AS TO THE ADMISSIBILITY OF

Application No. 17668/91
by G.J.
against Sweden

The European Commission of Human Rights sitting in private on 30 March 1992, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
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 7 March 1990 by G.J. against Sweden and registered on 14 January 1991 under file No. 17668/91;

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 is a Swedish citizen born in 1938 and resident at Huskvarna. Before the Commission he is represented by Mrs. Ulla-B. Ludvigsson.

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

In 1964 the applicant obtained a driving licence in accordance with the requirements of the Driving Licence Act (körkortslagen) permitting him to drive motorcycles, private cars and light goods vehicles with or without a trailer, heavy goods vehicles with or without a trailer and taxis. The applicant was subsequently employed as a professional driver.

In 1979 it was discovered that he suffered from an eye cataract (grön starr) and it appears from the documents submitted that in 1983

the National Board of Health and Social Welfare (socialstyrelsen) formed the opinion, on the basis of a medical examination, that the applicant's eyesight was not sufficient to meet the requirements under the Driving Licence Act for maintaining a licence for driving heavy goods vehicles and taxis. In 1984 the authority representing the public interest in proceedings regarding withdrawal of driving licences (allmänna ombudet i körkortsfrågor) requested the County Administrative Court (länsrätten) of the County of Jönköping to withdraw the applicant's driving licence for heavy goods vehicles and taxis.

On 7 March 1984 the County Administrative Court decided on a provisional basis to withdraw the driving licence insofar as it applied to heavy goods vehicles and taxis because of the applicant's eye defects. The decision was upheld by the Administrative Court of Appeal (kammarrätten) of Jönköping on 4 April 1984.

In a judgment of 7 September 1984 the County Administrative Court decided finally to withdraw the applicant's licence to drive heavy goods vehicles and taxis because of his eye defects.

The applicant appealed against the judgment to the Administrative Court of Appeal, which upheld the judgment. As a consequence of the withdrawal of the licence he lost his employment as a professional driver.

It appears that in 1986 the applicant requested the National Board of Health and Social Welfare to grant him an exemption from the eyesight requirements set out in the Driving Licence Act in order to obtain a driving licence for heavy goods vehicles and taxis. The Board rejected his requests on 26 May 1986 and on 18 August 1986.

A fresh request, submitted by the applicant in 1988, that he be granted an exemption from the eyesight requirements in order to obtain the driving licence for heavy goods vehicles and taxis was again rejected by the National Board of Health and Social Welfare on 26 June 1989. The Board stated in its reasons inter alia that due to a progressive eye disease involving serious defects in the vision of both eyes, the applicant could not be granted an exemption.

The applicant's appeal against this decision to the Government was rejected on 8 February 1990.

The applicant applied to the Supreme Administrative Court (regeringsrätten) for judicial review of the Government's decision and requested that an oral hearing be held. The Supreme Administrative Court, which did not grant the request for an oral hearing, found that the decision was in conformity with Swedish law. It therefore, on 20 September 1990, upheld the decision of the Government.

COMPLAINTS

The applicant alleges a violation of Article 6 para. 1 of the Convention in that he was not granted an oral hearing before the Supreme Administrative Court in the proceedings concerning his request for an exemption from the eyesight requirements in order to obtain a driving licence. He also alleges that the decisions not to grant him the exemption are incorrect.

THE LAW

1. The applicant complains that he was not granted an oral hearing before the Supreme Administrative Court in the proceedings concerning his request for an exemption from the eyesight requirements in order to obtain a driving licence and that the decisions are incorrect. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which, in the

relevant part, reads as follows:

> "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."

Leaving aside the question of a criminal charge which is not at issue in the present case, the Commission recalls the case-law of the European Court of Human Rights according to which Article 6 para. 1 (Art. 6-1) extends only to disputes ("contestations"), which must be genuine and of a serious nature, over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law (cf. Eur. Court H.R., Skärby judgment of 28 June 1990, Series A no. 180-A, p. 36, para. 27).

The Commission also recalls the Benthem case which concerned the question whether in connection with his business as a garage-owner, an applicant should also be granted a licence to operate a liquid petrol gas installation at a certain place. The European Court of Human Rights found that such a licence "was one of the conditions for the exercise of part of [the applicant's] activities as a businessman", "closely associated with the right to use one's possessions". In consequence, the Court concluded that a civil right within the meaning of Article 6 (Art. 6) was at stake (Eur. Court H.R., Benthem judgment of 23 October 1985, Series A no. 97, p. 16, para. 36).

In the present case the Commission notes that the applicant lost his licence to drive heavy goods vehicles and taxis already in 1984. As a consequence he also lost his job as a driver and he has not since that time worked as such. The Commission furthermore notes that the complaints in the present case are not directed against the proceedings in which the applicant's licence was withdrawn, but concern the subsequent proceedings in which the applicant was refused an exemption from the eyesight requirements under the Driving Licence Act in order to obtain a new driving licence for heavy goods vehicles and taxis. These proceedings were instituted by the applicant several years after the withdrawal of the licence and at a time when he no longer was employed as a professional driver.

The Commission recalls that under domestic law sufficient eyesight is a requirement in order to obtain a driving licence, and the applicant's licence for heavy goods vehicles and taxis was revoked in 1984 because he did not fulfil this requirement. The applicant has not shown that he now fulfils the requirement. Furthermore, the Commission notes that he does not have, under domestic law, any right to be granted an exemption from the eyesight requirement. In these circumstances the Commission finds that he cannot on arguable grounds claim that his case concerns a dispute over a "civil right" within the meaning of Article 6 (Art. 6) of the Convention for which reason this provision does not apply to the proceedings in question.

It follows that the application is incompatible ratione materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2).

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)