AS TO THE ADMISSIBILITY OF

Application No. 14610/89
by Arne TREHOLT
against Norway

The European Commission of Human Rights sitting in private on 9 July 1991, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Sir Basil HALL
MM. F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

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 21 December 1988 by Arne Treholt against Norway and registered on 2 February 1989 under file No. 14610/89;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having regard to the observations submitted by the respondent Government on 10 November 1989, 5 April, 28 August 1990 and 5 February 1991 and the observations in reply submitted by the applicant on 5 April and 7 June 1990;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Norwegian citizen, born in 1942. He is at present serving a 20-year prison sentence in Norway. Before the Commission he is represented by Professor Ole Krarup, Copenhagen, Denmark.

A. The particular facts of the case

On 20 January 1984 the applicant, then a high-ranking civil servant in the Norwegian Ministry of Foreign Affairs, was arrested at Fornebu airport near Oslo and charged with espionage. The applicant

was detained on remand. On 20 June 1985 he was sentenced to 20 years' imprisonment by the Eidsivating High Court (lagmannsrett). The applicant appealed against the judgment to the Supreme Court (Høyesterett). He later withdrew his appeal and on 4 April 1986 he filed a petition with the High Court for the re-opening of his case. On 11 February 1988 the High Court rejected the applicant's petition, a rejection which was upheld by the Supreme Court on 15 August 1988.

The present case concerns the treatment to which the applicant has been subjected whilst in detention on remand and while serving his prison sentence.

1. Detention on remand at Oslo Police Headquarters, 20 January - 5 March 1984

From the day of his arrest, 20 January 1984, until 5 March 1984, i.e. approximately seven weeks, the applicant was kept at Oslo police headquarters. Prior to his arrest the Police Security Service, in consultation with inter alia the Ministry of Justice, considered that none of the usual remand prisons had the staff and facilities which appeared to be necessary in the present case. Accordingly it was decided to detain the applicant at Oslo police headquarters and for this purpose three rooms were prepared prior to the arrest: an interrogation room of approximately 17 square metres, a sleeping room of approximately 11 square metres and a room of approximately 26 square metres available for the warders and the applicant.

On 23 January 1984 the applicant was brought before the Oslo Court of Interrogation (Oslo forhørsrett) where the prosecution requested detention on remand for 12 weeks including prohibitions of visits and correspondence as well as a prohibition of reading newspapers, listening to the radio and watching television. The Court granted the prosecution's request and the applicant did not lodge any protest, nor did he appeal against the Court's decision to the High Court.

At police headquarters the applicant was interrogated in the interrogation room daily by two police officers. When not under interrogation the applicant could either stay in the office which was converted into a bedroom or in the room which was at the disposal of the prison warders and the applicant. He was under constant surveillance and one to two police officers sat outside the bedroom, the door of which was left ajar. The applicant submits that he was not

permitted to turn out the lights whereas the Government submit that he could decide when to turn out the light in his bedroom.

The Government have submitted, and it has not been contested, that, regardless of the decision of the Interrogation Court, the applicant was allowed to watch sports programmes on television and the police also permitted visits from his wife and his father, the first of which took place two days after his arrest. The frequency varied according to the visitors' ability to come.

As regards use of the toilets the Government submit that the applicant was accompanied by one policeman who remained standing in the doorway in the corridor. For the first few days, the officer demanded that the door to the toilet be left open. He could then see the applicant fairly clearly without looking at him directly. After some days, the officer permitted the door to be closed but not locked. In this respect the applicant submits that during his visits to the toilet he had to sit with the door open face to face with a policeman.

The windows of the bedroom and the interrogation room were made of wired glass. The windows of the third room where the warders and the applicant could spend time after the interrogations were made of normal glass.

As regards medical attention during his stay at police headquarters the applicant submits that he was not offered to see a doctor at all. The Government submit that he was offered an opportunity to speak with both a clergyman and a physician but refused to speak with either. Furthermore the applicant's defence counsel did not request the attendance of a doctor on behalf of the applicant, nor did counsel ever complain that the applicant had in vain asked to see a doctor.

Finally the Government submit that, after the preliminary interrogations, the applicant was allowed to spend some time on the roof of the police headquarters. The applicant was allowed to decide how often he wished to have fresh air. However, as the roof was not designed for such purpose the applicant was handcuffed to a police officer when on the roof. The applicant was also allowed to exercise on a regular basis in the underpath between the police headquarters and the Oslo District Prison. The applicant has not disputed these facts.

2. Detention on remand at Drammen District Prison, 5 March 1984 - 29 July 1985

On 5 March 1984 the applicant was transferred to the Drammen District Prison where he stayed until 29 July 1985, i.e. approximately 1 year and 4 1/2 months. The applicant was placed in solitary confinement from his arrival until 2 June 1985. The applicant's trial commenced on 25 February 1985 and lasted 50 days. As indicated above he was convicted by the High Court on 20 June 1985 and sentenced to 20 years' imprisonment.

During his stay at Drammen District Prison the applicant lived in an area formerly reserved for three female inmates. These quarters comprised three cells, a corridor and a room for the prison guards. The cells were used by the applicant as bedroom, visitors' room and storage room respectively. The guard room served as living room. The

applicant also had access to a so-called open-air cell on the prison roof. This cell consisted of a closed room of some 12 to 14 square metres without any windows. The only connection the room had with open air consisted of the possibility of pushing aside a hatch in the roof which let in air through a wiregate.

During the period at Drammen the applicant was constantly supervised by a shift of seven prison guards. There was one man on duty during the day and two men during the night. During the night the guard on duty was outside in the corridor. The cell door was left ajar and the applicant was looked after at three to five minutes' intervals. He did not have contacts with other prisoners until 5 June 1985. He was then permitted to lead certain physical exercise programmes for the other inmates. He had 114 guarded leaves from the prison, mainly to go to Oslo police headquarters for questioning or, after the opening of his trial, to appear before the High Court.

a) Visits and correspondence

On 13 April 1984 the Interrogation Court extended the applicant's detention on remand until 9 July 1984. The Court also extended the general prohibition as regards access to newspapers, radio and television. Nevertheless the police permitted the applicant to watch all television programmes and to listen to all radio programmes except those dealing with his own case. He was also allowed to read four newspapers to which his defence counsel subscribed, except articles concerning his own case. The applicant was also allowed to receive another newspaper together with periodicals and other reading material provided that the policemen were given an opportunity to check this material in advance.

On 19 June 1984 the Interrogation Court prolonged the applicant's detention on remand once more and decided furthermore:

(translation)

"With the exception of programmes concerning his case, the accused shall be permitted to watch television and listen to the radio. He shall also have general access to foreign periodicals and newspapers, as well as periodicals concerning economics and similar subjects. Newspapers shall be delivered to the accused after they have been checked by the police."

Subsequent decisions of the Court of 4 September, 31 October and 28 December 1984 did not alter this situation. The applicant did not appeal against any of these decisions to the High Court.

During his stay at Drammen the question of visits was dealt with by the Court in the decisions mentioned above. The Court decided each time to allow supervised visits by the immediate family which was interpreted by the authorities as including his son, his father, his wife, his sister and his sister-in-law and brother.

When the applicant's trial commenced on 25 February 1985 these visits were no longer supervised. Subsequent to the conviction on 20 June 1985 his contacts with others increased considerably, in particular due to numerous visits by representatives of the mass media.

As regards correspondence the Government submit that the legal basis for the restrictions of applicant's right to send and receive letters was Section 54 of the Prison Act and the decisions of the Court mentioned above. According to those decisions, letters to and from the applicant were to be submitted to the Court which would determine whether or not they could be received or sent. The applicant submits that he was not allowed to receive or write any letters for a period lasting until 5 September 1984. From then on, he submits, he was subjected to extensive censorship on incoming and outgoing post.

b) The applicant's health situation at Drammen

At Drammen District Prison the applicant's wish to stay physically fit was complied with by installing an ergometric bicycle and a treadmill. The medical record kept at Drammen gives no indication of any serious somatic illness. This record is based on weekly, and sometimes more frequent, visits from the prison doctor.

The applicant, however, suffered from such mental strain that the prison doctor on 4 April 1984 asked for the assistance of a psychiatrist. Psychiatric assistance was eventually established on 25 May 1984.

In a statement of 12 March 1986, i.e. approximately 8 months after the applicant had left Drammen, the prison doctor concluded as regards his stay there:

(Translation)

"(the applicant's) physical health was satisfactory during his imprisonment at Drammen. But his mental state was in certain periods so strained that it verged on loss of reality (in particular) during the worst period April-May 1984. I did not consider him suicidal."

3. Placement at IIa National Penal and Preventive Detention Institution (IIa), 29 July 1985 - 20 June 1986

Subsequent to the applicant's conviction on 20 June 1985 he was transferred to Ila. He arrived there on 29 July 1985 and stayed until 20 June 1986, i.e. approximately eleven months.

Ila is a maximum security prison comprising three buildings. The applicant was placed in Section K which is considered the most "escape-proof" of the buildings. The applicant was placed there as he had been convicted of a serious crime and was considered a potential escape risk. Section K is a closed section intended for nine inmates. There were six other inmates in Section K when the applicant arrived.

At Ila the applicant was subjected to the same prison regime as other inmates. He was locked up in his cell of 6 square metres from 9 o'clock in the evening until 7 o'clock in the morning when he had

half an hour for toilet and breakfast together with the other six inmates. Lunch was served at 11-11.30 hours and dinner at 15.00-16.00 hours when he was outside in the fresh air until 17.30 hours together with the other inmates of the closed wing of the prison. From 17.30 hours and until 21.00 hours he was allowed to associate with the other six inmates in a "corridor" of approximately 20 x 3 metres.

The applicant submits that the other inmates in Section K were mentally retarded or violent psychotics. Therefore, he submits, he experienced several dangerous incidents due to the fact that he was publicly known and subject to curiosity and provocations by the other inmates. There were fist-fights and incidents with inmates trying to stab each other. The applicant also submits that the other inmates left their excrement on the floor of the toilet and also ate their food with excrement spread all over their bodies.

The Government submit that, as Section K housed convicts serving long sentences, a number of them had been convicted of crimes such as murder, rape and other grave sexual offences. Other inmates were serving time for selling drugs, assault and battery, theft and other economic offences. Consequently there were, and will be at any given time, a number of inmates who were suffering from some kind of mental instability and disorder. It cannot be ruled out, the Government submit, that inmates in need of treatment were placed in Section K. The prison records do not show, however, dangerous incidents involving the applicant.

As regards the sanitary conditions the Government submit that according to the prison records there was one inmate at Ila, during the applicant's stay there, who was brain damaged and had problems controlling his bodily functions. This person did not, however, stay in Section K.

As regards visits the prison rules gave inmates either one visit of two hours a week or two visits of one hour each. The applicant, however, received 316 visits during the 11 months he stayed at Ila, many of which lasting more than two hours. The applicant had 25 guarded leaves, most of them to go to the Oslo City Court to give evidence in his own case. There were no restrictions on the applicant's correspondence, but his outgoing mail was controlled insofar as his letters were read by the prison inspector. After 1 January 1986 the applicant was permitted to attend French classes twice a week for two hours.

4. Placement at Ullersmo National Penitentiary (Ullersmo), 20 June 1986 - 8 August 1988

On 20 June 1986 the applicant was transferred to Ullersmo and placed in the so-called receiving ward. The reason for this was that the authorities had found plans showing that the applicant would try to escape from prison.

a) General prison conditions

The confinement in the receiving ward lasted until 23 January 1987, i.e. approximately 7 months. During this period the applicant spent an average of about 2 1/2 hours every day with his fellow inmates. Furthermore he spent one hour a day in fresh air in the wintertime, three hours a day in the summertime.

At the initiative of the applicant, and beginning on 22 August 1986, a physical training programme under the auspices of the recreation department/sports officer was offered in the large prison yard. The applicant participated in this programme twice a week, for about one hour each time.

With regard to visits as well as other forms of social contact, the range of the applicant's activities was wider than that of other inmates in the institution. During the period 28 June - 7 October 1986 the applicant was allowed unsupervised visits by his wife and his father. During the same period he received regular visits (supervised by a police officer) by his sister and his brother. After 7 October their visits were unsupervised as well.

As regards visits by others than the applicant's immediate family, he received approximately 30 visits by defence counsels, real estate agents and other persons the applicant wanted to see. As a rule such visits lasted one hour or more. From 7 October 1986 to 23 January 1987, the applicant received about 60 visits by family, friends, defence counsels and representatives of the press. Some days the applicant had more than one visit. He was allowed approximately 200 telephone calls to persons outside the prison. He also had contact with professionals in the prison. He spent time with the psychologist (24 times), representatives of the prison health services (19 times), the physiotherapist (21 times) and the priest (9 times). In addition the applicant was visited by the prison director/deputy director (10 times) and the prison inspector (10 times).

On 23 January 1987 the applicant was moved from the confinement in the receiving ward to an open part of Ullersmo and placed together with other inmates. He submits that he was placed with common criminal offenders of whom many were drug addicts. The Government submit that the reason for placing the applicant in the company of persons convicted of serious crimes was a consequence of the fact that he himself was serving a long sentence. According to the practice in Norwegian prisons it is the length of the sentence and not the nature of the crime or the background of the inmate that determines his placement.

During his stay at Ullersmo the applicant was on 29 occasions granted guarded leave, of which several were of a social character. One of these leaves involved a medical check-up in a nearby hospital in November 1986 where, the applicant submits, he was forced to kneel down handcuffed when an X-ray of his sinuses was taken. The Government submit that the applicant was handcuffed to a prison officer since he was still considered an escape risk. The reason why the applicant had to kneel down was the X-ray equipment itself which comprised a "kneeling chair" specially designed by the hospital for the purpose.

On 19 January 1988 the applicant had served four years of his prison sentence but was nevertheless not allowed unguarded leaves of absence from the prison, otherwise granted to inmates having served such a period of time. The reason for this was the fact that the military still considered the applicant to be a security risk and that he should not therefore be allowed uncontrolled stays outside prison. On several occasions the applicant requested unguarded leaves of absence but these requests were all refused by the competent administrative authorities.

b) The applicant's health situation at Ullersmo

As indicated above the applicant arrived at Ullersmo on 20 June 1986 and was placed in the receiving ward.

At the request of the applicant's counsel, Dr. Håvard Friberg, who had examined the applicant during his stay at Drammen and Ila, met the applicant on 13 August 1986. On 5 October 1986 Dr. Friberg submitted a statement which concluded:

(Translation)

"(The applicant's) physical state of health appeared clearly worse. He appeared weaker with less enthusiasm and was marked by less training than before.

He was depressed and marked by hopelessness, pessimism and worries. Periodically he had thoughts of harming himself. I had not previously registered such thoughts from (the applicant).

He experienced an incipient dissolution of internal norm systems and control mechanisms and therefore also an increasing fear of not being able to control emotional and physical reactions. He had developed psychosomatic reactions such as nausea, headache, stomach cramps and he had developed increasing feelings of claustrophobia.

All in all I experienced that his personality was about to be subverted without his being able to use the ways of managing this which previously had been effective. I would not exclude that serious health problems could develop unless effective countermeasures are used.

I would recommend that you (i.e. the applicant's counsel) contact the prison doctor and the prison psychologist in order to find a regime which can prevent such development from occurring."

On 23 January 1987 the applicant was moved to an open part of Ullersmo and placed together with other inmates.

On 22 March 1988 the prison doctor at Ullersmo, Mr. Henrik Gjertsen, requested Professor Odd Steffen Dalgaard to submit an opinion on the applicant's mental situation in the light of the applicant's prison conditions. In his letter Mr. Gjertsen wrote inter alia:

(Translation)

"(The applicant) is very self-disciplined and has a 'professional' appearance. However, he is troubled by increasing psychosomatic symptoms, a feeling of hopelessness and increasing paranoia. Needless to say that the refusal to reopen his trial was a hard blow.

(The applicant) is a special prisoner who is subjected to special security measures. He is only let out for court hearings in which he is a party himself, in case of serious illness in the closest family, i.e. wife and father, and in case of necessary medical treatment which the prison cannot

provide. In such cases he is subjected to severe security measures which inter alia involve the use of handcuffs and the presence of three prison officers.

These measures in regard to the applicant's prison regime were introduced in the autumn of 1987, after a period where he had

had relatively regular leaves of absence to visit his wife, and for medical examinations and treatment outside the prison. This was based on his own and his wife's health situation. The assessment of whether leaves of absence should be granted or not is now made by the director (of the prison). On the basis of this tightening up of (the applicant's) prison regime the interdisciplinary team at Ullersmo submitted a statement of 13 November 1987 to the prison authorities. This was made public in the press. Furthermore, the psychologist Thore Boy Rist has not, for the same reason, found it ethically defensible to continue as (the applicant's) psychologist. This after working as (the applicant's) psychologist for 11/2 years.

The prison health department personnel feel that our professional assessments have no weight in this case and the impression remains that the prison authorities are of the opinion that we are being manipulated by (the applicant). This leads to the conclusion that an independent expert should assess (the applicant's) mental state of health.

Secondly, we would like an evaluation of (the applicant's) state of health in relation to the special treatment he is subjected to, in particular the extended use of handcuffs, the number of prison officers necessary when leaving the prison premises and the very limited possibilities of being together with the closest relatives."

In his opinion of 15 May 1988 Professor Dalgaard concluded as follows:

(Translation)

"Subsequent to (the applicant's) arrest his mental state has varied. During the first period of strict isolation he was, according to the psychiatrist in charge, close to developing a psychotic condition. Later he developed a number of psychosomatic problems, such as headache, dizziness and stomachache and he has suffered from fears. The mood has varied and has alternated between optimism and despair and hopelessness.

During the last 6 months (the applicant's) state of health has deteriorated in that the psychosomatic problems have increased together with the fact that he has felt an increasing powerlessness, drained of energy and courage. He has also been afraid of losing control over his emotions.

This deterioration must be seen in connection with three elements, namely that the hope of reopening his trial has disappeared, that the pressure due to the health problems of his closest relatives has increased and that an expected amelioration of his prison conditions has not occurred.

Under this increased pressure it appears that his psychological defence mechanisms fail as he does no longer let off steam through physical activity, engagement in the problems of other prisoners or work on his own case.

Due to the latest developments and under the very strict prison regime I consider that there is a great danger that (the applicant's) mental state will deteriorate considerably. First and foremost I see the following three possibilities: that (the applicant) "escapes" into a psychosis, possibly with paranoid ideas; that (the applicant's) aggression and bitterness are turned inward with a risk of harming himself, possibly suicide; or that (the applicant's) aggression and bitterness are

let off uncontrolled with a risk of harming others. One may fear a combination of the last two possibilities.

As a conclusion I would maintain that steps should soon be taken to ameliorate (the applicant's) prison regime if a serious deterioration of his state of mental health is to be avoided. It is of crucial importance that increased possibilities for the applicant to be together with his wife and family under adjusted normal conditions be created and, as regards future prison conditions, that predictability be increased. I presuppose, of course, that such an amelioration should go hand and hand with the security measures the authorities find necessary at any given moment."

5. Second placement at Ila National Penal and Preventive Detention Institution, from 8 August 1988

On 8 August 1988 the applicant was transferred back to Ila at his own request. He is at present serving his sentence there.

a) General prison conditions

Under the present regime the applicant gets breakfast between 7.00 and 7.30 hours, then stays in his cell until 11.00 hours when there is half an hour's break for lunch. Dinner is served at 15.00 hours and the applicant may go outside in the fresh air from 16.00 to 17.30 hours. Subsequently he may be together with other inmates until 20.45 hours. The applicant maintains that he is constantly under heavy technical and physical surveillance. There is bright light outside the cell windows which makes it difficult to sleep at night. Surveillance cameras have been introduced all over the prison and the applicant maintains that this is due to his being there. Furthermore he maintains that he is followed by one or two guards wherever he moves outside his cell.

The Government submit that the applicant has been placed in Section I as from 9 August 1988 and that there has been no major change with regard to his living quarters. As indicated before, Ila is a maximum security prison and the applicant is, according to the Government, living under the same conditions as other inmates except for the fact that three prison officers instead of two escort the applicant on guarded leave.

b) The applicant's health situation at Ila

Since his return to Ila a number of medical opinions concerning the applicant have been submitted, which in particular challenge the authorities' refusals to grant the applicant unguarded leaves of absence instead of guarded leaves. On 28 June 1989 Professor Dalgaard submitted a medical statement in which he concluded:

(translation)

"... Based upon my own impressions as well as the assessments of the Ila doctors I conclude that (the applicant's) health has deteriorated compared with the examination which was undertaken a year ago, although the deterioration is not a dramatic one. His sufferings are of the same nature as the ones described in my previous medical statement but with certain symptoms being increased. His psychosomatic sufferings are by way of headache, dizziness and temporary disturbance of sight, in other words sufferings of a migraine nature and these sufferings appear to have increased somewhat. He has also shown a tendency of increased touchiness changing with a feeling of depression and apathy.

... As stressed strongly by (the applicant) as well as his

wife, their relationship is of major significance to the health of both of them. Should one of them fail, it will result in a critical situation also for the other part. For this reason it is of major importance that as far as possible conditions be arranged enabling a more dignified way of being together than the one which is possible within the framework of the Ila Institution. As I also did in my previous statement I therefore strongly emphasize the significance of a gradual liberalisation regarding the possibility of being together with the wife and other members of the family outside the Ila prison ..."

On 20 February 1990 the applicant instituted proceedings in the Oslo City Court in order to obtain a declaratory judgment stating that the authorities' refusal to grant unguarded leaves of absence was illegal. The hearing was scheduled for 4-6 July 1990 but suspended as the Ministry of Justice decided on 22 June 1990 that unguarded leave of absence should be granted as the applicant was no longer considered a security risk.

Subsequently the applicant has had 18 unguarded leaves of absence during the period from 30 June 1990 to 29 June 1991, lasting from 6 hours to 5 days 2 hours. The applicant withdrew his court case on 19 November 1990.

B. Domestic law and practice

The statutory rules concerning treatment of prisoners are set out in the Prison Act (Fengselsloven) of 12 December 1958 with subsequent amendments. Supplementary rules are given by the Central Prison Administration (Fengselsstyret) in the Prison Regulations of 12 December 1961 with subsequent amendments.

Placement, accomodation, etc.

Section 11 of the Prison Act reads as follows:

"When sentenced persons are placed in various institutions according to Sections 9 and 10, particular regard must be had to the person's age, criminal record, potential and abilities, receptiveness to training and influence, and to the nature of the offence. An effort should be made to place sentenced persons who suffer from psychological or physical defects, or who for other reasons need special care, in institutions where the necessary treatment can be provided. ..."

As regards accommodation, Section 16 of the Act prescribes as follows:

"Provided that space permits and there are no special reasons to the contrary, inmates shall be placed in single cells at night.

Inmates may, in accordance with specific rules, associate with one another during daytime when under necessary supervision.

Where treatment in association with other inmates is not applicable or is not deemed appropriate, inmates shall be treated in single cells. No inmate may be kept in solitary confinement for more than a year without the permission of the Central Prison Administration.

Inmates in solitary confinement shall be visited each day by officers of the institution."

These provisions are supplemented by the Prison Regulations, Section 53.2 of which reads as follows:

"Subject to the restrictions deriving from Section 53.3, inmates shall be allowed to associate with one another on a daily basis.

In institutions which are suitable for this purpose, inmates shall be classified in groups which should preferably be placed in separate wards in the institution. When determining such classification and deciding whether an inmate is otherwise to be allowed to associate with other inmates, persons serving their first custodial sentence should as far as possible be kept separate from inmates who have previously served a custodial sentence.

Apart from this, classification of inmates should be determined on the basis of an overall evaluation of the individual inmate and his situation so that age, health, mental state, character, working capacity, need for training, length of sentence, etc. are taken into account. Unless otherwise decided in a specific case, inmates who are allowed to associate with other inmates shall be under constant supervision and control. The time when inmates are to be allowed to spend time together and the duration of such contact shall be determined in advance."

Section 53.3 of the Prison Regulations also relates to freedom of movement:

"Inmates shall stay in their cells when they have not been ordered or given permission to spend time elsewhere.

Permission to move about outside the common room shall be limited to specific rooms or areas.

Inmates must not be allowed to move about freely in the buildings or on the grounds of the institution.

If an inmate is to move from one place to another within the institution, he shall be escorted by a prison officer unless it is defensible in the individual case to allow him to go alone. The provisions of this section do not apply to open and semi-open institutions."

Section 81 of the Prison Regulations prescribes the following as regards persons remanded in custody during criminal investigation:

"Persons remanded in custody and other inmates who have not been sentenced to imprisonment must not, while staying in the institution, be subject to any restrictions other than those necessary to fulfil the purpose of such detention or to preserve order and security in the institution."

As regards access to open air and physical activities, Section 22 reads as follows:

"Inmates who work indoors shall as far as possible be permitted to spend at least an hour each day out of doors. On Sundays and holidays inmates shall as far as possible be allowed to spend a longer time out of doors.

Where there are suitable facilities, inmates should be allowed to engage in physical training and sports."

Visits, correspondence, etc.

As regards inmates' right to receive visits, Section 23 of the Prison Act provides as follows:

"According to specific rules, inmates shall be allowed to receive visits from their immediate family and other persons with whom it is important for them to have contact.

Visits may be refused when there is particular reason to believe that they may have a detrimental effect. This also applies to visits from the inmate's immediate family.

Inmates may refuse to receive visits from others than persons in the service of the institution or persons who have been admitted to the institution on official business.

Visits from persons other than those mentioned in the third paragraph shall normally take place in the presence of a prison officer."

Section 64 of the Prison Regulations gives further details as regards visits. The following are excerpts from the Regulations:

"Section 64.1. General Provisions

According to the rules set out below, inmates shall be allowed to receive visits from their immediate family and other persons with whom it is important for them to have contact.

Visits may be refused when there is reason to believe that the implementation of control measures will not be sufficient to prevent disorderly conduct in connection with the visit.

Visits from children aged 3 to 14 years should be allowed only when they can be carried out in a way which takes the child's needs into consideration.

Inmates may refuse to receive visits from others than persons in the service of the institution or persons who have been admitted to the institution on official business."

...

"Section 64.4. Control in connection with visits

No control measures shall be implemented which are more extensive than what is necessary to prevent disorderly conduct in connection with a visit.

If it is deemed necessary for preventing objects from being smuggled in or out, the visit may be made conditional on the inmate's changing clothes both before and after the visit.

If such control is not considered to be sufficient, the inmate may be bodily searched before and after the visit.

When considered necessary in order to prevent disorderly conduct, an officer may supervise the visit without monitoring the conversation. In cases where it is deemed particularly necessary, the officer may also monitor the conversation. Visits which are to be monitored are not to be conducted in a foreign language unless permission to do so has been granted.

A glass partition between the inmate and the visitor may be

used when other supervisory measures are not considered sufficient to prevent disorderly conduct in connection with the visit. In other cases, a glass partition may only be used if the conditions for ordinary supervision of visits exist and the inmate himself wishes to use a glass partition instead of other control measures.

When there is special reason to believe that there is extensive drug abuse in the prison, the Central Prison Administration may - notwithstanding the provision of the first sentence of the third paragraph - consent to routine supervision of visits without monitoring conversations."

"Section 64.7. Visits from defence counsel and lawyers

An inmate is entitled to receive unsupervised visits from his officially appointed defence counsel. As regards visits from other defence counsel or lawyers, the general provisions on control in Section 64 shall apply. Of the provisions of Section 64.1-4, only section 64.2 applies to visits from an officially appointed defence counsel."

As regards control of correspondence, according to the Prison Regulations, letters may be opened both in order to check whether something the inmate is not allowed to receive has been enclosed in a letter and in order to read through the letter to monitor the content. When special reasons so indicate, the letter may be confiscated.

When a person is remanded in custody, his right to receive and send letters and to receive visits is governed by a court order. Previously laid down in Section 54 of the Prison Act, the conditions are now set out in Section 186, second paragraph, of the Criminal Procedure Act (Straffeprosessloven). Section 54 of the Prison Act read as follows:

"In the case of an inmate who is under arrest or has been detained on suspicion of a punishable offence, the court which is dealing with the case may also decide at any time during the investigations that visits may only take place in the presence of an institution officer, and that correspondence may only take place on the conditions mentioned in Section 24. The court may also require to see letters to and from the inmate to decide whether they may be delivered or posted. The court may moreover decide that the inmate shall not be allowed to receive newspapers or listen to radio broadcasts.

The court may refuse the inmate permission to receive any visits, or to receive visits from certain persons, if there is reason to fear that because of his behaviour attempts may be made to impede the investigation in an improper way. The same applies to visits from certain persons whose behaviour gives grounds for such fear. In cases of urgency, the governor of the institution may refuse permission for visits as mentioned in this paragraph until the decision of the court has been obtained."

Medical assistance

As regards the prisoner's right to medical assistance, the relevant provisions are to be found inter alia in Section 21 of the Prison Act:

"Inmates shall be provided with necessary medical care. They are obliged to allow a doctor to examine and treat them according to specific rules, cf. Section 32."

"Section 54.1. Psychiatric and psychological treatment

At institutions in which there is a psychiatrist employed, he shall take care of the inmates and as far as practicable give the individual inmate the treatment deemed to be most suitable, individually or in groups.

If there is a psychologist employed in the institution, this also applies to him. If there is a psychiatrist employed in the institution, the psychologist shall carry out his treatment in consultation with the former.

If necessary, an inmate may be treated by a specialist outside the institution.

Any special psychiatric and psychological treatment shall be coordinated with the other measures implemented in relation to the individual inmate."

Leave, guarded leave

Both leave ("permisjon") and guarded leave ("fremstilling") involve allowing the inmate to spend a period of time outside the institution. When granted guarded leave, an inmate is allowed to leave the institution accompanied by several officers. When granted leave, he is allowed to leave the institution unescorted.

Section 34 of the Prison Act provides as follows:

"An inmate may, in accordance with specific rules, be granted a short period of leave when there are special and weighty reasons for so doing and when there is no reason to believe that the leave will be abused.

An inmate who is serving a long term of deprivation of liberty may also be granted such leave when it is considered to be particularly advantageous to his treatment."

Supplementary rules are set out in Section 59 of the Prison Regulations.

The general rule is that an inmate may be granted leave after having been deprived of his liberty for a period of at least four consecutive months or after having served at least one third of his sentence. Inmates serving sentences of 12-20 years' imprisonment may

be granted leave after having been deprived of their liberty for a period of four consecutive years. Leave may be granted only if there is reason to believe that the inmate will not commit a punishable act while on leave, that he will comply with the conditions stipulated, and that he will not otherwise abuse the leave.

As regards guarded leave, reference is made to Section 59.1 of the Regulations.

"Section 59.1 Guarded leave

When special reasons so indicate, an inmate may be granted guarded leave outside the institution, for example to visit relatives in connection with important family occasions, to receive treatment from a physician or dentist, to appear before a public authority, to consult a job placement counsellor, employer or probation officer, etc.

The director shall make decisions concerning guarded leave. The head administrator of the institution may grant leave in accordance with general guidelines laid down by the

director. Absence from the institution must not exceed the amount of time considered necessary for the purpose of the leave.

As regards transport etc., the provisions of Section 24 shall apply."

Administrative complaint

According to Section 28 of the Public Administration Act (Forvaltningsloven) of 10 February 1967, an individual may lodge a complaint with the superior administrative body against decisions.

Section 25 of the Prison Act provides as follows:

"Inmates have the right to send written applications or complaints to the competent authority.

If an inmate wishes to speak to a representative of the authority concerned, the institution shall so inform the authority.

Letters to the Ministry of Justice or the Central Prison Administration or to the Board of Supervisors of the institution are, if they are delivered in a sealed envelope, exempted from the provision of the second paragraph of Section 24."

Section 1 a of the Prison Act reiterates the following principle:

"The Public Administration Act is applicable to matters dealt with in pursuance of this Act where nothing else follows from the provisions of the second to the eighth paragraph or is laid down in accordance with these provisions or Section 7.

...

Complaints relating to decisions taken by the governor of an institution are heard by the Central Prison Administration. Decisions by the Central Prison Administration may be appealed to the King, but there is no appeal against decisions concerning complaints. The King may issue regulations governing the procedure to be followed when dealing with complaints.

The King and the Central Prison Administration may, of their own motion and notwithstanding the time-limits set out in the third paragraph of Section 35 of the Public Administration Act, alter decisions taken by subordinate agencies to which this Act gives authority, except decisions concerning disciplinary penalties and confiscation."

Court control

The Constitution of 17 May 1814 contains no explicit provision on the role of the courts in respect of the principle of judicial supremacy. According to unwritten constitutional principles, the courts are competent to control the public administration. This competence is exercised by the ordinary courts, which are empowered to rule on decisions taken by any administrative body, irrespective of its hierarchical status. There are no exceptions e.g. for the King in Council.

The courts may rule on the validity of regulations and of decisions defining the legal position of one or more persons.

Such review applies irrespective of the contents of the decision and covers prohibitions, injunctions, permissions and refusals.

The courts are competent to control whether the public administration has acted within the legal framework by which it is bound. The courts are to review the facts on which a decision is based. They may also review the interpretation of the legal provisions ("lovtolkning") and the application in concreto ("subsumsjonen"). As regards purely discretionary decisions, the courts may review the facts on which they are based and will also decide whether there has been an abuse of power. This is the case inter alia if the decision is based on extraneous considerations ("utenforliggende hensyn"), i.e. considerations promoting an aim which is outside the scope of the relevant Act. The courts may also consider whether the decision is manifestly unreasonable ("åpenbart urimelig", "vilkårlig").

COMPLAINTS

In his application of 21 December 1988 the applicant invokes Article 3 of the Convention. He maintains that the total duration of the confinement and the way in which he has been treated should be considered as a continuing violation of Article 3, aggravated by the time passing. He maintains that he has been subjected to extensive psychological pressures during his confinement which has taken place partly under extremely hard conditions. He also alleges that he has been treated differently from other prisoners.

Concerning the stays in the various prisons the applicant points out, in regard to his approximately seven weeks at police headquarters in Oslo, that the interrogations should be regarded as a sophisticated way of mental brain-washing aimed at breaking down his mental strength. The constant physical surveillance was a disproportionate attack on his personal integrity and an exaggeration of the security measures required.

As regards his stay at Drammen District Prison from 5 March 1984 to 29 July 1985 the applicant maintains that the solitary confinement lasting until 2 June 1985 constituted inhuman and degrading treatment.

As regards his stay at Ila from 29 July 1985 to 20 June 1986 the applicant in particular refers to the fact that he was placed in a closed section together with allegedly mentally retarded or violent persons. He maintains that it contravenes Article 3 to have been exposed to such mental hardships in a situation where, together with his lawyers, he tried to present legal points to the Supreme Court.

As regards his stay at Ullersmo from 20 June 1986 to 8 August 1988 the applicant refers to his period of confinement in the receiving ward and the fact that he was under very harsh surveillance, inter alia being handcuffed to a prison officer whenever he had to leave the prison premises. The applicant also refers to the fact that he was not allowed unguarded leaves of absence as from 19 January 1988 which would have been granted to other prisoners having served four years of their sentence.

As regards his present stay at Ila the applicant refers to the fact that he endures a heavy technical and physical surveillance and that he is still treated differently from other prisoners, in particular as regards unguarded leaves of absence.

In his observations on admissibility and merits of 5 April 1990 the applicant furthermore complains that the authorities' treatment of him and his wife amounts to a violation of Article 8 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 21 December 1988 and registered on 2 February 1989.

On 6 July 1989 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits of the application as submitted under Article 3 of the Convention.

The Government's observations were submitted on 10 November 1989. After two extensions of the time-limit the applicant submitted his observations in reply on 5 April 1990.

Further information and documents concerning the case were submitted on 5 April, 28 August 1990 and 5 February 1991 by the Government and on 7 June 1990 by the applicant.

Free legal aid was granted to the applicant by the Commission on 16 February 1990.

THE LAW

1. The applicant complains that his conditions of detention and treatment in prison constitute a breach of Article 3 (Art. 3) of the Convention which reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

a) First, the Commission recalls that it is not required to decide whether or not the facts submitted by an applicant disclose any appearance of a violation of the provisions referred to if, inter alia, the requirement under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies has not been complied with. In other words, under Article 26 (Art. 26) of the Convention, the Commission may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

As regards the period of detention on remand at Oslo police headquarters and Drammen District Prison the respondent Government argue that the applicant never challenged the decisions taken by the Oslo Court of Interrogation concerning this detention. They submit that these decisions constituted the legal basis for placing the applicant in detention on remand and for his conditions during that deprivation of liberty. The applicant never availed himself of the opportunity to appeal to the High Court and to the Appeals Committee of the Supreme Court. Therefore, the Government submit, the applicant has not fulfilled the requirement of Article 26 (Art. 26) as to the exhaustion of domestic remedies as far as his placement in these two institutions is concerned.

As regards the detention subsequent to his conviction the respondent Government submit that the applicant did not, until 20 February 1990, bring any of his numerous administrative complaints about his prison conditions before a court. The Government maintain that it follows from the principle of judicial supremacy that the courts are competent to control the public administration and, since the applicant did not avail himself of his right to address the Norwegian courts, this part of the application is also inadmissible for non-exhaustion of domestic remedies in accordance with Article 26 (Art. 26) of the Convention.

The applicant submits that the provisions of the Norwegian Criminal Procedure Act do not authorise the court, in regard to detention on remand, to review issues other than visits and

censorship. The elements of detention which constitute the applicant's allegations in this case, i.e. permanent surveillance, lack of training possibilities and of outdoor activities, detention in a roof prison etc., cannot be reviewed by an investigating court or a court of appeal.

Furthermore the applicant argues in respect of the detention subsequent to his conviction that, under the Norwegian constitutional system, judicial review of decisions taken by the prison authorities is not an effective legal remedy. The scope of judicial review does not empower the courts to order any

administrative authority to take a specific decision under circumstances as those at hand. The respondent Government have furthermore not been able to show that any judgment exists which demonstrates that the courts engage in an effective review of the conditions of confinement which might have made the present application superfluous. In addition the applicant submits that the decisive element in the present case lies in the fact that he was, and still is, faced with accumulating suffering which, taken as a whole, constitutes a violation of Article 3 (Art. 3).

Having regard to the observations of the parties on the question of exhaustion of domestic remedies, the Commission does not find it necessary to determine whether the applicant has fulfilled this condition because, even assuming this to be the case, the application is inadmissible for the following reasons.

b) As already indicated above, the applicant complains that his conditions of detention and treatment in prison constitute a breach of Article 3 (Art. 3) of the Convention.

The Commission recalls in the first place the interpretation of the concept of inhuman or degrading treatment by both the Commission and the European Court of Human Rights. The Commission has held in the Greek case (Comm. Report 5.11.69, Yearbook 12 p. 186) and in the case of Ireland v. the United Kingdom (Comm. Report 25.1.76, Eur. Court H.R., Series B no. 23-I, p. 388) that:

- the notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical;

- treatment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his own will or conscience.

However, as underlined by the European Court of Human Rights in the case of Ireland v. the United Kingdom,

"ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc." (Eur. Court H.R., judgment of 18 January 1978, Series A no. 25, p. 65, para. 162).

The further elements in Article 3 (Art. 3), namely inhuman and degrading punishment, have been considered by the Court in the Tyrer case (Eur. Court H.R., Tyrer judgment of 25 April 1978, Series A no. 26). The Court stated that "for a punishment to be 'degrading' and in breach of Article 3 (Art. 3), the humiliation or debasement involved must attain a particular level." (at p. 10, para. 30). Here again the assessment is relative, depending on the nature and context of the punishment itself and the manner and method of its execution. The Court further considered that "the suffering occasioned must attain a

particular level before a punishment can be classified as 'inhuman' within the meaning of Article 3 (Art. 3)".

Under Article 3 (Art. 3), the Commission has previously been confronted with a number of cases concerning prison conditions, including isolation of varying duration and severity (cf. inter alia No. 6038/73, Dec. 11.7.73, Collection 44 p. 115; No. 7854/77, Dec. 12.7.78, D.R. 12 p. 185; No. 8317/78, Dec. 15.5.80, D.R. 30 p. 44).

It has on other occasions stated that complete sensory isolation, coupled with total social isolation, may destroy the personality and it constitutes a form of treatment which cannot be justified by the requirements of security or for any other reason. It has, however, drawn a distinction between this kind of isolation and removal from association with other prisoners for security, disciplinary or protective reasons; it does not normally consider that this form of segregation from the prison community amounts to inhuman treatment or punishment (cf. No. 5310/71, Ireland v. the United Kingdom, Comm. Rep. 25.1.76, p. 379; Nos. 7572/76, 7586/76 and 7587/76, dec. 8.7.78, D.R. 14 p. 64 and No. 8317/78 mentioned above).

In making an assessment in the present case, the Commission has accordingly had regard to the duration of the measures, the objectives pursued, the particular conditions and stringency of the measures and the effects on the applicant (cf. also Kröcher & Möller v. Switzerland, Comm. Report 16.12.82, D.R. 34 p. 25).

As regards the question of duration the Commission recalls that the underlying reason in the present case is the fact that the applicant is serving a 20 year sentence for espionage. Such circumstances will necessarily affect the applicant's situation, in particular having regard to his background as a high ranking civil servant.

The prospects of serving a 20 year sentence may very well cause severe problems for the applicant and his family without this necessarily coming within the ambit of Article 3 (Art. 3) of the Convention. A right to be released on parole or to leaves of absence does not exist under the Convention, and should the applicant serve the total of his 20 year term this would not in itself raise an issue under Article 3 (Art. 3) of the Convention unless the conditions as such would amount to inhuman or degrading treatment within the meaning of this provision.

c) Having regard to these general aspects the Commission recalls that the applicant was arrested on 20 January 1984 and kept in detention on remand until 29 July 1985, first at Oslo police headquarters and subsequently at Drammen District Prison. During that period he was kept in solitary confinement until 2 June 1985, i.e. a period totalling approximately 1 year and 4 1/2 months. As regards the form of isolation and the restrictions to which the applicant was subjected the Commission refers to parts 1 and 2 of THE FACTS set out above.

It is true that a number of restrictions were imposed on the applicant as regards his mail and contacts with other persons. However, the Commission recalls that the applicant's criminal case concerned espionage involving very sensitive matters, necessitating elaborate investigations. The decisions to isolate the applicant and the other restrictions to which he was subjected with regard to visits and mail were therefore justified by the nature of the charges against him.

Bearing the aforementioned considerations in mind the Commission concludes that there were reasons to keep the applicant isolated. This cannot be considered as a complete sensory isolation as the applicant had contact with many persons, who were not only

persons of authority, and he had other means of contact with the outside world. The solitary confinement was not, therefore, of such severity as to constitute inhuman or degrading treatment in violation of Article 3 (Art. 3) of the Convention.

The applicant also maintains, however, that the way in which he was treated during this period was in breach of Article 3 (Art. 3). In particular he maintains that his personal integrity was offended and that he was subjected to sophisticated mental brain-washing and constant surveillance. The Government refute the applicant's allegations of mental brain-washing and submit that the security measures were necessary in the circumstances of the present case.

The Commission finds that, in view of the special character of his offences for which he was subsequently sentenced to 20 years' imprisonment, there was an obvious need for security measures and surveillance of the applicant, in particular in order to prevent his escape and in order to minimise the risk of the applicant inflicting harm on himself. In these circumstances, and having regard to the case-law mentioned above, the Commission does not find that the applicant, during his stay at Oslo police headquarters and at Drammen District Prison, was treated contrary to Article 3 (Art. 3) of the Convention.

d) As regards his first stay at Ila from 29 July 1985 to 20 June 1986 the applicant's complaints center around the fact that he was, in his opinion, placed together with mentally retarded inmates and violent psychotics.

He submits that he experienced several dangerous incidents of fist-fights and inmates trying to stab each other. Furthermore excrements were left on the floor of the toilet and some inmates ate their food with excrements all over their bodies.

The Government submit that the prison records at Ila do not reveal any violent incidents involving the applicant. They accept, however, that it cannot be ruled out that inmates in need of treatment have been placed in Section K. Finally, as regards the sanitary conditions, the Government submit that during the applicant's stay at Ila the prison records show that the only inmate who had problems controlling his bodily functions did not stay in Section K.

The Commission is in no position to evaluate the mental state of the inmates of Section K. It is clear, however, that the applicant, having been found guilty of serious crimes, was placed in a maximum security prison which also housed prisoners convicted of having committed murder, rape, assault and battery as well as other serious crimes. The Commission accepts that the applicant found the climate in such surroundings shocking, but applying the aforementioned criteria, it cannot find that his placement in Section K at Ila was as such contrary to Article 3 (Art. 3) of the Convention. Furthermore, although the applicant was subjected to the same prison regime as other inmates, the Commission finds it established that he received favourable treatment in some respects, for example as regards visits.

e) With regard to the applicant's stay at Ullersmo from 20 June 1986 to 8 August 1988 the Commission recalls that he was transferred to Ullersmo because escape plans had been found. The applicant submits that these plans had been provoked with the knowledge of the police, the prosecuting authorities and the Ministry of Justice, and that they were cultivated through provocateurs and used for a new official campaign aimed at scandalising and humiliating him and his family. Furthermore the applicant maintains that his placement in the receiving ward from 20 June 1986 until 23 January 1987 was inhuman treatment.

The Government contest the applicant's allegations concerning the escape plans and contend that the facts of the case show that the applicant's confinement in the receiving ward was not such as to raise any issue under Article 3 (Art. 3) of the Convention.

As already stated above, the Commission does not normally consider that removal from association with other prisoners for security, disciplinary or protective reasons would amount to inhuman treatment or punishment, and it has not found anything in the present case which would necessitate a deviation from this view. From the facts of the case the Commission in particular recalls that the applicant was allowed to be together with other inmates every day, received a substantial number of visits from his family and others, and participated in certain physical training programmes. Accordingly, having regard to the usual criteria applied in cases of confinement, i.e. the stringency of the measure, its duration and the objective pursued, the Commission finds that the applicant's treatment was not such as to show a violation of Article 3 (Art. 3) of the Convention.

The applicant has submitted a number of medical certificates indicating a deterioration of his mental health during his stay at Ullersmo. The Commission has not overlooked this evidence. Nor has it overlooked the fact that the applicant was not granted unguarded leaves of absence immediately after 19 January 1988 when he had served four years of his sentence. It is clear that serving his sentence caused the applicant problems also from the point of view of his mental state, but, having regard to the prison regime which the applicant necessarily had to endure, the Commission has not been able to establish that he was not looked after, from a medical point of view, as well as the prison conditions allowed. Furthermore a right to unguarded leave of absence is not as such guaranteed under the Convention, and the Commission does not find that refusals in this respect raise any issue under Article 3 (Art. 3) of the Convention, in particular in circumstances when a number of guarded leaves were granted, of which several were of a social character.

f) With regard to the applicant's present stay at Ila which commenced on 8 August 1988 the applicant complains of heavy technical and physical surveillance and of the fact that unguarded leaves of absence were not granted until 30 June 1990 despite several medical certificates recommending them.

The Government submit that except from the fact that the applicant was escorted by three instead of two prison officers when on guarded leave, he was subjected to the same regulations as other inmates. Furthermore the Government refer to the fact that Ila is a maximum security prison and to the consequences this entails as regards surveillance.

Having regard to the facts of the case as submitted by the parties, the Commission does not consider the general prison conditions to which the applicant is subjected to be contrary to Article 3 (Art. 3) of the Convention. It recalls that the question of unguarded leave does not raise any issue under this provision. Moreover, it notes that as from 30 June 1990 the applicant has been granted such leave on several occasions. Accordingly the applicant's present stay at Ila has not revealed any conditions which constitute inhuman or degrading treatment within the meaning of Article 3 (Art. 3) of the Convention.

g) Summing up, the Commission recalls that the applicant was found guilty of espionage by the competent courts and sentenced to 20 years' imprisonment which will necessarily affect his situation, in particular having regard to his background as a high ranking civil servant. The prospect of serving a 20 year prison sentence may very well cause severe problems for the applicant, but the Commission has not been able to establish that he was not or is not looked after in

general or from a medical point of view as well as prison conditions allowed and allow. Furthermore the Commission recalls that a right to release on parole or to leaves of absence is not guaranteed under the Convention. Should the applicant serve the whole of his 20 year term no issue under Article 3 (Art. 3) of the Convention would arise unless it could be established that the conditions of detention would amount to inhuman or degrading treatment within the meaning of this provision.

However, as set out above the Commission does not find that the applicant's case discloses any appearance of a violation of Article 3 (Art. 3) of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant in his observations on admissibility and merits of 5 April 1990 also complains that the authorities' treatment of him and his wife amounts to a violation of Article 8 (Art. 8) of the Convention. Leaving aside the questions of exhaustion of domestic remedies and the six months rule set out in Article 26 (Art. 26) of the Convention, the Commission finds that the facts of the present case do not disclose any interference with the applicant's right to respect for his family life which, in the circumstances of serving a 20 year prison sentence for espionage, was not justified for the reasons set out in Article 8 para. 2 (Art. 8-2) of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C.A. NØRGAARD)