AS TO THE ADMISSIBILITY OF

Application No. 12130/86
by U.
against the Netherlands

The European Commission of Human Rights sitting in private on 12 March 1990, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 11 February 1985 by U. against the Netherlands and registered on 5 May 1986 under file No. 12130/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch citizen, born in 1932 and presently residing in Oss, the Netherlands. The facts of the case, as submitted by him, may be summarised as follows:

1. In 1972, the applicant, together with two other persons, founded a limited liability company under Dutch law (Besloten Vennootschap met beperkte aansprakelijkheid). The company was involved in building activities. In 1974 the two other directors left the company.

In 1975, a State Accountant (Rijks Accountant) drew up a report of the account books of the firm and of the private accounts of the partners in the firm. He concluded that the account books were very incomplete and that it was hardly possible to get an overview of the profits of the firm. He found out that several building activities had been kept out of the books. This was not contested by the

applicant, who declared that one of the other directors had been responsible for the bookkeeping.

This report formed the basis of a provisional income tax assessment for 1974, which the Tax Authorities sent to the applicant on 31 May 1975. The assessment amounted to DFL 59.092, a result of an estimated income, derived from the firm, of DFL 121.400. The firm was thought to have made a profit of DFL 270.000, but the Tax Authorities refused to specify which transactions or projects caused this profit. On the same day, the Tax Authorities sent the applicant an additional assessment for 1972, to an amount of DFL 44.940 plus an increase of DFL 22.470 and an additional assessment for 1973 to an amount of DFL 34.543 plus an increase of DFL 17.272. On 2 June 1975 the attachment of the applicant's possessions was ordered.

The applicant submits that he had always thought that the firm had not made any profit. Although the Tax Authorities afforded the applicant the opportunity to prove that the assessments were not based on correct or complete facts, they were not willing to show how they had calculated the assessments. Nor was he provided with a copy of the Report of the State Accountant, as this was only a document for internal purposes.

On 17 December 1975 and 29 January 1976, the applicant appealed to the Court of Appeal (Gerechtshof) of 's-Hertogenbosch against the assessments for 1972 and 1973 respectively. On 30 November 1976, the applicant's tax adviser reached a compromise with the Inspector of Direct Taxes (Inspecteur der directe belastingen). His income for 1972, 1973 and 1974 was set at DFL 35.000. On the basis of this income he had to pay income tax, plus an increase of 50% of the tax assessments for 1972 and 1973. On 29 January 1977, the applicant's adviser informed the Court of Appeal of 's-Hertogenbosch that the appeals should be considered withdrawn.

However, the applicant alleges that the tax adviser should only have agreed to the compromise under certain conditions, of which the applicant had informed him. Two of these conditions were that no increase would be imposed and that the compromise would be reconsidered if the applicant managed to find evidence for his allegations that the tax assessments were incorrect.

In order to gather that evidence, the applicant initiated several proceedings. On 10 January 1979 the applicant requested the Deputy Minister (Staatssecretaris) of Finance to send him a copy of the report of the State Accountant of 1975. On 25 June 1979, the Deputy Minister rejected the request, again explaining that such reports are for internal purposes only.

On 13 December 1979, the applicant requested the Inspector of Direct Taxes to reconsider the additional tax assessments. This was refused by the Inspector on 27 October 1980. The applicant appealed to the Court of Appeal of 's-Hertogenbosch against this decision. On 24 March 1983 the Court of Appeal decided not to deal with the appeal, because a compromise had been reached and the applicant was not able to prove that he had given clear instructions to his adviser concerning additional conditions or that the Inspector should have had any reasonable doubts about the adviser's competence to negotiate the compromise. On 29 August 1984, the Supreme Court (Hoge Raad) confirmed the judgment of the Court of Appeal.

In the meantime the applicant had collected a substantial amount of proof indicating that most of the disputed profits had been transferred to a separate company of one of his former co-directors.

On 28 May 1986, the applicant again requested the Deputy Minister of Finance to send him a copy of the 1975 Report of the State Accountant. The applicant appealed against the (implicit) refusal to

the President of the Judicial Division of the Council of State (Afdeling Rechtspraak van de Raad van State). In March 1987, the Deputy Minister sent the applicant a copy of the Report wherein certain paragraphs were deleted out of respect for the privacy of others. The President of the Judicial Division of the Council of State decided a few days later that the paragraphs were deleted from the Report on justifiable grounds. The applicant now appealed to the Judicial Division of the Council of State, again requesting communication of the missing paragraphs. On 2 March 1989, also the Judicial Division rejected the appeal, because the Deputy Minister could reasonably decide not to disclose the complete report in order to protect the privacy of others.

Finally, the applicant filed a complaint against his tax adviser with the Disciplinary Council of the Dutch Order of Tax Consultants (Raad van Tucht van de Nederlandse Orde van Belastingadviseurs). On 1 October 1987, the Disciplinary Council declared the complaint partly well-founded. The applicant appealed to the Council of Appeal (Raad van Beroep) of the Dutch Order of Tax Consultants, which gave its decision on 14 October 1988. This Council as well was of the opinion that the adviser should have taken more account of the extra conditions, put forward by the applicant with respect to the compromise.

2. The applicant's wife receives a benefit under the Act on Benefits for Victims of Wartime Persecution (Wet uitkeringen vervolgingsslachtoffers 1940-1945). The applicant and his wife have lodged many complaints with several national judicial authorities concerning the non-applicability of some of the benefits to married women and concerning the level of these benefits. These complaints are reiterated before the Commission.

3. On 27 March 1984 the applicant's neighbour was granted a building permit for a garden-wall by the Municipal Authorities of Oss. The applicant filed an objection against this permit, because the wall reminds the applicant's wife of her internment in a Japanese concentration camp during the Second World War. This objection was partly accepted by the Municipal Authorities. An appeal against this decision was rejected by the Judicial Division of the Council of State (Afdeling Rechtspaak van de Raad van State) on 27 May 1986. On 22 April 1986 the applicant asked the Municipal Authorities of Oss to grant him financial compensation as they had changed the zoning plan (bestemmingsplan) permitting the building of garden-walls. On 9 July 1987 the Municipal Authorities rejected the request. The applicant appealed to the Litigation Division of the Council of State (Afdeling voor de geschillen van bestur van de Raad van State) against the decision of the Municipal Authorities of Oss. The Litigation Division annulled the decision of the Municipal Authorities on procedural grounds.

COMPLAINTS

1. The applicant complains that his tax assessments are based on incorrect facts and that he has been denied the possibility to prove that the assessments were unjust. The assessments were based on a report to which he had no access and which accordingly seriously impeded him in challenging the assessments. As a result, he has not had a fair hearing concerning his tax assessments and the increases thereof. The applicant invokes Articles 3, 5 para. 1, 6 para. 1, and 8 para. 1 of the Convention and Article 1 of Protocol No. 1.

2. The applicant further complains that the Council on Benefits for Victims of Wartime Persecution disregarded statements by experts and doctors concerning his wife's condition and that the level of benefits granted was too low. The applicant again invokes Articles 3, 5 para. 1, 6 para. 1, and 8 para. 1 of the Convention and Article 1 of Protocol No. 1.

3. The applicant finally complains that the Municipal Authorities changed the zoning plan without properly informing the population and granted his neighbour a building permit, which was not based on the conditions set out in the zoning plan. Furthermore, the Municipal Authorities did not grant him compensation. He again invokes Articles 3, 5 para. 1, 6 para. 1, and 8 para. 1 of the Convention and Article 1 of Protocol No. 1.

THE LAW

1. The applicant has complained of his additional tax assessments and the increases thereof for the years 1972, 1973 and 1974. In particular he submits that these are based on false information which he has not had an opportunity to disprove. He invokes several Articles of the Convention and, in particular, Article 6 para. 1 (art. 6-1) which provides 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 established by law. ..."

The Commission has constantly held that Article 6 (Art. 6) is not applicable to proceedings regarding taxation (cf. No. 2552/65, Dec. 15.12.67, Collection 26 p. 1, No. 2717/66, Dec. 6.2.69, Yearbook 13 p. 176, No. 8903/80, Dec. 8.7.80, D.R. 21 p. 246 and No. 9908/82, Dec. 4.5.83, D.R. 32 p. 266). It therefore follows that, as far as the complaints relate to the tax assessments as such, this part of the application should be declared inadmissible as being incompatible ratione materiae with Article 6 (Art. 6) of the Convention, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The applicant has, however, also complained that he was obliged to pay an increase on top of the additional assessments. The Commission recalls that the question may arise whether the imposition of an increase, or additional charge, could be regarded as the determination of a criminal charge within the meaning of Article 6 para. 1 (Art. 6-1) (cf. No. 11464/85, Dec. 12.5.87, von Sydow v. Sweden and No. 12693/87, Dec. 6.3.89, Källander v. Sweden). However, the Commission finds that it is not necessary to determine this issue in the present case because, even assuming that Article 6 applies to the applicant's complaint, it is in any event manifestly ill-founded for the following reason.

The increases formed part of the additional tax assessments, after the Tax Authorities discovered that the accounts of the applicant and the applicant's firm showed some serious shortcomings. Although the applicant appealed against the additional assessments, including the increases, these appeals were withdrawn after the applicant's tax adviser had concluded a compromise with the Inspector for Direct Taxes, which lowered the assessments, and thereby the increases to a considerable extent. It must be concluded that with that compromise the applicant accepted the increases and can therefore no longer be considered a victim. 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 Commission.

In respect of this complaint, the applicant also invokes Articles 3 (Art. 3), 5 para. 1 (Art. 5-1) and 8 para. 1 (Art. 8-1) of the Convention and Article 1 of Protocol No. 1 (P1-1). However, the Commission finds that these complaints have not been substantiated by the applicant.

It follows that these complaints are manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also complained of the level of state benefits for his wife and of a building permit granted to his neighbour. He invokes Articles 3 (Art. 3), 5 para. 1 (Art. 5-1), 6 para. 1 (Art. 6-1), and 8 para. 1 (Art. 8) of the Convention, and Article 1 of Protocol No. 1 (P1-1).

The Commission has examined these separate complaints as submitted by the applicant. However, after considering the case as a whole, the Commission finds that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

It follows that these complaints, as a whole, are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)