AS TO THE ADMISSIBILITY

of Application No. 10252/83
by A.M.T.M.C. VOLLAERS
against the Netherlands

The European Commission of Human Rights sitting in private on 4 March 1987, the following members being present:

MM. C. A. NØRGAARD, President
G. SPERDUTI
J. A. FROWEIN
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
H. VANDENBERGHE
Mr. F. MARTINEZ

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

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

Having regard to the application introduced on 20 December 1982 by A.M.T.M.C. Vollaers against the Netherlands and registered on 31 January 1983 under file No. 10252/83;

Having regard to:

- the report provided for in Rule 40 of the Rules of Procedure of the Commission;

- the Commission's decision of 12 July 1984 to bring the application to the notice of the respondent Government and to adjourn consideration of the application pending the outcome of the proceedings in the Feldbrugge case;

- the Commission's decision of 14 July 1986 to resume consideration of the case and to invite the respondent Government to submit written observations on its admissibility and merits;

- the observations submitted by the respondent Government on 16 October 1986 and the observations in reply submitted by the applicant on 24 November 1986;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Dutch citizen born in 1925 and residing in Tilburg. He is represented by Mr. L.J. Fillet, a lawyer practising in Tilburg.

The applicant is employed as a manager in a small publishing company.

He reported himself as being ill with his employer on 5 February 1981 and claimed sickness allowances on the basis of the Health Act (Ziektewet) as from that date.

On 8 0ctober 1981 the occupational association concerned (Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke Belangen) in Zeist decided that as from 30 September 1981 the applicant could no longer be considered as unfit to work.

The applicant appealed on 14 October 1981 against that decision to the Appeals Board (Raad van Beroep) in 's Hertogenbosch, submitting that he was still unfit to work as from 30 September 1981. He claimed that he suffered from back trouble and pain in his left leg which made it impossible for him to work in a standing or sitting position, as his function required.

The President of the Appeals Board charged the permanent medical expert with an enquiry in conformity with Art. 135 of the Appeals Act. This expert, a neurologist, examined the applicant on 24 November 1981. He equally consulted the industrial doctor as well as a general practitioner and four specialist doctors.

In his conclusions of 30 March 1982 the permanent medical expert concluded that the applicant had been fit to work as a manager as from 30 September 1981.

On 14 April 1982 the President of the Appeals Board, in conformity with the conclusions presented by the permanent medical expert, rejected the appeal by the applicant as being unfounded in application of Art. 141 para. 1 of the Appeals Act.

The applicant filed an objection (verzet) against this decision on 11 May 1982.

He complained in the first place that the permanent medical expert had not given his own medical practitioner, who was treating him at the time, an opportunity to express an opinion. The latter would undoubtedly have been more competent than the four other specialists who had suggested that his physical troubles had a psychological cause, namely a conflict situation in his work environment.

The applicant further submitted that the proceedings which were followed in his case were in breach of Art. 6 of the Convention, since these proceedings do not provide for an opportunity for the person concerned to express himself on the dispute before the court. He also considered that the denial of access to the medical opinions of the medical specialists who had been consulted by the permanent medical expert was in breach of the principle of fair hearing.

As regards the first complaint, the President of the Appeals Board was of the opinion that the law does not require the permanent medical expert to consult all doctors, by whom the employee has been examined. Moreover, the doctor indicated by the applicant had only started treating him after the permanent medical expert had examined him. In this respect the appeal was therefore ill-founded.

As regards the applicant's second complaint, the President of the Appeals Board first pointed out that an alleged breach of Art. 6 of the Convention was not one of the grounds set out exhaustively in the law (Art. 142, para. 2 of the Appeals Act) on which an appeal (verzet) could be based. However, in view of the fundamental nature of the complaint, this part of the appeal was answered in the

following obiter dictum: The proceedings in question did not concern a civil right as they concerned payment of a public character (publiekrechtelijke uitkering) and hence fell outside the scope of Art. 6.

In any event the objections raised against the proceedings were not of such a nature that the proceedings as a whole could be qualified as being unfair.

The main aim of the legislator had been to speed up the proceedings in the interest of the individual concerned. Furthermore, the proceedings contained a number of safeguards of fairness, such as the independence of the medical expert and his obligation to report independently following his oath; the legal obligation for the medical expert to consult the doctor in charge of the case of the individual concerned; the legal obligation to examine the individual concerned and to offer him/her the opportunity to present his/her objections. The fact that the proceedings did not provide for an oral debate in court or access to the medical files did not outweigh these advantages.

On these grounds, the Appeals Board declared the appeal inadmissible insofar as the applicant had submitted that Art. 141 et seq. of the Appeals Act should not have been applied for being contrary to the Convention and unfounded insofar as the applicant had complained about the failure to consult his own practitioner.

This decision (beschikking) of 22 June 1982, communicated to the applicant on 28 June 1982, is not subject to appeal (Art. 142 para. 7 of the Appeals Act).

Complaints

The applicant considers that Art. 6 of the Convention is applicable to the "permanent medical expert procedure" and has been breached.

As regards the applicability of Art. 6, the applicant refers to the case-law of the European Court of Human Rights in which the latter emphasised the autonomous character of the concept of civil rights and obligations (judgments in the cases of Ringeisen, König and Le Compte).

In support of his view, the applicant invokes a decision of the Appeals Board of Zwolle of 23 November 1981 in which that Appeals Board held that the permanent medical expert proceedings are in breach of Art. 6, basing itself as regards the applicability of Art. 6 on the jurisprudence of the European Court of Human Rights in the cases of Ringeisen and König. In this respect the Appeals Board of Zwolle considered that the outcome of the proceedings can be decisive for the civil rights and obligations of the individual concerned to the extent, for example, that a civil court, called upon to pronounce itself on the lawfulness of a dismissal, will automatically decide that the dismissal was not arbitrary, if the Appeals Board had in the meantime ruled that the dismissed person was fit to work. The Appeals Board in question quotes in this respect a decision of a civil court in Apeldoorn of 18 May 1977.

The applicant further refers to a series of legal opinions expressed by experts in various legal journals in the Netherlands as regards the implication of the Court's case-law for the proceedings in point.

Lastly he argues that Art. 6 is applicable since the entitlement to sickness benefits is an enforceable private right.

As regards the compliance with Art. 6, the applicant emphasises that in these proceedings there is no oral hearing before the Appeals Board and that the person concerned has no access to the medical files on which the opinion of the permanent medical expert is based.

PROCEEDINGS

The application was introduced on 20 December 1982 and registered on 31 January 1983.

On 15 November 1983 the Commission decided in accordance with Rule 42 para. 2 (b) of its Rules of Procedure to give notice of the application to the respondent Government without, however, inviting them to present any written observations, pending the outcome of another application declared admissible on the same day after an oral hearing (Application No. 8562/79, Feldbrugge against the Netherlands) and raising the same issues.

On 29 May 1986 the European Court of Human Rights delivered judgment in the case of Feldbrugge. On 14 July 1986 the Commission resumed consideration of the application in the light of this judgment. Having enquired whether the applicant wished to maintain his application in the light of the Feldbrugge judgment and having received an affirmative answer in this respect on 5 August 1986, the Commission invited the respondent Government on 26 August 1986 to submit observations on the admissibility and merits of the application before 7 November 1986.

On 16 October 1986 the Government informed the Commission that in the light of the Feldbrugge judgment it had no other observations on the admissibility and merits of the application "than that the Presidents of the Appeals Boards have declared that henceforward an individual can file an objection (verzet) against the decision in first instance under all circumstances ... ". The Government further announced that it was preparing new legislation in the light of the Feldbrugge judgment "with a view to exclude violation of Article 6 para. 1 of the Convention by the Appeals Boards and the Central Appeals Board at Utrecht in the future".

The applicant replied on 24 November 1986 that he had no further comments to add.

THE LAW

The applicant complains that he has been denied a fair and public hearing within the meaning of Art. 6 (Art. 6) of the Convention in the proceedings based on the Appeals Act in which he challenged before the Appeals Board (Raad van Beroep) a decision taken by the occupational association which had declared him fit to resume work as from a particular date and which resulted in the denial of sickness allowances by virtue of the Health Act (Ziektewet) as from the same date.

Art. 6 para. 1 (Art. 6-1), first sentence, of the Convention is worded as follows:

"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 notes that this application raises similar

issues to the case of Feldbrugge (Eur. Court H.R., Feldbrugge judgment of 29 May 1986, Series A, No. 99), in which the Court found a violation of Article 6, para. 1 (Art. 6-1), and that the Government have not raised any specific points concerning the admissibility of the present application.

It follows that the application must be declared admissible, no grounds for declaring it inadmissible having been established.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)