AS TO THE ADMISSIBILITY OF

Application No. 13904/88
by K. J.
against Sweden

The European Commission of Human Rights sitting in private on 6 September 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
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

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 1 March 1988 by K.J. against Sweden and registered on 2 June 1988 under file No. 13904/88;

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 1948 and resident at Rönninge. He is currently serving a prison sentence at Norrköping.

On 7 August 1987 the Stockholm District Court (tingsrätt) ordered, in his absence, that the applicant be taken into custody on suspicion of having committed serious smuggling and narcotics offences.

On 17 September 1987 the applicant was arrested and on 23 September brought before a judge who ordered that the applicant remain in detention.

On 29 September 1987 the applicant was transferred from

Stockholm to Visby situated about 400 km from Stockholm on the island of Gotland, where he was kept in detention.

On 16 December 1987 the Stockholm District Court refused to release the applicant. The hearing which preceded the decision was held in camera in the jail, where the applicant was held at Visby. The applicant appealed to the Svea Court of Appeal (Svea hovrätt) which rejected the appeal on 23 December 1987 without a hearing. On 15 January 1988 the Supreme Court (högsta domstolen) refused leave to appeal.

The applicant remained in detention on remand at Visby until April 1988.

On 27 May 1988 the District Court convicted and sentenced the applicant to 12 years' imprisonment. This judgment was, in essence, confirmed by the Svea Court of Appeal on 23 September 1988.

The applicant was defended by a lawyer whose office was in Stockholm. During the period the applicant was detained at Visby his defence counsel visited him about ten times and on these occasions he attended the applicant's interrogations by the police and the public prosecutor. However, there was no time for the applicant to discuss in private with his counsel.

COMPLAINTS

1. The applicant complains that he has been hindered in the preparation of his defence on the ground that his defence counsel was in Stockholm whereas the applicant was placed in detention at Visby. He invokes Article 6 para. 3 (b) of the Convention.

2. The applicant also alleges a violation of Article 6 para. 1 of the Convention on the ground that the hearing which preceded the decision of 16 December 1987 was held in camera.

THE LAW

1. The applicant complains of a violation of Article 6 para. 3 (b) (Art. 6-3-b) of the Convention on the ground that he could not prepare his defence properly.

Article 6 paras. 1 (Art. 6-1) and 3 (b) (Art. 6-3-b) of the Convention read, insofar as relevant:

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

The applicant contends that his defence was hampered because his legal counsel worked in Stockholm whereas he was detained at Visby. He supposes that his transfer from Stockholm to Visby had no other explanation but to make his contacts with his counsel more difficult. He further contends that his counsel's visits to Visby were filled with interrogations by the police and that no time was left for them to discuss in private.

The Commission recalls that the applicant was arrested on 17 September 1987 and that the District Court delivered judgment on 27 May 1988. The applicant was held in detention on remand during this period and from 29 September 1987 to April 1988 he was held in a jail

at Visby. It appears that during the period the applicant was held at Visby his legal counsel visited him ten times. Having regard to the time which elapsed between the applicant's arrest and the trial and the contacts which took place between the applicant and his counsel during that period, the Commission finds no indication that the applicant did not have sufficient time and facilities to prepare his defence.

It follows that, in this respect, the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also alleges a violation of Article 6 para. 1 (Art. 6-1) of the Convention on the ground that no public hearing was held before the District Court when, on 16 December 1987, it decided not to release the applicant.

The Commission recalls that Article 6 para. 1 (Art. 6-1) applies to "the determination... of a criminal charge" against the individual concerned. However, the proceedings of which the applicant complains did not determine any criminal charge against the applicant. They only related to the question whether the applicant should remain in detention on remand. Article 6 para. 1 (Art. 6-1) was therefore not applicable to those proceedings.

It is true that Article 5 para. 4 (Art. 5-4) of the Convention entitles everyone who is deprived of his liberty to take proceedings by which the lawfulness of the detention shall be decided. Although Article 5 para. 4 (Art. 5-4) contains certain procedural guarantees to the detainee (cf. Eur. Court H.R., Weeks judgment of 2 March 1987, Series A no. 114, pp. 31-32, paras. 65-66) it does not go so far as guaranteeing the publicity of the hearing before the court (cf. Eur. Court H.R., Neumeister judgment of 27 June 1968, p. 43, para. 23).

Consequently, there is no appearance of a violation of Article 6 para. 1 (Art. 6-1) or Article 5 para. 4 (Art. 5-4) of the Convention in this respect.

It follows that this part of the application is 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 APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)