AS TO THE ADMISSIBILITY OF

Application No. 13167/87
by Bengt WIKSTRÖM
against Sweden

The European Commission of Human Rights sitting in private on 14 April 1989, the following members being present:

MM. S. TRECHSEL, Acting President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. J. RAYMOND, Deputy 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 23 April 1987 by Bengt WIKSTRÖM against Sweden and registered on 24 August under file No. 13167/87;

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 1942. He is a mechanic by profession and resides at Helsingborg, Sweden.

On 8 January 1981 the applicant arrived by ferry to Helsingborg. His car was taken out for inspection at the customs control and four bottles containing 1.85 litres of alcoholic beverages were found. The applicant was subsequently charged with a violation of the Smuggling Act (varusmugglingslagen) and his case was heard in the District Court (tingsrätt) of Helsingborg which pronounced judgment in the case on 20 May 1981. The applicant was found guilty of the charge brought against him and sentenced to pay a fine.

The applicant appealed against this decision to the Court of Appeal of Skåne and Blekinge (hovrätten över Skåne och Blekinge) which upheld the judgment on 9 September 1981. The applicant's application for leave to appeal to the Supreme Court (högsta domstolen) was

rejected by the Court on 11 February 1982.

The applicant subsequently applied for a re-opening of his case but his request was rejected by the Supreme Court on 2 December 1982.

On 23 September 1984 the applicant submitted a new request to the Supreme Court in order to have his case re-opened. He maintained that he had been convicted of smuggling contrary to domestic legislation in that the act he had committed did not constitute a criminal offence. His request to the Supreme Court was supported by the Prosecutor General (riksåklagaren).

Nevertheless his request was rejected by the Supreme Court in March 1987.

COMPLAINTS

The applicant invokes Article 7 of the Convention. He maintains that he has been held guilty of a criminal offence on account of an act which did not constitute a criminal offence under national law at the time when it was committed.

THE LAW

The applicant maintains that he has been convicted of a criminal offence contrary to Article 7 (Art. 7) of the Convention which reads:

"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.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

The Commission recalls, however, that, under Article 26 (Art. 26) of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

In the present case the judgment, in which the criminal charge against the applicant was determined, was pronounced by the Court of Appeal on 9 September 1981 and his request for leave to appeal against this judgment was rejected by the Supreme Court on 11 February 1982. Subsequently the applicant requested the re-opening of the proceedings but his requests were rejected by the Supreme Court on 2 December 1982 and in March 1987 respectively.

The application to the Commission was introduced on 23 April 1987, i.e. about a month after the Supreme Court had rejected his last request to have his case re-opened but more than six months from the date of any other court decisions taken in the present case.

It follows that the Commission can only deal with the applicant's complaint if his petition for a re-opening can be considered a remedy within the meaning of Article 26 (Art. 26) of the Convention, in which case the six month period provided for in that Article should be calculated from the date of the last decision of the Supreme Court in this respect.

The Commission recalls that it has the competence in every case to appreciate in the light of the particular facts whether a remedy appears to

offer the possibility of effective and sufficient redress within the meaning of the general recognised rules of international law in regard to the exhaustion of domestic remedies and, if not, to exclude it from consideration in applying the six month time-limit (cf. for example No. 12858/87, Dec. 3.5.88, to be published in D.R.).

The Commission refers, however, to its extensive jurisprudence according to which an application for re-trial or similar extraordinary remedies cannot, as a general rule, be taken into account in the application of Article 26 (Art. 26) of the Convention (cf. No. 10326/83, Dec. 6.10.83, D.R. 35 p. 218 with further references).

The Commission has not found any special circumstances in the present case which would permit a different conclusion from its extensive jurisprudence on the question of re-trials or similar extraordinary remedies. Consequently the applicant's petitions for retrial did not constitute domestic remedies under the generally recognised rules of international law and the rejection of the applicant's request for re-opening by the Supreme Court in March 1987 cannot be taken into consideration in determining the final decision for the purpose of applying the six month time-limit laid down in Article 26 (Art. 26).

Accordingly the present application, submitted to the Commission on 23 April 1987, has been introduced out of time. Furthermore, an examination of the case does not disclose the existence of any other special circumstances which might have interrupted or suspended the running of the six month period.

It follows that the application must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Deputy Secretary to the Commission — Acting President of the Commission

(J. RAYMOND) — (S. TRECHSEL)