AS TO THE ADMISSIBILITY OF

Application No. 30300/96
by Johan Henk TALMON
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

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 17 October 1995 by Johan Henk TALMON against the Netherlands and registered on 27 February 1996 under file No. 30300/96;

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 1955, and residing in Delft, the Netherlands. Before the Commission he is not represented by a lawyer.

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

A. The particular circumstances of the case

The applicant is currently unemployed and has been in receipt of benefits pursuant to the Social Assistance Scheme for the Unemployed (Rijksgroepregeling Werkloze Werknemers, hereinafter referred to as the Assistance Scheme) since 1 June 1984. The Assistance Scheme stipulates that an unemployed person will be eligible for benefits if he attempts to obtain and is willing to accept employment deemed suitable for him. The applicant considers that the only employment suitable for him is that of "independent scientist and social critic" and that he is unable to find employment as such. He submits that he has serious and unsurmountable conscientious objections against all other employment.

The competent authorities twice informed the applicant by letter that if he did not attempt to find other employment which was also considered suitable for him he risked having his benefits reduced. On 31 December 1990 the Mayor and Aldermen (Burgemeester en Wethouders)

of Delft decided to reduce the applicant's unemployment benefits by 18% for a period of three months in view of the fact that he had failed to comply with the obligation to look for suitable employment. The applicant filed an objection (bezwaarschrift) against this decision on 25 February 1991.

On 24 June 1991 the Mayor and Aldermen rejected the objection and the applicant filed an appeal with the Provincial Executive (Provinciale Staten) of Zuid-Holland. This appeal was rejected on 25 February 1992. The applicant then filed an appeal with the Administrative Law Division (Afdeling Bestuursrechtspraak) of the Council of State (Raad van State).

Meanwhile, on 13 August 1991, the Mayor and Aldermen of Delft decided to reduce the applicant's unemployment benefit by 24% for a period of three months since he still failed to look for suitable work. The applicant filed an objection against this decision also.

On 29 October 1991 the Mayor and Aldermen rejected the objection. The applicant's subsequent appeal to the Provincial Executive was rejected on 2 July 1992 and the applicant filed a second appeal with the Administrative Law Division of the Council of State.

A hearing before the Administrative Law Division took place in both cases on 22 September 1994. In two separate decisions of 29 February 1995, communicated to the applicant on 19 April 1995, the Administrative Law Division rejected the appeals.

The Administrative Law Division held that the Assistance Scheme was based on the principle that every person is responsible for providing for his own means of living and that it followed from this principle that an unemployed person is expected to display active efforts to obtain employment. As a consequence, a number of conditions which had to be complied with in order for a person to become eligible for unemployment benefits had been included in the Assistance Scheme, such as the requirement that the unemployed person, according to his ability, attempts to obtain paid employment. The Administrative Law Division considered that it had appeared that the applicant had not displayed sufficient effort in this respect.

The applicant's appeals to the Administrative Law Division were examined by a single judge, Mrs G., who is a former State Secretary for Social Affairs and Employment (Staatssecretaris voor Sociale Zaken en Werkgelegenheid). According to the applicant, Mrs G. has been involved in the introduction into the Assistance Scheme of the possibility to reduce benefits in cases where recipients fail to accept suitable employment.

B. Relevant domestic law and practice

The Council of State has a Legislation Division, which provides the Government with advice on proposed legislation, and an Administrative Law Division, which acts as an administrative court in first and final resort and as court of appeal.

Councillors usually take part in the activities of both divisions.

According to Section 8:15 of the Administrative Law Act (Algemene Wet Bestuursrecht) a party may challenge a judge on the ground that the latter appears to lack impartiality.

Pursuant to Section 8:16 para. 1 of the Administrative Law Act the request to replace a judge should be submitted as soon as the party concerned became aware of facts or circumstances which led to the appearance of a lack of impartiality.

COMPLAINTS

1. The applicant complains in the first place that by reducing his unemployment benefits the authorities are forcing him to accept employment other than that of independent scientist and social critic. He submits that he has conscientious objections against all other types of employment. He invokes Articles 4 para. 2, 9 and 10 of the Convention.

2. The applicant further complains under Article 6 para. 1 of the Convention of the length of the proceedings. In this respect he submits that the authorities had been aware of his refusal to look for and accept other types of employment and that they did not decide to reduce his benefits until seven years after he had first been granted them.

3. The applicant also argues that in the light of the former position of the single judge Mrs G. of the Administrative Law Division his civil rights have not been determined by an independent and impartial tribunal within the meaning of Article 6 para. 1 of the Convention. In this respect he invokes the Court's judgment in the case of Procola v. Luxembourg (judgment of 29 September 1995, Series A no. 326).
4. Finally, the applicant complains under Article 13 of the Convention.

THE LAW

1. The applicant complains that as a result of the reduction of his unemployment benefits he is forced to accept employment to which he has conscientious objections. He invokes Articles 4 para. 2, 9 and 10 (Art. 4-2, 9, 10) of the Convention which, insofar as relevant, provide as follows:

> Article 4 para. 2 (Art. 4-2)
>
> "2. No one shall be required to perform forced or compulsory labour."
>
> Article 9 (Art. 9)
>
> "1. Everyone has the right to freedom of thought, conscience and religion; ..."
>
> Article 10 (Art. 10)
>
> "1. Everyone has the right to freedom of expression."

The Commission notes that in order to qualify for unemployment benefits pursuant to the Assistance Scheme, the applicant was required to look for and accept employment which was deemed suitable for him. Since he refused to comply with this condition, his benefits were temporarily reduced. It does not appear, however, that the applicant was in any way forced to perform any kind of labour or that his refusal to look for other employment than that of independent scientist and social critic made him liable to any other measures than the reduction of his unemployment benefits. In these circumstances, the Commission cannot find that the present complaint raises any issues under Articles 4 para. 2, 9 and 10 (Art. 4-2, 9, 10) of the Convention.

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

2. The applicant also complains under Article 6 para. 1 (Art. 6-1) of the Convention of the length of the proceedings. This provision, insofar as relevant, provides as follows:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

The Commission considers, in the first place, that it cannot accept the applicant's contention that the proceedings at issue started in 1984 when he was first granted unemployment benefits pursuant to the Assistance Scheme. The applicant was not affected by the authorities' opinion that he did not comply with the requirement to look for suitable employment until they decided, for the first time on 31 December 1990, to reduce his benefits partially and temporarily. Accordingly, the proceedings started on 25 February 1991 when he filed an objection against the decision to reduce his benefits and they ended on 29 February 1995 when the Administrative Law Division rejected the appeal. The proceedings thus lasted four years and four days.

In the light of the criteria established by case-law (cf. e.g. Eur. Court HR, Vernillo v. Italy judgment of 20 february 1991, Series A no. 198, p. 12, para. 30) and having regard to the circumstances of the present case, the Commission considers that the length of the proceedings at issue was not excessive and did not fail to meet the "reasonable time" requirement.

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

3. The applicant further complains, also under Article 6 para. 1 (Art. 6-1) of the Convention, that his civil rights were not determined by an independent and impartial tribunal. In this respect he submits that the single judge of the Administrative Law Division who dealt with his appeal had, in her former capacity as State Secretary for Social Affairs and Employment, been involved in the introduction into the Assistance Scheme of the possibility to reduce benefits in cases where recipients fail to accept suitable employment. The applicant invokes the Court's judgment in the case of Procola v. Luxembourg (op. cit.).

The Commission recalls in the first place that, unlike the present case, the case of Procola concerned the fact that four members of the Luxembourg Conseil d'Etat had carried out both advisory and judicial functions in the same case (op. cit., p. 16, para. 45). The Commission notes that in the present complaint it has not been alleged that the single judge Mrs G. of the Administrative Law Division who decided on the applicant's appeals in the present case had carried out any function in respect of the subject matter of the appeals in her capacity of member of the Council of State.

Furthermore, the Commission reiterates that according to Article 26 (Art. 26) of the Convention it may only deal with an application after all domestic remedies have been exhausted. This rule of exhaustion of domestic remedies, which dispenses States from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, is one of the generally recognised principles of international law (Eur. Court HR, De Wilde, Ooms and Versyp v. Belgium judgment of 18 June 1971, Series A no. 12, p. 29, para. 50).

The mere fact that an applicant has submitted his case to the competent court does not in itself constitute compliance with this rule. It is also required that the substance of any complaint made before the Commission should have been raised during the proceedings concerned. The Commission refers to its established case-law on this matter (cf. No. 12717/87, Dec. 8.9.88, D.R. 57, p. 196).

The Commission observes that in the present case the applicant neither tried to challenge the single judge of the Administrative Law

Division, nor raised his complaint under Article 6 para. 1 (Art. 6-1) of the Convention in his proceedings before the tribunal. By failing to do so, he did not provide the Administrative Law Division with the opportunity to remedy the violation alleged against it. Consequently, the Commission finds that the applicant has not complied with the requirement of exhaustion of domestic remedies.

It follows that this part of the application must be rejected under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention.

4. Finally, the applicant invokes Article 13 (Art. 13) of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that Article 13 (Art. 13) has been interpreted by the European Court of Human Rights as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (cf., e.g., Boyle and Rice v. the United Kingdom judgment of 21 June 1988, Series A no. 131, p. 23, para. 52). However, having regard to its above conclusions in respect of the Convention complaints submitted the Commission finds that the applicant does not have any arguable claims.

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.

M.-T. SCHOEPFER Secretary to the Second Chamber	G.H. THUNE President of the Second Chamber