AS TO THE ADMISSIBILITY OF

Application No. 12915/87
by Johannes Karel ZELISSE
against the Netherlands

The European Commission of Human Rights sitting in private on 13 April 1989, the following members being present:

MM. S. TRECHSEL, Acting President
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
H.G. SCHERMERS
H. DANELIUS
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 9 March 1987 by Johannes Karel ZELISSE against the Netherlands and registered on 12 May 1987 under file No. 12915/87;

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 1960 in Delft, the Netherlands and presently residing in Cambridge, the United Kingdom. In the proceedings before the Commission he is represented by Mr. J.H.B. Hulshof, a retired naval officer.

Since 31 October 1983 the applicant, an engineer, has lived in the United Kingdom.

By letter of 10 December 1985 the applicant requested the Minister of Defence of the Netherlands to grant him exemption from military service. He submitted that his employer in Cambridge would dismiss him if he were drafted and that it would be very difficult for him to find a new job after his period of service, because of the extremely fast developing technology in his field of work.

By letter of 29 January 1986 the Deputy Minister (Staatssecretaris) of Defence informed the applicant of his decision not to grant him an exemption from military service.

By letter of 19 February 1986 the applicant appealed to the Crown. He submitted, inter alia, that under Dutch law dismissal for

fulfilling compulsory military service was not allowed. English law did not contain a similar provision.

On 24 November 1986, the Crown, in accordance with the advice of the Administrative Litigation Division of the Council of State (Afdeling voor de geschillen van bestuur van de Raad van State), declared the appeal unfounded.

By letter of 10 March 1987 the applicant requested the Minister of Defence to grant him a deferment until the Convention organs would have decided on his application.

By letter of 19 March 1987 the Deputy Minister informed the applicant of his decision not to grant the deferment.

The applicant appealed to the Crown. He furthermore asked the Chairman of the Administrative Litigation Division of the Council of State to take an interim measure.

By decision of 29 June 1987 the Chairman declared the case inadmissible since no appeal to the Crown was possible on the present issue. By decision of 13 August 1987 the Crown, in accordance with the advice of the Chairman of the Administrative Litigation Division of the Council of State, declared the case inadmissible for the same reason.

On 4 January 1988 the applicant was drafted as a conscript.

For administrative difficulties, due to the fact that the applicant still had his permanent address in the United Kingdom, the army authorities decided that the applicant's service be discontinued, although he remained obliged to serve in case of war or similar emergency.

On 19 February 1988 the applicant left the army. He immediately applied to his former employer for a renewal of his contract, but was refused.

COMPLAINTS

The applicant complains that the Crown's decision of 24 November 1986 was not reasoned and was, therefore, unfair. He furthermore complains that the Crown is not an independent and impartial tribunal. Finally, he complains that he had no access to an independent and impartial tribunal in relation to the refusal of the Deputy Minister of Defence to grant him a deferment pending his application before the Commission. He claims that disputes over his civil rights and obligations were involved. He invokes Article 6 of the Convention.

THE LAW

The applicant has complained of the proceedings concerning exemption from and deferment of military service. He has invoked Article 6 (Art. 6) of the Convention.

Article 6 (Art. 6), so far as relevant, is in the following terms:

"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 must first consider whether the procedure before the Crown was concerned with "the determination of civil rights and obligations" within the meaning of the above mentioned provision of the Convention.

For Article 6 para. 1 (Art. 6-1) to be applicable to a case it is not necessary for both parties to the proceedings to be private persons. The wording of this paragraph is far wider; the French expression "contestations sur (des) droits et obligations de caractère civil" covers all proceedings, the result of which is decisive for private rights and obligations. The English text, "determination of .... civil rights and obligations", confirms this interpretation (Eur. Court H.R., Ringeisen judgment of 16 July 1971, Series A No. 13, p. 39, para. 94).

The character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, etc.) and that of the authority which is invested with jurisdiction in the matter (ordinary courts, administrative body, etc.) are therefore of little consequence (Eur. Court H.R., Ringeisen judgment, loc. cit.).

All that is relevant under Article 6 para. 1 (Art. 6-1) of the Convention is the fact that the object of the cases in question is the determination of rights of a private nature (Eur. Court H.R., König judgment of 28 June 1978, Series A No. 27, p. 32, para. 94).

However, the Commission is of the opinion that a decision not to grant a person exemption from or deferment of military service does not as such constitute a determination of his civil rights or obligations within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Such measures relate to the operation of the armed forces and constitute sovereign acts of the State.

However, the question which arises in the present case is whether the proceedings concerning the exemption from and deferment of military service involved a "determination" of the applicant's existing civil rights and obligations under his contract of employment.

It is the established case-law of the Convention organs that "a tenuous connection or remote consequences do not suffice for Article 6 para. 1 (Art. 6-1) ...: civil rights and obligations must be the object -or one of the objects- of the "contestation" (dispute); the result of the proceedings must be directly decisive for such a right" (Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A No. 43, p. 21, para. 47).

In the present case the Commission considers that the private rights and obligations of the applicant are only indirectly affected. The proceedings concerning the applicant's request to grant him exemption from and deferment of military service did not, therefore, involve the "determination" of the applicant's civil rights or obligations within the meaning of Article 6 (Art. 6) of the Convention.

It follows that the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For this reason, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — Acting President of the Commission

(H.C. KRÜGER) — (S. TRECHSEL)