The European Commission of Human Rights sitting in private on 1 December 1986, the following members being present:

MM. E. BUSUTTIL, Acting President
C. A. NØRGAARD
G. JÖRUNDSSON
S. TRECHSEL
B. KIERNAN
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
Mrs G. H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ

Mr. J. RAYMOND, Deputy Secretary to the Commission

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

Having regard to the application introduced on 9 August 1985 by K.R-J. against Denmark and registered on 22 November 1985 under file No. 11846/85;

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 Polish citizen, born in 1959. He is an electrician by profession and resides in Copenhagen. When introducing his application the applicant was serving a three year prison sentence at Vestre fængsel (prison), Copenhagen.

The applicant came to Denmark in 1977 and he has lived there since. In 1981 he married a Polish citizen and his wife came to Denmark in 1982. They do not have any children. The applicant's mother, stepfather, sister and grandmother also live in Denmark.

On 18 August 1983 the applicant was arrested by the Danish police and detained on remand. By indictment of 27 February 1984 he was charged with a number of violations of the Danish Penal Code, including 11 counts of fraud. It appears that the applicant's wife was also involved in the criminal activity and she was also arrested and detained on remand.

By judgment of 15 June 1984 the City Court of Copenhagen (Københavns byret) found the applicant and his wife guilty of the charges brought against them and sentenced them to three years' and one year's imprisonment respectively. During the court proceedings it was established that the applicant could not expect political persecution in Poland but that he still had to do his military service. Therefore, in addition to the sentence imposed the Court ordered that the applicant and his wife be expelled from Denmark when released and furthermore the Court imposed re-entry bans, of indefinite duration in

the applicant's case and for a period of ten years in the case of his wife.

The applicant and his wife appealed against the judgment to the Court of Appeal (Østre Landsret) insofar as it concerned the expulsions and the entry bans. On 23 November 1984 the Court of Appeal upheld the lower court's judgment in this respect, insofar as it concerned the applicant, whereas it quashed the judgment in this respect in regard to the applicant's wife. The applicant subsequently applied to the Ministry of Justice for leave to appeal to the Supreme Court in regard to the expulsion and the entry ban. However, on 13 August 1985 the Ministry refused to grant leave to appeal.

COMPLAINTS

The applicant invokes Articles 3 and 8 (art. 3, art. 8) of the Convention maintaining that the decisions to expel him, and to refuse him entry to Denmark, amount to inhuman treatment and disrespect for his private and family life since his wife, mother, sister, stepfather and grandmother all live in Denmark whereas he no longer has any relatives or other connections in Poland.

THE LAW

1. The applicant has complained that his expulsion, which is to follow the prison sentence imposed, and the prohibition of entry amount to an unjustified interference with his right to respect for his private and family life.

Article 8 (art. 8) of the Convention ensures inter alia everyone's right to respect for his private and family life and forbids any interference by a public authority with the exercise of this right except under certain conditions.

The Commission has constantly held that the right of an alien to reside in a particular country is not as such guaranteed by the Convention (cf. eg. No. 9492/81, Dec. 14.7.82, D.R. 30, p. 232 with further references). However, regarding the notion of "family life" it is true that the Commission has previously held that the expulsion of a person from a country where close relatives reside can in certain situations amount to an infringement of Article 8 (art. 8) of the Convention (cf. e.g. No. 7816/77, Dec. 19.5.77, D.R. 9, p. 219). In such circumstances the Commission first examines whether such a link exists between the applicant and the relatives as can be considered to establish a family life within the meaning of Article 8 (art. 8).

The Commission finds that this requirement is fulfilled in regard to the relations between the applicant and his wife. However, the applicant and his wife, who have been married since 1981, are both aliens of the same nationality and it has not been established that they will be unable to make reasonable arrangements to live together outside Denmark, even though they would prefer to live there. Where the circumstances are such that the wife has a reasonable possibility of following her husband out of the country, there is not in the Commission's opinion any interference with family life contrary to Article 8 para. 1 (art. 8-1) of the Convention (cf. No. 7729/76, Dec. 17.12.76, D.R. 7, p. 164).

Regarding the remainder of the relatives mentioned by the applicant the Commission observes that scarce information has been given about these relatives and the closeness of the relationship involved. In particular no claim of any dependence between the applicant and the other relatives has been made. In these circumstances, therefore, the Commission considers that it has not been shown that there exists a sufficiently close link between the applicant and his relatives in Denmark which could be deemed to have established the family life which is protected by Article 8 (art. 8).

Accordingly, whilst some disturbance in the applicant's family life, between the applicant and his wife, will inevitably result from a refusal to permit him to reside in Denmark, the Commission considers that it has not been shown that these disturbances are of such a nature as to amount to a violation of the Convention and in particular of Article 8 (art. 8).

The Commission has also considered the applicant's complaint regarding interference with his "private life" also protected by Article 8 (art. 8) of the Convention. However, the Commission finds that the expulsion necessarily implies a disruption of private life but this inevitable consequence of any expulsion cannot in principle be regarded as an interference with the right to respect for private life protected by Article 8 (art. 8) of the Convention (cf. No. 10427/83, Dec. 12.5.86, unpublished). Furthermore, the applicant has not submitted any evidence which would suggest that this principle should be departed from in the present case. The Commission therefore finds that there has been no interference with the applicant's right to respect for his private life.

It follows that the applicant's complaints under Article 8 (art. 8) of the Convention, are, as a whole, manifestly ill-founded within the meaning of Article 27 para. 2 (art. 27-2) of the Convention.

2. The applicant has finally complained that his expulsion from Denmark and the prohibition of entry amount to inhuman treatment within the meaning of Article 3 (art. 3) of the Convention. However, the Commission finds that an examination of this complaint, as submitted by the applicant, does not disclose any appearance of a violation of this provision and 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

Deputy Secretary to the Commission Acting President of the Commission

(J. RAYMOND) (E. BUSUTTIL)