AS TO THE ADMISSIBILITY OF

Application No. 17270/90
by S.
against Sweden

The European Commission of Human Rights sitting in private on 10 October 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
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 RUIZ
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 2 May 1990 by S. against Sweden and registered on 9 October 1990 under file No. 17270/90;

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

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they appear from the applicant's submissions, may be summarised as follows.

The applicant is a South African citizen born in 1960. He is currently serving a prison sentence at Härnösand and will be released on 13 October 1990. He then faces expulsion.

The applicant came to Sweden in November 1986 and applied for asylum. His application was rejected by the National Board of Immigration (statens invandrarverk) on 17 August 1987. The National Board also ordered that the applicant should be expelled.

The applicant appealed to the Government which rejected the appeal on 21 December 1989.

By judgment of 2 November 1989 the District Court (tingsrätten) of Skellefteå convicted the applicant of rape and sentenced him to one year and six months' imprisonment and ordered

that he should be expelled with a prohibition against returning to Sweden before 1 January 1996.

By judgment of 19 December 1989 the Court of Appeal for Upper Norrland (hovrätten för Övre Norrland) confirmed the conviction and expulsion decision but increased the sentence to two years' imprisonment. The applicant appealed against the expulsion decision. On 19 January 1990 the Supreme Court (Högsta domstolen) refused leave to appeal. An application for re-opening of the proceedings was rejected by the Supreme Court on 14 May 1990.

The applicant will be released on 13 October 1990 after having served half his sentence. He states that he will then be expelled to South Africa.

In August 1990 the applicant requested the Government to quash the expulsion decision or, in any event, not to enforce the decision. On 27 September 1990 the Government rejected the request.

The applicant states that already in 1978 when he lived in Durban and went to High School he started to engage in political activities against apartheid. He participated in demonstrations and student actions. The applicant was arrested on a number of occasions and was subjected to torture. He was arrested from 24 hours to one month without any trial. He still has scars on his body as a result of the torture he suffered. The applicant has also written articles against apartheid in the local newspaper. In Johannesburg he created at the university a political group of students who belonged to the Zulu tribe. The group organised demonstrations and the applicant was arrested and tortured on several occasions. During the Soweto upheaval in 1985 two members of the group were shot to death. After his studies the applicant worked as a journalist for the Herald. He wrote about apartheid and human rights. In 1984 the applicant was arrested by the security police, the only reason being that he was the son of a political opponent. The applicant states that his father was forced to leave South Africa in 1959 on account of his political activities. The father had a high position in the African National Congress (A.N.C.).

As a result of this the applicant realised that he could not remain in South Africa. He feared for his life. He succeeded in obtaining a forged British passport and left South Africa for Windhoek, Amsterdam and Copenhagen.

The applicant states that if he is expelled he risks deadly torture or indefinite imprisonment. He is also deadly afraid of the massacres carried out by the Zulu Inkhata movement.

COMPLAINTS

The applicant complains that his life is threatened if he is expelled to South Africa. He requests the Commission to stop the expulsion.

He alleges violations of Article 6 of the Convention.

THE LAW

1. The Commission will first examine whether an expulsion of the applicant to South Africa would involve a violation of Article 3 (Art. 3 ) of the Convention which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that according to its established case-law the right to asylum and the right not to be expelled or extradited are not as such included among the rights and freedoms

mentioned in the Convention but that the expulsion or extradition of a person may nevertheless, in certain exceptional circumstances, raise an issue under the Convention and in particular under Article 3 (Art. 3) where there are serious grounds to fear that the person concerned would be subjected, in the State to which he is to be sent, to treatment which is in violation of this Article (Art. 3) (see e.g. No. 1802/62, Dec. 26.3.63, Yearbook 6 pp. 462, 480; No. 10308/83, Dec. 3.5.84, D.R. 36 pp. 209, 231; No. 10564/83, Dec. 10.12.84, D.R. 40 pp. 262, 265).

In the Soering case, the European Court of Human Rights stated as follows (Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161, pp. 35-36, para. 91):

> "In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (Art. 3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 (Art. 3) of the Convention."

The Commission has examined the applicant's submissions and the documents in support of his application. It finds that the information available to it is not sufficient to conclude that there exists a substantial risk that the applicant would be subjected to treatment contrary to Article 3 (Art. 3) of the Convention after his return to South Africa.

It follows that this part of 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 violations of Article 6 (Art. 6) of the Convention with regard to the proceedings in Sweden.

The Commission recalls, however, that, according to its case-law, Article 6 (Art. 6) does not apply to disputes whether an alien should be allowed to enter a particular country or be expelled from a country (cf. No. 8244/78, Dec. 2.5.79, D.R. 17 p. 149).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention and must be rejected pursuant to Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)