AS TO THE ADMISSIBILITY OF

Application No. 12694/87
by S.
against Sweden

The European Commission of Human Rights sitting in private on 7 October 1988, 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
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C. L. ROZAKIS
Mrs. J. LIDDY

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 September 1986 by Agne Hubert STENE against Sweden and registered on 21 January 1987 under file No. 12694/87;

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 1928. He is an unskilled worker and states that he resides at Kyrkhult in the municipality of Olofström, Sweden.

The applicant owns a piece of property in the municipality of Olofström. However, due to his profession he often changes his de facto place of residence in order to find jobs. He has, however, always considered his property at Olofström as his home.

In 1980 the applicant, his wife and his daughter were considered resident (mantalsskriven) at Olofström. However, it appears

that the municipality of Oskarshamn complained to the County Administrative Court (länsrätten) of Kalmar maintaining that the applicant and his family should be considered resident there. After obtaining statements from the parties involved the County Administrative Court, in its decision of 19 May 1981, found in favour of the municipality of Oskarshamn. It does not appear that the applicant appealed against this decision and he has been considered resident there ever since.

When the local tax authorities, for the year 1985, again considered the applicant resident at Oskarshamn the applicant lodged a complaint with the County Administrative Court maintaining that his home was at Kyrkhult in the municipality of Olofström where he owned a piece of property and where he resided as often as his work situation would allow. The Court obtained statements from the parties involved and in its judgment of 17 September 1985 it stated as follows:

"A person who due to his work situation spends the night in a place different from that where his family is living shall, in accordance with Section 13 of the Ordinance on Population Records (folkbokföringsförordningen), be considered resident at his family's place of living if he visits the family on a regular basis.

From the facts of this case it appears that (the applicant) on census day, 1 November 1984, had an occasional job and a small place of living at Vimmerby, that his family occupied the ordinary residence at Figeholm and that (the applicant) according to his own submissions visits the family when possible. In these circumstances the Court finds that (the applicant) correctly has been considered resident in the municipality of Oskarshamn for the year 1985."

The applicant appealed against this judgment to the Administrative Court of Appeal (kammarrätten) of Jönköping which, however, rejected the appeal. In its judgment of 22 November 1985 the Court of Appeal stated:

"In his appeal (the applicant) submits inter alia the following : He stayed most of the time at his property Fogleboda at Kyrkhult. He has held different jobs in Vimmerby and in Hörby and did not then live at Figeholm. He has not visited the family there on a regular basis. His wife often stayed in Jämtland due to her illness. His daughter is of age and may take up her place of residence where she wants. It is difficult to find work and he has only his property at Fogleboda to rely upon for which reason he should be considered resident in the municipality of Olofström.

The Administrative Court of Appeal decides as follows.

The County Administrative Court has found that (the applicant) should be considered resident at Oskarshamn for the year 1985. (The applicant's) submissions in the Court of Appeal do not, having regard to the contents of the investigation in its entirety, lead to any other result."

The applicant appealed against this judgment to the Supreme Administrative Court (regeringsrätten) which, however, refused to grant leave to appeal on 13 June 1986.

COMPLAINTS

The applicant invokes Article 2 of Protocol No. 4 to the Convention. He maintains that the Swedish authorities have denied him the right to choose his residence.

THE LAW

The applicant has invoked Article 2 of Protocol No. 4 (P4-2) to the Convention which provides in its first paragraph that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

In this respect the Commission recalls that there has been no interference with the applicant's right to take up a residence where he found it appropriate. Indeed it appears from the facts of the case that the applicant has resided at several different places in order to find appropriate jobs. In these circumstances the Commission finds that the rights and freedoms guaranteed to the applicant under Article 2 of Protocol No. 4 (P4-2) have not been infringed and 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

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission — President of the Commission

(H. C. KRUGER) — (C. A. NØRGAARD)