The European Commission of Human Rights sitting in private on 5 May 1986, the following members being present:

MM. J. A. FROWEIN, Acting President
C. A. NØRGAARD
G. SPERDUTI
M. A. TRIANTAFYLLIDES
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs G. H. THUNE
Sir Basil HALL

Mr. H. C. KRÜGER, Secretary to the Commission

Having regard to Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Art. 25);

Having regard to the application introduced on 5 November 1984 by B.J. against Denmark and registered on 4 January 1985 under file No. 11349/85;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

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

The applicant is a Danish citizen, born in 1942. He is a smith by profession. At the time of introducing the application he was serving a 5-year prison sentence at Vestre Fængsel, Copenhagen, Denmark.

The applicant was arrested on 13 October 1983 and charged with a number of offences including one count concerning complicity in financing and smuggling heroin. During the investigation the applicant was in addition charged with one count of robbery. A defence counsel was appointed by the Court and the applicant's case was brought before the Copenhagen City Court in February 1984. During the trial nine witnesses were heard as well as the applicant. On 21 March 1984 the Court pronounced judgment in the case. Based on an evaluation of the statements submitted by the witnesses and the written material brought forward, the Court found the applicant guilty of all charges brought against him, except the robbery charge. He was sentenced to five years' imprisonment. The applicant appealed against the judgment to the Court of Appeal but only insofar as it concerned the heroin charge. The prosecution appealed against the judgment insofar as it concerned the acquittal on the robbery charge.

After having received the court transcripts the applicant informed his counsel by letters of 22 and 23 April and 5 May 1984 that he wanted a substantial number of witnesses examined in court in order to prove his innocence. In his letters the applicant expressed the view that the witnesses heard by the City Court did not tell the truth and that other witnesses could clarify the factual circumstances. The case was scheduled to be heard by the Court of Appeal on 11 May 1984 but it was

postponed until 14 August 1984 since by letter of 3 May 1984 the applicant's counsel had informed the prosecution that he requested the hearing of additional witnesses.

On 9 May 1984 the Court of Appeal was informed that the applicant wanted another defence counsel and through his family the applicant found another lawyer who was then officially appointed by the Court of Appeal. Certain correspondence followed between the applicant and his new defence counsel in which the forthcoming trial before the Court of Appeal was discussed. An extract of the file was submitted to counsel on 26 July 1984 and a supplementary extract was submitted on 8 August 1984.

On 17 July 1984 the applicant's cell was searched on the basis of a search warrant from which it appeared that he had been charged with the smuggling of narcotics into another prison while detained on remand. The applicant submits that he has never been informed of such a charge. Due to the outcome of the search the charge was not pursued. From the police report on the search, it appears that the police found 5 letters and 5 envelopes which were put in a sealed envelope. This material was brought before the City Court the following day and it was handed over to the police after the Court had examined it and made sure that it did not contain correspondence between the applicant and his counsel. Correspondence between the applicant and his previous counsel was found during a search of 20 July 1984 carried out at the home of the applicant's friend. These letters were put in a sealed envelope and an attempt was made to hand them over to the applicant who, however, refused to receive them.

On 20 July 1984 the applicant complained to the prosecutor about the search, maintaining that the charge on which the search was carried out was hilarious and only a cover in order to read the confidential correspondence between himself and his counsel. The applicant's counsel furthermore appealed against the search warrant of 17 July which, however, was eventually approved by the Court of Appeal on 23 October 1984.

On 3, 4 and 5 August 1984 the applicant submitted to the Court of Appeal and the prosecution a list of the witnesses he wanted examined in court. The applicant pointed out that all witnesses mentioned, totalling more than 30, knew the case. He did not, however, specify what in particular he wanted to obtain by hearing the witnesses, the reason being that the police had only just submitted the relevant copies of the case-file to the defence counsel and that, therefore, the applicant had not had the necessary time to consult him.
On 10 August 1984 the applicant's counsel further requested a postponement of the criminal case due to the fact that he had not received the necessary documents and reports from the police until 8 August 1984, that the applicant had requested the hearing of further witnesses which necessarily should be discussed first and since he had only recently been appointed counsel for the applicant.

The requests mentioned above were not dealt with by the Court of Appeal prior to the actual appeal hearings which commenced as scheduled on 14 August 1984, continued on 16 August and ended on 17 August 1984. The circumstances of the trial in the Court of Appeal may be summarised as follows.

The requests for a postponement and the hearing of further witnesses were considered first. Due to the prosecution's objections against these requests the applicant intervened verbally in such a way that the presiding judge threatened to have him removed from the courtroom. The applicant, however, left in protest. After a short break, during which the applicant was persuaded to return, the prosecutor continued his arguments against a postponement due to which the applicant again intervened, was cut off by the presiding judge and then left the courtroom. It was thereafter decided to proceed in accordance with

Sec. 847 para. 2 no. 2 of the Administration of Justice Act which permits the court to proceed with the case in the absence of the accused if he has left the courtroom without permission.

The Court of Appeal then heard the parties' remaining arguments as to the postponement and the witnesses. In particular regarding the request for the hearing of further witnesses, counsel pointed out that it could not be excluded that certain of the persons mentioned in the list of witnesses, submitted to the Court of Appeal by the applicant, could furnish information of importance for the case. The Court, however, decided that there were not at the present stage of the proceedings sufficient reasons to comply with the requests. The presiding judge pointed out that the Court reserved its position as to the production of further evidence. The case was then adjourned until 16 August.

The applicant was present when the trial continued on 16 August. He was informed of the decisions taken. He protested loudly, demanded the appointment of a new defence counsel, and started to sing a song. He was thus removed from the courtroom in accordance with Sec. 151 of the Administration of Justice Act. After this development the defence counsel asked the Court for permission to withdraw from the case but that was refused and the trial proceeded with the hearing of the witnesses suggested by the prosecution.

The following day, 17 August 1984, the trial continued. The applicant again intervened. He sang another song and again demanded a new defence counsel. He was again removed from the courtroom in accordance with Sec. 151 of the Administration of Justice Act. The defence counsel anew asked for permission to withdraw since it was obvious that the applicant refused to accept him as his counsel, but it was refused. The last witness was thus heard and the defence counsel subsequently requested a postponement in order to obtain further evidence referring to the fact that the accused had not been heard yet and to his request to have a substantial number of additional witnesses examined. The prosecutor objected to a postponement and the Court then decided as follows:

"Since there is, according to the information now obtained, and considering the attitude adopted by the applicant, no reason to adjourn the case in order to obtain further evidence it is decided that the case shall continue."

The parties' pleadings thereafter finished and after its deliberations the Court of Appeal found the applicant guilty of all charges. The sentence of five years' imprisonment was upheld.

The applicant subsequently asked the Ministry of Justice for leave to appeal against the judgment, referring to a number of procedural errors which allegedly had occurred, inter alia that the Court did not appoint a new defence counsel, that the trial was not postponed and that he was refused permission to hear witnesses in his defence. The Ministry of Justice refused leave to appeal to the Supreme Court on 20 December 1984.

COMPLAINTS

Under Art. 6, para. 3, sub-para. b of the Convention (Art. 6-3-b) the applicant complains that he did not have adequate time to prepare his defence. He refers to the fact that his second counsel did not receive a copy of the case file until a few days before the trial started in the Court of Appeal.

Under Art. 6, para. 3, sub-para. c of the Convention (Art. 6-3-c) the applicant alleges that the Court of Appeal refused to appoint a defence counsel of his own choice although he had asked the Court to appoint a new defence counsel and although his counsel had asked for

permission to withdraw.

Finally the applicant maintains that the Court of Appeal refused to hear the witnesses requested by him in a way contrary to Art. 6 para. 3, sub-para. d of the Convention (Art. 6-3-d). He alleges that the evidence submitted by the police did not relate to the factual circumstances and that he would have been able to prove this had he been allowed to hear the witnesses requested.

THE LAW

1. The applicant has complained of his conviction on 17 August 1984 by the Court of Appeal and of the court proceedings concerned.

With regard to the judicial decision of which the applicant complains, the Commission recalls that, in accordance with Art. 19 of the Convention (Art. 19), its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its constant jurisprudence (see e.g. Dec. No. 458/59, 29.3.60, Yearbook 3 p. 222; Dec. No. 1140/61, 19.12.79, Collection 8 p. 57 and Dec. No. 7987/77, 13.12.78, D.R. 18 p. 31).

It is true that in this case the applicant also complains that he did not have adequate time to prepare his defence as secured to him under Art. 6, para. 3, sub-para. b of the Convention (Art. 6-3-b) and refers in this respect to the fact that his second counsel did not receive a copy of the case-file until a few days before the trial started in the Court of Appeal and that he could not, therefore, properly discuss with counsel how to proceed in the forthcoming trial.

The Commission recalls that the rights secured by Art. 6, para. 3 of the Convention (Art. 6-3) are those of the accused and the defence in general. In order to determine whether these rights were respected, consideration must be given to the situation in which the defence as a whole is placed (cf. Dec. Nos. 7572/76, 7586/76 and 7587/76, 8.7.78, D.R. 14 p. 64 (115) with further references and Dec. No. 11219/84, 10.7.85, to be published in D.R.).

Art. 6, para. 3, sub-para. b (Art. 6-3-b) states that everyone charged with a criminal offence has the right to have adequate time and facilities for the preparation of his defence. In the present case the Commission observes that the applicant was apparently not satisfied with his defence counsel in the City Court. He therefore found, through his family, another lawyer who was then officially appointed by the Court of Appeal. It is not clear when the new defence counsel was appointed but it appears to have been after 9 May and before 17 July 1984. That left the applicant and his new counsel a minimum of almost one month to prepare the case, a period in which there appears to have been no restrictions as to visits, correspondence or exchange of information between the applicant and counsel in order to prepare a defence. The extract of the case-file was sent to counsel on 26 July 1984 and a supplementary extract probably on 8 August 1984 that is 19 and 6 days respectively before the commencement of the trial. Accordingly counsel had the opportunity to acquaint himself, for the purpose of preparing the defence, with the results of the findings of the police as well as the previous proceedings before the lower court. It may be that the supplementary extract of the case-file was submitted to counsel rather late. However, considering all the circumstances mentioned above, the Commission finds that the applicant had sufficient time and facilities to prepare his defence. The Commission therefore

concludes that this complaint is manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention (Art. 27-2).

2. Under Art. 6, para. 3, sub-para. c (Art. 6-3-c) the applicant has alleged that he was refused a defence counsel of his own choice since the Court of Appeal refused to appoint a new defence counsel at his request notwithstanding that his counsel asked for permission to withdraw.

The Commission recalls that Art. 6, para. 3 sub-para. c (Art. 6-3-c) guarantees to an accused person that the proceedings against him will not take place without an adequate representation of the case for the defence. A right is guaranteed to an effective defence either in person or through a lawyer (cf. No. 6694/74, Artico v. Italy, Comm. Report, 8.3.79, paras. 87 and 88). However, if the applicant is represented by an officially appointed defence counsel the above provision cannot be interpreted so as to secure to the accused a right to change the officially appointed counsel, chosen by him, without well-founded and substantiated reasons.

In the present case the Commission recalls that an officially appointed defence counsel assisted the applicant during the trial before the City Court. Awaiting the appeal hearing the applicant found another defence counsel whom he then asked the Court of Appeal to appoint. This the Court did, but at the appeal hearing the applicant then requested the appointment of another counsel, which was then refused.

In the applicant's submissions there is nothing which indicates that the applicant was barred from defending himself or from choosing his own counsel had he been willing or able at his own expense to instruct one. There is likewise nothing which indicates that the defence counsel appointed was prevented from acting or that he failed in his duties. As set out above, the Commission has already found that adequate time and facilities were at hand for the preparation of the defence. The Commission thus concludes that the applicant did receive effective legal assistance in the proceedings before the Court of Appeal and that therefore this part of the application is manifestly ill-founded within the meaning of Art. 27, para. 2 of the Convention (Art. 27-2).

3. The applicant has finally complained that the Court of Appeal's refusal to hear the witnesses suggested by him violated his right to examine witnesses as set out in Art. 6, para. 3 sub-para. d of the Convention (Art. 6-3-d).

According to Art. 6, para. 3, sub-para. d of the Convention (Art. 6-3-d), any person charged with a criminal offence has a right 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". One of the purposes of this provision is to ensure equality between the defence and the prosecution as regards the summoning and examination of witnesses but it does not grant the accused an unlimited right to secure the appearance of witnesses in court. Furthermore, it is in the trial court's discretion to refuse to take evidence which is considered irrelevant or unobtainable (cf. Dec. No. 8417/78, D.R. 16 p. 200 and Eur. Court H.R. Engel and others, judgment of 8.6.1976).

In the present case the Commission recalls that neither the applicant nor his defence counsel during the trial indicated what kind of information of importance for the case could be obtained by hearing further witnesses. The Commission also recalls that the Court heard 7 witnesses but did not find it necessary to postpone the proceedings in order to hear further witnesses since, in its opinion, and having regard to the attitude adopted by the applicant, further evidence would not be necessary for the evaluation of the substance of the case

which the Court had to consider. The Commission finds no elements which would indicate that the Court in these circumstances went beyond its discretion to refuse to take evidence when refusing to hear the witnesses concerned. Accordingly, an examination of the facts complained of does not disclose to the Commission any appearance of a violation of the Convention and in particular of Art. 6 (Art. 6).

ill-founded within the meaning of Art. 27, para. 2 of the Convention (Art. 27-2).

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — Acting President of the Commission

(H. C. KRÜGER) — (J. A. FROWEIN)