AS TO THE ADMISSIBILITY OF

Application No. 14423/88
by L.J.
against Sweden

The European Commission of Human Rights sitting in private on 7 May 1990, the following members being present :

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

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 15 January 1988 by L.J. against Sweden and registered on 1 December 1988 under file No. 14423/88 ;

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

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

The applicant is a Swedish citizen born in 1956 and resident at Flyinge. Before the Commission, the applicant is represented by Mr. Evald Lindqvist, an engineer.

On 20 December 1985 the applicant was convicted of unlawful deprivation of liberty, assault and child abuse by the District Court of Gothenburg (Göteborgs tinsrätt). He was sentenced to undergo treatment in a closed psychiatric ward.

The applicant appealed to the Court of Appeal for Western Sweden (Hovrätten för Västra Sverige) which rejected the appeal on 5 February 1986. On 19 March 1986 the Supreme Court (Högsta domstolen) refused leave to appeal.

Subsequently, the applicant asked to be discharged from the hospital. The Discharge Council (utskrivningsnämnden) of Katrineholm refused the request on 16 September 1987. The applicant appealed to

the Psychiatric Council (psykiatriska nämnden) which rejected the appeal on 29 December 1987. It stated inter alia the following :

> "From the medical case-file and other documents in the case it appears that you suffer from such mental disease as referred to in Section 1 of the Act on Institutional Psychiatric Care (lagen om beredande av sluten psykiatrisk vård). From the documents it further appears that psychiatric care under the provisions of the said Act is absolutely necessary in view of the degree and character of the disease and in view of the fact that you, as a result of the disease, obviously lack understanding of the disease and since your state of health can be significantly improved by care and significantly deteriorate if you do not receive care - Section 1 para. 1 (a) of the Act on Institutional Psychiatric care - and since, as a result of the disease, you present a danger to the personal safety of others - Section 1 para. 1 (b) of the Act on Institutional Psychiatric Care.
>
> The conditions for providing care under Section 1 para. 1 of the Act on Institutional Psychiatric Care are therefore satisfied."

On 7 january 1988 the Discharge Council rejected a request from the applicant that he should be provisionally discharged.

The applicant appealed to the Psychiatric Council which in a decision of 22 March 1988 noted that the applicant had been provisionally discharged on 18 February 1988 and, consequently, struck the case off its list of cases.

On 31 March 1988 the applicant requested a permanent discharge. This petition was rejected by the Discharge Council on 13 April 1988 with reference to Section 1 (a) and (b) of the Act on Institutional Psychiatric Care.

On 20 April 1988 the Discharge Council decided that the provisional discharge should continue until 30 June 1988.

The applicant appealed to the Psychiatric Council which on 5 July 1988, for the same reasons as in the decision of 29 December 1987, rejected the appeal after having obtained written observations from the Chief Doctor of the Karsudden hospital and the Discharge Council.

COMPLAINTS

The applicant complains that he has been wrongly convicted and sentenced, because he had committed the alleged offences, and that he was wrongly deprived of his liberty, because he was not "of unsound mind". He claims a permanent discharge and requests that his conviction be quashed.

The applicant alleges violations of Articles 3, 4, 5 and 6 of the Convention.

THE LAW

1. The applicant complains about his conviction and detention in a psychiatric hospital. He alleges violations of Articles 3 (Art. 3), 4 (Art. 4), 5 (Art. 5) and 6 (Art. 6) of the Convention.

2. The Commission recalls that the applicant's conviction and sentence acquired legal force when the Supreme Court refused leave to appeal on 19 March 1986. The present application was introduced on 15 January 1988, which is more than six months after the Supreme Court's decision. Consequently, insofar as the applicant complains about his

conviction and sentence, the application has been introduced out of time and must be rejected pursuant to Article 27 para. 3 of the Convention in conjunction with Article 26 (Art. 27-3+26).

3. As regards the applicant's detention in a psychiatric hospital, the Commission notes that, in deciding whether a person should be detained as a "person of unsound mind" within the meaning of Article 5 para. 1 (e) (Art. 5-1-e) of the Convention, the national authorities have a certain discretion, since it is in the first place for them to evaluate the evidence placed before tham in a particular case. Nevertheless, the Convention organs are competent to verify under the Convention that a measure of detention ordered by the national authorities is "lawful" (Eur. Court H.R., Winterwerp judgment of 24 October 1979, Series A no. 33, p. 18, para. 40).

The Commission notes that the applicant's detention in a psychiatric hospital was first based on a judgment in which the applicant had been found guilty of serious offences. The detention was subsequently reviewed on several occasions by the Discharge Council and the Psychiatric Council. It appears from the documents submitted in the case that these bodies based their decisions on the applicant's medical case-file and on other medical documents. One medical certificate, issued by the Chief Doctor of the institution where the applicant was kept, has also been made available to the Commission.

On the basis of the material presented, the Commission, which notes that the applicant was provisionally discharged on 18 February 1988, is satisfied that the applicant's detention up to that date was in conformity with Article 5 para. 1 (e) (Art. 5-1-e) of the Convention. This part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. As regards the remainder of the applicant's complaints, the Commission finds no issue under the Convention. This part of the application is therefore also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICAITON INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)