E. Levits, *Judges*,

with Mr E. Fribergh, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 6 December 1990 by Erik Ninn-Hansen against Denmark and registered on 25 October 1995 under file no. 28972/95;

Having regard to the reports provided for in Rule 49 of the Rules of Court;

Having regard to the observations submitted by the respondent Government on 11 February 1998 and the observations in reply submitted by the applicant on 14 April 1998;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Danish citizen, born in 1922. He resides in Charlottenlund, Denmark. The applicant was a member of Parliament for many years and served, *inter alia*, as Minister of Justice from 1982 until January 1989. Before the Court the applicant is represented by Mr Kristian Mogensen and Mr Axel Kierkegaard, lawyers practising in Copenhagen.

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

a. Particular circumstances of the case

In the autumn of 1988 the Parliamentary Ombudsman started an investigation of the Ministry of Justice's administration in 1986-1988 of cases concerning Tamil refugees' applications for family reunification. In his report of 1 March 1989 the Ombudsman criticised the way the Ministry of Justice and the Directorate for Aliens (*Direktoratet for Udlændinge*) had handled the applications for family reunification of Tamil refugees.

The Ombudsman's report received considerable public attention and resulted in public criticism of the Government's refugee policy. The political unrest about refugee questions continued, especially about refugees' possibilities of family reunification and the public criticism was increasingly directed against the applicant personally.

On several occasions members of Parliament attempted to induce the Government to invite a specially commissioned court of inquiry with public court sessions to investigate the applicant's conduct in connection with the Tamil refugees' applications for family reunification. Whereas the applicant had no objections thereto the Government resisted and such a proposal was not adopted.

On 23 April 1990 the Danish State Television transmitted a programme in which the applicant's conduct and the discharge of his official duties were severely criticised. In the following two weeks the television programme resulted in an extensive public debate in all Danish media. This caused the Prime Minister to issue a press release on 8 May 1990 in which it appeared that the Government and the political parties, which together with the Government comprised a parliamentary majority, now agreed that the question of the administration of the Tamil refugees' family reunification should be investigated. From the press release it also appeared that the Government would propose a change in the Administration of Justice Act (*Retsplejeloven*) aiming especially at such an investigation.

The Bill was proposed by the Minister of Justice on 15 May 1990 and adopted on 13 June 1990.

Following the adoption of the Bill the Prime Minister addressed a letter of 29 June 1990 to the President of the Supreme Court which read as follows:

(Translation)

> "According to Section 21a of the Administration of Justice Act the Office of the Prime Minister has decided, on behalf of the Ministry of Justice, to request a Supreme Court judge to conduct an investigation of the decision-making

process and the administration connected with the handling of cases concerning the family reunification of refugees from Sri Lanka. The investigation shall comprise the period from the conclusion of peace in Sri Lanka in the summer of 1987 until it was decided to normalise the handling of these cases in January 1989.

In the investigation it shall be examined whether anybody in public service or duty in connection with the proceedings has committed such faults or negligence which may result in an attempt to place legal responsibility.

It has been decided that the investigation according to the Administration of Justice Act Section 21a, subsection 3, shall be conducted in camera.

The Office of the Prime Minister will consider nominating a person to represent the State during the case.

With reference to the above the President of the Supreme Court is hereby requested to propose a Supreme Court judge to conduct the investigation."

On 3 July 1990 the President of the Supreme Court proposed Supreme Court Judge H. On 10 July 1990 the Office of the Prime Minister requested H to investigate the matter as mentioned in the letter of 29 June 1990. Furthermore, on 10 July 1990 the lawyer, N, was appointed to represent the public, i.e. acting as interrogator in the proceedings. Thus, on 10 July 1990 a court of inquiry was set up on the terms of reference as described in the letter of 29 June 1990. On 25 January 1991 the investigation was extended to comprise also the period after January 1989.

During the summer and autumn of 1990 the Court of Inquiry (*Undersøgelsesretten*) requested documentary evidence from, *inter alia*, various Ministries, the Directorate for Aliens and the Parliamentary Ombudsman. This material comprised a total of approximately 18,000 pages.

The Court of Inquiry subsequently held 104 sessions and heard 61 witnesses. The hearing of witnesses commenced on 20 November 1990 and ended on 29 May 1992. The first seven sessions were held in camera. On 19 December 1990, however, the Prime Minister and the Minister of Justice agreed, as requested by the applicant, that the investigation should be conducted in public. The transcripts of the above seven sessions were accordingly made accessible to the public and the applicant was accordingly allowed to go through these transcripts.

Already on 26 October 1990 the Court of Inquiry had informed the applicant of its task and that he would be called as a witness in the case. Like all other witnesses testifying before the Court of Inquiry, he was asked whether he wished a legal assistant (*bisidder*) during the proceedings, but he declined. Before the hearing of the applicant he was given an opportunity to acquaint himself with the written material which formed the basis of the interview. The applicant testified on 2, 3, 4, 15, 16, 22 and 29 April and 21, 22 and 24 October 1991 as well as on 4, 11 and 17 March 1992. Before his testimonies he was informed that he had the right to remain silent and that, in case he chose to give testimony, this would not be under oath.

On 29 May 1992 the Court of Inquiry ended its examination of witnesses and the presiding judge stated, with regard to the submission of written statements, as follows:

(Translation)

> "...The Court of Inquiry is not going to pronounce a judgment - which would presuppose legal arguments from counsel - but issue a report - i.e. a recommendation to others - with regard to the issues which have been examined during the investigation. If anybody wishes to make written submissions to the court it cannot at the outset be expected that the court will take the initiative to arrange an adversarial procedure, requesting replies, rebuttal and counter-rebuttal from everybody who has made statements. As can be ascertained from the court's work, everybody who has given testimony without being under oath has had an opportunity - with legal assistance - to obtain knowledge of the evidence which the Court of Inquiry has obtained in order to prepare the report. Some - many - have made use of this opportunity, others have not. Everybody has had an opportunity to raise questions and to suggest that further evidence be produced and this opportunity has also been used by witnesses who have not wished legal assistance. The Court of Inquiry has complied with these wishes without exception, and nobody has been prevented from stating - also in a more general way - his views on the issues of the case during the hearings. If anybody despite this intends to make submissions to the court they are not prevented from doing so, but the preparation of the report has - as I said - commenced and ought obviously to be finished as swiftly as possible."

The final date for the submission of written statements was fixed by the Court of Inquiry as 1 August 1992, but on appeal to the Supreme Court the time-limit was extended to 21 September 1992. The Supreme Court - sitting with five judges, four of whom participated in the subsequent proceedings in the Court of Impeachment - stated in its decision of 17 August 1992 that the Court of Inquiry would not be obliged to take into consideration observations submitted later than that date. Furthermore, it stated that having regard, *inter alia*, to the purpose of the Court of Inquiry it would not be obliged to initiate an adversarial procedure and forward received written statements to other witnesses.

On 10 June and 30 July 1992 the Court of Inquiry granted the witnesses the right to read through the court transcripts of the testimonies given by other witnesses at the offices of the legal assistants to the extent which the legal assistants considered it necessary in order to assist their clients properly. It was thus presupposed that witnesses were not given access to testimonies of other witnesses which the assistants considered irrelevant in relation to their clients. On 10 September 1992 the decision was upheld by the Supreme Court, which also this time was composed of five judges four of whom subsequently participated in the proceedings in the Court of Impeachment.

On 9 January 1991 and 17 September 1992 the Court of Inquiry notified, *inter alia*, the applicant that it did not find sufficient reason to give him permission to go through the court transcripts of testimonies which were given by other witnesses during the public sessions of the Court as he was not assisted by a legal assistant.

On 15 December 1992 the Court of Inquiry's report was finished and it was published on 14 January 1993. The report itself comprised a total of 2218 pages and the transcripts from the hearings comprised a total of 2782 pages. The report contained, *inter alia*, serious criticism of the applicant's discharge of his official duties in his capacity as Minister of Justice in respect of the handling of the Tamil refugees' family reunification cases. It also contained criticism of the actions of other persons, including the Prime Minister at the time. On 14 January 1993 the Government resigned.

On the basis of the report Parliament decided on 11 June 1993 to institute proceedings against the applicant before the Court of Impeachment (*Rigsretten*) pursuant to the provisions of the Court of Impeachment Act (*Rigsretsloven*). By indictment of 14 June 1993 the prosecutors, appointed by Parliament, charged the applicant with a violation of Section 5, subsection 1, of Act no. 117 of 15 April 1964 concerning Ministers' responsibilities whilst in office (*lov nr. 117 af 15. april 1964 om ministres ansvarlighed* - the 1964 Act). According to this provision a minister is liable to punishment if he wilfully or by gross negligence disregards the duties which fall on him under the Constitution, or under other laws, or due to the nature of his office.

The applicant was charged with having disregarded his duties under the Aliens Act (*Udlændingeloven*) to the extent that a number of aliens could not obtain a family reunification although they had, under the Act, a right thereto.

The case commenced in the Court of Impeachment on 7 December 1993. Whereas no one challenged the impartiality and independence of the individual judges the applicant challenged the impartiality and independence of the court as such, referred, *inter alia*, to Article 6 of the Convention and requested the court to dismiss (*afvise*) the case. In order to substantiate the allegations the applicant furthermore requested the hearing of the Supreme Court judge who had presided over the Court of Inquiry, as well as a lawyer who had participated in that inquiry.

As regards the hearing of the two witnesses the court rejected the request by 21 votes to 3 on 7 December 1993 stating the following:

(Translation)

> "It appears from the public report which has been made by the Court of Inquiry in the Tamil case how that court's work was planned and carried out. To hear evidence in this respect must accordingly be regarded as superfluous.
>
> The defence has not challenged the impartiality of any of the participating Supreme Court judges but has in the preliminary submissions regarding the dismissal of the case in particular referred to the fact that the Court of Inquiry was chaired by a Supreme Court judge and that its meetings were held in the Supreme Court's offices to the extent that the public at large was left with the impression that the Supreme Court as such has in advance been involved in the case. When considering this objection the question of what communications Supreme Court judge H might have had with colleagues in the Supreme Court about the Tamil case or related questions cannot be considered to be of any importance.

Since the evidence concerning the connection advocate N might have had with the media during the period of time the Court of Inquiry was sitting cannot be considered of importance for the question of dismissing the case either, these judges vote in favour of rejecting the request of calling Supreme Court judge H and advocate N to submit evidence."

The minority of three judges did not find sufficient reason to reject the request.

Following further oral arguments the Court of Impeachment decided on the question of dismissing the case on 5 January 1994. In rejecting the request for dismissal the unanimous court stated as follows:

(Translation)

"The composition of the Court of Impeachment is set out in Section 59 of the Constitution. The provision that the court shall consist of an equal number of Supreme Court judges and judges elected by Parliament must be based on the assumption that the special cases which fall under the court's competence ought to be delivered by a group of judges which comprises not only persons trained in law but also persons with special knowledge of political matters. Having regard to the fact that charges are brought by Parliament it has been decided that members of Parliament cannot be elected to or act as members of the Court of Impeachment. The provision according to which members and the substitutes are elected for six years in a proportionate way secures that members are not elected in order to participate in a particular case and that the elections reflect the (political parties') number of seats in Parliament. It must be considered natural and legitimate that the persons, who are elected as members of the court, are associated with the political parties, but this does not mean, of course, that when deciding a case before the court they should be considered as ‘party men’ who will rely more or less on what their political basis might think about the case. Against this background there is no substantiation in counsel's submissions that the election by Parliament of half of the judges makes the Court of Impeachment ‘a delicate legal construction’ and ‘which in advance makes it difficult for the court to appear independent and impartial in this case.’

As regards the participating Supreme Court judges counsel for the defence has submitted, among other things, that the Court of Inquiry in the Tamil case was chaired by a Supreme Court judge who sat in the offices of the Supreme Court and that, therefore, the view was formed by the public at large that the Supreme Court as such was involved in the work of the Court of Inquiry. This view has no basis in fact, something [the applicant] must be aware of. Even assuming that this view might appear among the public this cannot constitute a reason for finding that there can be any legitimate doubts as to the impartiality of the participating Supreme Court judges. Nor does the fact that the Supreme Court, pursuant to Section 21, subsection 4, of the Administration of Justice Act, examined certain appeals against decisions of a procedural character taken by the Court of Inquiry, or the fact that the Court of Inquiry was chaired by a colleague to the participating Supreme Court judges, give any reasonable grounds for such doubts.

The facts of the cases decided by the European Court of Human Rights, which have been referred to by counsel for the defence, are in the court's view quite different from those of the present case. Therefore, these decisions cannot support counsel's view either. It is noted in this respect that the requirement that a court shall appear to be impartial implies, according to the case-law of the Court of Human Rights, that there ought not to be any legitimate doubt as to the impartiality of the judges.

The objections of a general character which counsel for the defence has raised against both the judges elected by Parliament and the participating Supreme Court judges cannot in the circumstances, either as such or as a whole, constitute the basis for any legitimate doubts as to whether the Court of Impeachment fulfils the requirements of impartiality which a court is obliged to comply with according to Article 6 § 1 of the Convention.

The Court of Impeachment shall in its evaluation of whether [the applicant] is guilty of the charges brought against him only consider the evidence which is brought to the attention of the court. As a starting point it is accordingly of no importance for this case on what grounds Parliament decided to press charges. The submissions of counsel for the defence, however, give the court reason to make the following remarks about the Court of Inquiry and its competence.

According to its assignment the Court of Inquiry, *inter alia*, had to consider whether ‘anybody in public service or duty in connection with the proceedings has committed such faults or negligence which may result in an attempt to place legal responsibility.’ Thus, the Court of Inquiry made an evaluation of evidence as well as legal evaluations, but the Court of Inquiry had no mandate to decide - and did not decide - whether [the applicant] committed a punishable offence. Accordingly, it did not have, and did not exercise, a judicial function in the sense provided for in Section 61 of the Constitution. The assignment of the Court of Inquiry was accordingly not contrary to the prohibition in this provision against creating special courts with the power to exercise judicial functions. The reasons which have been decisive for Parliament's decision to press charges are of no importance for the Court of Impeachment's decisions in this case. What has been submitted by counsel for the defence about the correlation between the legislative, the executive and the judicial powers in connection with the setting-up of the Court of Inquiry, or the criticism of a general character which has been directed against special courts or courts of inquiry ... are not of any importance in respect of the question of dismissing the present impeachment case either.

As regards the inquiry's importance as to the proceedings in this case, counsel for the defence has submitted that the possibility of a direct taking of evidence through the hearing of witnesses in the Court of Impeachment is lost or at least considerably reduced due to the fact that most of those persons who shall give evidence have done so previously in the Court of Inquiry. It is normal, however, and not contrary to the principle of direct evidence that a witness in a criminal case at an earlier stage has made statements to the police or in court.

Like in other criminal cases, the Court of Impeachment must consider the weaknesses which may follow from this as an element in the evaluation of evidence.

Counsel for the defence has, furthermore, submitted that the case has for many years been mentioned and commented upon in the media to quite an extraordinary extent and in a way which was solely detrimental to [the applicant] so that he now appears to be convicted in advance. Even if the description of the media coverage is more or less correct there is no legitimate reason to believe that the Court of Impeachment cannot disregard this and decide solely on the basis of the evidence before it.

Accordingly, in respect of the objection related to other matters than the question of the impartiality of the court there is no legitimate reason either to doubt that [the applicant] will have a fair trial within the meaning of Article 6 of the Convention.

Finally, it is considered that counsel's submissions that the case has not advanced within a reasonable time, cf. Article 6 § 1 of the Convention, cannot constitute the basis for dismissing the case.

Consequently, the court finds no reason to accept the request for dismissal."

Following the above decision the court resumed its examination of the case. On 16 March 1994 a dispute arose between the prosecution and the defence as to the use of the transcripts from the Court of Inquiry when hearing witnesses in order to confront these witnesses, if necessary, with their previous statements.

On 22 March 1994 the court decided by 21 votes to 3 to allow the use of these transcripts. In its decision the majority stated as follows:

(Translation)

"The dispute concerns only whether the transcripts from the Court of Inquiry should be submitted and whether these transcripts may be used to confront (witnesses with their previous statements). The transcripts do not contain the Court of Inquiry's evaluations or conclusions but recall the statements [the applicant] and witnesses made before the Court of Inquiry as taken down by the judge and accepted by the witness. Permission to confront (witnesses with these statements) means only that [the applicant] and witnesses may be questioned about the differences should their statements during the trial deviate from their previous statements.

According to normal practice in criminal cases both court transcripts containing statements from the accused and witnesses as well as police reports containing statements to the police are submitted. The submission is made pursuant to Section 834 of the Administration of Justice Act which corresponds to Section 29 of the Impeachment Act, and the submission is made despite the fact that these documents cannot as a main rule be used as independent

evidence during the trial cf. Section 877, subsection 2 nos. 2 and 3 and subsection 3, of the Administration of Justice Act. Thus, it is in accordance with normal practice in criminal cases that the transcripts from the Court of Inquiry are submitted during the trial in the Court of Impeachment and Sections 50 and 55, second sentence, of the Impeachment Act cannot lead to any other result. Furthermore, it is noted that the Court of Inquiry transcripts are public. We do not find reason in these circumstances to accept the protests made by counsel for the defence.

Sections 50 and 55, second sentence, of the Impeachment Act deal only with court transcripts concerning preliminary examinations arranged by the Court of Impeachment, but resemble otherwise mainly Section 877, subsection 2 nos. 2 and 3, of the Administration of Justice Act. The question how the Court of Inquiry transcripts may be used during the trial in the Court of Impeachment shall thus be decided according to the rules contained in Section 877 of the Administration of Justice Act and case-law related thereto, cf. the general reference to the Administration of Justice Act in Section 77 of the Impeachment Act.

In accordance with normal practice in criminal cases both court transcripts and police reports may be used, where necessary, by the prosecution and the defence to confront (witnesses with their previous statements). Such a use is not contrary to the principle that the case shall be determined only on the basis of the evidence which has been submitted during the trial. This is so since these confrontations do not replace the accused's or the witness' statements during the trial, but aim at giving the court a better basis upon which to evaluate the evidence in question. We consider, therefore, that the Court of Inquiry transcripts may be used in accordance with this practice.

There is no reason to believe that the submission of the transcripts or their use for confrontation purposes would be contrary to the principles contained in the Convention. ..."

Three judges were against the use of the transcripts, stating as follows:

(Translation)

"We find that it would be more in conformity with the principle of direct evidence that the Court of Inquiry transcripts are not submitted and that they are not in any way used during the trial in the Court of Impeachment. Thereby it will be secured that the statements will be made regardless of what happened in the Court of Inquiry, and that the Court of Impeachment thus appears - in accordance with the principles found in the European Convention on Human Rights - to be wholly unbound of the work performed by the Court of Inquiry. Thus, we vote in favour of accepting the protest of counsel for the defence."

The trial hereafter continued, written evidence was produced and the applicant and a total of 44 witnesses - several of whom appear to have been called by the defence - were heard. On 28 June 1994 the applicant suffered a stroke and the trial was adjourned. In order

to evaluate the effect thereof several medical opinions as well as an opinion from the Medico-Legal Council (*Retslægerådet*) were obtained. On 8 November 1994 the trial was adjourned until further notice. Following further medical examinations the prosecution requested, on 3 April 1995, that the case be resumed whereas counsel for the defence requested a further adjournment due to the applicant's state of health.

On 6 April 1995 the Court of Impeachment decided to continue the case. A majority of 13 judges stated as follows:

(Translation)

> "...
>
> We find that [the applicant's] physical state of health does not prevent him from being present during continuing proceedings.
>
> According to the explanations of the doctors there is no scientific basis for believing that his continuing presence increases the risk of a deterioration of his health.
>
> Hereafter, it must be examined whether his mental state excludes that the case continue ...
>
> As set out in the Medico-Legal Council's statement of 21 March 1995 [the applicant's] intellect is still to be considered as being reduced considerably although a certain improvement has occurred as regards acknowledging the illness and the function of speech. The Medico-Legal Council has not, however, been willing to decide whether he is incapable of participating at a qualified level in a trial since the answer would depend on a legal evaluation of the medical information.
>
> According to practice in normal criminal cases a deterioration of mental functions does not exclude the conclusion of a criminal case and the imposition of a normal penalty on persons with an illness equivalent to that of [the applicant]. Being unaccountable for one's actions due to a mental illness which has occurred subsequent to the criminal act but before judgment is pronounced does not as such exclude that a case may be concluded and a penalty imposed, cf. Section 73 of the Penal Code.
>
> From the Impeachment Act or its *travaux préparatoires* ... it does not appear that the legislature wished to deviate from this practice in cases concerning Ministers' responsibilities whilst in office to the extent that such cases could not proceed unless the accused could participate at a 'qualified level'.
>
> Before [the applicant] was hospitalised on 28 June 1994 due to a stroke the major part of the taking of evidence had been concluded and he had been present during all court sessions. Thus, he had been heard during four court sessions and he had attended all hearings of witnesses and all documentation of written material. The remaining taking of evidence consists, following the

request of the defence, of a re-examination of five witnesses and of [the applicant]. This part of the trial may be conducted in a way that the necessary considerations are taken to his state of health.

In these circumstances we find that in the existing medical information, compared with the other available information about [the applicant's] situation following the stroke on 28 June 1994, there is no reason to believe that it will be impossible for him to take a stand as to the charges, to make rational statements as well as to follow the rest of the proceedings, and he cannot be considered as being incapable of examining all relevant witness statements together with counsel prior to making statements. Furthermore, there is no reason to believe that a continuation of the trial would entail a breach of the guarantees the Impeachment Act and the Administration of Justice Act contain in order to secure an accused's defence.
...

Since what counsel for the defence has submitted concerning Article 6 of the Convention cannot lead to any other result we vote in favour of the prosecution's request to continue the case."

A minority of 7 judges voted in favour of rejecting the request stating as follows:

(Translation)

"According to Section 77 of the Impeachment Act, cf. Section 846 of the Administration of Justice Act, an accused has a right to be present personally during the entire trial. The provision expresses that the accused has a right to defend himself, including putting questions to witnesses, express himself on the result of the taking of evidence, on legal questions and to have the last word in the case. These considerations are of particular importance in an impeachment case - cf., *inter alia,* the *travaux préparatoires* to Section 52 of the Impeachment Act. [The applicant's] counsel has maintained that a continuation of the trial requires his personal presence and since none of the circumstances mentioned in Section 847, subsection 2, ... are at hand, this case may not be pursued if the accused has a valid excuse for being absent, cf. Section 847, subsection 1, of the Administration of Justice Act. Under this falls - in addition to physical illness - in certain circumstances also mental illness in the form of a mental deterioration.
...

Since 7 March 1994 a considerable number of court sessions have been held during which a considerable number of witnesses have been heard. During the continuing trial it remains to hear, once more, five central witnesses and - not least - [the applicant], and it must be considered to be of decisive importance to his possibilities of defending himself, that he is capable, during the re-examinations and during the oral pleadings, to understand and express himself about the charges and the substantial amount of evidence. According to the existing medical information [the applicant's] intellect is permanently impaired to a considerable extent, caused by vascular related dementia with the

> result that, in our opinion, he would be unable to participate in the proceedings at a qualified level, having regard to the special character and dimension of the case and, thus, the requirements to his intellectual level which concluding the case in a responsible manner demands. A continuing adjournment of the trial would not entail that [the applicant] is better placed than other accused, including accused who are covered by the rules in Sections 68, 69 and 73 of the Penal Code covering sanctions against mentally deviating offenders. ... Also these accused are protected by the guarantee of a fair trial which Sections 846 and 847 express.
>
> Therefore, we find that what the prosecution has submitted concerning the continuation of the case does not constitute a basis for setting aside the court's previous decision to adjourn the case until further notice, since [the applicant's] state of health still entails that he has a valid excuse for being absent. Thus, we vote in favour of rejecting the prosecution's request to continue the case."

Following this decision counsel for the defence informed the court on 10 April 1995 that the request for re-hearing the five witnesses and the applicant was withdrawn since it was considered irresponsible in view of his state of health to confront the applicant with the witnesses or to hear him again. Furthermore counsel for the defence announced that most likely the applicant would not be present during the remaining sessions. The prosecutors declared that they would not request that the applicant be fetched by force. Counsel was accordingly now ready to commence the oral pleadings.

The oral pleadings commenced on 15 May 1995 and ended on 7 June 1995 when the case was accepted for adjudication. The applicant did not attend these court sessions.

Judgment was pronounced on 22 June 1995. By 15 votes to 5 the applicant was found guilty of having violated Section 5, subsection 1, of Act no. 117 of 15 April 1964 concerning Ministers' responsibilities whilst in office. He was sentenced to four months' imprisonment which was suspended provided no further criminal act would be committed within a period of one year. The judgment contained thorough reasoning with regard to the applicant's guilt as well as his sentence. The costs of the proceedings were borne by the State.

The judgment of the Court of Impeachment is final.

b. Relevant domestic law and practice

Provisions relating to the Court of Inquiry

(Translation)

> Section 61 of the Constitution
> "... Special courts with powers to pass judgments can never be instituted."
>
> Section 21 of the Administration of Justice Act
> "The Government retain their right to institute special courts save as regards special courts with powers to pass judgments..."

Section 21a of the Administration of Justice Act
"(1) The Minister of Justice may request one or several judges to conduct an investigation of specific matters. The Minister of Justice may decide that experts participate in the investigation.

(2) The Court of Inquiry has no powers to pass judgments.

(3) The investigation is conducted according to the rules of [the Administration of Justice Act]. However, the Minister of Justice may in special cases decide that the investigation shall be conducted in camera...

(4) The decisions of the Court of Inquiry may be appealed against directly to the Supreme Court.

(5) The investigation is concluded by a report. The report is published by the Minister of Justice, unless quite exceptional reasons speak against publication."

The competence and composition of the Court of Impeachment

(Translation)

Section 16 of the Constitution
"Ministers can be prosecuted for the discharge of their office by the King or by Parliament. The Court of Impeachment shall try the cases instituted against the ministers for the discharge of their office."

Section 59 of the Constitution, which was given its present wording by the Constitution of 5 June 1953, reads as follows:

(Translation)

"(1) The Court of Impeachment shall consist of up to fifteen of the eldest - according to seniority of office - ordinary members of the highest court of justice of the Kingdom and an equal number of members appointed for six years by Parliament according to proportional representation. One or more substitutes shall be appointed for each appointed member. No member of Parliament shall be appointed or act as a member of the Court of Impeachment. Where in a particular instance some of the members of the highest court of justice of the Kingdom are prevented from taking part in the trial and adjudication of a case, an equal number of the members of the Court of Impeachment last appointed by Parliament shall retire from their seats.

(2) The Court of Impeachment shall elect a President from among its members.

(3) Where a case has been brought before the Court of Impeachment, the members appointed by Parliament shall retain their seats in the Court of Impeachment for the duration of such case, even if the term for which they were appointed has expired.

(4) Detailed rules for the Court of Impeachment shall be provided by statute."

Detailed rules for the Court of Impeachment are laid down by Act No. 100 from 1954, cf. Consolidation Act No. 641 of 17 September 1986 - the Court of Impeachment Act. Relevant provisions of the Act read as follows:

(Translation)

Section 1, subsection 1
"The Court of Impeachment shall try the cases instituted by the King or Parliament against the ministers."

Section 2
"(1) The Court of Impeachment shall consist of the ordinary members of the Supreme Court and an equal number of members appointed for six years by Parliament according to proportional representation. No member of Parliament shall be appointed or act as a member of the Court of Impeachment.

(2) For each person appointed, two substitutes shall immediately be appointed according to proportional representation.

(3) Where any of the judges appointed by Parliament retires from the Court of Impeachment before expiry of the term of the appointment, the substitute first appointed for him shall take his seat in the Court of Impeachment for the remaining part of term. Where the first appointed substitute is prevented from doing so or where he retires from the Court of Impeachment as well, the second substitute takes his place.

(4) No supplementary appointments of substitutes shall be held.

(5) Where a case has been brought before the Court of Impeachment, the members appointed by Parliament shall retain their seats in the court for the duration of such case, even if the term for which they were appointed has expired."

Section 5
"(1) Where in a particular instance some of the judges of the Supreme Court are prevented from taking part in the trial and adjudication of the case, an equal number of the members last elected by Parliament according to proportional representation shall retire from their seats.

(2) Where one of the appointed judges is prevented from taking part in the trial of the individual case, his seat in the court shall be taken by the substitute first appointed for him; where he is also prevented from taking part in the case, the second substitute shall take his seat. Where he is also prevented from taking part in the case, the most junior Supreme Court judge in office shall retire from his seat."

Section 6
"In no case can the bench of the Court of Impeachment comprise less than 18 judges."

Section 8
"Each of the judges of the Court of Impeachment shall make a written solemn assurance on his honour and conscience that he will attentively follow the proceedings in the court and pass judgment as he finds it to be right and true according to the law and the evidence of the case."

On 28 May 1990 Parliament appointed fifteen lay judges and thirty substitutes for the period from 18 May 1990 until 17 May 1996 (cf. Parliamentary Proceedings, Yearbook and Index, 1990 - 1991, p. 172). Seven of the lay judges had also been appointed as lay judges or substitutes in the preceding period from 18 May 1984 until 17 May 1990.

Provisions on the accused's right and duty to be present

Relevant provisions of the Court of Impeachment Act (in translation):

Section 33
"Where the defendant fails to appear without lawful cause of absence from the hearing mentioned in Section 29 or any subsequent hearing, the Court of Impeachment may take whatever steps necessary to secure his presence, including, if necessary, to have him fetched by force."

Section 42
"Where the defendant does not appear and cannot immediately be brought before the court, the court decides, after the prosecutor and counsel for the defence have spoken, whether the case is nevertheless to be advanced, or whether it should be adjourned."

Section 77
"Unless otherwise stipulated by this Act, the Administration of justice Act applies to the procedure before the Court of Impeachment."

Relevant provisions of the Administration of justice Act reads as follows (in translation):

Section 846
"Unless an exception is stipulated by law, the defendant must be present in person during the entire trial as long as he has access to making a statement; however, after the examination of the defendant is concluded, the presiding judge may permit him to excuse himself."

Section 847
"(1) Where the defendant fails to appear at the beginning of or during the trial, and where he cannot immediately be brought before the court, the case will be adjourned. Where the defendant fails to appear despite lawful summons and without stating a lawful cause of absence, the court may decide, however, that

witnesses and experts who have appeared must be examined, if this is found compatible with the interests of the defendant and provided an adjournment of the examination will be of substantial inconvenience to the persons who have appeared or involve considerable postponement of the case. However, examinations pursuant to the second sentence can only be carried through if the defendant's counsel has appeared and consents to the examination.

(2) A trial can be expedited in the defendant's absence if the court finds that his presence is not necessary:

(i) when he has escaped after service of the indictment on him,

(ii) when, after having appeared when the case was opened, he has left the court without leave of the court,

(iii) when it is deemed

(a) that the most severe punishment is a matter of imprisonment for six months, and that the defendant has consented to the expedition of the case, or

(b) that the trial will undoubtedly lead to his acquittal."

PROCEEDINGS BEFORE THE COMMISSION AND THE COURT

The application was introduced on 6 December 1990 and registered on 25 October 1995.

On 8 September 1997 the Commission decided to communicate to the respondent Government the applicant's complaints concerning the independence and impartiality of the Court of Impeachment and the court's decision to continue the trial despite the applicant's state of health.

The Government's written observations were submitted on 11 February 1998, after two extensions of the time-limit fixed for that purpose. The applicant replied on 14 April 1998.

COMPLAINTS

The applicant complains that he did not have, in the determination of the criminal charges against him, a fair trial within a reasonable time by an independent and impartial tribunal. More specifically the applicant complains that:

a) the proceedings in the Court of Inquiry did not comply with the requirements of fairness and were to some extent held in camera, and that these proceedings and their outcome made a proper evaluation of evidence in the Court of Impeachment impossible;

b) the Court of Impeachment was not an independent and impartial tribunal;

c) the Court of Impeachment refused the applicant permission to hear two witnesses in support of his claim to dismiss the case;

d) the Court of Impeachment allowed the use of the transcripts from the Court of Inquiry;

e) the Court of Impeachment decided to continue the proceedings despite the applicant's state of health;

f) the case was not determined within a reasonable time.

THE LAW

The applicant complains of a number of violations of Article 6 of the Convention which in so far as relevant reads as follows:

> "1. 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 within a reasonable time by an independent and impartial tribunal...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

The Court recalls that the guarantees in paragraph 2 and 3 of Article 6 represent constituent elements of the general concept of a fair trial embodied in paragraph 1. In view of the nature of the violations alleged by the applicant, the Court therefore considers it appropriate to group related matters of complaint and to take the relevant paragraphs of Article 6 together.

a) The fairness of the proceedings before the Court of Inquiry

The applicant complains that the proceedings in the Court of Inquiry were conducted in an inquisitorial manner without proper separation between the functions of the judge and the functions of the prosecutor. The applicant was not properly informed of the proceedings against him and he was not admitted influence on matters essential for his defence. Thus, he

was not notified of written evidence and witnesses produced against him and he was not given an opportunity to call witnesses on his behalf. He also complains that the first seven sessions were held in camera. In the applicant's opinion the Court of Inquiry in fact determined his guilt. He submits that these deficiencies severely prejudiced the subsequent trial.

The Court recalls that under Article 6, everyone charged with a criminal offence has the right to a fair and public hearing by an independent and impartial tribunal (Article 6 § 1), to be informed promptly of the nature and cause of the accusation against him (Article 6 § 3 (a)), to have adequate time and facilities for the preparation of his defence (Article 6 § 3 (b)) and to defend himself in person or through legal assistance (Article 6 § 3 (c)).

In the present case the Court notes that the purpose of the proceedings conducted by the Court of Inquiry and the report eventually issued by that court was to form a basis for Parliament to decide on whether to press charges against certain persons who were, or had been, entrusted with public authority, for having disregarded their duties whilst in office. These proceedings were therefore not as such concerned with "determining the charge" (cf. application nos. 8603/79, 8722/79, 8723/79 & 8729/79, Crociani et al v. Italy, decision of 18 December 1980, DR 22, p. 147 at p. 216).

It follows that, in so far as the applicant's complaint is directed against that part of the proceedings taken in isolation, it is incompatible *ratione materiae* with the provisions of the Convention and the application must be rejected on this point, pursuant to Article 35 §§ 3 and 4 of the Convention.

The Court recalls, however, that although the primary purpose of Article 6 of the Convention as far as criminal matters are concerned is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that Article 6 has no application to pre-trial proceedings. The "reasonable time" mentioned in Article 6 § 1, for instance, begins to run from the moment a "charge" comes in to being, within the autonomous, substantive meaning to be given to that term. Other requirements of Article 6, especially of § 3, may also be relevant before a case is sent for trial if and in so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with them (Eur. Court HR, Imbrioscia v. Switzerland judgment of 24 November 1993, Series A no. 275, p. 13, § 36).

The Court has therefore considered the proceedings as a whole, in order to determine whether the proceedings before the Court of Inquiry could have weakened the situation of the applicant to such an extent that all subsequent stages of the proceedings were unfair.

The Court recalls that the sessions in the Court of Inquiry were public except for the seven first sessions which were held in camera and that subsequently the applicant was granted access to the court transcripts of these first seven sessions. He was also given an opportunity of having legal assistance throughout the hearings, which he declined. The Court notes furthermore that when he gave testimony before the Court of Inquiry, the applicant was protected from self-incrimination and that he could make submissions to the Court of Inquiry on an equal footing with all other witnesses heard during the investigation.

Having regard to the object of the Court of Inquiry - to provide a basis for Parliament's decision whether to press charges against certain persons who were, or had been, entrusted with public authority, for having disregarded their duties whilst in office - and the measures taken in order to protect the witnesses' interests, including the applicant's, the Court considers that the proceedings before the Court of Inquiry did not affect the applicant's defence to the extent that one could conclude at the preliminary stage, that the subsequent impeachment proceedings could not be fair (cf. also the aforementioned Crociani case).

Consequently, the Court finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms guaranteed by Article 6 of the Convention.

b) The independence and impartiality of the Court of Impeachment

The applicant complains that the composition of the Court of Impeachment violated the independence and impartiality requirement in Article 6 of the Convention in respect of the participation of the judges elected by Parliament as well as the participation of the Supreme Court judges.

The Court recalls at the outset that in order to establish whether a tribunal can be considered as "independent", regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence. As to the question of "impartiality", there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect (Eur. Court HR, Findlay v. the United Kingdom judgment of 25 February 1997, Reports of Judgments and Decisions 1997-I, p. 281, § 73).

i: The allegations relating to the participation of the judges elected by Parliament

The Government submit that the reason for the special composition of the Court of Impeachment is the nature of the cases to be adjudicated by that court in that it may face questions the answer to which will to some extent presuppose an insight into the political conditions under which a minister works. In the opinion of the Government the fact that the lay judges are appointed by Parliament cannot in itself lead to the disqualification of the Court of Impeachment when it has to try criminal cases against ministers on the basis of a decision to prosecute made by Parliament. Furthermore, the lay judges appointed by Parliament are appointed for a term of six years and they cannot be removed during that period. In addition, Parliament has no power of instruction over the lay judges appointed by it, and there is no subordinate relationship between Parliament and the lay judges. The Court of Impeachment was also aware of issues relating to its impartiality, which it considered on a number of occasions. Finally, it cannot with any reasonableness be argued that the lay judges were appointed with a view to this particular case.

In support of his complaint the applicant submits that Parliament had a double function *vis-à-vis* the Court of Impeachment in that, on the one hand, it exercised its power to initiate criminal proceedings against the applicant and, on the other, at an earlier time had appointed half of the judges of the Court. Although the members of the Court of Impeachment appointed by Parliament are not themselves members of Parliament there exists ties of loyalty

between Parliament and the lay judges. They were therefore loyal party followers who would let themselves be led by the opinion of their political basis. This is the more so because the setting up of the Court of Inquiry and the charges brought before the Court of Impeachment had essentially a political purpose. In fact, the applicant alleges that the time of the appointment of lay judges by Parliament meant that the lay judges were in actual fact appointed in order to participate in a specific case. The applicant does not submit that any of these judges were impartial in the subjective sense but that, in the particular circumstances of the case, they lacked the necessary appearance of independence or impartiality.

The Court recalls that the Court of Impeachment was composed of a number of professional judges equal to the number of judges appointed by Parliament. The lay judges were appointed by Parliament by proportional representation. They were appointed for a period of six years and during that time it was not possible for any authority, including Parliament, to change the composition or in any other way influence the lay judges. The reason for the participation of these lay judges in the Court of Impeachment is that the cases it is intended to adjudicate require a certain insight in political matters.

The Court recalls, furthermore, that Article 6 § 1 of the Convention requires independence not only from the executive and the parties but also from the legislator, i.e. Parliament (cf. the aforementioned Crociani case at p. 220). However, mere appointment by Parliament cannot be seen to cast doubt on the independence or impartiality of the court. The applicant has not alleged that any of the judges in question actually took instructions or actually was biased. Although political sympathies may play part in the process of appointment of lay judges to the Court of Impeachment the Court does not consider that this alone gives legitimate doubts as to their independence and impartiality. In this respect the Court have paid attention, *inter alia*, to the fact that the lay judges were required to take an oath to the effect that they would pass judgment "as [they] find it to be right and true according to the law and the evidence of the case" and that it is not established that they were appointed with a view to adjudicate this particular case or had declared political affiliations concerning the subject matter in issue. Nor has it been established that there existed other links between Parliament and the lay judges which could give rise to misgivings as to the lay judges' independence and impartiality.

Thus, having had regard to all the particular circumstances of the case and the special character of the Court of Impeachment as well as the guarantees which existed in order to protect it against outside pressures, the Court does not consider that the participation of judges appointed by Parliament disclose any appearance of a violation of the independence and impartiality requirement in Article 6 of the Convention.

ii: The allegations relating to the participation of the Supreme Court judges

The Government contend that the Supreme Court judges on the bench of the Court of Impeachment had not at any time prior to the impeachment case been involved in the preparation of the case and in the course of events leading up to prosecution. Only on two occasions had the Supreme Court determined appeals against procedural decisions made by the Court of Inquiry. These decisions had no connection with the subsequent criminal case against the applicant and they did not involve any decision on issues covered in the subsequent criminal case. The fact that the Court of Inquiry was chaired by a colleague of the participating Supreme Court judges cannot provide a reasonable basis for raising doubts about the impartiality of the participating Supreme Court judges. Nor can the question of the

alleged perception in certain parts of the population of the relationship between the Court of Inquiry and the Supreme Court lead to any reasonable doubts being raised as to whether, based on an objective assessment, the Court of Impeachment appeared to be impartial.

The applicant submits that the participating Supreme Court judges did not fulfil the requirement of objective impartiality as some of these judges had determined appeals made against decisions of the Court of Inquiry. Also the fact that the judge presiding in the Court of Inquiry was at the same time a Supreme Court judge and must be presumed to have discussed the case with his colleagues during and after the proceedings in the Court of Inquiry, made the Supreme Court judges partial in the subsequent proceedings in the Court of Impeachment. Finally, the applicant submits that the fact that the Court of Inquiry was chaired by a Supreme Court judge and its sessions were held in the offices of the Supreme Court left an impression on the public at large that the Supreme Court as such was involved in the activities of the Court of Inquiry. The subsequent proceedings in the Court of Impeachment, involving also Supreme Court judges, would thus not appear impartial in the eyes of the public at large.

The Court notes that the applicant does not dispute the personal impartiality of the participating Supreme Court judges. As to the objective test it must be determined whether, irrespective of the judge's personal conduct there are ascertainable facts which may raise doubts as to his or her impartiality. In this respect even appearances may be of certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public, including the accused. Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. In deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (Eur. Court HR, Castillo Algar v. Spain judgment of 28 October 1998, § 45, to be published in the Court's official reports).

The Court recalls that the Supreme Court on two occasions determined appeals against decisions made by the Court of Inquiry, on both occasions five Supreme Court judges participated in the decision-making in the Supreme Court, and four of these subsequently participated in the proceedings in the Court of Impeachment. The Court recalls that the mere fact that these judges also made pre-trial decisions cannot be taken as in itself justifying fears as to their impartiality; what matters is the scope and nature of these decisions (Eur. Court HR, Nortier v. the Netherlands judgment of 24 August 1993, Series A no. 267, p. 15, § 33 and Fey v. Austria judgment of 24 February 1993, Series A no. 255-A, p. 12, § 30).

Having regard to the scope and nature of the decisions made by the Supreme Court, concerning fixing of time-limits for submission of observations to the Court of Inquiry and the extent to which witnesses before the Court of Inquiry could have access to testimonies of other witnesses, the Court finds that the applicant's fear that the Supreme Court judges involved in these pre-trial decisions lacked impartiality cannot be regarded as objectively justified. Nor can the fact that the professional judges participating in the Court of Impeachment were colleagues of the judge who had presided over the Court of Inquiry and the fact that the Court of Inquiry held its sessions in the offices of the Supreme Court lead to the conclusion that the applicant's fear that the judges lacked impartiality and independence was objectively justified.

iii: The effects of a virulent press campaign

The applicant submits that the media had entertained a consistent and negative press campaign against him which had in fact determined his guilt prior to the trial and had influenced the participating judges - the professional as well as the lay judges - in the Court of Impeachment to an extent that the court could not be regarded as impartial. The Government did not address this issue.

The Court accepts that, in certain cases, a virulent press campaign can adversely affect the fairness of the trial and involve the State's responsibility (cf. application 8403/78, decision of 15 October 1980, DR 22, p. 100). This is so with regard to the impartiality of the Court under Article 6 § 1 (cf. the Crociani case at p. 222) as well as with regard to the presumption of innocence embodied in Article 6 § 2 (cf. applications 7572/76, 7586/76 and 7587/76, Ensslin, Baader and Raspe v. Federal Republic of Germany, decision of 8 July 1978, DR 14, p. 64).

The Court considers that to the extent the applicant may have been faced with an extensive publicity and press coverage for his alleged maladministration while in office, this must be seen against the background of the applicant's position as the Minister of Justice at the time and the public interest in the matters concerned (cf. also application no. 3444/67, X. v. Norway, decision of 16 July 1970, Yearbook 13, p. 302). The Court, having examined the case, has not found any evidence that could lead to the conclusion that any of the judges in the Court of Impeachment were influenced by this publicity in reaching their decisions during the proceedings in the court or the final conviction and sentencing of the applicant, or that the applicant was in any other way prejudiced by this publicity.

In conclusion, the Court have found no appearance of a breach of the Article 6 of the Convention with regard to the independence and impartiality of the Court of Impeachment and the presumption of innocence.

c) The Court of Impeachment's refusal to hear two witnesses

The applicant complains of the fact that the Court of Impeachment refused to hear the Supreme Court judge, H, who chaired the Court of Inquiry and the lawyer, N, who was appointed to represent the public during the investigation conducted by the Court of Inquiry. He considers that this refusal violated his rights under Article 6 §§ 1 and 3 (d) of the Convention. He submits that the reason for his request to hear H was to clarify whether and, if so, to what extent H had discussed the applicant's case with those of his colleagues in the Supreme Court, who subsequently participated in the trial in the Court of Impeachment. By the same token, the reason for his request to hear N was to clarify N's relations to representatives of the media during the period of time the Court of Inquiry was sitting.

The Court recalls that, as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which the defendant seeks to adduce. More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses and it does not require the attendance and examination of every witness on the accused's behalf, its essential aim being an "equality of arms" in the matter. The task of the European Court is to ascertain whether the proceedings in issue, considered as a whole, were fair as required by § 1 (Eur. Court HR, Vidal v. Belgium judgment of 22 April 1992, Series A 235-B, p. 32, § 33).

In the present case the Court of Impeachment reached its decision of 7 December 1993 on the ground that testimonies by Supreme Court judge H and advocate N would not be of any importance to the matter to be decided upon. The conviction of the applicant, on 22 June 1995, was based on written evidence and testimonies given by the applicant and 44 witnesses, several of whom appear to have been called on part of the defence. Furthermore, the judgment contained a thorough reasoning for the court's findings.

The Court considers that nothing in the material submitted indicates that the Court of Impeachment's refusal to hear the two witnesses in question was arbitrary or that the applicant's conviction was based on insufficient evidence. There are therefore no appearances of a violation of Article 6 §§ 1 and 3 (d) of the Convention with regard to the Court of Impeachment's refusal to hear the two witnesses.

d) The admission of the transcripts from the Court of Inquiry

The applicant claims that the fact that the Court of Impeachment decided to admit the transcripts from the Court of Inquiry violated his right to a fair trial in that it in fact prevented the witnesses appearing before the Court to give testimony unbound of the testimony they gave before the Court of Inquiry. He submits that there is no basis in national law for the court's decision and that the statements obtained by the Court of Inquiry cannot be compared with interrogations made by the police prior to trial in normal criminal cases as the applicant had not been charged before he was heard by the Court of Inquiry.

The Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and as general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (Eur. Court HR, Doorson v. the Netherlands judgment of 26 March 1996, Reports of Judgments and Decisions 1996-II, p. 470, § 67). It is the subsequent use by the trial court of statements given at a preliminary stage that is capable of raising issues under the Convention.

In the present case the Court of Impeachment admitted those transcripts of the proceedings in the Court of Inquiry which contained statements made by the applicant and witnesses before the latter in order to confront, if necessary, the same persons appearing before the Court of Impeachment with their own statements given before the Court of Inquiry. The Court recalls that the Court of Impeachment did not base its conviction of the applicant on previously made statements by witnesses who were not heard by the Court of Impeachment as well.

The Court considers that the Court of Impeachment's admission of the transcripts of the Court of Inquiry in order merely to confront witnesses with their previous statements cannot be considered contrary to Article 6 of the Convention. There is therefore no appearance of a violation of Article 6 with regard to the Court of Impeachment's decision to admit the transcripts of the Court of Inquiry.

e) The continuation of the proceedings in the Court of Impeachment despite the applicant's state of health

The Government submit that the Court, as a starting point, should show restraint when assessing the appropriateness of procedural decisions of the national tribunals. In the instant case the Court of Impeachment found, on the basis of extensive medical evidence, that the applicant did not have a lawful excuse for his absence, i.e. his state of health did not prevent him from participating in a qualified way in the remaining sessions of the proceedings in the Court of Impeachment. In such a case the provisions of the Court of Impeachment Act render it possible to request that the defendant be brought before the court, if necessary by force. The prosecution as well as the defence refrained from requesting that the applicant be present during the last sessions. By doing so, the defence waived the applicant's opportunity of being present. However, the applicant continued to be represented by counsel who was in no way restricted in being in contact with the applicant during the remaining proceedings. Furthermore, at least quantitatively, the major part of the trial had been concluded at the time when the applicant chose not to appear. Further adjournments might in fact have caused the case to come to a standstill, in particular, because the applicant's state of health was considered to be permanent.

The applicant maintains that the continuation and conclusion of the trial against him regardless of his state of health constituted a violation of Article 6 § 3 (d) of the Convention. The fact that he had suffered a stroke made him unable to follow the remaining sessions in a qualified way and participate in the preparation of his defence by, *inter alia*, questioning witnesses and making statements. Although quantitatively the major part of the trial had been concluded at the time when the applicant fell ill, a qualitatively important part of the trial still remained, namely the re-hearing of the applicant and five key witnesses.

The Court recalls that it is in the first place for the national courts to assess the evidence and interpret domestic law and that the Court will not substitute its own assessment and interpretation for theirs in the absence of arbitrariness (see, *inter alia*, Eur. Court HR, Kostovski v. the Netherlands judgment of 20 November 1989, Series A no. 166, p. 19, § 39 and Tejedor García v. Spain judgment of 16 December 1997, Reports of Judgment and Decisions 1997-VIII, p. 2796, § 31).

The Court notes that the Court of Impeachment's decision of 6 April 1995 to continue the trial was made on the basis of extensive medical evidence. Thus, several medical opinions and an opinion from the Medico-Legal Council were obtained. On the basis of the medical evidence produced the court found that the applicant's physical health did not prevent him from being present during continuing proceedings. Nor did the statements from the doctors provide any reasons to believe that his continuing presence would increase the risk of deteriorating his health. With regard to the applicant's mental state there was evidence that his intellect had been reduced considerably. However, the Medico-Legal Council refrained from stating whether he was incapable of participating at a qualified level in a trial since the answer would depend on a legal evaluation of the medical information.

On the basis of an assessment of domestic law and practice in normal criminal cases and the *travaux préparatoires* to the Court of Impeachment Act, the Court of Impeachment found that the applicant's illness could not constitute a lawful excuse for his absence. Having

regard, in particular, to the fact that the major part of the taking of evidence had been concluded, that the applicant had been present during all court sessions prior to his illness and to the fact that the remaining part of the trial could be conducted in a way that the necessary considerations be taken to his state of health, the Court of Impeachment found that the applicant's state of health should not prevent the conclusion of the trial and the imposition of a normal penalty on him.

The Court recalls its case-law in which it has held that it is of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the witnesses (cf. Eur. Court HR, Poitrimol v. France judgment of 23 November 1993, Series A no. 277-A, p. 15, § 35). This is the more so if the court in question acts as the first and only instance. In the present case, following the refusal of the Court of Impeachment to adjourn the trial further, the applicant decided not to attend the remaining sessions of the trial. However, also in these circumstances it is of importance for the fairness of the criminal justice system that the accused be adequately defended (see *mutatis mutandis* Eur. Court HR, Lala v. the Netherlands judgment of 22 September 1994, Series A no. 297-A, p. 13, § 33 and Pelladoah v. the Netherlands judgment of 22 September 1994, Series A no. 297-B, p. 34-35, § 40).

In assessing whether the applicant was adequately defended during the remaining part of the trial the Court have had regard to, *inter alia*, the fact that he was represented by counsel and that the major part of the trial had been concluded when he fell ill, the only remaining part of the proceedings being the announced re-hearing of the applicant and five witnesses and the parties' closing statements (see the aforementioned Lala and Pelladoah judgments, p. 14, § 34, and p. 35, § 41, respectively and Eur. Court HR, Van Geyseghem judgment of 21 January 1999, § 35, to be published). The Court further recalls that, as a result of the decision of the Court of Impeachment not to adjourn the trial, the applicant's defence withdrew the request to have a re-hearing of the applicant and of five witnesses. Consequently, the remaining part of the trial only concerned the closing statements of the parties.

Having regard to the above the Court does not find any appearance of a violation of Article 6 § 1 or § 3 (c) and (d) of the Convention with regard to the Court of Impeachment's decision to conclude the trial despite the applicant's illness, and in his absence.

f) A trial within a reasonable time

The applicant complains finally that his case was not tried within a reasonable time. He claims that the period to be considered for the purposes of Article 6 of the Convention commenced on 8 May 1990, the date of the Prime Minister's press release or, in the alternative, on 13 June 1990, when Parliament adopted Section 21a of the Administration of Justice Act, which provided the legislative basis for the Court of Inquiry, or at the latest when the proceedings in the Court of Inquiry commenced.

The Court recalls that according to case-law the period to be taken into consideration under Article 6 § 1 of the Convention must be determined autonomously. It begins at the time when formal charges are brought against a person or when that person has otherwise been substantially affected by actions taken by the authorities as a result of a suspicion against him (cf. e.g Eur. Court of HR, Eckle v. Germany judgment of 15 July 1982, Series A no. 51, p. 33, § 73).

The Court considers that the mere fact that Parliament enacts a law which in a general way provides the institutional basis for conducting investigations of certain matters, even assuming that the applicant was the cause for such a legislative initiative, does not involve the determination of the applicant's civil rights and obligations or of any criminal charge against him in the meaning of Article 6 of the Convention.

For the purpose of determining whether the length of the proceedings was reasonable and having regard to its considerations under a) the Court finds that the applicant cannot be considered to have been substantially affected before the date on which he was officially informed of the Court of Inquiry's task and that he would be called as a witness. Thus, for the purposes of this case the Court finds that the period to be taken into consideration began on 26 October 1990 and it ended on 22 June 1995 when the Court of Impeachment delivered its judgment, the proceedings lasting a total of four years and eight months.

The Court recalls that the reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had in particular to the complexity of the case, the applicant's conduct and that of the competent authorities (cf., *inter alia*, Eur. Court HR, Kemmache v. France judgment (nos. 1 and 2) of 27 November 1991, Series A no. 218, p. 27, § 60 and, Laino v. Italy judgment of 18 February 1999, § 18, to be published).

In the instant case the task of the Court of Inquiry was to investigate whether "anybody in public service or duty" had committed faults or negligence in relation to the decision-making process and the administration connected with the handling of cases concerning the family reunification of refugees from Sri Lanka. For this purpose the court required written material that comprised a total of approximately 18,000 pages and it held 104 sessions and heard 61 witnesses in the period between 20 November 1990 and 29 May 1992. Furthermore, two decisions made by the Court of Inquiry on procedural issues were appealed to the Supreme Court during the proceedings. On 15 December 1992 the Court of Inquiry's report was finished and it was published on 14 January 1993. The report itself comprised a total of 2218 pages and the transcripts from the hearings comprised a total of 2782 pages.

The Court of Impeachment had to determine whether the applicant was liable to punishment for having disregarded his duties under the Aliens Act. For this purpose 44 witnesses were heard and a substantial amount of written evidence was produced. In addition, the court had to decide on several preliminary procedural issues during the proceedings which lasted approximately two years. Having regard to the nature and extent of the case the Court considers that it was indeed a complicated one.

The applicant has not indicated any periods of inactivity which were due to the conduct of the Danish authorities. In fact the only period of inactivity (from 28 June 1994 until 6 April 1995) was due to the applicant's illness. Considering again the nature and extent of the case the Court does not find any reason to criticise the Danish authorities involved for the length of the proceedings. Furthermore, the Court finds that the preliminary inquiry undertaken by the Court of Inquiry was necessary in order for Parliament to decide on whether to press charges against the applicant.

Having regard to the above, and making an overall assessment of the length of the proceedings, the Court finds that they have not gone beyond what may be considered reasonable in the particular circumstances of the case.

In sum, the Court has found no appearance of a violation of the complaints submitted under Article 6 of the Convention taken individually. Nor does the Court find cause for holding that taken cumulatively the procedural deficiencies alleged by the applicant disclose any appearance of a violation of Article 6, the proceedings considered as a whole.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, by a majority as regards the complaint examined under e), and unanimously as regards the remainder

DECLARES THE APPLICATION INADMISSIBLE.

Erik Fribergh
Registrar

Christos Rozakis
President