AS TO THE ADMISSIBILITY OF

Application No. 20791/92
by Wijnanda Johanna SPRINGINTVELD
against the Netherlands

The European Commission of Human Rights sitting in private on 2 September 1994, the following members being present:

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

Mr. K. ROGGE, 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 24 September 1992 by Wijnanda Johanna SPRINGINTVELD against the Netherlands and registered on 9 October 1992 under file No. 20791/92;

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

1. Particular circumstances of the case

The applicant is a Dutch citizen, born in 1948, and resides at Amsterdam. Before the Commission she is represented by Mr. D.J. van der Kuyp, a lawyer practising at Amsterdam.

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

In 1978 the applicant was granted benefits for a one parent family (één-oudergezin) under the General Welfare Act (Algemene Bijstandswet).

After having been informed by an anonymous person in November 1987 and January 1988 respectively that the applicant was gainfully employed by the company X. while receiving welfare benefits, the Special Control Department (Afdeling Bijzondere Controle) of the Municipal Social Service (Gemeentelijke Sociale Dienst) of Amsterdam decided to open an investigation. Following a verification of the information through contact with the applicant's alleged employer, it appeared that the applicant had in fact been paid commissions by this company between 1985 and 1988.

On 21 April 1988 the applicant was questioned by an officer of

the Special Control Department on the suspicion of having committed forgery within the meaning of Section 225 of the Criminal Code (Wetboek van Strafrecht) by not declaring the above earnings in her statements of income to the welfare authorities.

The applicant, after having been confronted with the results of the investigation, admitted having received commissions from that company and having failed knowingly and deliberately to declare these earnings to the welfare authorities, but stated that she also had incurred substantial expenses, inter alia, for that work. It was agreed that she would return on 25 April 1988 in order to submit relevant invoices.

On the basis of subsequent information the welfare authorities obtained from the tax authorities, it also appeared that the applicant had received undeclared income in 1984 from another company Y., which company was dissolved in March 1985. It further appears that the welfare authorities received information that she cohabited with her - gainfully employed - friend.

When the applicant returned on 25 April 1988, she submitted certain invoices and was questioned in respect of the undeclared income in 1984 and was asked whether or not she cohabited with a gainfully employed person. She admitted also having had certain earnings in 1984 which she had not declared to the welfare authorities and having a friend, but denied cohabiting and sharing her household with him. The officer questioning her then requested the applicant to co-operate in an inspection visit to her house immediately after the interview. Although the applicant was informed that, given her obligations under Section 30 para. 2 of the General Welfare Act, a refusal might have consequences for the continuance of her welfare benefits, she refused to co-operate during this visit.

On 10 May 1988 the Special Control Department drew up a formal report on the two interviews held on 21 and 25 April 1988.

Pursuant to Section 3 para. 4 of the General Welfare Act the Welfare Department decided on 28 April 1988 to withdraw the applicant's welfare benefits as from 1 May 1988, considering that, since she had refused to co-operate in an investigation by the Special Control Department, it could not be examined whether or not, and if so to which extent, welfare benefits should be granted.

The applicant's objection (bezwaarschrift) against this decision was rejected on 2 December 1988 by the Mayor and Aldermen (Burgemeester en Wethouders) of Amsterdam.

The applicant's appeal of 12 December 1988 to the Provincial Executive (Gedeputeerde Staten) of Noord-Holland was declared ill-founded by the Appeals Commission for administrative disputes (Commissie beroepszaken administratieve geschillen) of Noord-Holland on 21 August 1989.

The applicant's subsequent appeal to the Administrative Litigation Division of the Council of State (Afdeling voor de Geschillen van Bestuur van de Raad van State) was rejected on 5 February 1992.

The Administrative Litigation Division noted that, under Section 30 para. 2 of the General Welfare Act, a person who has requested or receives welfare benefits is obliged to submit all information relevant for the granting or continuance of welfare benefits, and that, under Article 3 para. 4 of the General Welfare Act, the Mayor and Aldermen can terminate or reduce welfare benefits when a condition attached to such benefits is not met.

Noting that the applicant's benefits had not been withdrawn on

the basis of information from an anonymous source, but following the applicant's refusal to co-operate in an investigation into her personal situation, the Litigation Division held that it was not contrary to Section 30 of the General Welfare Act to investigate the personal situation of a welfare beneficiary. It further found that, given the nature of such an investigation and the applicant's failure to inform the Welfare Department at her own initiative about relevant circumstances, the Special Control Department could inspect the applicant's home in order to examine her personal situation immediately after the interview on 25 April 1988. Since the applicant had acted contrary to her obligation under Section 30 para. 2 of the General Welfare Act by refusing to co-operate in this inspection, it could not be determined whether or not she qualified for welfare benefits. The Litigation Division, therefore, concluded that her welfare benefits had been lawfully withdrawn.

Insofar as the applicant alleged a violation of Article 8 of the Convention, the Litigation Division considered that Section 30 of the General Welfare Act was compatible with Article 8 of the Convention. Having regard to Article 8 para. 2 of the Convention, it found that the competence of the welfare authorities to investigate and the obligation of welfare beneficiaries to provide information for welfare purposes constituted justified interferences with the right to respect for private and family life.

The applicant also relied on Article 6 of the Convention. She argued that the evidence could not be founded only on the basis of anonymous information and that she should have been given adequate time and facilities for the preparation of her defence at the time the interview had been held. With regard to this argument the Litigation Division considered that, as the procedure only concerned the assessment of the applicant's entitlement to welfare benefits and did not concern a criminal charge, Article 6 paras. 2 and 3 of the Convention were not applicable.

It further appears that the applicant was also charged by the public prosecutor with a criminal offence and was convicted following criminal proceedings.

2. Relevant domestic law

Section 3 para. 4 of the General Welfare Act, insofar as relevant, provides:

[Dutch]
"Indien een voorwaarde niet is nagekomen, kunnen burgemeester en wethouders de bijstand beëindigen of in afwijking van artikel 1 vaststellen. (...)."

[Translation]
"When a condition is not respected, the mayor and aldermen may discontinue the welfare benefits or determine them in deviation from section 1. (...)."

Section 5 para. 1 of the General Welfare Act reads:

[Dutch]
"Aan echtelieden, aan echtelieden met hun minderjarige kinderen, aan een man met zijn minderjarige kinderen of aan een vrouw met haar minderjarige kinderen, wordt de bijstand als gezinsbijstand verleend."

[Translation]
"To spouses, to spouses with their minor children, to a man with his minor children or to a woman with her minor children, welfare benefits will be granted as benefits for a family."

Section 5a of the General Welfare Act, insofar as relevant, reads:

[Dutch]
"1. De bijstand aan niet met elkaar gehuwde personen van verschillend of gelijk geslacht die duurzaam een gezamenlijke huishouding voeren, wordt vastgesteld op een overeenkomstige wijze als bedoeld in artikel 5 tenzij het betreft bloedverwanten in de eerste of tweede graad. Daarbij wordt rekening gehouden met de middelen van deze personen tezamen.
2. Van een gezamenlijke huishouding, bedoeld in het eerste lid, kan slechts sprake zijn indien twee ongehuwde personen gezamenlijk voorzien in huisvesting dan wel op andere wijze in elkaars verzorging voorzien.
(...)

4. Waar in deze wet overigens sprake is van gezin, gezinsbijstand of artikel 5, wordt daaronder mede verstaan de in het eerste lid van dit artikel bedoelde situatie."

[Translation]
"1. Welfare benefits for unmarried persons of different sexes or the same sex, who have a permanent joint household, will be determined as provided for in Section 5 unless it concerns relatives in the first or second degree. The means of these persons together will be taken into account in this respect.
2. A joint household within the meaning of para. 1 exists where two unmarried persons jointly provide for housing accommodation or in another way provide for each other's care.
(...)

4. Where elsewhere in this Act family, benefits for a family or section 5 is mentioned, this will include the situation referred to in the first paragraph of this section."

Section 30 of the General Welfare Act reads:

[Dutch]
"1. Het onderzoek dat aan een beslissing inzake de verlening van bijstand voorafgaat, strekt zich niet verder uit dan tot datgene, wat van belang is voor de verlening van bijstand.
2. De persoon ten wiens behoeve bijstand is gevraagd of wordt verleend is verplicht om van al datgene wat van belang is voor de verlening van bijstand of de voortzetting van verleende bijstand mededeling te doen, zo mogelijk onder overlegging van bewijsstukken."

[Translation]
"1. The investigation preceding a decision on the granting of welfare benefits shall be limited to matters which are relevant for the granting of welfare benefits.
2. The person for whom welfare benefits are requested or granted is obliged to provide information, if possible under submission of elements of proof, about all matters relevant for the granting or continuation of benefits."

Section 47 of the General Welfare Act reads:

[Dutch]
"De bijstand wordt verleend ten laste van de gemeente, welker burgemeester en wethouders hem hebben toegekend."

[Translation]
"Welfare benefits are granted at the expense of the municipality, whose mayor and aldermen have granted them."

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that she did not receive a fair hearing in that both the Provincial Executive and the Administrative Litigation Division relied on information, i.e. the anonymous information alleging that she cohabited with a gainfully employed person, which is not mentioned in the report of 10 May 1988.

2. The applicant further complains that the Administrative Litigation Division unjustly found Article 6 paras. 2 and 3 of the Convention inapplicable to the proceedings at issue. She submits that her case resulted in both administrative and criminal proceedings. She complains that there are no rules governing, and thus no judicial control over, investigations at the homes of welfare beneficiaries, although they are comparable to house search under criminal law.

3. The applicant finally complains under Article 8 of the Convention that her obligation to allow the welfare authorities to visit her home in order to investigate her personal situation on the penalty of losing her welfare benefits constituted an unjustified interference with her right to respect for her private and family life. She submits that the welfare authorities had no ground for the suspicion that she cohabited with a gainfully employed person and thus no legal basis for imposing an inspection of her house. She further submits that there are no clear legal rules on the alleged competence of the welfare authorities as regards visits to the homes of welfare beneficiaries and the procedure to be followed, and thus no judicial control over these visits. She finally submits that during such visits the responsible welfare officers investigate whether or not there are clothes or toilet articles of possible cohabiting partners, sleeping-places and that they question the children of the family concerned.

THE LAW

1. The applicant complains that she did not receive a "fair hearing" within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. She submits that the judicial authorities relied on certain information which was not mentioned in the report of 10 May 1988.

Article 6 para. 1 (Art. 6-1) of the Convention reads:

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

The Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention is applicable to proceedings on entitlement to welfare benefits, as such proceedings concern a determination of a civil right within the meaning of that provision (cf. Eur. Court H.R., Salesi judgment of 26 February 1993, Series A no 257-E, p. 59, para. 19).

The Commission observes that the applicant's welfare benefits were not withdrawn on the basis of the information on her personal situation, but following her refusal to allow the welfare authorities to inspect her home in order to clarify her personal situation. The Commission notes that in the proceedings on the lawfulness of the decision to withdraw her welfare benefits the applicant was provided with ample opportunity to state her case and finds no indication that these proceedings were unfair.

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

2. The applicant further complains that the Administrative

Litigation Division unjustly found Article 6 paras. 2 and 3 (Art. 6-2, 6-3) of the Convention inapplicable to the proceedings at issue.

Article 6 paras. 2 and 3 (Art. 6-2, 6-3) of the Convention provides:

> "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;
>
> e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

The Commission observes that the administrative proceedings at issue concerned the lawfulness of the withdrawal of the applicant's welfare benefits for non-compliance with the General Welfare Act.

The Commission considers that such administrative proceedings cannot be regarded as criminal proceedings following criminal charge. The aim of these administrative proceedings was not to determine whether or not the applicant was guilty of a criminal offence, but to determine whether or not she qualified for welfare benefits. Moreover, in separate criminal proceedings, the applicant was in fact charged and convicted in connection with the facts at issue. It has, however, not been argued that the latter proceedings were not in conformity with the requirements of Article 6 (Art. 6) of the Convention.

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

3. The applicant complains under Article 8 (Art. 8) of the Convention that there has been an unjustified interference with her right to respect for her family and private life, as regards the proposed visit to her home.

Article 8 (Art. 8) of the Convention, insofar as relevant, 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 (...) the economic well-being of the country, for the prevention of (...) crime, for the protection of (...) the rights and freedoms of others."

The Commission can only examine the personal situation of the applicant and not the general scope of the laws applied in her case (cf. No. 10491/83, Dec. 3.12.86, D.R. 51 p. 41).

The Commission observes that the welfare authorities requested the applicant's permission for an inspection visit to her house in order to verify whether or not she cohabited with a gainfully employed person. Since the applicant refused to give her permission, her home was not inspected and her statement as to her personal situation could thus not be verified. Her welfare benefits were subsequently withdrawn since the information the welfare authorities had at their disposal at that moment was considered insufficient for continuing the payment of welfare benefits to the applicant.

The Commission is of the opinion that the applicant's obligation to permit an inspection of her home by the welfare authorities constituted an interference with her rights under Article 8 para. 1

(Art. 8-1) of the Convention, as non-compliance with such an inspection can - and in fact did - entail the loss of welfare benefits.

The question therefore arises whether this interference was justified under para. 2 of this provision, namely whether it was "in accordance with the law" and necessary in a democratic society for one or more of the legitimate aims referred to in this provision.

As regards the question whether the interference was "in accordance with the law", the Commission recalls that the law in question should be accessible to the person concerned, who must be able to foresee its consequences (cf. Eur. Court H.R., Kruslin judgment of 24 April 1990, Series A No. 176-A, p. 20, para. 26).

The Commission observes that the interference complained of was based on Section 30 para. 2 of the General Welfare Act, which contains a general obligation for welfare beneficiaries to disclose all information relevant for entitlement to welfare benefits or the continuance of such benefits.

The Commission notes that the Litigation Division held that it was not contrary to Section 30 of the General Welfare Act to investigate the personal situation of a welfare beneficiary. It further found that, given the nature of such an investigation and the applicant's failure to inform the Welfare Department at her own initiative about relevant circumstances, the Special Control Department could request the applicant to permit a visit to her home in order to examine her personal situation immediately after the interview on 25 April 1988.

The Commission recalls that it is primarily the task of national authorities to apply and interpret domestic law, but that the Convention organs have a limited jurisdiction to control the manner in which it is done (cf. No. 10689/83, Dec. 14.5.84, D.R. 37 p. 225). The Commission does not consider the findings by the Litigation Division in the present case to be arbitrary or unreasonable. The Commission, therefore, accepts that the interference at issue was "in accordance with the law" within the meaning of Article 8 para. 2 (Art. 8-2) of the Convention.

As to the "necessity" of the interference at issue, the Commission finds that, given the limited financial resources of welfare or other social security schemes, it is not unreasonable for welfare authorities to verify whether or not a petitioner or beneficiary fulfils all requirements for entitlement to such benefits, or the continuance thereof.

The Commission is therefore satisfied that the interference complained of can reasonably be considered as being necessary in a

democratic society in the interests of the economic well-being of the country, for the prevention of crime or for the protection of the rights of others.

It follows that this complaint 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

(K. ROGGE) — (S. TRECHSEL)