AS TO THE ADMISSIBILITY OF

Application No. 20995/92
by W. T.
against the Netherlands

The European Commission of Human Rights (Second Chamber) sitting in private on 11 April 1996, the following members being present:

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

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 16 November 1992 by W. T. against the Netherlands and registered on 26 November 1992 under file No. 20995/92;

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

I. The particular circumstances of the case

The applicant is a Dutch national, born in 1931, and resides at Utrecht, the Netherlands. Before the Commission he is represented by Mr. E.Th. Hummels, a lawyer practising in Utrecht.

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

On 28 December 1990 the police arrested a number of people, among whom the applicant, on the suspicion of having damaged a fence of a military air base at Volkel. The applicant declared before the police that he had gone to Volkel with the intention to cut fences, but that in fact he had not done so and that he had not carried any wire-cutters. On 29 December 1990 a daily newspaper published a picture on which the applicant, carrying a pair of wire-cutters, was clearly visible.

On 30 October 1991 the Magistrate (politierechter) Mr. A. of the Regional Court (Arrondissementsrechtbank) of 's-Hertogenbosch acquitted the applicant for lack of evidence of the charge that he had damaged the fence of the air base.

On 28 November 1991, pursuant to Sections 591 and 591a of the

Code of Criminal Procedure (Wetboek van Strafvordering), the applicant requested the President of the Regional Court to award him a total amount of 1.287,50 Dutch guilders as compensation for travel expenses for two witnesses and his lawyer's fees.

On 16 July 1992 the Magistrate Mr. A. awarded the applicant the amount claimed for the travel expenses of the two witnesses in full and rejected the claim for compensation for the applicant's lawyer's fees, finding no reasonable grounds for granting it.

In the annex to this decision, containing the reasons for the rejection of the applicant's claim for compensation for his lawyer's fees, it was stated that the applicant himself was responsible for the fact that suspicions against him had arisen and had continued to exist throughout the proceedings, since his initial declaration before the police had been clearly contradicted by the newspaper picture, having regard also to his statement before the trial court that he could not remember whether or not he had in fact carried a pair of wire-cutters. The Magistrate, therefore, found no reason to hold the State responsible for the adverse consequences of the original suspicion and the subsequent criminal proceedings against the applicant.

II. Relevant domestic law

Section 591 the Code of Criminal Procedure, insofar as relevant, provides as follows:

<Translation>
"1. To the former suspect or his heirs compensation will be awarded at the expense of the State for costs, which are to be borne by the former suspect pursuant to the provisions of the Act on Fees in Criminal Cases, insofar as these costs have served the investigation or have become useless as a result of the withdrawal of summonses or remedies by the public prosecution ..."

Section 591a of the Code of Criminal Procedure, insofar as relevant, provides as follows:

<Translation>
"1. If a case comes to an end without imposition of a punishment or a measure ... compensation will be granted to the former suspect or his heirs for his travel and subsistence costs incurred for the investigation and the examination of his case, calculated on the basis of the Act on Fees in Criminal Cases.

2. If a case comes to an end without imposition of a punishment or a measure ... compensation may be granted to the former suspect or his heirs for the damage which he has actually suffered as a result of the loss of time due to the judicial investigation and the examination of his case at the trial, as well as the costs of counsel. This will include compensation for the costs of counsel during the detention on remand. ...

4. Sections 90 ... apply by analogy."

Section 90 of the Code of Criminal Procedure provides as follows:

<Translation>
"1. Compensation is awarded where, and insofar as, in the opinion of the judge, taking all circumstances into account, there are equitable grounds for it. ... "

COMPLAINTS

The applicant complains under Article 6 para. 1 of the Convention that in the proceedings concerning his claim for compensation he did not receive a fair hearing before an impartial tribunal, in that the same Magistrate, who had dealt with the criminal case against him, rejected his request for compensation for his lawyer's fees without providing him with an opportunity to further explain his claim and without proper reasons being given. The applicant submits that legal representation in the criminal proceedings against him was indispensable, since he is not familiar with criminal law.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 16 November 1992 and registered on 26 November 1992.

On 12 October 1994 the Commission decided to adjourn further consideration of the application pending the outcome of the proceedings before the European Court of Human Rights in the cases of Masson (No. 15346/89) and Van Zon (15379/89) v. the Netherlands.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that in the proceedings concerning his claim for compensation for his lawyer's fees he did not receive a fair hearing before an independent and impartial tribunal.

Article 6 para. 1 (Art. 6-1) of the Convention, insofar as relevant, reads:

> "In the determination of his civil rights and obligations (...), everyone is entitled to a fair (...) hearing (...) by an independent and impartial tribunal (...)."

The Commission recalls that for Article 6 (Art. 6) to be applicable under its "civil" head, there must be a "dispute" over a right which can be said, at least on arguable grounds, to be recognised under domestic law. The "dispute" must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise (cf. Eur. Court H.R., Zander judgment of 25 November 1993, Series A no. 279-B, p. 38, para. 22).

In the present case, the Commission notes that in the proceedings at issue the applicant requested compensation for his lawyer's fees pursuant to Section 591a para. 2 of the Code of Criminal Procedure.

In its Masson and Van Zon judgment of 28 September 1995 Series A no. 327, the European Court of Human Rights has held that the claims of the applicants in these cases, which included a claim of compensation for lawyer's fees pursuant to Section 591a para. 2 of the Code of Criminal Procedure as in the present case, did not concern a "right" which could arguably be said to be recognised under the law of the Netherlands. This being so, the Court found that Article 6 para. 1 (Art. 6-1) of the Convention was not applicable to the impugned proceedings and had therefore not been violated (loc. cit., para. 52).

The Commission finds that there is nothing in the present application which would lead to a different conclusion.

Accordingly the Commission must reject the application as being incompatible ratione materiae with the provisions of the Convention, pursuant to 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
(M.-T. SCHOEPFER)	(H. DANELIUS)