CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 56529/00
by Eie ENHORN
against Sweden

The European Court of Human Rights (Fourth Section), sitting on 10 December 2002 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr A. PASTOR RIDRUEJO,
Mrs E. PALM,
Mr M. FISCHBACH,
Mr J. CASADEVALL,
Mr S. PAVLOVSCHI, *judges*,
and Mrs F. ELENS-PASSOS, *Deputy Section Registrar*,

Having regard to the above application introduced on 3 April 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Eie Enhorn, is a Swedish national, born in 1947. His whereabouts is unknown. He is represented before the Court by Ms Eva Hagstrom, a lawyer practising in Stockholm. The respondent Government are represented by their Agent, Mrs Eva Jagander, the Ministry for Foreign Affairs.

A. The circumstances of the case

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

In 1994 it was discovered that the applicant, who is a homosexual, was infected with the HIV virus and that he had transmitted the virus to a 19 year old man, with whom the applicant had his first sexual contact in 1990.

In this context, on 1 September 1994 a county medical officer (*smittskyddsläkaren*) issued the following instructions to the applicant pursuant to the 1988 Infectious Diseases Act (*smittskyddslagen*; hereinafter called "the 1988 Act").

> "[the applicant] was not allowed to have sexual intercourse without first informing his partner about his HIV infection. He was required to use a condom. He was to abstain from consuming such an amount of alcohol that his judgment would thereby be impaired and others put at risk of being infected with HIV. If the applicant was to have a physical examination, an operation, a vaccination, a blood-test or was bleeding for some reason, he was obliged to tell the relevant medical staff about his infection. Also, he was to inform his dentist [about it]. Moreover, the applicant was prohibited from giving blood and donating organs or sperm. Finally, he was to revisit his consulting physician and keep up appointments set up by the county medical officer."

It appears to be in dispute whether the instructions were included in the applicant's medical record as prescribed by section 16 of the 1988 Act.

The applicant kept three appointments with the county medical officer in September 1994 and one in November 1994. Also, he received two home-visits by the county medical officer. He failed to appear as summoned five times during October and November 1994.

On 2 February 1995 the county medical officer petitioned the County Administrative Court (*länsrätten*) for a court order that the applicant be taken into compulsory isolation in a hospital for up to three months pursuant to section 38 of the 1988 Act.

Before the court the applicant stated *inter alia:*

> "subsequent to learning about his HIV infection he had hardly had any sexual relationships. Henceforward he would only have sexual relations with other HIV infected persons. The applicant did not wish to visit the county medical officer or a psychiatrist, but finding his communication with his consulting physician satisfying he intended to pay the latter monthly visits."

The county medical officer stated among other things:

> " the applicant may not presently be sexually active, but history has shown that when the opportunity offers he is likely to have sexual relationships, preferably with younger men and without thinking of the consequences. [The applicant] closes his eyes to his situation, he does not want to change his conduct and he twists reality in such a way that he is never to blame for anything. In order to alter [the applicant's] behaviour it is necessary that he consult a psychiatrist. Having regard to his [resistance thereto], the risk of him spreading the disease is obvious."

A statement of 16 February 1995 was submitted to the County Administrative Court by a deputy chief physician and specialist in psychiatry, SA, who had met the applicant twice at the psychiatric ward at the infection clinic. He found *inter alia*:

> "Having learnt that he was HIV positive, the applicant reacted with a high level of anxiety, which he attempted alleviating with alcohol. He has maintained that he drinks three strong beers at night in order to be able to sleep. He has had periods of extensive [alcohol] abuse as a consequence of learning that he was infected with HIV but also when he lost his job. [The applicant's] lack of social contacts and his feeling of being an outsider in combination with a possible abuse of alcohol could increase the risk of destructive sexual relations."

By judgment of 16 February 1995, finding that the applicant had failed to comply with the measures prescribed by the county medical officer, which aimed at preventing the applicant from spreading the HIV infection, the County Administrative Court ordered that the applicant be compulsory isolated for up to three months pursuant to section 38 of the 1988 Act.

The order took effect immediately, but the applicant failed to report to the hospital, for which reason the police brought him there on 16 March 1995.

It appears that the order, and subsequently others issued by the County Administrative Court were upheld on appeal by the Administrative Court of Appeal (*kammarrätten*), thus constantly prolonging the compulsory confinement of the applicant by periods of six months at the time.

While being isolated the applicant had an opportunity to be outdoors every day together with members of the hospital staff, but not on his own. Also, he was able to accompany staff members on different activities outside the hospital grounds.

The applicant absconded from the hospital several times, first on 25 April 1995. The police, whom he had contacted voluntarily, returned him to the hospital on 11 June 1995. On 27 September 1995 he ran away again and was at large until the police found him on 28 May 1996. The applicant absconded for a third time on 6 November 1996 but returned of his own accord on 16 November 1996. He ran away for the fourth time on 26 February 1997 and was not returned until 26 February 1999.

During the period from 26 February until 2 March 1999 the applicant was detained in his room.

On 14 April 1999 the county medical officer petitioned the County Administrative Court anew for a continuation of the compulsory isolation. At a court hearing held in camera on 20 April 1999, the applicant explained amongst other things:

> "... before 1994 he had had 10 or 12 sexual relationships per year. His contacts were partly old acquaintances, partly new ones, whom he met in parks and so on. The boy, who was fifteen years old when they met, took the initiative both emotionally and sexually. Today [the applicant] realises that he infected the boy, which he finds very regrettable. A relative with psychiatric problems with whom [the applicant] had had a longer sexual relationship was also the initiator. Being on the run from 1997 until 1999 he had had no sexual relationships. He had taken precautions against spreading the disease and, having had to visit a physician twice during the escape period, on both occasions he had informed them about his HIV infection. Mostly he kept to himself. From October 1997 until June 1998 and from August 1998 until February 1999 he had lived at a farm hostel, and during the periods in between, when the hostel was full, he had camped. He had spent his time shopping, cooking, watching TV, spending money on games and drinking beers. He drank approximately six strong beers a week and never got drunk. He dreamt of living on his own in an apartment supporting himself on a sickness allowance. He had lost all sexual desire and in the future he would have to decline all possible sexual relationships. If he was to be exempted from compulsory isolation he would follow the instructions issued by the county medical officer. "

The owner of the above farm hostel was heard as witness on the applicant's behalf. He stated *inter alia*:

> "The applicant, under a cover name, had stayed at his farm hostel from October 1997 until June 1998 and from August 1998 until January 1999. He had talked briefly with the applicant almost every day during those periods. The applicant did not bother anybody and did not form any personal relationships. The applicant used to go shopping once a day, usually for beers, and [the witness] would estimate that the applicant drank between four and six cans of beers every day... The applicant went to Stockholm or Norrköping on a few occasions in order to deal with money matters...However, in Norrköping he primarily went to the liquor store... He could hardly imagine that the applicant had had any sexual relationships while living at the hostel..."

Also, on the applicant's behalf an opinion of 16 April 1999 was submitted procured by chief physician, PH, regarding the applicant's alcohol consumption. Having gone through various laboratory tests performed since 31 July 1995 in order to check the applicant's liver he found no divergent result. The latest laboratory test of 18 March 1999 indicated that the applicant had a healthy liver.

It was noted that subsequent to his return the applicant had taken up contact with a chief physician and specialist in psychiatry, CG, who was not connected to the hospital.

Before the court a statement was submitted by consulting psychiatric chief physician, PN, connected to the special care facility at the hospital where the applicant was admitted. After the applicant's involuntary return PN had attempted to establish contact with him three times, but in vain. He claimed that on the latest occasion in March 1999 the applicant had made a

lunge at him. In PN's view the applicant had not made any positive progress since 10 October 1996, the date of PN's latest official opinion regarding the applicant's condition, in which he *inter alia* made the following assessment:

> "the applicant suffered from a paranoid personality disorder and from alcohol abuse. He was considered to be completely void of a sens of being ill and also lacked awareness. The combination of a sexual orientation towards younger men and a possible alcohol related neuro-psychological functional impairment with from time to time a probably paranoid personality disorder, close to psychosis, and previous dangerous behaviour from the infection-spreading viewpoint was deemed disadvantageous. The chances of coming to terms with or limiting a continuous risk of the infection being spread by means of a prolonged placement in isolation in accordance with the Act were deemed - all facts considered - not yet to have been completely exhausted."

Also submitted was a statement of 8 April 1999 by a psychologist at the special care facility at the hospital, BS, who had met the applicant once. BS found that the applicant was intellectually above average and that he appeared immature and fragile and showed signs of being suspicious and distrustful.

The county medical officer, who was heard before the court, expressed amongst other thing:

> "During the last two years being on the run, the applicant sought medical treatment twice and it has been established that both times he informed of his HIV virus [as opposed to the period of absconding between September 1995 and May 1996 during which the applicant three times failed to inform medical staff about his virus]. Moreover, [the applicant] has [finally] accepted that he infected the young man, with whom he had a long lasting relationship as from the beginning of the 1990s, thus accepting that it was not the other way around. Also, he has agreed to sign a care-plan and to consult two physicians of his own choice...These circumstances suggest the beginning of an improvement in the applicant's attitude towards treatment. Nevertheless, it has not been established that [the applicant] has materially changed his attitude regarding the risk that he may spread the disease. Continuously, he shows an inability to accept the aid and support measures that he is entitled to receive; he has refused to consult the psychiatrist PN and the psychologist BS. Moreover, having been in touch with the physicians, whom the applicant [recently] had voluntarily contacted [i.e. PH and CG], in the county medical officer's view these consultations appeared partly economically motivated [on account of the fact that the applicant needed doctor's certificates in order to receive continued sickness allowance], partly motivated by the applicant's wish to be declared mentally healthy, but [not motivated] by any willingness to commence a treatment. During [the applicant's] contact with the said doctors, they were not discussing the risk of spreading the disease at all. A care-plan had not formally been signed [by the applicant]. In conclusion, in the county medical officer's opinion, [being released] the applicant will not voluntarily comply with the given instructions or limit the spreading of the disease."

As regards the laboratory tests concerning the applicant's liver the county medical officer found these to be of doubtful value, since they had been performed in connection with the compulsory isolation of the applicant at the hospital, but never in connection with a period of intoxication.

On 23 April 1999 the County Administrative Court delivered its judgment finding against the applicant with the following reasons:

> "[The applicant] is HIV positive and thus carries the HIV infection. He has been subjected to compulsory isolation since February 1995 and has during this period absconded from the hospital on several occasions – on the latest occasion for more than two years. During these two years he did not have any contact with the county medical officer or the consulting physician. Periodically he has used a false name and has been living a very secluded life, obviously due to the risk of being discovered. A life of freedom makes great demands upon the person carrying the infection. During the time preceding the compulsory isolation [the applicant] was not able to follow the practical instructions issued. Subsequently, he has consistently declined the help offered by the consulting physician and the psychiatrist at the special care facility at the hospital and has instead responded with aversion and mistrust – and by escaping. [The court] finds that it has been difficult for [the applicant] to accept the information regarding the HIV infection and that he needs help in dealing with the critical situation. It appears from the material that [the applicant] still shows aversion to the treatment offered and that he is considered likely to abscond. [The court] has not been convinced that [the applicant] is not misusing alcohol and finds that, especially in connection with consumption of alcohol, [the applicant] is likely to be unable to take responsibility for his sexual behaviour. Against this background, [the court] finds that there is good reason to suppose that, if he remains free, [the applicant] will not comply with the practical instructions issued and that this omission entails a risk of the infection spreading."

On 12 June 1999 the applicant re-absconded, leaving his whereabouts unknown. In the meantime he had appealed against the above judgment to the Administrative Court of Appeal before which he invoked an opinion of 14 May 1999 by the aforementioned chief physician and specialist in psychiatry, CG, stating *inter alia* the following:

> "The opinions [by other psychiatrists and one psychologist] resulting from previous examination were fairly unanimous in their conclusion that the applicant was a man with a paranoid personality disorder, who misused alcohol. "Misuse" in psychiatric terms is defined as a maladaptive use of substances, e.g. drunk driving. This diagnosis is to be distinguished from alcohol dependency, which means a compulsive use of alcohol with abstinence and social complication that are more difficult to master. The diagnosis "paranoid personality disorder" is defined as a pervading suspiciousness and lack of trust in other people, whose motives are consistently perceived as malicious. It follows from the definition of "paranoid personality disorder" itself that this is manifest in the patient's personality when he or she becomes adult and onwards. Owing to the fact that the person in question perceives the disorder as part of his or her own self, the motivation for change is usually too low. It is not correct to discuss this in terms of lack of awareness of a disease since it is not considered that a disease is involved but rather a variation in personality, although the latter may well cause complications in relations with other individuals and society. When such occur, an individual with a personality disorder may display different symptoms such as depression, anxiety, etc. In [my] interview with the applicant, the latter was fairly open and talkative. When he talked about experiences from his time at school, he gave proof of different emotions. He also showed empathy as far as other persons from those years were concerned. He was also partly able to shoulder responsibility for his own mistakes without blaming others. However, the applicant was absolute and very rigid in his interpretation of what had occurred in respect of his adulthood and

particularly the events of recent years after being informed of the HIV virus in September 1994. His approach to the county medical officer and the staff at the infection ward, whom he believed had kept harassing him unjustly, was almost hateful. The applicant felt that he had been subjected to persecution between 1994 and 1995. This could possibly be interpreted as a symptom of delusion. As from 1996, the applicant had not experienced feelings of persecution *inter alia* since he had arranged for his own liberty. With regard to sexual relations, the applicant has stated that he preferred sexual contacts with boys around the age of seventeen. He was not interested in pre-pubertal boys. He had lived asexually since 1996 and had no longer any particular sexual desires or fantasies. He was fully aware that he was carrying the HIV virus and was careful to stress that he was not afraid to die. His attitude towards medication against the HIV infection was negative. The reasons for this were that such medication could have side effects and perhaps, above all, because it would entail limitations on his freedom since he would be subjected to different check-ups. The applicant spontaneously expressed a wish to have further talks on a voluntary basis. When asked whether such talks could be part of a care plan in co-operation with the county medical officer and the staff at the infection ward, the applicant answered no, the reason being that he would feel ashamed in his own eyes if he were to give up this fight."

In conclusion CG found that the applicant fulfilled the criteria for a paranoid personality disorder, and that judging from previous information, the applicant suffered from misuse of alcohol but not from alcohol dependency. According to CG the applicant could be described in every day terms as an odd person, but not mentally ill. With regard to the risk that the applicant would pass on the HIV infection to other persons, CG believed that neither he nor others could do anything but guess. The weightiest indications in this respect, however, ought to be deduced from the applicant's behaviour during the years which he had spent at large.

By judgment of 18 June 1999 the Administrative Court of Appeal found against the applicant. Leave to appeal against the judgment was refused by the Supreme Administrative Court (*Regeringsrätten*) on 5 October 1999.

B. Relevant domestic law

According to the 1988 Act, infectious diseases are divided into diseases dangerous to society and other infectious diseases. One of the diseases described as dangerous to society is the human immuno-deficiency virus (HIV infection). The relevant provisions of the 1988 Act read as follows:

Section 5

"Each county council (*landsting*) is responsible for ensuring that the necessary measures for the prevention of infectious diseases are taken within its area..."

Section 6

"Every county council is to have a county medical officer ..."

Section 13

"It is the duty of any person having reason to suspect that he has been infected with a disease dangerous to society to consult a physician without delay and to allow the physician to carry out examinations and to take specimens needed in order to establish whether he has been infected with such a disease. It is also his duty to comply with the practical instructions issued to him by the physician. The same applies when a person, having been infected with a disease dangerous to society, states that he has been in contact with some other person in such a way that the infection may have been transmitted"

Section 14

"Any person infected with a disease dangerous to society must supply the consulting physician with information concerning the person or persons from whom the infection may have come or to whom it may have been passed on, and must supply general particulars concerning the possible source of the infection and where it may have been spread further"

Section 16

"The consulting physician issues to the person examined for a disease dangerous to society the practical instructions needed to prevent the spread of the infection. These instructions may refer to that person's contacts with the physician, hygiene, isolation in the home, employment and attendance at schooling, as well as his general way of life. The instructions are to be included in the infected person's medical record. The physician must as far as possible see to it that the instructions are complied with"

Section 17

"At the request of the individual concerned or of his own motion, the county medical officer may alter the instructions in such a way as he finds most appropriate"

Section 25

"A consulting physician, having reason to believe that a patient carrying or suspected of carrying infection of a disease dangerous to society will not comply or is not complying with the practical instructions issued, must promptly notify the county medical officer. This also applies when such a patient discontinues current treatment without the consent of the consulting physician"

Section 28

"...Before resorting to any coercive measure, the county medical officer must try to obtain voluntary compliance if this can be done without the risk of the infection being spread"

Section 30

"A county medical officer, who has been informed by a consulting physician that a patient carrying HIV infection has not complied or is suspected of not complying with the practical instructions issued, shall notify the social welfare committee, the police authority and the principal probation officer. In doing so he is to supply particulars concerning the identity of the person to whom the practical instructions apply and the implications of those instructions. No information is to be supplied if the county medical officer believes this unnecessary in order to secure compliance with the practical instructions or otherwise finds its immaterial with regard to the prevention of communicable disease"

Section 38

"The County Administrative Court, on being petitioned by the county medical officer, shall make an order for the compulsory isolation of a person carrying infection from a disease dangerous to society if that person does not voluntarily comply with the measures needed in order to prevent the infection from spreading. An order of this kind shall also be made if there is reasonable cause to suppose that the infected person is not complying with the practical instructions issued and this omission entails a manifest risk of the infection being spread. Compulsory isolation is to take place in a hospital run by a county council"

Section 39

"If a compulsory isolation order by the County Administrative Court cannot be awaited without danger, the county medical officer shall issue an order as referred to in Section 38. The order thus issued shall be submitted immediately to the County Administrative Court for approval"

Section 40

"Compulsory isolation may continue for up to three months from the day the infected person was admitted to hospital under the isolation order"

Section 41

"Following a petition from the county medical officer, the County Administrative Court may order the continuation of compulsory isolation beyond the maximum period indicated in Section 40. An order of this kind may not exceed six months at a time"

Section 42

"When there is no longer cause for compulsory isolation, the county medical officer shall order its termination immediately ..."

Section 43

"A person in compulsory isolation shall be well cared for. He is to be offered the support and help needed, and to be motivated to change attitude and conduct of live, in order to terminate the involuntary confinement. Subject to the provisions of this Act, a person in compulsory isolation may not be subjected to any other restriction in his liberty. A person in compulsory care shall be offered occupation, and physical training suitable for his age and condition of health. Unless there are exceptional circumstances, he must have an opportunity to be outdoors every day for at least an hour."

Section 44

"A person in compulsory isolation may be prevented from leaving the hospital perimeter or that part of the hospital to which he is admitted, and may in other respects be subjected to such constraints on his liberty of movement as are necessary to ensure his compulsory isolation. His freedom of movement may also be restricted when considerations of his own safety or that of other persons so demand "

Section 52

"Appeals against a decision by the county medical officer under the 1988 Act may be lodged with the County Administrative Court if the decision concerns,

1. practical instructions under Section 17

2. temporary detention under Section 37

3. rejection of a request for the termination of compulsory isolation

..."

There is no particular provision in the Act concerning penal sanctions against a person who transmits a dangerous disease. Certain behaviour, however, is considered to be criminal and therefore falls under the Penal Code.

In March 1999 a parliamentary committee, entrusted with the task of reviewing the present legislation concerning infectious diseases, submitted its report (SOU 1999:51). With regard to compulsory isolation, in the committee's view such should only take place in very particular and exceptional circumstances. The committee proposed, having regard amongst other things to Article 5 of the Convention, a definite time-limit permanently ending any compulsory isolation after a maximum of three months. So far no Government Bill has been presented to Parliament.

COMPLAINTS

The applicant complains under Articles 5 and 8 of the Convention that he has been unlawfully deprived of his liberty, that the criteria for isolation under the applicable legislation are too vague and that his compulsory confinement was disproportionate to the aim pursued.

THE LAW

The applicant complains that the isolation order and his involuntary placement in the hospital gave rise to violations of Articles 5 and 8 of the Convention.

In so far as relevant, Article 5 reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

The Court notes that by invoking Article 8 of the Convention the applicant submits, without any further reasoning, that his compulsory confinement was unlawful within the meaning of Article 5 § 1 of the Convention. The Court finds that this issue alone does not give rise to any separate issue under Article 8 of the Convention (see e.g. *D.G. v. Ireland,* no. 39474/98, 16 May 2002, § 107), and that the complaint is more appropriately examined under Article 5 of the Convention. Thus, the Court

considers that it is not necessary to determine whether there has been a violation of Article 8 of the Convention.

In the Government's view the involuntary placement fulfilled the requirements of both Article 5 § 1 (b) and (e) of the Convention. The detention in issue was lawful and free from arbitrariness and the 1988 Act satisfies the test of being precise and foreseeable.

As to the Article 5 § 1 (b), under section 13 of the 1988 Act is it incumbent on a person infected with a serious disease to comply with the instructions issued by a physician such as the instructions issued by the county medical officer to the applicant on 1 September 1994. The applicant failed to satisfy a number of specific and concrete obligations that followed from the said instructions. It can be deduced from the 1988 Act that involuntary placement in a hospital is viewed as the last resort when voluntary measures have failed or are considered inadequate in order to protect other members of society. Thus, the detention was not intended to punish him for not complying with the instructions but was resorted to in the hope that his attitude and behaviour would change.

As to the Article 5 § 1 (e) the Government note the lack of case-law as to the detention of persons for the prevention of spreading of infectious diseases. They recall "the Winterwerp conditions" relating to the detention of people of unsound mind and find that these condition may reasonably apply also in the present case.

With regard to the question whether the measures taken were proportionate to the aim pursued, the Government reiterate that the objective of the measure in dispute is not primarily to provide medical treatment for the disease and that there may be no treatment of an HIV-infected person by means of coercive measures. Instead the aim of the confinement is to support, assist and encourage the carrier of the dangerous infection to change his or her attitude and lifestyle in such a way that the compulsory isolation may be ended.

The Government consider that a number of voluntary measures had been attempted in vain during the period between September 1994 and February 1995 to ensure that applicant's behaviour would not contribute to the spread of the HIV infection. Also, they note the particular circumstances of the case, notably with regard to the applicant's personality and behaviour as described by various physicians and psychiatrist, his preference for teenage boys, the fact that he transmitted the HIV virus to a young man, and that he absconded several times and refused to co-operate with the staff at the hospital. Thus, the Government find that the involuntary placement of the applicant in hospital was proportionate to the attainment of the measure's purpose, namely to prevent him from spreading the infectious disease.

As to the duration of the detention the Government point out that even if the compulsory isolation order has been in existence for six years the applicant's actual deprivation of liberty within the notion of

Article 5 of the Convention has lasted for approximately one and a half year. Furthermore, they allege that had the applicant not absconded so many times it might have been possible for the staff to assist and support him in such a way that a change in his attitude would have taken place, thus shortening the length of the compulsory isolation.

The applicant contends that only Article 5 § 1 (e) of the Convention is applicable to the present case.

He submits that his detention had no legal basis in Swedish law. According to section 38 of the 1988 Act a lawful compulsory detention of him would have required not only that he was failing to comply with the practical instructions issued, but that in addition his omission entailed a manifest risk of his spreading the HIV. He maintains that none of the requirements were fulfilled. As to the former, he points out that submitting to psychiatric interviews or conversations was not amongst the practical instructions issued on 1 September 1994. Even if, by absconding, he failed to comply with the practical instructions issued the applicant contests that this omission entailed a manifest risk of the infection being spread by him. He refers to the fact that during the two last years on the run, he had to seek medical treatment twice and that it has been established that on both occasions he informed of his HIV virus. Moreover, he refers to his present conduct, including sexual conduct, as confirmed by the witness owning the farm hostel, where the applicant stayed during his absconding period at large from February 1997 until February 1999. He notes, taking into consideration the advanced registration system in Sweden of disease spreading, that during his periods at large i.e. altogether for more than four and a half years, there has been no indication that he had infected anybody. Finally, he draws attention to the statement submitted by the specialist in psychiatry, CG.

Moreover, the applicant maintains that section 38 of the 1988 Act is not precise and foreseeable, notably since the notions “reasonable cause” and “a manifest risk of the infection spreading” are too weak. The preparatory notes give no indication as to their meaning.

In addition, he contends that the instructions were not included in his medical record as prescribed by section 16 of the 1988 Act.

Finally, the applicant finds that the length of his detention infringed the principle of proportionality required by Article 5 § 1 (e) of the Convention.

Even if he was, in fact, isolated “only” for one and a half years, he recalls that the parliamentary committee entrusted with the task of reviewing the legislation concerning infectious diseases in its report proposed, having regard to Article 5 of the Convention, that any compulsory isolation should permanently end after a maximum of three months.

The Court considers, in the light of the parties’ submissions that the complaint raises serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits.

The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Françoise ELENS-PASSOS
Deputy Registrar

Nicolas BRATZA
President