AS TO THE ADMISSIBILITY OF

Application No. 33527/96
by Mirosław BARANOWSKI
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

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 25 January 1996 by Mirosław BARANOWSKI against Sweden and registered on 25 October 1996 under file No. 33527/96;

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 applicant, a Polish citizen born in 1965, resides in Gdynia, Poland. He is at present serving a prison sentence in Sweden.

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

On 31 May 1995, arriving by ferry from Gdansk, Poland, the applicant, driving a car, and K.B., driving a lorry, were stopped at the customs check at the ferry berth in Oxelösund, Sweden. More than 14 kilos of amphetamine were found in the lorry. The applicant and K.B. were detained on remand.

The applicant was questioned by the police on several occasions, inter alia on 6, 11 and 12 July 1995. On the latter occasion, the applicant was assisted by a Polish interpreter. The records of the previous interviews were translated into Polish and the applicant declared that he wished to make no alterations or additions to the records. Further, he stated that there was no need of a defence counsel at the interview. The applicant was asked several factual questions but refused to answer most of them.

At an unspecified date a defence counsel was appointed for the applicant.

On 17 August 1995 the applicant, assisted by an interpreter, was again questioned by the police. He declared that he was not interested in reading the transcript of the interview.

On 1 September 1995 the applicant was granted access to the case-file. It appears that he examined the file in the presence of his defence counsel. Allegedly, the applicant unsuccessfully requested the police to question certain witnesses. On 6 September 1995 the investigation was finalised.

On 13, 15 and 18 September 1995 the trial before the District Court (tingsrätten) of Nyköping took place. The applicant and K.B. were heard. The applicant was assisted by his defence counsel. At the request of the public prosecutor, evidence was taken from two customs officers. Apparently, no witnesses had been proposed by the defence.

By judgment of 27 September 1995, the applicant was convicted of an aggravated narcotics offence (grovt narkotikabrott) and of an attempt to aggravated smuggling of goods (grov varusmuggling). He was sentenced to ten years' imprisonment to be followed by expulsion. The applicant appealed to the Svea Court of Appeal (Svea hovrätt).

On 2 October 1995 the applicant requested the District Prosecutor in Norrköping to take evidence from customs officers in Oxelösund who had talked to him before he was notified of the suspicions against him. Allegedly, they would verify that the applicant had been calm and composed before he was told that he was suspected of the narcotics offences. On an unspecified date in November 1995 the prosecutor apparently informed the applicant's counsel that none of the customs officers recalled the events in question.

The Court of Appeal held hearings in the case on 14, 16, 17 and 20 November 1995. Again, the applicant and K.B. were heard. The court also heard three customs officers, including the two officers who had appeared before the District Court. The applicant claims that, on 17 November, his counsel unsuccessfully requested that evidence be taken from other customs officers, apparently the officers referred to in his request of 2 October to the District Prosecutor.

On 29 November 1995 the Court of Appeal upheld the District Court's judgment.

On 28 December 1995 the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

COMPLAINTS

The applicant complains that he did not have a fair hearing. In particular, he claims that the police officers questioning him prepared false records of the interviews, that the courts were not impartial and that the District Court failed to take his statements into account. He also claims that he was found guilty on the basis of false testimony given by K.B. Furthermore, he maintains that he did not have adequate time to prepare his defence as, allegedly, the public prosecutor was allowed to introduce additional documentary evidence during the appellate hearing. Finally, he complains that his requests for additional witnesses to be called were rejected. He invokes Article 6 paras. 1, 2 and 3 (b) and (d) of the Convention.

THE LAW

The applicant complains that he did not have a fair hearing, that he was found guilty on the basis of false testimony, that he did not have adequate time to prepare his defence and that his requests for additional witnesses to be called were rejected. He invokes Article 6 paras. 1, 2 and 3 (b) and (d) of the Convention which, in relevant parts, read as follows:

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

...

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:

...

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

...

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;

..."

The Commission considers that there is nothing in the file to show that the courts were not impartial or that police officers prepared false records of the interviews with the applicant. In this connection, the Commission notes that the applicant wished to make no alterations or additions to the records of the interviews of 6 and 11 July 1995 and that he was not interested in reading the transcript of the interview of 17 August 1995. Also the allegation that the District Court failed to take his statements into account is, in the Commission's view, unsubstantiated. Furthermore, it appears that this complaint, as well as the complaint that he was convicted on false testimony, rather concerns the evaluation of facts and evidence, an issue which is left to the domestic courts to resolve.

The Commission further finds that the applicant's submissions fail to substantiate that the public prosecutor introduced additional evidence during the hearing before the Court of Appeal. Moreover, there is no evidence that the applicant or his counsel complained of such an action to the appellate court or the Supreme Court or that they requested the appellate hearing to be adjourned in order for them to study new evidence.

As regards the request for additional witnesses to be called, the Commission recalls that the admissibility of evidence is primarily governed by the rules of domestic law. Article 6 of the Convention does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the domestic courts to decide whether it is necessary or advisable to hear a witness (cf. Eur. Court HR, Bricmont v. Belgium judgment of 7 July 1989, Series A no. 158, p. 31, para. 89). In the present case, the requested additional witnesses apparently did not recall the events on which they were supposed to give evidence. Having regard to this and to the fact that other witnesses gave evidence about the customs check on 31 May 1995, the Court of Appeal was entitled to think that the additional witnesses were unnecessary.

It follows that the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	J.-C. GEUS
Secretary	President
to the Second Chamber	of the Second Chamber