AS TO THE ADMISSIBILITY OF

Application No. 36395/97
by Waldemar MASOW
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 February 1997 by Waldemar MASOW against Sweden and registered on 9 June 1997 under file No. 36395/97;

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, a Polish citizen born in 1964, resides in Świnoujście, Poland. He is presently serving a prison sentence in Sweden.

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

a. The particular circumstances of the case

On 6 June 1996 the applicant was charged, inter alia, with aggravated drug offences (grovt narkotikabrott) under Section 3 of the Drug Offences Act (narkotikastrafflagen; 1968:64) and aggravated smuggling of goods (grov varusmuggling) under Section 3 of the Smuggling of Goods Act (Lagen om straff för varusmuggling; 1960:418). According to the bill of indictment concerning the latter charge, the applicant had ordered amphetamine from Poland and paid half of it and had, with the help of two couriers, illegally brought three to four kilos of amphetamine to Ystad, Sweden and then further to Göteborg. The public prosecutor also alleged that the applicant had paid approximately 100,000 Swedish crowns to one of the two couriers for the narcotics. Furthermore, the applicant or an accomplice was supposed to have received the narcotics from the persons in Poland and hidden it or forwarded it to others for resale.

By judgment of 3 July 1996, following an oral hearing, the District Court (tingsrätten) of Göteborg did not find that the applicant had brought or could be considered to have brought the amphetamine to Sweden and as it had not been alleged that he had taken part in the illegal import in any other way, the applicant was acquitted of the charge of aggravated smuggling of goods. However, the court found that he was guilty of aggravated drug offences and of having used a false document (brukande av falsk urkund). He was sentenced to five years and six months' imprisonment and to subsequent expulsion from Sweden.

Both the applicant and the prosecutor appealed against the District Court's judgment. The prosecutor claimed that the applicant should also be convicted of aggravated smuggling of goods. The prosecutor modified his description of the alleged act in that he claimed that the applicant had let somebody bring two kilos of amphetamine into Sweden. The prosecutor no longer claimed that the applicant had paid for or handled the narcotics.

By judgment of 10 September 1996, following an oral hearing, the Court of Appeal for Western Sweden (Hovrätten för Västra Sverige) found the applicant guilty of, inter alia, aggravated smuggling of goods. The court considered that the applicant, helped by an accomplice in Poland, had obtained the amphetamine in Poland and had participated in the planning of the smuggling of the amphetamine which, through the agency of two couriers, had been transported to Göteborg. The court also found that the applicant, with the assistance of an accomplice, had made an advance payment for the narcotics.

The applicant appealed to the Supreme Court (Högsta Domstolen) which, on 16 October 1996, refused leave to appeal.

b. Relevant domestic law and practice

The relevant parts of the Smuggling of Goods Act provide the following:

(Translation)

Section 1, subsection 1:

"A person who, without notifying the responsible authority, ... imports ... goods, ... which by law or statute may not be imported ... shall, if the act is carried out intentionally, be convicted of smuggling of goods and sentenced to a fine or to imprisonment for a period not exceeding two years. If the act concerns narcotics referred to under Section 8 of the Drug Offences Act, the sentence shall be imprisonment for a period not exceeding three years.

Section 3, subsection 1:

"If the smuggling of goods is considered aggravated, the sentence shall be imprisonment for a period of not less than six months and not exceeding six years. If the act concerns narcotics referred to under Section 8 of the Drug Offences Act, the sentence shall be imprisonment for a period of not less than two years and not exceeding ten years."

Section 8 of the Drug Offences Act regulates which substances are considered as narcotics under that Act.

COMPLAINTS

Invoking Article 6 paras. 1 and 2 of the Convention, the applicant complains that he did not have a fair trial by an impartial tribunal. He claims that he was found guilty of instigation to smuggle goods (anstiftan till varusmuggling), an offence with which he had not been charged. He also states that he was convicted of an act which did not constitute a criminal offence under Swedish law. Finally, he asserts that the evidence against him was not sufficient to convict him of the smuggling charge.

THE LAW

The applicant complains that he did not have a fair trial by an impartial tribunal. He invokes Article 6 paras. 1 and 2 of the Convention which, in so far as relevant, provide as follows:

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

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

a. The applicant first claims that he was found guilty of an offence, instigation to smuggle goods, with which he had not been charged.

However, the Commission recalls that, by the Court of Appeal's judgment, the applicant was not convicted of any instigation offence but of aggravated smuggling of goods, an offence included in the bill of indictment. Thus, the applicant was not convicted of an offence with which he had not been charged.

Consequently, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

b. The applicant further complains that he was convicted of an act which did not constitute a criminal offence.

The Commission considers that Article 7 of the Convention is of relevance to this complaint. Article 7 para. 1 reads as follows:

"1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

In this respect the Commission recalls that the smuggling offence of which the applicant was convicted was criminalised under Sections 1 and 3 of the Smuggling of Goods Act. Consequently, the act in question constituted a criminal offence under Swedish law.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

c. Finally, the applicant asserts that, as regards the smuggling offence, his guilt was not proven.

The Commission finds that this complaint concerns the Court of Appeal's evaluation of facts and evidence. It is recalled that, in accordance with Article 19 of the Convention, the Commission's 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 a complaint concerning errors of law and fact allegedly 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 or its Protocols. The Commission refers, on this point, to the established case-law of the Commission and the European Court of Human Rights (cf., e.g., No. 21283/93, Dec. 5.4.94, D.R. 77-A, pp. 81 and 88,

and Eur. Court HR, Klass v. Germany judgment of 22 September 1993, Series A no. 269, p. 17, para. 29).

The Commission finds that an examination of the applicant's submissions in respect of the present complaint do not disclose any appearance of a violation of the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER Secretary to the Second Chamber	J.-C. GEUS President of the Second Chamber