AS TO THE ADMISSIBILITY OF

Application No. 16617/90
by Melle WACHTMEESTER
against the Netherlands

The European Commission of Human Rights sitting in private on 12 April 1991, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. J.-C. GEUS
A.V. ALMEIDA RIBEIRO
M.P. PELLONPÄÄ

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 19 April 1990 by Melle WACHTMEESTER against the Netherlands and registered on 22 May 1990 under file No. 16617/90;

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

The applicant, born in 1950, is a Dutch national, resident in Wedde, in the Netherlands. He is represented by Mr. Huydecoper, a lawyer practising in The Hague.

The applicant is a journalist on the local newspaper "Winschoter Courant". Under the heading "Sale of Reiderland, vultures have the scent of money in their nostrils" he published an article in which he mentioned Mr. Van Wijk, Mr. Moed and Mr. Strating as "members of the usual clan who turns up at every public auction of immovable property in Eastern Groningen". In the article he wrote also: "The clan draw their chairs together and discuss. The vultures have the scent of money in their nostrils." (This article is attached to this report in Appendix I.)

Mr. Van Wijk and Mr. Moed lodged complaints with the public prosecutor and the applicant was prosecuted for insult. In his

defence the applicant claimed to have acted in the public interest, convinced that a group of some twenty people, amongst them Mr. Van Wijk and Mr. Moed, used undue pressure in public auctions. The Council of Journalism, which was consulted, considered that the language used by the applicant was not objectionable.

The applicant was convicted of the offence of simple insult (Article 266 of the Dutch Criminal Code) and sentenced to a fine of 250 Dutch guilders.

In his appeal to the Supreme Court (Hoge Raad) the applicant invoked Article 10 of the European Convention on Human Rights as interpreted in the decisions of the European Court of Human Rights in the "Sunday Times", "Barthold" and "Lingens" cases.

The Supreme Court confirmed the conviction on 21 November 1989.

COMPLAINT

The applicant complains of a violation of Article 10 of the Convention, in that the impugned court decisions infringed his freedom of expression.

THE LAW

The applicant complains that the Dutch authorities, by prosecuting and convicting him of the criminal offence of insult (belediging), violated his freedom of expression as guaranteed by Article 10 (Art. 10), which reads:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibiities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The applicant argues in particular that the only purpose of his article was to denounce the practices - in his view, socially unacceptable - at public auctions of a certain group of persons in respect of the purchase and sale of houses and business premises. He argues that it concerns a matter in which the public at large has an interest. As the scope of Article 10 (Art. 10) is not limited to the expression of neutral comments but also covers certain offending, shocking or disturbing statements, the applicant is of the opinion that his conviction for insult amounts to an unjustified interference with his freedom of expression.

The Commission observes that the applicant has been sanctioned for expressing a certain opinion on the behaviour of the group referred to as "clan" and "vultures".

The applicant's freedom of expression has therefore been interfered with. It remains to be seen whether the interference was

"prescribed by law", had a legitimate aim and was "necessary in a democratic society" for the aforesaid aim within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention (Eur. Court H.R., Lingens judgment of 8 July 1986, Series A no. 103, p. 24, paras 35-36).

In the present case the interference with the applicant's freedom of expression was prescribed by law, as his conviction was based on Article 266 of the Dutch Criminal Code. It was moreover designed to protect "the reputation or rights of others" and had therefore a legitimate aim under Article 10 para. 2 (Art. 10-2) of the Convention.

In assessing whether the interference was "necessary in a democratic society" for achieving the above mentioned aim, the Commission considers that it is the task of the press to impart information and ideas which the public has a right to receive. However, the Commission recalls that the limits of acceptable criticism are less wide as regards a private individual than in the case of a politician (Eur. Court H.R., ibid., p. 26, para. 42). In the present case the Commission observes that the behaviour criticised by the applicant did not concern public or political personalities but people from a small town in the Netherlands not exercising any public functions. In the balance between the applicant's freedom of expression and the right of the public to be informed, on the one hand, and the protection of the named persons' reputation, on the other, the Commission notes that it was quite possible for the applicant to express his criticism without at the same time attacking these persons in the way he did.

It follows that the interference with the applicant's exercise of his freedom of expression was a proportionate measure to protect "the reputation and rights of others" and that it could therefore be considered to have been "necessary in a democratic society" for that purpose. The interference was accordingly justified under para. 2 of Article 10 (Art. 10-2) and the application is 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 Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)