AS TO THE ADMISSIBILITY OF

Application No. 14106/88
by Simon HAYWARD
against Sweden

The European Commission of Human Rights sitting in private on 6 December 1991, the following members being present:

MM.C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
G. SPERDUTI
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs.G. H. THUNE
SirBasil HALL
MM.F. MARTINEZ RUIZ
C.L. ROZAKIS
Mrs.J. LIDDY
MM.L. LOUCAIDES
J.-C. GEUS
A.V. ALMEIDA RIBEIRO
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 20 June 1988 by Simon Hayward against Sweden and registered on 9 August 1988 under file No. 14106/88;

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 3 January and 29 August 1990 and the observations submitted in reply by the applicant on 31 May and 12 November 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 United Kingdom citizen, born in 1955. He resides in London. Before the Commission the applicant is represented by Mr. Christopher Murray of Kingsley Napley, solicitors, London.

A. The particular facts of the case

On 13 March 1987 the applicant was arrested at Linköping, Sweden, being suspected of having committed certain drug offences contrary to

the Swedish Penal Code. On 17 July 1987, the indictment was served charging him with having committed two drug offences. At the trial, which lasted from 28 July to 3 August 1987, the applicant denied both charges and entered a plea of not guilty. On 10 August 1987, he was convicted in the Uppsala District Court (tingsrätten) of both charges and sentenced to serve a term of five years' imprisonment. On 11 November 1987, following hearings which took place between 29 September and 28 October 1987, the Svea Court of Appeal (Svea hovrätt) upheld the judgment. On 22 December 1987, the Supreme Court (Högsta domstolen) refused the applicant's request for leave to appeal against the judgment of the Court of Appeal.

Arrest and detention

In September 1986, in London, the applicant met his brother who was then resident in Ibiza. The latter invited the applicant to accompany him during his forthcoming holidays and to do some sailing. They flew to Ibiza in February 1987. During his stay in Ibiza the applicant agreed to drive his brother's Jaguar car to Sweden since an Englishman who lived there allegedly wanted to buy it. The applicant left for Sweden on 10 March 1987. He arrived at Helsingborg, Sweden, just before 6 p.m. on 13 March and passed through customs without any particular problems. Around 9.30 p.m. he arrived at Linköping where he stopped in front of the main railway station and waited for a friend, Mr. Forbes Mitchell, whom he had met in Ibiza. Upon his arrival Mr. Mitchell informed the applicant that they had to drive another forty kilometres but after driving a short while they were stopped by the police and arrested.

The applicant was apprehended by two police officers at 10.58 p.m. They immediately took him to the police station at Motala where they arrived at 11.35 p.m. The arrest was reported by telephone on 14 March 1987 at 1 a.m. to the district prosecutor at Uppsala, who from that moment was in charge of the preliminary investigation. A police officer interrogated the applicant for the first time on 14 March 1987 at 1.20 a.m. During this interrogation the applicant was informed that he was suspected of having committed aggravated drug offences. He denied that he was guilty of any offence. The district prosecutor was informed of the interrogation of the applicant and decided that night at 1.45 a.m. to detain the applicant provisionally.

On 14 March 1987 at 2.15 p.m., the applicant was interrogated again. According to the minutes the applicant was informed that he was suspected of aggravated drug offences. On 17 March 1987 the applicant was informed that great quantities of cannabis had been found the previous day in the car he had driven from Ibiza. The applicant denied any knowledge thereof.

On 18 March 1987, the Uppsala District Court appointed an English-speaking public defence consel for the applicant. The following day the prosecutor requested the applicant's detention on remand. The request arrived at the District Court on 20 March 1987, and the District Court held a hearing on 24 March 1987 following which the Court decided to detain the applicant on remand. He appealed against the decision to the Svea Court of Appeal. On 31 March 1987, however, the appeal was rejected. The applicant remained in detention on remand, in solitary confinement, until the end of his trial.

During 1987 the Swedish anti-drug police had carried out investigations concerning Mr. Forbes Mitchell, whom they suspected of being involved in smuggling cannabis from Ibiza to Sweden. Subsequent to his arrest on 13 March 1987, Mr. Mitchell pleaded guilty to the drug trafficking charges brought against him and he was sentenced to seven years' imprisonment on 18 June 1987.

Media coverage

As at the time of his arrest the applicant was an officer in the British army the case attracted media attention. On 22 March 1987, the arrest was made public in a television broadcast. On 24 March 1987, the prosecutor in charge of the case made the following statement in a television interview in English: "It is easier if I have his confession, but I do not need it."

The applicant submits that in an article appearing on 28 April 1987 in the national daily "Expressen" the prosecutor was quoted as saying that: (translation) "Both oral information and technical evidence have shown that he smuggled the drugs knowingly."

In another article in "Expressen" of 30 May 1987 in which the applicant's mother inter alia maintained that he was innocent, the prosecutor was quoted as saying that: (translation) "I believe him to be guilty and I will prove it at the trial."

In a further newspaper article of 24 July 1987 the prosecutor told the interviewer that: (translation) "... the captain knew very well what he was doing."

The Government deny that the prosecutor made the statements reported in the newspapers.

Access to solicitors

As mentioned above, the Uppsala District Court appointed a Swedish counsel for the applicant on 18 March 1987. Subsequent to a visit to the applicant of his mother and girlfriend on 26 March 1987, his mother retained his present representative to act on his behalf. The reason for this was that the facts of the case were, in the applicant's opinion, international in character, and in order to establish his innocence he considered it necessary to investigate matters and obtain evidence from sources outside Sweden. On several occasions the applicant's present representative was, however, refused direct access to the applicant by the prosecutor, who did not consider him to be a defence counsel within the meaning of the Swedish Code of Judicial Procedure (rättegångsbalken), and he was not allowed any oral or written communication until 22 July 1987, i.e. one week before the trial in the District Court commenced. No restrictions were imposed upon the applicant as regards access to his Swedish counsel.

The preliminary investigation

The preliminary investigation continued during the spring and summer of 1987 until the commencement of the trial on 28 July 1987. The applicant was interrogated as well as other persons suspected of being accessory to the offences. As regards the method used when interrogating the applicant, the following information has been provided by the Government.

The applicant would get a question in English. The person questioning him would write down the answers in Swedish. The applicant would then ask what had been written down. In case the applicant had any objections to that text, the interrogator would change the Swedish text.

The preliminary investigation records were successively communicated to the applicant, to such extent as could be done without jeopardising the investigation. The arrangement had been approved by the applicant's Swedish counsel by telephone.

A number of issues as regards the preliminary investigation gave rise to discussions between the prosecutor and the defence counsel:

On 4 May 1987, the applicant's counsel requested that the records of the interrogations of the applicant be translated into English. This

did not happen. The Government submit that the parties eventually agreed not to translate the preliminary investigation documents on the understanding that counsel could discuss the file with the applicant, if need be aided by an interpreter. The applicant denies having accepted any such agreement and submits that his request for a translation was rejected.

On 4 May 1987, the applicant's counsel also requested that Mr. Mitchell's girlfriend, P, who lived in Ibiza, be questioned concerning any possible involvement on her part and concerning a meeting between Mr. Mitchell and the applicant. The Government submit that in the summer of 1987 the prosecutor had received information that Interpol agents had visited Ibiza to make inquiries into the applicant's case. The Interpol agents were exposed to unpleasant attention at a bar, where they had asked certain questions, as well as at their hotel. For that reason, they left Ibiza. The Government submit that after having been informed by the prosecutor of the dangers that in his view might be involved in a visit to Ibiza, the applicant's defence counsel came to share the view that such a visit was not advisable.

The applicant denies that his counsel shared the prosecutor's view and rejects the suggestion of any danger in Ibiza.

It is clear, however, that P visited Mr. Mitchell in Sweden from 21 to 27 June 1987 and that an unsuccessful attempt was made by the police to question her. The applicant and his counsel were not informed of this visit or of the unsuccessful attempt to question P.

On 10 and 11 June 1987, the applicant was interviewed by two officers from the British National Drugs Intelligence Unit (NDIU), Detective Inspector Morgan and Detective Sergeant Moore. On 11 June 1987, Messrs. Morgan and Moore and Mr. Gunnar Larsen, the Scandinavian drug liaison officer attached to the Norwegian embassy in London, interviewed Mr. Mitchell and on 12 June 1987, Messrs. Morgan and Moore filed with the Swedish police a one-page report (Morgan- Moore report) in which they stated as follows:

"We have information in relation to the seizure of 50.5 kilos of cannabis resin made in Linköping, Sweden, on 13 March 1987, when (the applicant) was arrested.
...
3. (The applicant) had full knowledge that the drugs were concealed in the vehicle.
4. (The applicant) must have been paid £ 20,000 for providing this courier service for his brother... .
5. (The applicant) also became involved in this offence because of the "excitement" that it would provide.

On Thursday 11th June 1987 we spoke to Forbes Cay Mitchell, also arrested for this offence. Without being prompted in any way he fully corroborated the above information that we had previously acquired, before our visit to Sweden."

On 1 July 1987, the prosecutor informed the applicant's Swedish counsel that Scotland Yard had refused permission for the two NDIU officers to attend the hearing in Sweden to give evidence in relation to the report filed on 12 June. In a letter from Scotland Yard it was stated inter alia:

"On 12th June, in Sweden, these police officers had supplied a report which each signed, and I have subsequently reviewed the content. The officers are unable to vouch for the truth and accuracy of any of the information in the paragraphs marked 1. to 5. in the report. All the information within their knowledge would amount to hearsay evidence and this would be inadmissible in similar proceedings in an English criminal court.

I regret therefore that I am unable to accede to your request and the two police officers will not be permitted to give this evidence."

The final records of the preliminary investigation were completed on 15 July 1987, i.e. approximately four months after the applicant's arrest, and a copy was served on him. The records comprised twelve interrogations of the applicant, seven interviews with Mr. Mitchell, eight interviews with three other persons who were suspected of being accessories to the offences, one interview with the applicant's fiancée and interviews with eleven policemen who participated in the investigations. In addition they contained an account of technical examinations, various documents that had been obtained from Ibiza as well as verbatim records of telephone calls which had been tapped by the police in the course of their investigations. Finally, they contained a letter from the applicant's counsel with certain corrections in respect of the accounts given of four of the interrogations of the applicant.

On 17 July 1987, the indictment was served on the applicant whereby he was formally charged with:

1. deliberately importing, on 13 March 1987, 50.5 kilogrammes of cannabis into Sweden without notifying the proper authorities contrary to Section 3 of the Act (1960:418) Regarding Penalties for Goods Smuggling, and

2. during the period 10 to 13 March 1987, transporting 50.5 kilogrammes of cannabis from Ibiza, Spain, to Sweden, and, on 13 March 1987, being unlawfully in possession of and transporting in Sweden 50.5 kilogrammes of cannabis.

The District Court trial

The trial before the Uppsala District Court commenced on 28 July 1987. The Court comprised a legally trained judge and five lay assessors. At the start of the hearing the parties were provided the opportunity to state if there was any obstacle to holding the main hearing. Neither party contended that there was any such obstacle.

During the trial and at the request of the prosecutor the Court heard oral evidence from 8 witnesses including Mr. Mitchell and Mr. Gunnar Larsen, the Scandinavian drugs liaison officer attached to the Norwegian embassy in London. The prosecutor had also requested the hearing of Detective Sergeant Brian Moore and Detective Inspector David Morgan of Scotland Yard. However, as indicated above, they did not receive permission from their superiors to testify in the case.

At the applicant's request 6 further witnesses were heard.

Mr. Larsen was heard as a witness on 29 July 1987. He informed the Court that he had received knowledge of the case on 24 March 1987 by means of a telex from Interpol. Thereafter he contacted Scotland Yard for verification of the information received. Scotland Yard had received information from persons not wishing to reveal their identity and from persons who, for fear of reprisals, did not wish to be identified. Mr. Larsen gave evidence that he, Mr. Moore and Mr. Morgan subsequently met with an informer who revealed, inter alia, that the applicant was fully compliant with what he was involved in, that the applicant knew where the drugs were hidden in the car and was due to indicate the hiding place when he arrived at the destination. The informer also stated that the remuneration for the transportation was 20,000 pounds. Mr. Larsen considered that the information provided by the informer tallied with other information coming into Scotland Yard. Mr. Larsen told the Court that the informer in question was himself a criminal who had provided information to the British police in other

cases relating to drugs. In these cases the information had been 100% correct. Mr. Larsen gave two reasons for not divulging the name of the informer: first, the security of the informer's life and second, his own security as well as that of his family.

The applicant's counsel requested that the Court should enjoin Mr. Larsen under pain of a fine or custody to reveal his source. In a decision on 29 July the Court found that Mr. Larsen had valid reasons not to answer the question, and consequently rejected counsel's request.

After Mr. Larsen had been heard, counsel requested that his statements be rejected as evidence. As a basis for his contention he invoked that the testimony was based on second-hand information the source of which had not been divulged and that consequently the Court had no possibility of evaluating the evidence. For these reasons this evidence was not, in counsel's opinion, compatible with the requirements of a fair trial laid down in Article 6 of the European Convention on Human Rights.

In a decision of 30 July 1987, the Court found that there was no reason to reject Mr. Larsen's testimony, since the evidence in question had already been taken and the grounds invoked by counsel could not, under Swedish law, form a basis for rejecting the evidence.

During the trial, the prosecutor also wished to present the Morgan-Moore report. Counsel requested that the report be rejected as evidence since it constituted written testimony and consequently was not admissible as evidence under Swedish law. The Court found, by a decision of 3 August 1987, that the fact that Mr. Morgan and Mr. Moore had been prohibited by their superiors from coming to Sweden to give evidence was a special circumstance which could make the report admissible as evidence. The Court consequently dismissed counsel's request and allowed the report as evidence.

The trial came to an end on 3 August 1987 and judgment was rendered on 10 August 1987 when the Court, after an evaluation of all the oral evidence and written material produced, found the applicant guilty of the charges brought against him and sentenced him to five years' imprisonment. Among the reasons for this finding was the evidence given by Mr. Mitchell and Mr. Larsen. The Court held that Mr. Mitchell had given an account which was serious for the applicant and that credence should be given to his information. In relation to Mr. Larsen's evidence the operative part of the Court's judgment reads as follows:

(translation)

"The question is what value should be attached to this testimony in so far as it relates to the information given by the informer. It is clear that the information does not carry the same weight as if the informer had been known to the Court and could have been cross-examined in the proceedings under oath. The Court would then have had the occasion to assess the witness's credibility, to put questions to the witness concerning the source and the reliability of the information given about (the applicant), etc. The fact that this was not possible does not, however, strip the information which was given of all its value as evidence. In a trial, there can prove to be circumstances which mean that even information which emerges in the manner now at issue shall be attributed some importance in respect of the evidence.

To start with, concerning the reliability of the informer, it appears that the latter has been known to Scotland Yard for some time and that the information provided by the informer in earlier cases has been wholly correct. A probable motive for the informer's action has also been stated. With regard to what has

thus been revealed concerning the informer's person, there are no grounds for assuming other than that the informer is reliable per se.

This does not preclude the possibility that the statements, awareness or non-awareness, might perhaps be false. It can, however, be said that the information given by the informer according to Larsen tallies with other information which came into Scotland Yard. Larsen has also stated that Mitchell, after the informer had been heard, gave a spontaneous account in front of Larsen and the policemen Morgan and Moore which was in accordance with the information given by the informer. The District Court finds therefore, with regard to what has been said above, that the information emerging from the informer's account as given by Larsen and which tallies with what Morgan and Moore have stated in their memorandum, should be given no small importance in terms of evidence."

One of the five lay assessors dissented. He stated, inter alia, that the statements by the informer set out in Larsen's evidence represented "... second-hand or third-hand information from a source which has not been more closely identified. It is therefore not possible to assess satisfactorily their credibility. The statements were also made at such a late stage of the investigation that the possibility cannot be ruled out that essential information contained in the investigation was publicly known in Great Britain due to the attention paid to the case in the mass media. It is therefore not possible to give Larsen's testimony full force in terms of evidence, nor the weight which the public prosecutor would claim."

The Court of Appeal proceedings

On 18 August 1987, the applicant appealed against the judgment of the District Court to the Svea Court of Appeal. In his reasons for the appeal the applicant claimed that the witnesses brought against him had contradicted themselves and that no credence could be attached to their statements. Accordingly it had not been proven that he was guilty of the charges brought against him. Furthermore, with reference to Chapter 23, Section 19, of the Code of Judicial Procedure, the applicant referred to shortcomings in the preliminary investigation as he had already on 4 May 1987 requested the hearing of a witness in Ibiza, namely the girlfriend of Mr. Mitchell. However, the police and the prosecution had not obtained any information from this important witness. Finally the applicant requested that the police be instructed to continue the investigation of the case and to obtain the statement of the witness in question.

On 24 August 1987, the prosecutor informed the applicant that he would make a renewed attempt to interview Mr. Mitchell's girlfriend, P, and that he would obtain information from a police officer in Ibiza. A visit to Ibiza was planned for this purpose.

On 2 September 1987, a Swedish police officer had a 35 minutes' telephone conversation with P who was in Ibiza. An assistant to the applicant's counsel was present and also put questions to P.

The prosecutor and two policemen visited Ibiza from 6 to 11 September 1987 to complete the preliminary investigation. The applicant's counsel was in Ibiza from 5 to 9 September. The Spanish police made an attempt to see P but it failed. The Swedish visitors were shown the two villas at the disposal of the applicant's brother. Several places, which the applicant had visited, were shown. The applicant's counsel had expressed a wish to be present during the discussions with the Spanish police officers but was not allowed to participate.

On 18 September 1987, the Court of Appeal decided to defer the beginning of the main hearing to 29 September because of a request from

the applicant's counsel who wanted certain investigations to be made in the Netherlands.

On 25 September 1987 the prosecutor submitted the minutes concerning the complementary preliminary investigation to the Court of Appeal. The minutes contained the verbatim records of the telephone conversation with P of 2 September, records of interviews and documents concerning the investigations carried out in Ibiza with the police officers involved as well as with Mr. Mitchell and the applicant. The Court sent a copy of the minutes to the applicant's counsel the same day.

The appeal was heard by the Court of Appeal from 29 September to 28 October 1987. The Court of Appeal consisted of three legally qualified judges as well as two lay judges. When the main hearing started, on 29 September at 9.35 a.m., counsel remarked that the applicant had not been served with the minutes concerning the complementary preliminary investigation, which inter alia contained information obtained in Ibiza. For this reason, the Court adjourned the case until 10.45 a.m. when the parties were asked whether there were any obstacles to holding the main hearing. Neither party contended that there was any such obstacle.

In the course of the main proceedings in the Court of Appeal the testimonies of 18 witnesses were heard at the request of the prosecutor and the applicant, including Mr. Larsen and Mr. Mitchell. Furthermore the Court of Appeal had issued a summons to the policemen Morgan and Moore of Scotland Yard to present themselves as witnesses during the main proceedings. By letter of 29 September 1987, however, their superior had announced that they were not permitted to present themselves as witnesses before the Court of Appeal and that, for this reason, the witness summons had not been served upon them. In view of this information the Court of Appeal, as had happened in the District Court, allowed the prosecutor to cite as evidence the Morgan-Moore report of 12 June 1987 in accordance with Chapter 35, Section 14 of the Code of Judicial Procedure.

On 1 October 1987, counsel requested that the main hearing be adjourned in order to carry out complementary preliminary investigations in respect of the accuracy of the information provided by Mr. Mitchell. The Court of Appeal decided on the same day that the main hearing was to continue until 7 October and then be adjourned for a maximum of 15 days, in order to carry out the complementary preliminary investigation requested.

On 15 October 1987, the above-mentioned complementary preliminary investigation was accounted for in Court. No significant new information had appeared regarding the reliability of Mr. Mitchell.

On 11 November 1987, the Court of Appeal upheld the judgment of the District Court.

In its judgment the Court stated inter alia:

(translation)

"The question in this case is whether (the applicant) when he carried out the shipment, was aware that drugs were present in the car. The question of guilt must be judged in the light of (the applicant's) certified impeccable past.

In examining this case, it is important to determine the extent to which Christopher Hayward (the applicant's brother) has been involved in dealing with drugs.

Mitchell has admitted the actions for which he has been prosecuted. His account has generally been substantiated by

information given by Åsa Hoffman, Lennart Viryo and Joakim Andersén. The information which Mitchell provided about Christopher Hayward and (the applicant) does not appear to have the purpose of diminishing Mitchell's own involvement or of shifting the responsibility which Mitchell himself accepted. Mitchell has pinpointed Christopher Hayward as one of the men behind the drug dealings, but, with regard to (the applicant), he has not been prepared to allege that, in making the shipment, (the applicant) was aware of the drugs present in the vehicle, but merely that Christopher Hayward provided information stating that (the applicant) was willing to carry out courier work for the sake of excitement, in order to earn some money and because 'he could get away with it'. With regard to this and to other circumstances, the Court of Appeal finds that Mitchell's information in this respect deserves to be given credibility in this case.

As a result of Mitchell's and other defendants' information, the Court of Appeal finds it clear that Christopher Hayward, as well as other persons in Ibiza, was engaged in drug trafficking and had forwarded the drugs consignment in the Jaguar from Ibiza to Sweden with his brother as driver. Nothing has emerged to suggest that Christopher Hayward was acting in this situation under threat.

Nothing has emerged which would be able to explain why Christopher Hayward should dupe his brother into undertaking a journey of this kind, which, in the event of discovery, would entail for (the applicant) enormous consequences as a result of his position in society. Inter alia, with regard to the fact that Mitchell must have assumed that (the applicant) was aware of the presence of the drugs consignment in the vehicle and that Mitchell had not been told by Christopher Hayward either that his brother should be kept uninformed, it can be assumed that the purpose of the journey would sooner or later be revealed to (the applicant) with the consequences which this in different ways would entail. For this reason alone, the Court of Appeal finds that there is a high degree of probability that (the applicant) had knowledge of the drugs consignment in the car.

In addition, the circumstances surrounding the declared theft of the Jaguar in Ibiza appear to be peculiar.

Generally speaking, it must be regarded as somewhat unlikely that a drugs courier, undertaking such a long and demanding transportation as that performed by (the applicant), should be unaware that the car was laden with a large quantity of drugs. The Jaguar's value has been stated in this case to be between 50,000 and 70,000 SEK. The purchase price in Morocco of 50 Kg cannabis has been quoted at a substantially greater amount; a figure of up to 400,000 - 500,000 SEK has been mentioned. If the Jaguar, during the journey from Ibiza to Sweden, was in any way to become unusable, there must have been a strong chance that (the applicant), if he was unaware of the drugs consignment, would abandon the car,which was insured, and proceed directly to England. The drugs consignment could then easily have been lost.

It would also appear rather unlikely that an uninformed (applicant) would undertake such a rapid and testing journey through Europe simply in order to spend some time delivering a vehicle for sale in Sweden. The stretch of the journey from Narbonne, from where (the applicant) started on the morning of 12 March, to Linköping where he arrived on the evening of the 13 March, amounts to more than 2,200 km.

(The applicant's) allegations that he was due to deliver the car for sale to Mitchell is barely credible with regard, inter alia,

to the fact that (the applicant), who had experience of the importation of cars from the Continent to England, did not call for any customs treatment whatsoever at the Swedish border control, that he did not know anything about the selling price etc., that registration documents for the vehicle were missing and that Mitchell, who demonstrably was due to leave Sweden two days later, categorically denied all knowledge of any car purchase.

(The applicant's) credibility is further diminished by the fact that after three months interrogation he altered his original account and admitted that it contained some untruths, such as the statement that he had been invited by Mitchell to go skiing in Sweden. The Court of Appeal finds it additionally surprising that (the applicant) incorrectly told his girl friend that he would be travelling back in order to serve for a while longer in Northern Ireland, instead of telling her that he would be helping his brother by driving Christopher's car from Ibiza to England, which, according to his statement, was his intention at the time he separated from her.

What emerged about (the applicant's) journey via Andorra is, in the opinion of the Court of Appeal, not of such a nature that it might affect an assessment of the extent to which (the applicant) was aware that drugs were present in the car.

As far as the special screwdriver is concerned which was discovered on (the applicant) and which had been purchased after he had passed through the Swedish Customs Control, (the applicant) has maintained the following. Already during the journey through France, he was irritated by the fact that the driver's seat was loose and was moving about as he was driving. He therefore attempted on a few occasions to buy a suitable screwdriver but without success. As a result of the witness hearing with Bertil Olsson and of what emerged upon inspection of the Jaguar, the Court of Appeal deduces that it is possible to tighten up three of the four screws which hold the driver's seat using virtually any normal screwdriver whatsoever, without having to detach the seat, an action which would be sufficient to secure the driver's seat. The investigation relating to this case shows that the drugs consignment cannot be removed from its caches within the car's door-sill cavities without the front seats being removed from the car. This dismantling operation appears easier and quicker to do with the screwdriver which (the applicant) purchased in Åstorp on the evening of 13 March. The fact that (the applicant) went to great lengths to obtain this screwdriver in Sweden substantially supports the view that he was aware that there were drugs hidden in the vehicle and was aware of what would suitably be required in order to unload them.

(The applicant's) actions after he arrived at the railway station in Linköping appear to be somewhat remarkable and suggest that he was awaiting further instructions. The contact between him and Mitchell was very short and contained, in practical terms, nothing but new instructions. It seems most peculiar that (the applicant), if he believed that he was about to deliver the car to Mitchell, then to be discharged from his brother's assignment, should, without protest and after just a few moments discussion with Mitchell, continue the journey for an additional 40 km on to a designated garage in the countryside.

What finally implicates (the applicant) is what, according to Åke Swahn's testimony, took place on the side-road between national highways 36 and 50 outside Motala. Swahn's testimony clearly show that (the applicant) consciously carried out a manoeuvre to establish whether he was being followed. This cannot be explained in any way other than that (the applicant) was aware that he was

carrying drugs within the car. (His) explanations concerning the course of events testified to by Swahn, viz. first that he never stopped as Swahn stated, secondly that he - if he did stop - was acting unconsciously as a result of his experiences from Northern Ireland, do not alter the Court of Appeal's assessment in this regard.

With regard to what thus and otherwise occurred, the Court of Appeal finds that it is established beyond any reasonable doubt that (the applicant) deliberately carried out the transportation of the drugs. This conclusion is also supported by what Larsen testified and by what Moore and Morgan stated in their report."

The five-year sentence was confirmed.

Supreme Court proceedings

On 8 December 1987, the applicant applied to the Supreme Court for leave to appeal against the judgment of the Court of Appeal. He claimed that the requirements regarding evidence warranting a verdict of guilt were not fulfilled, that there were shortcomings in the police investigation of the case, in particular since the police and the prosecutor had not, as requested by his counsel, interrogated Mr. Mitchell's girlfriend, P. Finally the applicant also relied on the great difficulties confronting him in adducing evidence of his own innocence.

The applicant submitted in particular that the verdict of guilt was based on hearsay evidence, provided by a co-defendant. The judgment was furthermore based on mere inferences drawn from the applicant's behaviour in various situations. It was important for the application of the law that the Supreme Court should provide guidance as to the force required of evidence in circumstances like those of the present case.

On 22 December 1987, the Supreme Court refused the applicant's request for leave to appeal.

Correspondence

During his detention on remand the applicant received and sent about thirty letters each week. These were scrutinised in accordance with the applicable restrictions for remand prisoners.

On 11 November 1987, when the applicant's conviction had been upheld by the Court of Appeal, the police handed to the applicant a number of letters sent to him by members of his family, by friends and professional colleagues. These were letters which the police considered should not be forwarded to the applicant before the end of the proceedings. They had been withheld up to seven months from the applicant. These were letters from:

a. the applicant's former commanding officer, dated 19 May 1987,

b. Suzanne Brook, a friend of the applicant, dated 30 March 1987 and 30 April 1987,

c. Philipp Huntley, a friend of the applicant, dated 24 April 1987,

d. Christopher Brook, a friend of the applicant, dated 14 April 1987.

The applicant submits that the contents of these letters were entirely personal in nature. The Government submit that the letters mentioned under a. and c. were interpreted as advising the applicant

to keep silent. As for the letters from Miss Brook, they mention a person of the name of Christopher and were withheld on the assumption that this meant Christopher Hayward, the applicant's brother, who was wanted by the police and about whom the prosecutor did not wish the applicant to receive any information. The letter from Mr. Christopher Brook was kept because he was considered to be Christopher Hayward.

According to the Government the applicant was informed that the letters had been seized. The applicant denies this.

B. Relevant domestic law

a. The preliminary investigation

According to Chapter 23, Section 1, of the Swedish Code of Judicial Procedure, a preliminary investigation shall be initiated as soon as there is cause to believe that an offence has been committed. The purpose of the investigation is, according to Section 2, to make inquiries concerning the person who may reasonably be suspected of an offence and concerning the existence of sufficient cause for prosecuting him. Furthermore, the case shall be prepared so that the evidence can be brought forward at the main hearing in an uninterrupted sequence.

Section 3 contains rules about the conduct of the preliminary investigation. The main rule is that the prosecutor shall direct the investigation as soon as someone can reasonably be suspected of the offence. In such cases, the prosecutor generally requests the assistance of the police.

According to Section 4, not only circumstances pointing to the guilt of the suspect, but also those favourable to him shall be considered during the preliminary investigation. The investigation should be conducted so that no person is unnecessarily exposed to suspicion or put to unnecessary expense or inconvenience.

Section 18 contains rules about the suspect's right to information about the investigation. The first two paragraphs read as follows:

(translation)

"When the preliminary investigation has proceeded to the point at which a person is reasonably suspected of the offence, that person, when interviewed, shall be informed of the suspicion. In so far as it is possible without detriment to the investigation, he and his defence counsel shall be successively given an opportunity to be informed of what has taken place in the investigation. They are furthermore entitled to specify the inquiry they consider desirable and to state anything else they regard as required. Notification to this effect shall be given or dispatched to the suspect and his defence counsel and they shall be allowed reasonable time for consideration. Prosecution may not be directed until this has been done.

If the suspect requests that a person be examined or that any other inquiry be made, his request shall be complied with if it can be assumed that the measure would be of importance to the investigation. If the request is denied, the reasons therefor shall be stated."

If the investigating authority, although it has concluded the investigation it considers necessary, denies a request pursuant to Section 18, second paragraph, or if the suspect thinks that there is another defect in the investigation, the suspect may, according to Section 19, notify the court thereof. When a notice is filed with it, the court shall consider and rule upon the matter as soon as possible. If there is sufficient cause for it, the court may examine the suspect

or any other person, or take any other measure it deems appropriate.

Under Chapter 45, Section 11, and Chapter 51, Section 11, of the Code of Judicial Procedure the court may enjoin the prosecutor to complement the preliminary investigation if this is considered necessary for the main hearing to be completed in an uninterrupted sequence.

According to Chapter 23, Section 21, a record shall be kept of matters of importance for the inquiry. As soon as prosecution has been decided upon, the suspect or his defence counsel shall receive, on request, a copy of the record. If a public defence counsel has been appointed for the suspect, a copy shall be delivered or sent to him without special request.

b. The suspect and his defence

Rules about the suspect and his defence are found in Chapter 21 of the Swedish Code of Judicial Procedure. According to Section 3 the suspect may, in preparing and conducting his defence, be assisted by a defence counsel. In some circumstances a public defence counsel shall be appointed by the court at the suspect's request. A public defence counsel is paid out of public funds.

The right of the defence counsel to access to a person who is provisionally detained or detained on remand is regulated in Section 9. The first paragraph of this section reads as follows:

(translation)

"Defence counsel for a person who is provisionally detained or detained on remand may not be denied access to him. Defence counsel may speak in private with the person who is provisionally detained or detained on remand; however, counsel other than a public defence counsel may do so only with the consent of the investigating authority or the prosecutor, or when the court finds a private conference may take place without detriment to the investigation or to the order or security of the place of detention."

c. Evidence

There are two fundamental principles in Swedish law concerning evidence: free presentation of evidence and free evaluation of evidence.

The principle of free presentation of evidence means that everything that has any value as evidence can be presented to the court. There are no rules stating that certain types of evidence are inadmissible because they may be dangerously misleading. There are some restrictions concerning certain types of written evidence (see below).

The other fundamental principle regarding evidence under Swedish law is the principle of free evaluation of evidence. This principle is expressed in Chapter 35, Section 1, of the Code of Judicial Procedure, which provides as follows:

(translation)

"The court shall, after careful consideration of all that has occurred, decide what has been proved in the case."

This means that the court has to take into consideration everything that has happened during the trial when evaluating the evidence before it. This includes not only what the parties have presented to the court as evidence, but also circumstances, as for example the behaviour of witnesses in court, are elements which can be

taken into consideration when the court assesses the evidence.

As mentioned above, there are restrictions concerning certain types of written evidence. These are laid down in Chapter 35, Section 14, of the Code of Judicial Procedure. The wording of this Section, at the time of the trial challenged by the applicant, was as follows:

(translation)

"Neither a written statement made by a person by reason of pending or contemplated proceedings, nor a recorded account of a statement given to a prosecutor or police authority, or otherwise made out of court by reason of pending or contemplated proceedings, may be admitted as evidence unless admission of the statement or recorded account is specifically authorised by law, or the court finds admission justified on the basis of special circumstances."

d. The treatment of detained persons

Rules on the treatment of persons who are provisionally detained or detained on remand are found in the 1976 Act Pertaining to the Treatment of Persons Provisionally Detained or Detained on Remand (lagen 1976:371 om behandlingen av häktade och anhållna), referred to below as "the 1976 Act".

Section 1 of the 1976 Act provides that a person who is detained on remand because he is suspected of an offence may not be made subject to more far-reaching encroachments on his liberty than required by the aims of the detention on remand and by the requirements of good order and security.

Section 9 states that a person detained on remand may send or receive letters if this can be done without risk from the point of view of security and, in the case of a person who is detained because of suspicion of having committed an offence, without danger that evidence is removed or that the investigation is otherwise made more difficult. If a person detained on remand refuses to receive a letter or to send a letter on condition that its contents are scrutinised by the authorities, the letter is to be kept by the authorities, but it may not be opened without the consent of the detained person.

e. Certain other rules of procedure pertaining to this case

Under Chapter 46, Section 1, and Chapter 51, Section 15, of the Code of Judicial Procedure the court shall ascertain whether there is any obstacle to an immediate and full hearing and final disposal of the case. If that is found to be the case, the court shall adjourn the main hearing to another day.

According to the same provisions, the court shall ascertain that the action in a criminal case is fully developed and that irrelevant matters are not presented. The court shall attempt to remedy any unclear or incomplete statement made in the course of the proceedings.

In principle, all decisions taken by a prosecutor in the context of his handling of a criminal case may be appealed to superior prosecutors. There are certain exceptions to this principle. These exceptions concern decisions which may immediately be brought before a court, or decisions which indicate that the matter settled by the decision will be brought before a court. Examples of decisions of this kind are decisions to prosecute, decisions to seize something and decisions not to grant a request by a suspect to have certain measures of investigation carried out. Although in principle appeals to a superior prosecutor concerning decisions of this kind should be rejected on the ground that they may be brought before a court, they may exceptionally be accepted for consideration because the appealed

decision is manifestly wrong or because the general interest requires that a coherent practice is established in a certain respect.

A decision by a court with respect to a request under Chapter 23, Section 19, of the Code of Judicial Procedure to complement the preliminary investigation may be appealed separately if no case is pending before a court. Otherwise appeal is possible only in connection with an appeal against the judgment on the merits. This follows from Chapter 49, Sections 4 and 8, of the Code of Judicial Procedure.

Decisions by a court under Chapter 45, Section 11, Chapter 46, Sections 1 and 2, as well as Chapter 35, Section 14, of the Code of Judicial Procedure concerning written statements may be appealed against only together with an appeal against the judgment on the merits.

The Supreme Court will only deal with a case where leave to appeal is granted, cf. Chapter 54, Section 9, of the Code of Judicial Procedure.

COMPLAINTS

The applicant invokes Article 5 para. 3, Article 6 paras. 1-3 and Article 8 of the Convention.

As regards Article 5 para. 3 of the Convention the applicant complains that the prosecutor did not act as a judge or other officer authorised by law to exercise judicial power as he could not be considered to be independent of the executive and of the parties. The applicant maintains that this is supported by the fact that the prosecutor at a very early stage of the investigation made statements showing that he found the applicant guilty and because of the prosecutor's failure to investigate matters in the applicant's favour. Under Article 5 para. 3 of the Convention the applicant also complains of the fact that he was not brought before the Uppsala District Court until 11 days and some 13 hours after his arrest.

As regards Article 6 para. 1 of the Convention the applicant submits that he did not get a fair trial. In particular he maintains that he was subjected to a series of acts calculated by the prosecutor and the police authorities to damage his morale, that he was unnecessarily and arbitrarily held in solitary confinement, that he was treated by the prosecutor, in public and in private, and by the police authorities as guilty of the offence with which he was subsequently charged, that he was not properly informed of the nature and cause of the accusation against him, that he was not granted adequate time and facilities for the preparation of his defence, that he was not allowed to defend himself through legal assistance of his own choosing, that he was not allowed to examine or challenge two material witnesses who gave evidence against him and that, in general, he was denied the right of equality of arms.

In addition to the more general aspect of a fair trial the applicant specifically invokes Article 6 para. 2 of the Convention, maintaining that he was not presumed innocent until proved guilty according to law in that the prosecutor on several occasions, in particular during a television interview of 24 March 1987 and in three newspaper articles of 28 April, 30 May and 24 July 1987, expressed the clear opinion that he considered the applicant guilty of the charges brought against him.

As regards Article 6 para. 3 (a) of the Convention the applicant maintains that he was not informed promptly of the nature and cause of the accusation against him. He was arrested on 13 March 1987 but the prosecutor did not make the evidence formally available to him until 15 July 1987. The applicant maintains that in view of the fact that the great bulk of the evidence was in Swedish he was not properly informed.

Furthermore he refers to the fact that he was not informed in a language which he understood, as he neither speaks nor understands Swedish. The evidence against him, which ran to 186 pages, was virtually all in Swedish and the indictment of 17 July 1987 was also in Swedish.

The applicant also maintains that he did not have adequate time and facilities for the preparation of his defence and he invokes in this respect Article 6 para. 3 (b) of the Convention. He points out in particular that he was only given access to the evidence upon which he was charged and to his case-file on 15 July 1987, less than two weeks prior to the date on which the trial commenced. Furthermore, he was held in solitary confinement, denied access to his English lawyers, denied access to files compiled by the prosecutor during his investigations, most significantly the file relating to the investigation carried out in Ibiza in September 1987, and the prosecutor carried out an inadequate, incomplete and one-sided investigation.

Under Article 6 para. 3 (c) of the Convention the applicant points out that his case, to a very considerable extent, involved matters arising outside Sweden, notably in Spain and in the United Kingdom. This was the reason for instructing his present representative to act on his behalf in regard to those investigations he wished to undertake in order to prepare his defence. The applicant maintains that the Convention establishes his right to obtain the services of his present representative and to communicate with him in order that he might fully assist in the preparation of his defence. He was, however, denied access to his English counsel and denied any communication with him from the date of his arrest until 22 July 1987.

Finally, under Article 6 para. 3 (d) of the Convention the applicant maintains that the District Court and the Court of Appeal both relied extensively on evidence relating to information provided by an anonymous informant as well as the so-called Morgan-Moore report of 12 June 1987. Neither the informant's information nor that of Messrs. Morgan and Moore was given under oath and the applicant had no opportunity to challenge directly the evidence provided thereby.

Under Article 8 of the Convention the applicant submits that the police and the prison authorities interfered with at least five letters sent to him by relatives or friends. As each of these letters was personal in nature the applicant submits that this interference with his right to respect for his correspondence was not necessary in a democratic society and thus in violation of Article 8 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 June 1988 and registered on 9 August 1988.

On 4 September 1989 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit, by 17 November 1989, written observations on the admissibility and merits of the application.

After an extension of the time-limit the Government's observations were submitted on 3 January 1990. After three extensions of the time-limit the applicant's observations in reply were submitted on 31 May 1990.

Additional observations on admissibility and merits were submitted by the respondent Government on 29 August 1990. Additional observations in reply were submitted by the applicant on 12 November 1990.

Legal aid under the Addendum to the Commission's Rules of Procedure was granted to the applicant on 13 July 1990.

THE LAW

1. The applicant complains that the prosecutor who initially detained him on remand on 14 March 1987 did not act as a judge or other officer authorised by law to exercise judicial power as he could not be considered to be independent of the executive and of the parties. The applicant furthermore complains of the fact that he was not brought before a court until 11 days and some 13 hours after his arrest. He invokes Article 5 para. 3 (Art. 5-3) of the Convention.

Article 5 para. 3 (Art. 5-3) provides that "everyone arrested or detained ... shall be brought promptly before a judge or other officer authorised by law to exercise judicial power ...".

However, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the Commission finds that the situation of which the applicant complains, i.e. his detention without a court order, ceased on 24 March 1987, when his detention on remand was ordered by the Uppsala District Court. Consequently, the date of 24 March 1987 should be regarded as the starting point for the six months period provided for in Article 26 (Art. 26) of the Convention. The application, however, was submitted to the Commission on 20 June 1988, that is, more than six months after the date of this decision. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. The applicant also complains that in numerous respects during the course of the criminal proceedings against him he was denied a fair trial. He invokes in this regard Article 6 paras. 1-3 (Art. 6-1, 6-2, 6-3) of the Convention which read:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the

accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

a. Under Article 6 para. 2 (Art. 6-2) the applicant complains that he was not presumed innocent until proved guilty according to law in that the prosecutor on several occasions, on television and in newspaper articles, expressed the clear opinion that he considered the applicant guilty of the charges brought against him.

The Government contend that the applicant did not exhaust domestic remedies as he did not allege that the prosecutor had disqualified himself. Furthermore, the six month time-limit should be calculated from the act or the decision in this respect. Finally the Government contend that the prosecutor was wrongly quoted in the newspapers and that he did not, in the television interview, express anything but a suspicion.

The Commission does not find it necessary to examine the Government's objections with reference to Article 26 (Art. 26) of the Convention. It has previously held that Article 6 para. 2 (Art. 6-2) may be violated by public officials if they declare that somebody is responsible for criminal acts without a court having found so. This does not mean, however, that the authorities may not inform the public about criminal investigations. They do not violate Article 6 para. 2 (Art. 6-2) if they state that a suspicion exists, that people have been arrested, that they have confessed etc. (cf. No. 8361/78, Dec. 17.12.81, D.R. 27 p. 37).

In the present case the Commission notes that the Government deny that the prosecutor made the statements mentioned in the newspapers. The Commission does not find it necessary to investigate this further. It finds in any event that the statements, as reported in the press, only reflected the public prosecutor's opinion that the evidence was sufficient to have the applicant convicted by the court. In these circumstances they did not offend against the presumption of innocence guaranteed under Article 6 para. 2 (Art. 6-2) of the Convention (cf. also No. 7986/77, Dec. 3.10.78, D.R. 13 p. 73).

b.Under Article 6 para. 3 (a) (Art. 6-3-a) of the Convention the applicant complains that he was not informed promptly of the nature and cause of the accusation against him, in particular since all evidence was not available to him until 4 months after his arrest and since virtually all documents were in Swedish.

The Government contend that under the Convention there are no particular formal requirements as to the way in which the information required under Article 6 para. 3 (a) (Art. 6-3-a) is to be conveyed to an accused. Furthermore, they refer to the fact that the applicant was promptly informed of the accusations against him in connection with his arrest and detention from 13 to 17 March 1987. In this respect the Government point out in particular that the service of the indictment on an accused could not constitute the basis for the appreciation as to whether the information under Article 6 para. 3 (a) (Art. 6-3-a) was

given promptly.

The Commission recalls that Article 6 para. 3 (a) (Art. 6-3-a) does not specify that the relevant information should be given in writing or translated in written form for a foreign defendant. For the purposes of Article 6 para. 3 (a) (Art. 6-3-a) it is sufficient that the applicant, through police interrogations or preliminary court hearings, has been made aware in sufficient detail of the accusations against him (cf. Eur. Court H.R., Kamasinski judgment of 19 December 1989, Series A no. 168, pp. 36-37, paras. 79-81).

In the present case the Commission recalls that the applicant was arrested at 10.58 p.m. on 13 March 1987. He was interrogated at 1.20 a.m. the following day and informed of the suspicion against him. On 17 March 1987 he was informed that great quantities of cannabis had been found the previous day in the car he had driven from Ibiza and on 24 March 1987 he was detained on remand on the basis of the suspicion against him. It is uncontested that the applicant was able to understand and follow the investigations either due to the fact that they were conducted in English or through the assistance of an interpreter. In these circumstances the Commission considers that the applicant was informed in a manner which is not at variance with Article 6 para. 3 (a) (Art. 6-3-a) of the Convention.

c. The applicant also complains that he did not have adequate time and facilities to prepare his defence. He relies in this respect on Article 6 para. 3 (b) (Art. 6-3-b) of the Convention. He submits that he did not receive the case-file until approximately two weeks before the trial commenced, that he was placed in solitary confinement, that part of the file relating to investigations carried out in Ibiza was denied him and that all material was in Swedish.

The Government contend that the information obtained during the preliminary investigations was successively conveyed to the applicant and to his defence counsel who spoke English and, where appropriate, could make use of an interpreter. The complete file for the District Court hearing was received by the applicant on 15 July 1987, i.e. approximately two weeks before the trial commenced. Furthermore the Government contend that the applicant had the opportunity to ask for a deferral of the trial but he chose not to do so when his trial commenced.

The Commission recalls that Article 6 para. 3 (b) (Art. 6-3-b) entails two elements of a proper defence, i.e. the question of facilities and the question of time. As regards the former the Commission recalls that an English speaking public defence counsel with appropriate knowledge of Swedish law was placed at the applicant's disposal as from 18 March 1987, and that he could freely communicate with counsel, if necessary with the assistance of an interpreter. Furthermore, the Commission finds it established that documents were successively conveyed to the applicant and his counsel although it is true that the "case-file" was not conveyed until 15 July 1987. Nevertheless, it is clear from the applicant's own submissions that, together with counsel, he prepared the defence intensively at least as from 29 June 1987 which is approximately one month before the commencement of the trial. Finally, the Commission does not find that the fact that the applicant was placed in solitary confinement had any unacceptable influence on the preparation of his case.

As regards the question of available facilities one of the applicant's main grievances derived from his inability to understand or speak Swedish. As already indicated, the applicant's counsel spoke English and there is no allegation that the Swedish authorities refused the assistance of an interpreter where this has proved necessary. Nevertheless there remains the fact that a number of documents were not translated.

Articles 6 para. 3 (b) and (e) (Art. 6-3-b, 6-3-e) of the Convention, however, do not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the courts his version of the events (cf. the above-mentioned Kamasinski judgment, p. 35, para. 74). The Commission finds that this requirement was fulfilled in this case. In addition to the assistance of counsel and, where necessary, of an interpreter, the Commission recalls that the applicant states in his observations of 9 November 1990 that "a great deal of the preliminary investigation was already in English and did not need to be translated, ...". In these circumstances the Commission has not been able to establish that translations or means of translation were lacking to such an extent that the applicant did not have at his disposal the necessary facilities for a proper defence.

As regards the question of adequate time the Commission finds that this question cannot be determined in abstracto, but only in relation to the circumstances of the concrete case (cf No. 7909/74, Dec. 12.10.78, D.R. 15 p. 160). It recalls that the applicant complains that he did not receive the case-file until approximately two weeks before the trial commenced. However, the Commission also recalls that the pre-trial period lasted about 4 1/2 months during which documents became successively available to the applicant. The Commission accepts as appropriate in the circumstances of the present case the period of two weeks between the service of the indictment and the date of the trial since in any event all the evidence had to be produced and examined during the trial. Finally, the Commission notes that the applicant has not specified in what way the alleged lack of time was detrimental to his defence. For this reason it finds that, as a whole, the time-period available to the applicant was sufficient for allowing him to prepare his defence.

d. The applicant finally complains that during the pre-trial period he was denied access to his English lawyer. He invokes in this respect Article 6 para. 3 (c) (Art. 6-3-c) of the Convention.

It is not disputed by the Government that the applicant was refused access to his English lawyer until 22 July 1987. They maintain, however, that the Convention guarantees a right to only one defence counsel who, under Article 6 (Art. 6) of the Convention, must be understood as being the person actually participating in the trial. Furthermore, they contend that the applicant did not exhaust domestic remedies as he did not endeavour to have his public defence counsel replaced or otherwise express discontent with him.

The Commission does not agree with the respondent Government on these points. According to the Commission's case-law the right to legal assistance of one's own choice is not limited to only one counsel, but the right to several counsel may be limited for example by the State's right to make the appearance of lawyers before the courts subject to regulations and the obligation on defence counsel not to transgress certain principles of professional ethics (cf. Nos. 7572/76, 7586/76 and 7587/76, Dec. 8.7.78, D.R. 14 p. 64, at p. 114). Furthermore, the Commission finds that it was not the applicant's intention to replace his Swedish public defence counsel with his English lawyer.

In the present case the Commission cannot but conclude that the applicant was satisfied with and wanted to retain his Swedish counsel to whom he had unlimited access. Secondly, the applicant has not requested that his English lawyer take part directly in the criminal proceedings in Sweden, but he rather wanted to obtain his assistance in matters arising outside Sweden. Thirdly, the applicant has not shown that he was prevented from requesting such assistance, albeit through his Swedish counsel, or that he did not receive whatever assistance he might have deemed useful. In these circumstances the Commission finds that the

applicant had at his disposal the legal assistance of his choice within the meaning of Article 6 para. 3 (c) (Art. 6-3-c) of the Convention.

e. As regards the actual trial before the District Court and the Court of Appeal the applicant complains that his conviction was based to a decisive extent on information provided by an anonymous informer as well as the Morgan-Moore report of 12 June 1987. He maintains that he had no opportunity to challenge directly the evidence provided thereby and that this amounts to a violation of Article 6 para. 3 (d) (Art. 6-3-d) of the Convention.

The Government contend that the applicant did not exhaust domestic remedies as he did not appeal against the District Court's decisions of 29 July, 30 July and 3 August 1987 concerning the evidence in question. Furthermore, they point out that the applicant failed to voice any objection against the use of this evidence in the Court of Appeal on 5 and 7 October 1987, and that any decision taken by the Court of Appeal could have been appealed against to the Supreme Court. Finally, the Government refer to the difficulties in fighting organised crime and in handling evidence emanating from police informers. They submit that the evidence in question did not constitute the exclusive or even the main basis for the conviction of the applicant and that the courts were fully aware of its secondary importance.

The applicant maintains that he has exhausted all domestic remedies in this respect since he appealed to the Court of Appeal and to the Supreme Court. The evidence in question could only have been appealed against in this way. Furthermore, he submits that the principle of free presentation of evidence is a normal procedural aspect of the Swedish legal system and therefore unappealable.

The Commission does not find it necessary to examine the questions concerning exhaustion of domestic remedies. It recalls that the admissibility of evidence is primarily a matter for regulation by national law. As a rule it is for the national courts to assess the evidence before them. The Commission's task is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (cf. for example Eur. Court H.R., Kostovski judment of 20 November 1989, Series A no. 166).

The Commission finds that all the evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument (cf. Eur. Court H.R., Barberá, Messegué and Jabardo judgment of 6 December 1988, Series A no 146, p. 34, para. 78). This does not mean, however, that the statement of a witness must always be made in court, if it is to be admitted in evidence, as this might in some circumstances prove impossible.

The Commission does not find that the principle adopted by Sweden as regards the free evaluation of evidence as such runs counter to Article 6 para. 3 (d) (Art. 6-3-d) of the Convention, and hearing Mr. Larsen as a witness does not therefore disclose any appearance of a violation of this provision. Nevertheless, the Commission has not overlooked that Mr. Larsen's testimony was based on information he had received from an anonymous police informer and it would not exclude, for the purposes of the present case, that the use of such information could raise an issue under Article 6 (Art. 6) of the Convention as it was to some extent taken into account by the courts. Furthermore, as regards the Morgan-Moore report the question arises whether the use of it as documentary evidence complied with the requirements of a fair trial.

The Commission finds that the information obtained by Mr. Larsen through his informer, and the Morgan-Moore report, was far from being the only evidence in the case. It was also clear to the courts that this evidence could not be considered to be reliable first-hand information. Furthermore, the Commission finds that the applicant's conviction was not based to any decisive extent on this evidence. In particular it

recalls that in the course of the main proceedings in the Court of Appeal the testimony of 18 witnesses were heard at the request of the prosecutor and the applicant and it is clear from the judgment that the applicant's conviction was based on this testimony. Nothing has emerged which could give rise to any misgivings as regards the fairness of the applicant's trial or his right to a proper defence in this respect. In addition, the Commission notes that, as a matter of fact, the Court of Appeal reached its conclusion without reference to Mr. Larsen's evidence or to the Morgan-Moore report, but only subsequently noted that its conclusion was supported by it. In these circumstances the Commission does not find the fact that the Court of Appeal did not exclude this evidence could lead to the conclusion that the applicant did not get a fair trial within the meaning of Article 6 (Art. 6) of the Convention.

Summing up, the Commission recalls that the guarantees in paragraphs 2 and 3 of Article 6 (Art. 6-2, 6-3) of the Convention are specific aspects of the right to a fair trial set forth in paragraph 1. The Commission has considered the particular aspects and incidents invoked by the applicant and has found that these did not assume such importance as to constitute a decisive factor in the general appraisal of the trial. In addition an examination of the conformity of the trial as a whole with the rules laid down in Article 6 (Art. 6) of the Convention has not disclosed any appearance of a violation of this provision either. 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.

3. Under Article 8 (Art. 8) of the Convention the applicant complains that his right to respect for his correspondence was violated in that the police and prison authorities interfered with at least five letters sent to him by relatives or friends. The applicant submits that each of these letters was personal in nature and the authorities' interference cannot therefore be considered necessary in a democratic society.

The Government maintain that the decisions concerning the applicant's mail were taken more than six months prior to the filing of his application with the Commission. Furthermore, they submit that any interference with his mail was in accordance with law and a control was vital due to the fact that the applicant was detained on remand inter alia in order to prevent the investigations from being jeopardised. The Government maintain that in such circumstances the national authorities should have considerable leeway in deciding whether an interference is necessary.

The Commission considers that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case it recalls that the interference with the right to respect for the correspondence complained of took place during the applicant's detention on remand, and that he received the letters in question on 11 November 1987, subsequent to his conviction by the Court of Appeal. The Commission finds that the question of receiving or sending mail was not a matter which affected the applicant's trial for which reason the decision of the Supreme Court of 22 December 1987 refusing leave to appeal cannot be taken into consideration for calculating the six month time-limit set out in Article 26 (Art. 26) of the Convention. The Commission finds that 11 November 1987 was the date of "the final decision" regarding the subject of this particular complaint, whereas the application was submitted to the Commission on 20 June 1988, that is, more than six months after the date of this "decision". Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) 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)