AS TO THE ADMISSIBILITY OF

Application No. 25338/94
by A.R.
against Denmark

The European Commission of Human Rights (Second Chamber) sitting in private on 28 February 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 13 December 1993 by A.R. against Denmark and registered on 28 September 1994 under file No. 25338/94;

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

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Swedish citizen, born in 1948. He resides at Lund, Sweden.

In connection with certain investigations concerning drug trafficking the Danish police received information on the basis of which they obtained, on 30 October 1990, an arrest warrant against the applicant as being suspected of drug trafficking contrary to section 191 of the Danish Penal Code. At the same time the police submitted, through the Copenhagen City Court (Københavns Byret), a request to the Swedish authorities for the applicant's arrest and extradition to Denmark.

The applicant was arrested in Sweden on 12 November 1990 and was extradited to Denmark on 14 November 1990. On 15 November 1990 he was detained on remand in solitary confinement by the Copenhagen City Court on suspicion of having participated in drug trafficking involving several kilos of amphetamines.

The ongoing police investigations continued and involved several suspects and activities in other countries. The applicant's detention on remand in solitary confinement was prolonged on 3 and

17 December 1990 and on 14 and 28 January 1991. On 5 February 1991 he was released and on 27 March 1991 the State Prosecutor (Statsadvokaten) decided not to pursue the charges against the applicant.

On 7 May, 4 June and 15 July 1991 the applicant submitted requests for compensation for alleged unwarranted deprivation of liberty. On 22 January 1992 the State Prosecutor rejected the requests maintaining that the applicant's own behaviour had caused his continuing detention on remand.

Pursuant to Chapter 93a of the Administration of Justice Act (retsplejeloven) the applicant then requested the question of compensation to be brought before the courts. The case was heard in the Copenhagen City Court on 18 December 1992. The applicant claimed a total of 339,213 DKK in compensation for pecuniary and non-pecuniary damage caused by his detention on remand from 12 november 1990 until 5 February 1991. By judgment of the same day the applicant's claims were rejected by the Court which stated as follows:

(translation)

"Following an evaluation of the available evidence (the applicant) had certain telephone conversations which were tapped and which gave reason for the suspicion of criminal activities.

Having regard to the fact that (the applicant) submitted untrustworthy and to some extent varying explanations about the contents of these conversations the Court finds that (he) has (himself) caused the deprivation of liberty in question, cf. section 1018a subsection 3 of the Administration of Justice Act and that (his) request for compensation shall therefore be rejected."

The judgment was upheld by the High Court of Eastern Denmark (Østre Landsret) on 26 October 1993. Leave to appeal to the Supreme Court (Højesteret) was refused on 17 June 1994.

COMPLAINTS

The applicant complains that his detention on remand in solitary confinement was unfounded and unacceptable as no evidence existed which could justify the charges against him. Furthermore, he requests compensation for this unwarranted deprivation of liberty. The applicant invokes in this respect Article 5 paras. 4 and 5 of the Convention.

The applicant also complains of a violation of Article 6 para. 2 of the Convention maintaining that he had not committed any criminal offence.

THE LAW

1. The Commission considers that the applicant complains in substance of the fact that he was refused compensation for his detention on remand after the criminal proceedings had been discontinued. The applicant invokes inter alia Article 5 para. 5 (Art. 5-5) of the Convention. However, under this provision the right to compensation for any material or moral damage sustained as a result of a detention is conditional on a breach of one of the other paragraphs of Article 5. It follows that the Commission cannot consider the applicant's claim exclusively based on Article 5 para. 5 (Art. 5-5) unless a breach of Article 5 paras. 1 to 4 (Art. 5-1, 5-2, 5-3, 5-4) has been established (cf. for example No. 6821/74, Dec. 5.7.76, D.R. 6, p. 65).

The Commission has accordingly first examined whether the applicant's detention was at variance with Article 5 paras. 1 to 4

(Art. 5-1, 5-2, 5-3, 5-4) of the Convention. In this respect the Commission considers that the applicant was detained between November 1990 and February 1991 in conformity with Article 5 para. 1 (c) (Art. 5-1-c) of the Convention, i.e. the lawful detention effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence. Furthermore, the Commission has found no facts which would indicate that the applicant's arrest and detention were at variance with Article 5 paras. 2 or 3 (Art. 5-2, 5-3) of the Convention. Finally, as regards the applicant's reference to Article 5 para. 4 (Art. 5-4) of the Convention the Commission recalls that the lawfulness of the applicant's detention in Denmark was examined by a court within 24 hours of his arrival there and re-examined on 3 and 17 December 1990 and on 14 and 28 January 1991. In these circumstances the Commission considers that the examination of the facts of the case does not disclose any appearance of a breach of Article 5 (Art. 5) of the Convention. Thus the question of the applicability of Article 5 para. 5 (Art. 5-5) does not arise (cf. No. 7950/77, Dec. 4.3.80, D.R. 19, p. 213).

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 also complains that the refusal to award him compensation violates Article 6 para. 2 (Art. 6-2) of the Convention which reads as follows:

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

The Commission recalls, however, that neither this provision nor any other provision of the Convention gives a person "charged with a criminal offence" a right to compensation for lawful detention on remand where proceedings taken against him are discontinued. The refusal complained of by the applicant accordingly does not in itself offend the presumption of innocence (cf. for example Eur. Court H.R., Minelli judgment of 25 March 1983, Series A no. 62, p. 17, paras. 34-35).

Nevertheless, a decision whereby compensation for detention on remand is refused following the termination of the proceedings may raise an issue under Article 6 para. 2 (Art. 6-2) if the supporting reasoning amounts in substance to a determination of the accused's guilt (cf. for example Eur. Court H.R., Englert judgment of 25 August 1987, Series A no. 123-B, pp. 54-55, para. 37).

In the present case, however, the Commission considers that the courts confined themselves in substance to noting the existence of a reasonable suspicion that the applicant had been involved in criminal activity. They described a state of suspicion and not a finding of guilt. In these circumstances the Commission finds no appearance of a violation of the right to be presumed innocent as guaranteed by Article 6 para. 2 (Art. 6-2) 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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)