EUROPEAN COMMISSION OF HUMAN RIGHTS

Application No. 12170/86

Jón KRISTINSSON

against

ICELAND

REPORT OF THE COMMISSION

(adopted on 8 March 1989)

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I. INTRODUCTION

1. The following is an outline of the case, as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The application

2. The applicant, Jón Kristinsson, is an Icelandic citizen born in 1916. He resides at Akureyri, Iceland. Before the Commission he is represented by Mr. Eirikur Tómasson, a lawyer practising in Reykjavik, Iceland.

3. The Government of Iceland are represented by Mr. Thorsteinn Geirsson, Ministry of Justice, as Agent.

4. The case concerns the proceedings relating to criminal charges brought against the applicant. Before the Commission the applicant complains that the judge in question had previously dealt with the applicant's case in his capacity as deputy chief of police. The applicant contends therefore that the tribunal could not be considered to be impartial within the meaning of Article 6 of the Convention.

B. The proceedings

5. The application was introduced on 10 April 1986 and registered on 20 May 1986. The Commission considered the case on 13 October 1986 and decided to give notice of the application to the respondent Government in accordance with Rule 42, para. 2 (b) of its Rules of Procedure and to invite them to present, before 9 January 1987, their observations in writing on the admissibility and merits of the application.

6. Having been granted an extension of the time-limit, the Government submitted their observations on 6 February 1987. The applicant's observations in reply were submitted on 16 March 1987.

7. Legal aid under the Addendum to the Commission's Rules of Procedure was granted to the applicant on 18 September 1987.

8. On 13 July 1987 the Commission decided to invite the parties to appear before it at a hearing on the admissibility and merits of the case.

9. The hearing took place on 13 October 1987. The applicant was represented by Mr. Eirikur Tómasson as counsel. The Government were represented by Mr. Thorsteinn Geirsson of the Ministry of Justice as Agent and Mr. Gunnlaugur Claessen as counsel.

10. Following the hearing, the Commission declared the applicant's complaint under Article 6 of the Convention admissible.

11. The parties were then invited to submit any additional observations on the merits of the case which they wished to make. On 14 March 1988 the applicant informed the Commission that he did not wish to submit any further evidence or additional observations on the merits. No further observations on the merits of the case were received from the Government.

12. After declaring the case admissible the Commission, acting in accordance with Article 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. Consultations with the parties took place between 3 February 1988 and 1 February 1989. The Commission now finds that there is no basis upon which such a settlement can be effected at present.

C. The present Report

13. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
S. TRECHSEL
G. JÖRUNDSSON
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
Mr. C. L. ROZAKIS
Mrs. J. LIDDY

14. The text of this Report was adopted on 8 March 1989 and is now transmitted to the Committee of Ministers of the Council of Europe in accordance with Article 31 para. 2 of the Convention.

15. The purpose of the Report, pursuant to Article 31 para. 1 of the Convention, is:

(i) to establish the facts, and

(ii) to state an opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention.

16. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application as Appendix II.

17. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission.

II. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

18. On 20 June 1984 two police officers engaged in monitoring traffic speed by radar in the vicinity of the City of Akureyri concluded that the applicant had driven his vehicle at a speed of 68 km/h in a zone where the official speed limit was 50 km/h. The applicant did not dispute the result of the radar check, although he considered the measurements improper, since they were taken at the foot of a steep hill.

19. On 26 June 1984 two other police officers stopped the applicant in his car when they concluded that he had not observed a stop sign at an intersection in Akureyri. The applicant protested, maintaining that he had in fact brought his vehicle to a halt on this occasion.

20. After having received and examined the police officers' reports, the chief of police of Akureyri, who is also the town magistrate, concluded, in accordance with Section 112 of the Code of Criminal Procedure, no. 74 of 21 August 1974, that the sanction for the alleged violations of the Traffic Act would not exceed 12,000 Icelandic crowns. In two letters of 10 and 12 July 1984, the chief of police therefore afforded the applicant the opportunity of settling both of the above cases by paying a fine for the alleged breaches of the Traffic Act, determined by the chief of police and totalling 1,720 Icelandic crowns. It was stated in the letters that no further action would be taken by the authorities if payment were received within two

weeks from the date of the letters. Both letters were signed by Mr. SJ, acting as the deputy of the chief of police of Akureyri.

21. The applicant, however, did not accept this offer to settle the alleged breaches of the Traffic Act, and he was therefore summoned before the Akureyri District Criminal Court which had now taken over the further investigation of the case. The applicant appeared before the Court on 30 August 1984. The judge in charge of this preliminary investigation was Mr. SJ, the same person who had earlier dealt with the applicant's case as the deputy of the chief of police, now representing the town magistrate of Akureyri in his capacity as district court judge. The applicant declined to settle the case in court without being formally indicted. He did not contradict the radar speed measurement. On the other hand, he claimed that he did stop at the stop sign.

22. Following this court hearing, the police officers who had brought the complaints against the applicant were called to appear in the District Criminal Court to give evidence. The judge in charge was again Mr. SJ. At the conclusion of this preliminary court inquiry which took place on 4, 12 and 21 September as well as on 29 October 1984, Mr. SJ sent the case file and the evidence obtained to the public prosecutor on 7 November 1984.

23. On 23 November 1984 the public prosecutor issued an indictment against the applicant for his alleged violations of the Traffic Act and the case was sent to the District Criminal Court of Akureyri for adjudication.

24. On 4 December 1984 the applicant was summoned to appear before the District Criminal Court where the indictment was served on him. Furthermore, he was confronted with the evidence given by the four policemen and he had the opportunity to comment on their statements. In particular as regards the alleged speeding offence, the applicant pointed out that it was not correct that he had admitted to driving too fast whereas it was correct that he could not contradict the results of the radar measurement. At the request of the applicant, Mr. SJ, acting as district court judge and representing the town magistrate of Akureyri, adjourned the case in order to enable the applicant to decide whether he wished to have counsel appointed for his defence.

25. On 10 December the applicant again appeared in the District Criminal Court where he declared that he did not wish to have counsel appointed for his defence. Furthermore, he did not request further evidence to be obtained and he accepted that the case was ready for adjudication.

26. On 27 December 1984 Mr. SJ pronounced judgment in the case. The conclusion of the judgment was read out in Court in the applicant's absence. The applicant was found guilty on both counts and sentenced to pay a fine of 3,000 Icelandic crowns to the Icelandic State Treasury as well as all costs.

27. On 4 January 1985 the judgment was served on the applicant. He appealed against it to the Supreme Court of Iceland. Before the Supreme Court the applicant's primary claim was that the judgment be set aside and the case sent back to the District Criminal Court for retrial. The applicant argued that the enquiry into the case in the District Court had been inadequate, and that the case had not been heard by an impartial judge since the procedure whereby the same official was involved in the case both as chief of police (deputy chief of police) and as judge (deputy judge) conflicted with the principles stated in Sections 2 and 61 of the Icelandic Constitution and Article 6 of the European Convention on Human Rights.

28. In the Supreme Court the applicant was represented by counsel.

29. On 25 November 1985 the Supreme Court pronounced its judgment by which the applicant was acquitted of the charge of non-observance of the stop sign. The ruling of the District Criminal Court as regards the charge of exceeding the speed-limit was, however, upheld in that the Supreme Court found that this charge had been proved by the applicant's own statements as well as the other evidence obtained. For this violation of the Traffic Act the applicant was sentenced to pay 1,500 Icelandic crowns. He was also ordered to pay all costs of the District Court proceedings and the appeal proceedings. Regarding the applicant's claim concerning the partiality of the judge of the District Criminal Court, the Supreme Court stated:

"Under the Icelandic court system, judicial powers in district courts outside Reykjavik are vested in town and county magistrates who serve collaterally as chiefs of police. The District Criminal Court decision cannot be set aside on the ground that the deputy town magistrate of Akureyri tried the case in question. Furthermore, no specific facts have been established which would disqualify the town magistrate or his deputy."

B. Relevant domestic law

30. According to Section 59 of the Icelandic Constitution the judicial system shall be regulated by law. Act no. 74 of 27 April 1972 on the District Judicial Organisation and the Police and Customs Administration regulates the judicial system. The relevant parts of the Act read as follows:

(Translation provided by the Government)

"Section 1. In Reykjavík there shall be a civil court judge's office, a city magistrate's office, a criminal court judge's office, and offices of the chief of police and of the director of customs, as well as of the state criminal investigation police.

Outside Reykjavík there shall be offices of county and town magistrates.

In Bolungarvík and in Keflavík Airport there shall be offices of chiefs of police.

Section 2. Subject to Section 4, the office of the civil court judge in Reykjavík is, i.a., charged with cases of general private litigation, including presidency in cases concerning real estate, appointment of appraisers and surveyors in court and out of court, civil marriage, divorce cases, decisions in cases in respect of support, and the commissioning of civil servants, as practised until now.

From eight to twelve judges, as the Minister of Justice may decide, shall serve with the Reykjavík civil court judge's office. One of them shall be the chief judge, who also shall be director of the office.

Section 3. The office of the Reykjavík city magistrate is, i.a., charged with enforcement proceedings, auctions, probate cases, the maintenance of real estate records, the registration of firms and companies, the registration of ships, notarial duties, supervision of trusteeship for minors, and voting outside polling stations, as provided by law. ...

From five to eight city magistrates, as the Minister of Justice may decide, shall serve with the office of the Reykjavík city magistrate, and one of them shall be the chief city magistrate, who shall also be director of the office.

Section 4. The office of the Reykjavík criminal court judge is, i.a., charged with criminal cases, cf. Act no. 74 of 1974, Sections 1 and 2, paternity cases, decisions in respect of domicile, orders in respect of maintenance liability and

decisions according to law in respect of the local authorities collection agency. ...

From five to nine criminal court judges, as the Minister of Justice may decide, shall serve with the office of the Reykjavík criminal court judge. One of them shall be the chief judge, who shall also be director of the office.

Section 5. The chief of police of Reykjavík is in control of the police, other than the state criminal investigation police, is in charge of cases of ships stranding, of immigration, of the issuing of passports, and of other matters as provided by law. The duties of the state criminal investigation police are determined by special legislation.
Section 6. The director of customs in Reykjavík is in charge of customs enforcement, the signing on of ships' crews, the collection of taxes and customs duties to the State Treasury or other parties as determined by the Minister of Finance or provided by law, with the exception of the collection of dues assigned to a common collection agency, cf. Act no. 68 of 1962.

Section 7. Outside Reykjavík, the offices of county and town magistrates are charged with the duties enumerated in Sections 2-6, unless otherwise provided by law. These offices are also charged with other matters as determined by the Minister or provided by law.

With that judge, from one to five judges shall serve with the office of the town magistrate of Hafnarfjördur, Gardakaupstadur and Seltjarnarnes and the county magistrate of Kjósarsysla, as the Minister of Justice may decide.

The Minister of Justice may permit that with those judges, from one to three judges shall serve with each of the offices of the town magistrate of Akureyri and the county magistrate of Eyjafjardarsysla, and the town magistrate of Kópavogur.

The Minister of Justice may permit that with those judges, one or two judges shall serve with each of the offices of the town magistrate of Keflavík, Grindavík and Njardvík and the county magistrate of Gullbringusysla, the town magistrate of Selfoss and the county magistrate of Arnessysla and the town magistrate of Vestmannaeyjar.

Where more than one judge serves with the above town and county magistrates' offices, the town magistrate or county magistrate shall be director of the office.

Judges commissioned to serve with the above town and county magistrates' offices shall hold the titles of judges or district court judges with the offices in question.

...

Section 15. As many deputies as the Minister of Justice considers necessary, who meet the qualifications stated in Article 33, cf. Item 6 of Article 32 of Act no. 85 of 1936, shall serve with the above judges' offices.

The Minister of Justice may grant to deputies engaged for service according to sub-section 1, who meet the qualifications stated by law for permanent commission as judges, a special commission for performing independently and on their own responsibility the judicial functions entrusted to them."

31. The Code of Criminal Procedure, no. 74 of 21 August 1974, contains inter alia provisions concerning police investigations, the treatment of various minor offences and the functions of district court judges. The relevant parts of the Code read as follows:

(Translation provided by the Government)

"Chapter II. District Court Judges

Section 4. County magistrates outside townships, town magistrates in townships outside Reykjavík, other judges commissioned to serve within these offices, and criminal court judges in Reykjavík, conduct the investigation in criminal cases in court, hear them, and pass judgment.

Where a chief of police has been commissioned in areas outside townships, his duties as regards criminal cases are the same.

...

Section 15. A judge may have his authorised deputy conduct the investigation of criminal cases in court and pass judgments and decisions, if he meets the qualifications prescribed by sub-section 1 of Section 33 of the law in respect of district court procedure in civil cases.

Chapter V. Police and Initial Investigation

Section 32. County magistrates are chiefs of police outside townships, town magistrates in townships outside Reykjavík, and specially commissioned chiefs of police where they have been commissioned. Where policemen have not been specially designated, the parish chairmen assist the chief of police.

Chiefs of police, including the director of the state criminal investigation police, are in charge of law enforcement, each within his area of office. They shall, when they consider it appropriate or necessary, commence an investigation owing to suspected offences, whether or not they have received an information. In this regard, they are subject to the orders of the public prosecutor.

The police (the state criminal investigation police) conducts preliminary investigation of criminal cases, in so far as other authorities or the courts or other authorities are not charged with such investigation by law or custom. The purpose of initial investigation is to collect all evidence necessary to enable the prosecution authority subsequently to decide whether a criminal case shall be filed, and to collect evidence in preparation for the treatment of the case in court, cf., however, Section 73.

The state criminal investigation police conducts initial investigation in accordance with the provisions of law relating to that agency.

...

Section 40. ...

Following initial investigation the person in charge of it sends its transcripts to the public prosecutor. The public prosecutor may order further investigative measures to be taken, if he considers this necessary. Cases that may be expected to be settled without prosecution according to the provisions of Section 112 shall be sent by the chief of police (the director of the state criminal investigation police) to the judge in question. If the judge considers that Section 112 does not apply to cases thus received, he forwards them to the public prosecutor for further decision.

Chapter X. General Provisions Concerning Investigation of Criminal Cases in Court

Section 73. If measures are considered necessary for which the actions of a judge are required by law, or are otherwise necessary for the purposes of initial investigation while this is being conducted, the chief of police or the director of the state criminal investigation police may submit a petition for such measures to the judge. The petition shall either be in

writing or submitted orally to a court in session, and accompanied by the necessary documentation. The judge may request that the chief of police or the director of the state criminal investigation police submit the evidence or take the action he considers necessary before he takes the petition for decision.

If the judge considers that there are not sufficient reasons to grant a petition for action by the court according to sub-section 1, the chief of police or the director of the state criminal investigation police may request that the judge pass a formal decision on his refusal. The public prosecutor may appeal such decision to a superior court according to the rules governing summary appeal.

A chief of police who is also a criminal court judge may commence initial investigation in court when he considers this advisable.

Section 74. If the public prosecutor considers, following the initial investigation conducted by the police, the state criminal investigation police, or other parties (cf. Section 32), that a decision cannot be made as to whether or not a criminal case shall be filed or in which way a case may be closed, he may request an investigation to take place in court in order to bring to light the information necessary for this purpose.

...

During an investigation in court the judge is entitled to the assistance of the police (the state criminal investigation police), and may order specified investigative measures to be taken by the police as necessary.

...

When the investigation in court has been completed the judge shall as soon as possible have transcripts of the investigation prepared and sent to the public prosecutor with the case file.

Section 75. The judge shall, ex officio and independently, investigate all the facts and issues of the case, even if police have already investigated them and prepared reports on them. If an accused person has confessed to an offence the judge shall nevertheless investigate whether his confession is true to fact.

The judge shall investigate all factors relating to the guilt or the innocence of the accused, and all mitigating or aggravating circumstances...

Chapter XIV. Juvenile Cases, Fines Set by Chiefs of Police and Policemen, Settlements in Court, and Indictments

Section 112. A judge may, if this is not expressly prohibited by law, close a criminal case without prosecution:

1. If an offence is of a very minor nature, the judge may close the case by an admonition entered into the record, if the accused acquiesces.
2. If an offence is conclusively proven and it is considered that the penalty would not exceed a fine if the case were adjudged, the judge may determine a suitable fine to be paid within a specified period, upon the alternative of confinement of suitable duration, and with the payment of costs, if the accused accepts the judge's decision by his signature in the record. If a conclusively proven offence shall have the effect of deprivation of a licence to operate a motor vehicle or the deprivation of a right to obtain such licence, such deprivation may be ordered in the same way according to the provisions of this Section for one year or a shorter period. The offence in question shall be clearly but briefly entered into the record, with the penal provisions violated, and, if

applicable, effects of repetition with regard to subsequent offences. If a conclusively proven offence shall have the effect of confiscation of property, the judge may, under the same conditions as above, order confiscation. The judge may also order confiscation by an entry in the record if the accused cannot be found or is unknown, and the value of the confiscated property does not exceed 20,000 (Icelandic) crowns.

If a chief of police receives an information concerning a violation of the Traffic Act, the Law in respect of Alcoholic Beverages, the Law in respect of Notification of Changes of Residence, or of a police ordinance, and he considers that the sanctions would not exceed a fine of 12,000 (Icelandic) crowns, he may, within a month from receiving the information, make an offer by letter to the accused to have the case closed against the payment of a suitable fine within a specified period, provided the accused accepts this decision by his signature. If the accused declines or disregards this, the chief of police refers the case to a judge. If such offence shall have the effect of confiscation of property, such confiscation may similarly be determined, if the value of the property in question does not exceed 4,000 (Icelandic) crowns.

If a policeman observes a traveller on the road violating the Traffic Act or a police ordinance, and his penalty is considered not to exceed a fine of 1,200 (Icelandic) crowns, he may fine him by a suitable amount to be paid by the accused immediately or within a specified period, provided the accused accepts this decision by his signature in the fine book. If the fine is not paid within the period specified, an information shall be forwarded to the judge in the usual manner. The judge then invalidates the policeman's decision and proceeds with the case according to law. If the policeman's decision is considered contrary to reason the judge, the public prosecutor, or the chief of police may decide that the case shall be received again for treatment, and the policeman's decision is then invalidated.

The public prosecutor provides the chief of police with a list of offences with respect to which fines are allowed according to sub-sections 2 and 3. The list shall provide guidance concerning the amounts of fines for each type of offence. The Minister of Justice issues rules concerning the keeping of accounts for such cases and their treatment in other respects.

...

Section 115. When the public prosecutor has received the documentation concerning the investigation of a case and he does not consider that there is a reason to request further investigation, either according to Section 40, sub-section 8, or according to Section 74 (an investigation in court), he decides whether or not a criminal case shall be filed. If he considers that the available evidence is insufficient or unlikely to suffice for conviction, he takes no further action, but else he may:

a. ...
b. ...
c. ...
d. issue an indictment against the accused person or persons.

...

The judge endorses the indictment with the time and place for the filing of the case, and has it served on the defendant in the usual manner or in a court session. When the indictment is served on the defendant he shall be asked whether he wants to defend his case or be defended by counsel, and, if so, by whom.

Chapter XV. The Presentation and Treatment of Criminal Cases in District Courts

Section 121. When the period specified in Section 115, sub-section 4 or Section 117 has expired, the judge opens a session of the court and files the case. He then exhibits the transcripts of court hearings and other evidence that may be available and can be exhibited in court. The defendant shall, if possible, be made familiar with the evidence of which he has not been informed already, so that he may be asked whether he recognises that this concerns him or his case. If a counsel shall be appointed for his defence, this shall be done during this session, unless it has already been done. The defence counsel, or the defendant, if he wants to defend himself on his own, shall be handed the case documentation, a period shall be specified for the preparation of the defence, and the time of the next court session announced.

...

Section 122. A case shall be received for adjudication in the court session held according to Section 121, if the defendant appears in court and clearly confesses to the alleged offence, in which case no further evidence need be brought forth. The judge shall, however, at all times observe the provisions of sub-section 1 of Section 75 of this Act.

Evidence shall be brought forth if the defendant denies the charges in part or in whole, if the judge otherwise considers this necessary, or if this is requested by the prosecution or by the defendant.

Section 123. The judge decides each time whether a defence shall be presented orally or in writing.

Section 124. In cases where a defence is to be presented the defendant or his counsel may, before this is done, consult the judge with special regard to any matter he considers to stand in the way of a rightful judgment being rendered on the merits of the case at that time, such as whether the case must be dismissed from court, the procedure must be deferred pending further investigation or further defence, or the judge is disqualified, etc., and request the judge's determination. The judge decides whether such motions shall be granted, by an argumented decision if he considers that they shall not, and by judgment if a claim for dismissal is granted.

If a motion is made for dismissal from court, the public prosecutor shall be afforded an opportunity to state his views before the judge passes his resolution.

Subject to the agreement of the public prosecutor, a conclusion of denial may be summarily appealed to a superior court.

Section 125. When all evidence has been brought forth and a defence has been presented, the judge receives the case for adjudication.

...

Chapter XXII. Appeal

Section 176. If a judgment is appealed at the request of a defendant, penalties or other sanctions may not be increased in severity, unless the prosecution authority also appeals the judgment for this purpose.

...

Section 182. If the Supreme Court decides that the investigation shall be continued there, the prosecution and defence counsels and the persons to be questioned shall be called to appear before the Court. The provisions of this Act relating to the duty to testify and to provide information on

any matter the Court considers to be of relevance, apply as provided for district court investigation and procedure.

Section 183. The Supreme Court may render a decision or a judgment with respect to any matter concerning faults in case preparation at the district court or supreme court levels, district court procedure or supreme court case preparation or procedure, before the case is argued there or at any stage of argumentation such as whether a case shall be dismissed from court, whether the district court judgment shall be voided, on time-limits, on the judgment records, on the presentation of further evidence, etc.

Section 184. If it becomes apparent while a case is being argued or during the judges' further examination that further evidence must be brought forth in addition to what has already been made available, and it is considered that further investigation may be of value, the Supreme Court may pass a decision ordering the district court judge and the prosecution and defence counsels to obtain information on the matters specified in the decision and other matters that further hearings may indicate.

Section 185. The Supreme Court dismisses a case owing to faults in its preparation, such as if an indictment or a notification to appear before the Court has not been served on a party. The Supreme Court may void a district court judgment if it considers the investigation or the case procedure seriously faulty, and improvement by the methods described in Sections 182 and 183 is considered less feasible.

III. OPINION OF THE COMMISSION

A. Point at issue

32. The point at issue is whether there has been a violation of Article 6 para. 1 (Art. 6-1) of the Convention, in that the Criminal District Court of Akureyri, when convicting and sentencing the applicant on 27 December 1984, was not an "impartial tribunal".

B. The applicant's status as "victim"

33. Throughout the proceedings the Government have asked the Commission to hold that the applicant cannot claim to be a victim of a violation of Article 6 (Art. 6) of the Convention, as required by Article 25 (Art. 25) of the Convention. They maintain that the Supreme Court of Iceland, viewing separately the two alleged offences, acquitted the applicant of the charge of having disregarded the stop sign as the offence was not regarded as proven. As the applicant accordingly sought and gained redress under the national system available to him, he cannot in this respect claim to be a victim of any possible violation of the Convention. Regarding the offence of speeding, the Government maintain that the applicant was never a victim within the meaning of Article 25 (Art. 25). He confessed to that offence and was offered to have the matter settled against the payment of a fine, which is a routine procedure. Before the Supreme Court he did not claim acquittal but only a reduction in the penalty and this was granted by the Supreme Court.

34. The applicant has maintained that he did not confess to the charge of exceeding the speed limit but he chose not to contradict the radar speed measurement made by the police. Furthermore he contests that he was awarded all the material relief he sought because he was found guilty by the Supreme Court of the charge of exceeding the speed limit and sentenced to pay a fine. Finally, he stresses that the Supreme Court rejected his primary claim of partiality in the District Criminal Court, a defect involving matters of internal organisation which was not cured by the higher court. Therefore, the applicant maintains that he may claim to be a victim within the meaning of

Article 25 (Art. 25) of the Convention.

35. As regards the question of the applicant's status as "victim", the Commission recalls its decision on the admissibility where it took cognizance of the parties' submissions without, however, accepting the Government's objection. It now adds the following considerations:

36. The possibility certainly exists that a higher or the highest court might, in some circumstances, make reparation for an initial violation of one of the Convention's provisions. This is precisely the reason for the existence of the rule of exhaustion of domestic remedies contained in Article 26 (Art. 26) of the Convention. It becomes apparent in particular where the higher court has rectified the specific defect which would otherwise have raised an issue under the Convention. Likewise the Commission has previously held that an applicant who has sought and gained redress in the national courts may not subsequently or any longer claim to be a victim within the meaning of Article 25 (Art. 25) of the Convention (cf. No. 5575/72, Dec. 8.7.75, D.R. 1 p. 44 and No. 8083/77, Dec. 13.3.80, D.R. 19 p. 223). This conclusion, however, can only be drawn where the applicant is no longer affected at all, having been relieved of any effects to his disadvantage, for example where he has been acquitted unconditionally. The present applicant remained convicted on one count. He may therefore still claim to be a victim of an alleged violation of Article 6 (Art. 6) of the Convention.

37. Under Article 6 (Art. 6) of the Convention everyone charged with a criminal offence is entitled to certain rights irrespective of the evidence against him. Even a person who admits his guilt because the evidence against him is overwhelming, is entitled to these rights at his trial. The applicant would only cease to be a victim within the meaning of Article 25 (Art. 25) of the Convention if the Supreme Court had accepted his claim of lack of impartiality.

38. The Commission recalls, however, that criminal charges were brought against the applicant. He was tried and found guilty of the charges by the District Criminal Court, a judgment which was upheld in part by the Supreme Court. In such circumstances, and regardless of whether the evidence was such that the applicant did not claim acquittal and furthermore actually obtained a reduction of the fine, the State was not relieved from securing that the applicant's trial was carried out in conformity with Article 6 (Art. 6).

39. Moreover, the particular complaint raised before the Commission relates to the proceedings before the District Criminal Court of Akureyri, the basis of the complaint being, in particular, the very composition of the Court. As pointed out by the applicant, the alleged violation of the Convention involves matters of internal organisation and the Supreme Court of Iceland did not cure this alleged defect since it did not quash on that ground the judgment of the District Criminal Court of 27 December 1984.

40. For these reasons, the applicant may claim to be a victim of a violation of Article 6 para. 1 (Art. 6-1) in the sense of Article 25 (Art. 25) of the Convention.

C. Article 6 (Art. 6) of the Convention

41. The applicant has complained that he did not get a trial by an impartial tribunal as required by Article 6 para. 1 (Art. 6-1) of the Convention, the relevant part of which reads as follows:

> "In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing by an ... impartial tribunal...".

42. It is not disputed in the present case that this provision applies to the proceedings in the District Criminal Court of Akureyri, regardless of any subsequent proceedings in the Supreme Court. This also follows from the case-law of the Commission and the Court of

Human Rights and it would suffice to refer to the Court's judgment in the case of De Cubber v. Belgium (judgment of 26 October 1984, Series no. 86, p. 18, para. 32) where it stated the following:
"Article 6 para. 1 (Art. 6-1) concerns primarily courts of first instance; it does not require the existence of courts of further instance. It is true that its fundamental guarantees, including impartiality, must also be provided by any courts of appeal or courts of cassation which a Contracting State may have chosen to set up (...). However, even when this is the case it does not follow that the lower courts do not have to provide the required guarantees. Such a result would be at variance with the intention underlying the creation of several levels of courts, namely to reinforce the protection afforded to litigants."

43. The Government have maintained, however, that the Icelandic system where investigative and judicial powers are combined has a historical and geographical origin and they emphasise that the conditions prevailing in Iceland are significantly different from those of other member States of the Council of Europe. These particular Icelandic conditions form the background for the legal system and the applicant's case should be seen in this light.

44. The Government have pointed out that what the deputy chief of police did in the present case was only to follow the guidelines issued by the public prosecutor to the Icelandic chiefs of police concerning the handling of minor offences. The treatment of the applicant's case was in no way different from the treatment any other citizen would have received under the same circumstances. The letters from the chief of police were disregarded by the applicant and he was never called upon to appear before the chief of police or his deputy. The case was not dealt with any further by the police.

45. Bearing this in mind, the Government maintain that the procedure followed by the police was a matter of routine. No aspect of the procedure could have influenced the attitude of the chief of police or his deputy when the case was later brought up in court. Furthermore, the applicant's case was never referred to the public prosecutor at this stage.

46. Moreover, the Government submit that there is no indication at all of partiality in the deputy chief of police's treatment of the case, and this applies to all stages of the examinations of the court, both before and after the issuance of the indictment. The Government's conclusion is therefore that the applicant received fair treatment by an impartial tribunal in conformity with Article 6 (Art. 6) of the Convention.

47. The applicant has submitted that Iceland is, as any other High Contracting Party, obliged to comply with the Convention despite its historical and geographical situation. The breach of the Convention lies in the fact that the judicial system of Iceland provides that, outside Reykjavik, the town and county magistrates act, as in the present case, both as chiefs of police and judges in criminal proceedings.

48. Furthermore, the applicant has submitted that the judge in the present case did not display any personal hostility or ill-will towards the applicant. However, the fact that the case was decided by a person who earlier in the same case had acted as deputy chief of police must lead to the conclusion that the applicant's case was not heard by an impartial tribunal. Such a tribunal cannot be seen to do justice. In the present case the judge in question, in his capacity as deputy chief of police, sent the applicant two letters offering him to settle the case by paying a fine. By doing this he must have made up his mind and decided by himself that the applicant was guilty of both charges. He cannot therefore be considered an impartial judge when he afterwards was called upon to decide the case as a judge.

49. The Commission finds that a restrictive interpretation of Article 6

(Art. 6) of the Convention - notably in regard to the observance of the fundamental principle of the impartiality of the courts - would not be consonant with the object and purpose of this provision, bearing in mind the prominent place which the right to a fair trial holds in a democratic society. The Commission furthermore recalls that the European Court of Human Rights has stated that the guarantee of impartiality required by Article 6 (Art. 6) of the Convention implies a double guarantee: first the subjective requirement that the judge shall be unbiased, and secondly, an objective requirement that the situation must be such as to exclude any legitimate doubts about his impartiality (Eur. Court H.R., Piersack judgment of 1 October 1982, Series A no. 53, p. 14, para. 30).

50. In view of the specific nature of the case the Commission can limit itself to an examination of the objective requirement of impartiality. In this respect it is recalled that the Commission and the Court have previously had the opportunity to examine cases where the composition of a court was such that it could be considered to affect its impartiality.

51. In finding a violation of Article 6 para. 1 (Art. 6-1) in the case of Piersack v. Belgium (above para. 49) the Court considered that if "an individual, after holding in the public prosecutor's department an office whose nature is such that he may have to deal with a given matter in the course of his duties, subsequently sits in the same case as a judge, the public are entitled to fear that he does not offer sufficient guarantees of impartiality" (p. 15, para. 30 (d)). The impartiality of the tribunal which had to determine the merits of the charge was in such circumstances capable of appearing open to doubt.

52. In the case of De Cubber v. Belgium (above para. 42) the Court also found a violation of Article 6 para. 1 (Art. 6-1) of the Convention. It was noted that the Belgian investigating judge was independent, did not have the status of a party to criminal proceedings, should assemble evidence in favour of as well as against the accused, was not empowered to commit for trial and, in his report to the chambre du conseil, expressed no opinion on the accused's guilt. However, the investigating judge was placed under the supervision of the procureur général and, where the suspected offender had been caught in the act, could take any action which the procureur du Roi was empowered to take. He enjoyed very wide-ranging powers throughout an investigation which was inquisitorial in nature, secret and not conducted in the presence of both parties. He had the advantage over his colleagues on the trial court of having, well before the hearing, a particularly detailed knowledge of the files he had assembled. In these circumstances his presence on the bench provided grounds for some legitimate misgivings on the part of the accused. 53. In the Ben Yaacoub case (Ben Yaacoub v. Belgium, Comm. Report 7.5.85) the Commission found that the applicant's case was not heard by an impartial tribunal within the meaning of Article 6 (Art. 6) of the Convention in that the same person had dealt with the case in question, first in the chambre du conseil and subsequently as a member of the trial court. The Commission noted that the chambre du conseil had a number of functions and that, in particular, it had to ensure that the investigation was complete and to commit the accused for trial where there existed sufficient indications of guilt. Moreover, the chambre du conseil decided periodically on the detention on remand of the accused. The case was subsequently settled in the European Court of Human Rights.

54. Finally, in the Hauschildt case (Hauschildt v. Denmark, Comm. Report 16.7.1987) the Commission found no breach of the Convention when a judge, prior to deciding on an accused's guilt, had prolonged his detention on remand and taken various procedural decisions regarding the case. The Commission considered in this case that, if different functions were attributed to different organs by the rules of criminal procedure applicable in a given country, it could generally be assumed that the legislator, by separating the functions and attributing them to different persons, intended to protect the impartiality of the courts. Doubts as to impartiality might therefore arise where a judge had earlier fulfilled functions attributed to a different organ. On the other hand, a similar presumption did not arise where a judge exercised different functions all of which had been attributed to the court under the

institutional framework of the legal system concerned (para. 106 of the Report). The case has subsequently been referred to the European Court of Human Rights.

55. It follows from the above case-law that the Commission must attach particular weight to the functions exercised and to the internal organisation in regard to the case before it. In this respect even appearances may be important, cf. the English maxim "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused.

56. The Commission recalls that it is undisputed that the Icelandic system applied in the present case combined the investigative and the judicial powers. This also follows from inter alia Section 7 of the Act no. 74 of 27 April 1972 which provides that the offices of county and town magistrates are charged with the duties of both the judge and the chief of police. It is true that the deputy of the town magistrate of Akureyri, Mr. SJ, did not deal with the applicant's case as representing the public prosecutor. However, as deputy chief of police, he had to satisfy himself, on the basis of the material produced by his police officers and under Section 112 sub-section 2 of the Code of Criminal Procedure that the applicant had violated the Traffic Act, that the fine for the offence would not exceed 12,000 Icelandic crowns if the case went before the courts and that the fine to be imposed would be appropriate.

57. Furthermore it is undisputed that Mr. SJ subsequently dealt with the applicant's case in his capacity of judge, not only as investigating judge but also as trial judge. In the latter capacity, sitting as the sole judge, he enjoyed during the trial exclusive powers of deciding whether or not the applicant was guilty of the charges brought against him. Thus he exercised functions both as chief of police and as judge in the criminal case brought against the applicant. In such circumstances the Commission finds that there were reasons to fear that Mr. SJ, in his capacity as judge, did not offer sufficient guarantees of impartiality. Accordingly, and having regard to the case-law set out above, the impartiality of the "tribunal" which had to determine the merits of the charges brought against the applicant was open to doubt. This tribunal did not, therefore, fulfil the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

Conclusion

58. The Commission concludes unanimously that there has been a violation of Article 6 para. 1 (Art. 6-1) of the Convention, in that the District Court of Akureyri, when convicting and sentencing the applicant, was not an impartial tribunal.

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A. NØRGAARD)

CONCURRING OPINION OF MR. H. VANDENBERGHE

As the other members of the Commission, I am of the opinion

that there is a violation of Article 6 para. 1 of the Convention.

However, I cannot follow the reasoning proposed in para. 54 of the Report of the Commission referring to the Hauschildt case (Hauschildt v. Denmark, Comm. Report 16.7.87).

As explained in a dissenting opinion shared by six other members, the application of the criteria given by the Court in its decisions De Cubber v. Belgium (judgment of 26 October 1984, Series A no. 86) and Piersack v. Belgium (judgment of 1 October 1982, Series A no. 53) should in the Hauschildt case lead to the finding of a violation of Article 6 para. 1.

Because I could not agree with the majority opinion of the Commission in the Hauschildt case, I cannot therefore follow the reasoning contained in para. 54.

APPENDIX I

HISTORY OF THE PROCEEDINGS

Date	Item
10 April 1986	Introduction of the application
20 May 1986	Registration of the application
Examination of admissibility	
13 October 1986	Commission's decision to invite the Government to submit observations on the admissibility and merits of the application
6 February 1987	Submission of the Government's observations
16 March 1987	Submission of the applicant's observations
13 July 1987	Commission's decision to hold a hearing on the admissibility and merits of the case
13 October 1987	Hearing on the admissibility and merits. The parties were represented as follows: The applicant: M. Tómasson The Government: MM. Geirsson Claessen
13 October 1987	Commission's decision to declare the application admissible
Examination on the merits	

7 May 1988	Consideration of the state of proceedings
8 October 1988	Consideration of the state of proceedings
8 March 1989	Commission's deliberations on the merits, final votes and adoption of the Report