AS TO THE ADMISSIBILITY OF

Application No. 25673/94
by Leonardus Henricus Gerardus PEURTENERS
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 18 May 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

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

Having regard to the application introduced on 8 July 1994 by Leonardus Henricus Gerardus PEURTENERS against the Netherlands and registered on 15 November 1994 under file No. 25673/94;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch citizen, born in 1943, and residing at Bree, Belgium. Before the Commission he is represented by Mr. G.R.A.G. Goorts, a lawyer practising at Horst, the Netherlands.

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

a. Particular circumstances of the case

In 1984, the applicant bought a parcel of farmland in the municipality of Roosteren. To the piece of farmland was attached an obligation to plant new trees that would replace trees that had been felled in 1978. When the applicant became owner of the parcel of land, the obligation was transferred to him in accordance with Section 3 of the Forest Act (Boswet).

On 15 January 1992, the applicant requested exemption from the obligation to replant trees on his land. On 3 June 1992, the request was rejected by the Director of the Forestry Commission (Directeur van het Staatsbosbeheer). The Forestry Commission is a division of the Ministry of Agriculture, Nature Management and Fisheries (Ministerie van landbouw, natuurbeheer en visserij).

The applicant lodged an objection (bezwaarschrift) to the

rejection. On 16 March 1993, after a hearing at which the applicant's lawyer pleaded the applicant's case, the Director of the Forestry Commission rejected the objection.

The applicant subsequently lodged an appeal with the Industrial Appeals Tribunal (College van Beroep voor het Bedrijfsleven). A hearing was held on 2 December 1993. Both the applicant and his lawyer were present. On 12 January 1994, the Industrial Appeals Tribunal rejected the applicant's appeal.

b. Relevant domestic law

Pursuant to Section 8 para. 1 of the Forest Act, an appeal can be lodged against a decision of the Director of the Forestry Commission with the Industrial Appeals Tribunal.

Section 8 para. 2 of the Forest Act states that Sections 3, 5, and 29-73 of the Industrial Appeals Act (Wet Administratieve rechtspraak bedrijfsorganisatie) apply to proceedings conducted under the Forest Act.

Pursuant to Section 37, the President of the Industrial Appeals Tribunal may take decisions concerning cases that fall outside the competence of the Tribunal, and in cases that are manifestly inadmissible or unfounded (kennelijk niet-ontvankelijk of ongegrond) after a summary examination of the case and without a public hearing of the parties. In such cases an in-depth examination by the Industrial Appeals Tribunal is not necessary. Against such a decision of the President, an objection (verzet) can be lodged with the Industrial Appeals Tribunal (Section 38 of the Industrial Appeals Act).

COMPLAINTS

The applicant complains that his civil rights and obligations were not determined by an independent tribunal within the meaning of Article 6 para. 1 of the Convention because:

- pursuant to Section 37 of the Industrial Appeals Act, the President of the Industrial Appeals Tribunal may take decisions concerning cases that fall outside the competence of the Tribunal, and in cases that are manifestly inadmissible or unfounded after a mere summary examination of the case and without a public hearing of the parties;

- the executive authorities can, pursuant to Section 74 of the Industrial Appeals Act, decide that a judgment of the Industrial Appeals Tribunal shall not be implemented or suspend its execution.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6)of the Convention that his case was not heard by an independent tribunal.

Article 6 para. 1 (Art. 6-1), insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by an independent (...) tribunal ...."

The Commission notes that in the present case there was a dispute concerning restrictions on the applicant's use of his property. The property right in question was civil in nature. Article 6 para. 1 (Art. 6-1) therefore applies to this case (cf. Eur. Court H.R., Oerlemans judgment of 27 November 1991, Series A no. 219, pp. 20-21,

paras. 45-49).

The applicant complains that the summary procedure provided for in Section 37 of the Industrial Appeals Act does not meet the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission observes, however, that Section 37 was not applied in the present case. The applicant's case was not decided by the President of the Industrial Appeals Tribunal but by the full bench of the Tribunal. The applicant, therefore, cannot claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention of a violation of Article 6 para. 1 (Art. 6-1).

This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The applicant further complains that Section 74 of the Industrial Appeals Act is incompatible with the notion of "independent tribunal" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission recalls that the compatibility of Section 74 of the Industrial Appeals Act with the notion of "tribunal" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention was examined by the Court in the case of Van de Hurk v. the Netherlands (Eur. Court H.R., judgment of 19 April 1994, Series A no. 288). The Court stated, inter alia, that the power to give a binding decision which may not be altered by a non-judicial authority to the detriment of an individual party is inherent in the very notion of a "tribunal", and that this power can also be seen as a component of the "independence" required by Article 6 para. 1 (Art. 6-1) (ibid., p. 16, para. 45). The Court found that, since Section 74 of the Industrial Appeals Act allowed the executive authorities partially or completely to deprive a judgment of the Industrial Appeals Tribunal of its effect to the detriment of an individual party, one of the basic attributes of a "tribunal" was missing (ibid., p. 17, para. 52). In the absence of a remedy that fulfilled the requirements of Article 6 para. 1 (Art. 6-1), the Court concluded that there had been a violation of Article 6 para. 1 (Art. 6-1) of the Convention (ibid., p. 18 para. 55).

Section 8 para. 2 of the Forest Act enumerates the Sections of the Industrial Appeals Act that apply to proceedings conducted under the Forest Act. Section 74 of the Industrial Appeals Act is, however, not included in this enumeration. The applicant's complaint therefore lacks foundation.

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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)