AS TO THE ADMISSIBILITY OF

Application No. 20972/92
by Kaj RANINEN
against Finland

The European Commission of Human Rights (First Chamber) sitting in private on 30 November 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
F. ERMACORA
E. BUSUTTIL
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS

Mrs. M.F. BUQUICCHIO, 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 12 November 1992 by Kaj RANINEN against Finland and registered on 19 November 1992 under file No. 20972/92;

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 Finnish citizen, born in 1967 and resident in Helsinki. He is a student and presently executive manager of the Union of Conscientious Objectors ("Aseistakieltäytyjäliitto"). Before the Commission he is represented by Ms. Marjaana Laine and Mr. Juha Keltti, legal secretaries of this union.

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

Particular circumstances of the case

In 1986 the applicant was called up for military service. On account of his studies he obtained a suspension of his duty to report for service until 20 March 1992. Prior to this date he had objected in writing to performing any kind of military or substitute civilian service (siviilipalvelus, civiltjänstgöring).

On 8 April 1992 the applicant was arrested on suspicion of having evaded military service and was eventually brought to the Pori Brigade (Porin Prikaati) at Säkylä, where he was supposed to have commenced his service on 20 March 1992. Having been questioned by military staff on 9 April 1992, he again objected to carrying out any military duties and his arrest was prolonged.

Following a hearing on 11 April 1992 the District Court

(kihlakunnanoikeus, häradsrätten) of Eura ordered the applicant's detention on remand in the County Prison of Turku.

Following a hearing on 24 April 1992 the District Court of Eura convicted the applicant of having evaded service on 20 March 1992 and of an offence in duty on 9 April 1992. He was sentenced to 45 days' suspended imprisonment.

Immediately upon his release from prison on 24 April 1992 the applicant was accompanied by military staff back to the Pori Brigade. Having been questioned by military staff, he again objected to carrying out any military duties and was again arrested.

On 28 April 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku.

Following a hearing on 12 May 1992 the District Court convicted the applicant of an offence in service on 24 April 1992 and sentenced him to 30 days' imprisonment to be served later. Having been released from prison on the same day, the applicant was again accompanied by military staff back to the Pori Brigade. Having been questioned by military staff, he again objected to carrying out any military duties and was again arrested.

On 15 May 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku.

Following a hearing on 29 May 1992 the District Court convicted the applicant of an offence in service on 12 May 1992 and sentenced him to 30 days' imprisonment to be served later.

Having been released from prison on 29 May 1992, the applicant was transported by military police back to the Pori Brigade. Having been questioned by military staff, he again objected to carrying out any military duties and was again arrested.

On 2 June 1992 the applicant was transported back to the County Prison of Turku in order to serve his sentence. On 9 June 1992 he was released on parole. Immediately upon his release from prison the applicant was accompanied by military police back to the Pori Brigade. Having been questioned by military staff, he again objected to carrying out any military duties and was again arrested.

On 11 June 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku.

Following a hearing on 18 June 1992 the District Court convicted the applicant of offences in service on 29 May and 9 June 1992. He was sentenced to 40 days' imprisonment to be served later. His release on parole was also revoked.

Immediately upon his release from prison on 18 June 1992 the applicant was handcuffed and transported by military police back to the Pori Brigade. On arrival he was placed in the military hospital, but was not obliged to carry army clothes. He was not subjected to any medical examinations. Having been questioned by military staff on 19 June 1992, he again objected to carrying out any military duties. Thereupon he was formally arrested at 8.05 hrs.

On 22 June 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku.

On 26 June 1992 the applicant started serving his aggregated prison sentence.

Following a hearing on 29 June 1992 the District Court convicted the applicant of an offence in service on 19 June 1992 and sentenced him to 35 days' imprisonment. It noted that the applicant had been deprived of his liberty as from (and including) 19 June 1992. It further granted him a cost-free trial in accordance with the 1973 Act on Cost-Free Trial (laki 87/73 maksuttomasta oikeudenkäynnistä, lag om fri rättegång 87/73; hereinafter "the 1973 Act"). Considering, however, that the charges were similar to those previously brought against him, it refused his request that his lawyer be appointed his official counsel in accordance with the 1983 Act on Military Court Proceedings (sotilasoikeudenkäyntilaki 326/83, militär rättegångslag 326/83; hereinafter "the 1983 Act"). The applicant did not appeal against this decision.

On 20 August 1992 the applicant was released from prison on parole contrary to his own wish. He was met by military police officers, who asked whether he was aware of his obligation to perform his military service. The applicant replied in the affirmative and was accompanied by military staff to the Pori Brigade. Having been questioned by military staff, he again objected to carrying out any military duties and was again arrested.

On 24 August 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered

to be detained on remand in the County Prison of Turku.

On 9 September 1992 the District Court convicted the applicant of an offence in service on 20 August 1992 and sentenced him to 35 days' imprisonment to be served later. The District Court granted him a cost-free trial, but again refused his request that his lawyer be appointed his official counsel in accordance with the 1983 Act. The District Court based its refusal on reasons similar to those advanced in its judgment of 29 June 1992. The applicant's lawyer nevertheless assisted the applicant throughout the hearing.

On 11 September 1992 the applicant reported for military service of his own motion.

On 12 September 1992 a further request for the applicant's detention on remand was heard by the District Court of Eura. He was again ordered to be detained on remand in the County Prison of Turku.

Following a hearing on 28 September 1992 the District Court convicted the applicant of unauthorised leave from 9 to 11 September 1992 as well as of an offence in service on 11 September 1992. He was sentenced to 36 days' imprisonment to be served later. Two witnesses were heard on behalf of the prosecution. The applicant was ordered to pay the costs for hearing these witnesses. He was assisted by a lawyer.

After judgment had been rendered the applicant was transported back to the County Prison of Turku for immediate release. On release he was again met by military police officers, but again objected to being accompanied to the Pori Brigade.

On 2 October 1992 the applicant reported for duty of his own motion and was again arrested. Having been questioned by military staff on 3 October 1992, he again refused to comply with any military duties and his arrest was prolonged.

On 5 October 1992 the applicant was discharged from his military service for a period of two years.

Following a hearing on 30 November 1992 the District Court convicted the applicant of an offence in service on 3 October 1992 and unauthorised leave from 28 September to 2 October 1992. He was sentenced to 36 days' imprisonment to be served later. His release on parole was also revoked. Both the applicant and the prosecution appealed to the Court of Appeal (hovioikeus, hovrätten) of Helsinki.

On 7 December 1992 the Commander in Chief of the Military District (sotilaspiiri, militärdistriktet) of Helsinki considered the applicant to be temporarily unfit for service pending a further examination in December 1993. The decision was based on rule V629A of an Instruction for Medical Examinations (Fi. "lääkärintarkastusohje-sääntö"). According to the applicant, this rule prescribes that a conscript with an "an undefined psychosocial problem" (Fi. "määrittele-mätön psykososiaalinen ongelma") may be considered unfit for service.

On 18 October 1992 the applicant requested the Supreme Court (korkein oikeus, högsta domstolen) to restore the time-limit for appealing against the District Court's judgment of 28 September 1992. He stated, inter alia, not having received any written notice of appeal.

On 18 December 1992 the Supreme Court rejected the applicant's request, noting, inter alia, that he had been assisted by a lawyer at the District Court's hearing, where its judgment had been rendered. Thus, the giving of a written notice of appeal had been clearly unnecessary.

On 16 March 1993 the Court of Appeal upheld the District Court's judgment of 9 September 1992 in so far as entailing the applicant's conviction. The Court of Appeal considered, however, that the applicant had been in need of an official counsel and therefore retrospectively appointed his lawyer as his official counsel as from 8 September 1992.

On 16 March 1993 the Court of Appeal furthermore upheld the District Court's judgment of 30 November 1992. In this respect the applicant was subsequently refused leave to appeal to the Supreme Court.

Relevant domestic law

1. Refusal to perform armed military service

According to the 1950 Military Service Act (asevelvollisuuslaki 452/50, värnpliktslag 452/50; hereinafter "the 1950 Act"), a conscript who has a serious conscientious objection against performing armed military service and who does not wish to opt for substitute service shall be exempted from armed military service in peacetime and be ordered to perform unarmed military service (section 36a, as amended by Act no. 1728/91). The duration of such service is 330 days.

2. Refusal to perform substitute civilian service

According to the 1991 Act on Substitute Civilian Service (siviilipalveluslaki 1723/91, civiltjänstlag 1723/91), a conscript who declares a serious conscientious objection to performing any kind of military service shall be exempted from such service in peacetime and instead perform substitute service (section 1). The duration of this service is 395 days (section 3). A conscientious objector who refuses to perform his substitute service after later having been called up to this end shall be convicted and sentenced to a 197-day prison term intended to correspond to half the duration of the substitute service. The obligation to perform substitute service ceases when this prison term has been served. A conscript refusing to perform substitute service after having opted for such service can only be convicted once

of this offence (section 26, subsections 1 and 2). The prison sentence shall be unconditional and the convict shall serve his whole sentence, unless he later wishes, and is able to, perform substitute service, in which case he shall be released on parole for his remaining period of service (section 28, subsection 1 and section 29, subsections 1 and 2).

3. Refusal to perform either military or substitute service

In accordance with the 1889 Penal Code (rikoslaki 39/1889, strafflag 39/1889) a refusal to perform either military or substitute service may be considered as an offence in service punishable with up to one year's imprisonment (Chapter 45, sections 4 and 15, as amended by Act no. 792/89). Alternatively, the refusal may be considered as evasion from service or as unauthorised leave. A punishment imposed for such a refusal does not affect the convict's liability to perform either military or substitute service up to the end of the year of his thirtieth birthday, unless he is exempted from service (section 23,

subsection 2 (3) and section 15 of the 1950 Act).

4. Fetching of a conscript failing to report for military service

According to the 1951 Decree on the Application of the Military Act (asetus 63/51 asevelvollisuuslain soveltamisesta, förordning 63/51 ang. tillämpning av värnpliktslagen; hereinafter "the 1951 Decree"), a conscript who has failed to report for military service on a fixed day in the absence of a legal obstacle shall as soon as possible be brought by the police to his place of service (section 36, as amended by Decree no. 1361/88).

5. Classification of a conscript's fitness to perform military service

According to the 1950 Act, a decision concerning a conscript's fitness to perform military service shall always be based on an "examination" (section 15, as amended by Act no. 1169/88). At least one of the examiners shall be a military physician (section 66 of the 1951 Decree). The classification decision is not appealable (section 37, subsection 3 of the 1950 Act).

6. Cost-free trial

According to the 1973 Act, among others an accused may be granted a cost-free trial, if he or she cannot without difficulties meet all costs incurred in the criminal proceedings (section 1, subsection 1). If the accused cannot without difficulties assert his or her rights and interests, an official counsel shall also be appointed (section 10, subsection 1, as amended by Act no. 1125/88). An official counsel, who is not a public legal adviser, shall be reasonably compensated by the State for his or her work in the case, for loss of time as well as for necessary costs incurred (section 15, subsection 1).

7. Right to official counsel

According to the 1983 Act, as applicable in conjunction with the 1973 Act, an accused who is not already assisted or represented by counsel in military court proceedings shall have the right to have an official counsel appointed in order to assist him, provided that he would otherwise be unable properly to assert his rights. Decisions and judgments rendered in the course of military court proceedings are free of charge (section 28, subsection 1, as amended by Act no. 1126/88). An appeal lies against a refusal to appoint an official counsel (sections 18-19).

8. The convict's responsibility for costs incurred for the presentation of certain evidence

According to the 1972 Act on State Responsibility for Costs Incurred for the Presentation of Certain Evidence (laki 666/72 valtion varoista maksettavista todistelukustannuksista, lag 666/72 om bestridande av bevisningskostnader med statens medel), a convict shall be ordered to compensate the State for costs incurred in his case, unless they can be considered to have been unnecessary. If the imposition of such an obligation on the convict would, for a reason specified in the 1972 Act, be unreasonable, he shall be exempted from it or his compensation liability shall be reduced (section 16). An appeal against such an obligation lies with the Court of Appeal and, with leave to appeal, with the Supreme Court (section 10 of the 1972

Act and Chapter 17, section 42 of the Code of Judicial Procedure (Oikeudenkäymiskaari, Rättegångs Balk)).

COMPLAINTS

1. The applicant complains that his repeated convictions in conjunction with his treatment during the ensuing criminal proceedings constituted degrading treatment. During his arrests he was allegedly isolated. On 18 June 1992 he was transported in handcuffs to the military hospital. His fitness classification was changed in spite of the absence of medical evidence warranting this. He was obliged to appear fourteen times before the District Court on account of his one and only ongoing objection to performing any kind of military or substitute service. He was subjected to repeated detentions on remand as well as to numerous interrogations. He invokes Article 3 of the Convention.

2. The applicant further complains that the deprivation of his liberty from 18 June 1992, following his release from prison, until the issuing of the arrest order on 19 June 1992 was in violation of Article 5 para. 1 of the Convention. The handcuffing of the applicant allegedly shows that he was not brought to the military hospital of his own free will.

3. The applicant also alleges that he was not informed either orally or in writing of the reasons for his alleged arrest on 18 June 1992, also including his placement in the military hospital. He invokes Article 5 para. 2 of the Convention.

4. The applicant furthermore complains under Article 6 para. 1 of the Convention that he was denied a fair hearing in two respects.

Firstly, the applicant was denied the right to be assisted by official counsel in accordance with the 1973 and 1983 Acts at the District Court's hearings on 29 June and 9 September 1992. In this respect he also invokes Article 6 para. 3 of the Convention.

Secondly, the applicant was ordered to compensate the expenses incurred by the two witnesses heard by the District Court on 28 September 1992 at the prosecution's request. Allegedly, this "additional punishment" was imposed as a result of his refusal to express himself at that hearing. In this respect he also invokes Article 6 para. 2 of the Convention.

5. The applicant furthermore complains that he has been convicted repeatedly of the same offence, this being in violation of Article 4 of Protocol No. 7.

6. The applicant finally complains under Article 14 of the Convention that he has been discriminated against in two respects for having consistently refused to perform either military or substitute service.

Firstly, the prison sentences served by him on account of his consistent conscientious objection to military or substitute service could not, and cannot, be deducted from his remaining term of military service. However, the prison term to be served by a conscientious objector refusing to perform any kind of service once he has opted for substitute service is deductible from his remaining term of service,

should he not pursue his refusal.

Secondly, the aggregated prison term which the applicant has been sentenced to serve already exceeds the prison term which could be imposed on a conscientious objector refusing to perform any service once he has opted for substitute service.

THE LAW

1. The applicant complains that he has been subjected to degrading treatment on account of his ongoing objection to performing any kind of military or substitute service. He refers to the repeated criminal proceedings instituted against him concluding in equally repeated criminal convictions. He also refers to his repeated detentions on remand, his alleged isolation while arrested, his transportation to the military hospital in handcuffs and the change of his fitness classification. He invokes Article 3 (Art. 3) of the Convention which reads as follows:

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

a) The alleged isolation of the applicant during his arrests

As regards the alleged isolation of the applicant while he was arrested, the Commission recalls that the segregation of a detainee does not in itself constitute inhuman or degrading treatment. Whilst prolonged removal of a person from association with others is undesirable, the question whether such a measure is contrary to Article 3 (Art. 3) of the Convention depends on the particular conditions of its application, including its stringency, duration and purpose, as well as its effects on the person concerned. For instance, the removal of a prisoner from association with fellow inmates for security, disciplinary or protective reasons does not normally amount to inhuman treatment or punishment (cf. e.g. Bouajila v. Switzerland, Comm. Report 1.7.93, paras. 102-104, to be published; Dhoest v. Belgium, Comm. Report 14.5.87, paras. 116-118, D.R. 55 pp. 5-50, at pp. 20-21, with further references, and No. 14610/89, Dec. 9.7.91, D.R. 71 pp. 168-221, at pp. 190-191, with further references).

In the present case the applicant has not substantiated the length of the alleged periods of isolation and his conditions during those periods. In these circumstances the Commission, assuming that the applicant has complied with the six months' rule in Article 26 (Art. 26) of the Convention, cannot find any appearance of a violation of Article 3 (Art. 3) in this respect.

It follows that this aspect of the complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b) The handcuffing of the applicant

The Commission considers that the handcuffing of the applicant on 18 June 1992 for the purpose of transporting him to the military hospital raises issues under Articles 3 and 8 (Art. 3, 8) of the Convention. Article 8 (Art. 8) reads as follows:

> "1. Everyone has the right to respect for his private and

family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission considers, however, that it cannot, on the basis of the file, determine the admissibility of this aspect of the complaint. It is therefore necessary to give notice thereof to the respondent Government in accordance with Rule 48 para. 2 (b) of the Rules of Procedure.

c) The fitness classification of the applicant on 7 December 1992

The Commission considers that also the classification of the applicant as temporarily unfit for service on account of his "undefined psychosocial problem" raises issues under the above-cited Articles 3 and 8 (Art. 3, 8) of the Convention. It cannot, however, determine the admissibility of this aspect of the complaint on the basis of the file. It is therefore necessary to give notice thereof to the respondent Government.

d) The remainder of the complaint

The Commission finds no indication that the criminal proceedings instituted against the applicant as well as his ensuing convictions and repeated placement in detention on remand reached the threshold of severity of treatment contrary to Article 3 (Art. 3). There is thus no appearance of a violation of that provision.

It follows that this aspect of the complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant further complains that the deprivation of his liberty from 18 June 1992, following his release from prison, until the issuing of the arrest order on 19 June 1992 was in violation of Article 5 para. 1 (Art. 5-1) of the Convention. This provision reads as follows:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a. the lawful detention of a person after conviction by a competent court;

b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d. the detention of a minor by lawful order for the

purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint. It is therefore necessary to give notice thereof to the respondent Government.

3. The applicant also alleges that he was not informed either orally or in writing of the reasons for his alleged arrest on 18 June 1992, also including his placement in the military hospital. He invokes Article 5 para. 2 (Art. 5-2) of the Convention which reads as follows:

"Everyone who is arrested shall be informed promptly, ..., of the reasons for his arrest and of any charge against him.

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint. It is therefore necessary to give notice thereof to the respondent Government.

4. The applicant furthermore complains under Article 6 para. 1 (Art. 6-1) of the Convention that he was denied a fair hearing in two respects. Firstly, the District Court refused to appoint an official counsel for him at its hearings on 29 June and 9 September 1992. In this respect he also invokes Article 6 para. 3 (Art. 6-3) of the Convention. Secondly, he was ordered to compensate the expenses incurred by the two witnesses heard by the District Court on 28 September 1992 at the prosecution's request. In this respect he also invokes Article 6 para. 2 (Art. 6-2) of the Convention.

The relevant parts of Article 6 (Art. 6) of the Convention read as follows:

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

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:

...

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; ..."

a) The District Court's refusal to appoint an official counsel at its hearing on 29 June 1992

The Commission recalls that under Article 26 (Art. 26) of the Convention it may only deal with an application after all domestic remedies have been exhausted, according to generally recognised rules of international law. The complaints brought before the Commission

should normally have been raised before the competent domestic courts in compliance with the formal requirements and time-limits laid down in domestic law (Eur. Court H.R., Cardot judgment of 19 March 1991, Series A no. 200, p. 18, para. 34).

The Commission observes that the applicant lodged no appeal against the District Court's refusal to appoint an official counsel for him at its hearing on 29 June 1992. An examination of the complaints does not disclose the existence of any special circumstances which might have absolved him from his obligation to exhaust the domestic remedies available to him.

It follows that this aspect of the complaint must be rejected for non-exhaustion of domestic remedies within the meaning of Article 27 para. 3 (Art. 27-3) of the Convention.

b) The District Court's refusal to appoint an official counsel at its hearing on 9 September 1992

The Commission recalls that under Article 25 (Art. 25) of the Convention it may receive petitions from any person, non-governmental organisation or group of individuals claiming to be the "victim" of a violation by one of the High Contracting Parties of the rights set forth in this Convention. It observes that the applicant lodged a successful appeal against the District Court's refusal to appoint an official counsel for the applicant at its hearing on 9 September 1992. In these circumstances it finds that the applicant can no longer claim status as a "victim" within the meaning of Article 25 (Art. 25) of the Convention in regard to this aspect of the complaint.

It follows that this aspect of the complaint must be rejected as being incompatible ratione personae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

c) The District Court's order of 28 September 1992 obliging the applicant to pay the prosecution's costs for obtaining witness evidence

Recalling the above-mentioned requirement that domestic remedies be exhausted, the Commission observes that the applicant lodged no appeal against the District Court's order of 28 September 1992 obliging him to pay the prosecution's costs for hearing witnesses. An examination of the complaints does not disclose the existence of any special circumstances which might have absolved him from his obligation to exhaust the domestic remedies available to him.

It follows that this aspect of the complaint must also be rejected for non-exhaustion of domestic remedies within the meaning of Article 27 para. 3 (Art. 27-3) of the Convention.

5. The applicant furthermore complains that he has been convicted repeatedly of the same offence, this being in violation of Article 4 of Protocol No. 7 (P7-4). Article 4 para. 1 (Art. 4-1) reads as follows:

> "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. ..."

The Commission considers that it cannot, on the basis of the file, determine the admissibility of this complaint. It is therefore necessary to give notice thereof to the respondent Government.

6. The applicant finally complains under Article 14 (Art. 14) of the Convention that he has been discriminated against in two respects for

having consistently refused to perform either military or substitute service. Firstly, the prison sentence served by him on account of his conscientious objections to military or substitute service could not, and cannot, be deducted from his remaining term of military service. However, the prison term to be served by a conscientious objector refusing to perform any kind of service once he has opted for substitute service is deductible from his remaining term of service, should he not pursue his refusal. Secondly, the aggregated prison term which the applicant has been sentenced to serve already exceeds the prison term which could be imposed on a conscientious objector refusing to perform any service once he has opted for substitute service.

Article 14 (Art. 14) of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission considers that this complaint raises issues under Article 14 in conjunction with Article 9 (Art. 14+9) of the Convention and/or the above-cited Article 4 of Protocol No. 7 (P7-4). Article 9 (Art. 9) of the Convention reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Commission considers, however, that it cannot determine the admissibility of this complaint on the basis of the file. It is therefore necessary to give notice thereof to the respondent Government.

For these reasons, the Commission,

by a majority,
DECIDES TO ADJOURN the examination of

the complaint relating to the applicant's handcuffing on 18 June 1992;

the complaint relating to the grounds for classifying the applicant as temporarily unfit for service;

the complaint relating to the lawfulness of the alleged arrest of the applicant from 18 to 19 June 1992;

the complaint relating to the alleged absence of reasons for the above alleged arrest;

the complaint relating to the applicant's allegedly repeated convictions of the same offence; and

the complaint relating to the alleged discriminatory treatment of the applicant in his capacity as a so-called "total objector"

in comparison with conscientious objectors having refused to perform substitute service after having opted for such service; and

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (A. WEITZEL)