AS TO THE ADMISSIBILITY OF

Application No. 16668/90
by M.
against Sweden

The European Commission of Human Rights sitting in private on 11 October 1990, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
S. TRECHSEL
F. ERMACORA
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
M.P. PELLONPÄÄ

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 10 January 1990 by M. against Sweden and registered on 5 June 1990 under file No. 16668/90;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

The applicant is of Iranian nationality and was born in 1960. He is a student residing in L., Sweden. He is currently detained in prison in Sweden. He is represented by Peter Haglund, a lawyer practising in Falköping.

Before the Commission the applicant complains that he was wrongly convicted and sentenced for sexual abuse of his daughter. He also complains that the medical examinations of his daughter and the taking of secretion and blood samples were not carried out properly. In this connection he alleges that the samples were not stored correctly by the authorities, as a result of which some of the samples were destroyed and some could not be used in order to carry out a DNA analysis. He alleges that the samples could have proven that he is innocent but that the authorities deliberately destroyed them. Finally, the applicant complains that due to the fact that the samples were destroyed he was not allowed to have witnesses from the medical research laboratories examined on his behalf regarding the outcome of the DNA analysis. He alleges a violation of Article 6 paras. 1 and 3 (b) and (d) of the Convention.

It appears from the file that the applicant was convicted and sentenced for the above offence to three years' imprisonment by a judgment of the District Court (tingsrätten) of Linköping on 12 July 1989. His appeal to the Göta Court of Appeal (Göta hovrätt) was rejected on 12 September 1989 and leave to appeal was refused by the Supreme Court (Högsta domstolen) on 12 October 1989.

It furthermore appears that the suspicions about the applicant having committed sexual abuse arose from two medical examinations of his daughter in March and April 1989. Certain samples were sent to laboratories in the U.S.A. and the United Kingdom for DNA analysis. However, no analysis was made in the U.S.A. and the samples were not received back. The laboratory in the United Kingdom was unable to carry out the requested analysis.

The Commission has examined the applicant's separate complaints as they have been submitted by him. However, with regard to the judicial decisions of which the applicant complains, the Commission first recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in 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 established case-law (see e.g. No. 458/59, Dec. 29.3.60, Yearbook 3 pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43 pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18 pp. 31, 45).

It is true that the applicant has also complained that his right under the Convention to have adequate facilities for the preparation of his defence and to have witnesses examined on his behalf were violated.

The Commission, however, finds that the applicant has not submitted any substantial evidence supporting his allegations that the Swedish authorities prevented a DNA analysis from being carried out or substantiated his allegations that the samples were deliberately destroyed by the Swedish authorities. Moreover, the Commission notes that the applicant was convicted on the basis of a considerable amount of other circumstantial evidence such as medical opinions and witness statements.

An examination by the Commission of this complaint as it has been submitted does therefore not disclose any appearance of a violation of the rights and freedoms set out in the provisions invoked by the applicant.

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

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H. C. KRÜGER) — (C. A NØRGAARD)