

AS TO THE ADMISSIBILITY OF

Application No. 17392/90
by M.
against Denmark

The European Commission of Human Rights sitting in private on
14 October 1992, the following members being present:

MM. S. TRECHSEL, President of the Second Chamber
C. A. NØRGAARD
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS

Mr. K. ROGGE, Secretary to the Second 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 9 September
1990
by M. against Denmark and registered on 5 November 1990 under file
No. 17392/90;

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 submitted by the applicant, may be
summarised as follows.

The applicant is a German citizen, born in 1950. He resides at
C., Germany.

Prior to 1989 the applicant lived in what was then the German
Democratic Republic (Deutsche Demokratische Republik, herein-

after : DDR). On 10 March 1986 he and his wife applied for permission to move to the Federal Republic of Germany (Übersiedlungersuchen) which, however, was rejected by the DDR authorities. Determined to leave the country nevertheless, the applicant went to Berlin (East) in September 1988, and on 9 September 1988 at approximately 11.15 hours he entered the premises of the Danish Embassy together with 17 other DDR citizens and requested negotiations with the competent DDR authorities concerning permits to leave for the Federal Republic of Germany.

Certain contacts and proposals followed. The applicant and his friends were promised impunity and subsequent negotiations concerning the possibility of leaving the country. However, the applicant and his friends found these offers unacceptable. They were repeatedly requested to leave the building and they submit that eventually they proposed that they would leave the following morning. At the request of the Danish ambassador, however, the DDR police entered the Embassy on 10 September 1988 at approximately 2.30 hours and requested the applicant and his friends to leave and to come with them, which they did.

The thirteen adults of the group, including the applicant, were immediately detained on remand by the DDR authorities whereas the five children were placed in a children's home. After ten days detention the six women were released and the children handed over to them. The charges against the women were eventually dropped. The applicant submits that during the detention on remand they were subjected to interrogation of very long duration.

By indictment of 22 September 1988 the seven men were charged inter alia with having illegally entered and refused to leave the Danish Embassy (Hausfriedensbruch) contrary to Sections 134 and 22 of the DDR Penal Code. By judgment of the City District Court (Stadtbezirksgericht) of Berlin-Lichtenberg of 12 October 1988 the applicant as well as the six other men were found guilty of the charges brought against them and sentenced to conditional imprisonment, in the applicant's case for a period of three years with a threat of one year and six months imprisonment in case of non-compliance with the conditions set. They were released the same day, i.e. after 33 days of detention.

The applicant appealed against the judgment to the City Court (Stadtgericht) of Berlin which, however, rejected the appeal on 24 October 1988 as being manifestly ill-founded (offensichtlich unbegründet).

On 24 September 1988 the Danish Board for Foreign and Political Affairs (Det Udenrigspolitiske Nævn) decided to set up a committee which was entrusted with establishing the facts of the case. On 3 November 1988 the report was submitted to Parliament. It stated inter alia that the ambassador's decision to request the DDR police to remove the applicant and his 17 friends from the Embassy after only approximately 15 hours was contrary to the practice which had developed in similar cases. Subsequently the Ministry for Foreign Affairs amended its internal rules concerning the measures to be taken in cases of this kind. The applicant eventually received a copy of the report. He did not participate in the proceedings leading to the report.

On 23 March 1989 the applicant and his family moved to the Federal Republic of Germany without, however, being allowed to take their belongings with them.

On 9 June 1989 the applicant submitted a request for damages (eine entsprechende Entschädigung/Wiedergutmachung) to the Danish ambassador who was then in Finland. On 21 July 1989 the Danish Ministry for Foreign Affairs rejected all claims for damages as being unsubstantiated.

On 8 November 1989 the applicant instituted proceedings in the High Court of Eastern Denmark (Østre Landsret) against the Danish ambassador in question, but it appears that the case never proceeded as the applicant did not pay the registration fee (retsafgift). The applicant also applied for legal aid but this was refused by the competent authorities which found that the financial situation did not allow for the granting of legal aid and that there were no special reasons for deviating from this requirement.

The applicant submits that the case in the High Court was discontinued after the ambassador had died in September 1990.

COMPLAINTS

The applicant complains that his right to liberty and security

of person secured to him under Article 5 of the Convention was violated on 10 September 1988 when he was handed over to the DDR police.

Under Article 2 para. 1 of Protocol No. 4 the applicant maintains that he was deprived of his right to move freely on Danish territory when he was removed from the Embassy premises, and under Article 4 of the same Protocol the applicant submits that he was, together with his 17 friends, collectively expelled. Furthermore, the applicant complains, under Article 1 of Protocol No. 7, that he was expelled without a decision being taken in accordance with law.

He also complains that he did not get a fair and public hearing within a reasonable time as he was not heard when the committee set up by the Board for Foreign and Political Affairs examined the facts of the case.

With reference to Article 6 of the Convention the applicant also complains of the proceedings in the High Court.

Under Articles 7, 8 and 11 of the Convention the applicant finally complains of his conviction, of an unjustified interference with his private and family life, his home and his correspondence as well as an unjustified interference with his right to freedom of assembly.

THE LAW

1. The applicant complains that his right to liberty and security of person as guaranteed to him under Article 5 (Art. 5) of the Convention was violated when the Danish ambassador on 10 September 1988 requested the assistance of the DDR police. He also complains that this act violated Articles 2 and 4 of Protocol No. 4 (P4-2, P4-4) as well as Article 1 of Protocol No. 7 (P7-1) to the Convention.

The Commission notes that these complaints are directed mainly against Danish diplomatic authorities in the former DDR. It is clear, in this respect, from the constant jurisprudence of the Commission that authorised agents of a State, including diplomatic or consular agents, bring other persons or property within the jurisdiction of that State

to the extent that they exercise authority over such persons or property. In so far as they affect such persons or property by their acts or omissions, the responsibility of the State is engaged (cf. No.

7547/76, Dec. 15.12.77, D.R. 12 p. 73 with further references). Therefore, in the present case the Commission is satisfied that the acts of the Danish ambassador complained of affected persons within the jurisdiction of the Danish authorities within the meaning of Article 1 (Art. 1) of the Convention.

As regards the complaint submitted by the applicant under Article 5 (Art. 5) of the Convention the Commission recalls that the applicant and his friends entered the Danish Embassy in the former DDR at approximately 11.15 hours on 9 September 1988 and that on several occasions they were asked to leave. At 2.30 hours the following morning they left the Embassy when DDR police officers requested them to do so and they were immediately arrested by the DDR police. The applicant was subsequently tried and convicted by a DDR court and spent a total of 33 days in detention. In these circumstances the Commission finds that the applicant was not deprived of his liberty or security of person within the meaning of Article 5 (Art. 5) of the Convention by an act of the Danish diplomatic authorities but by an act of the DDR authorities. The Commission recalls, however, that an act or omission of a Party to the Convention may exceptionally engage the responsibility of that State for acts of a State not party to the Convention where the person in question had suffered or risks suffering a flagrant denial of the guarantees and rights secured to him under the Convention (cf. Eur. Court H.R., Soering judgment of 7 July 1989, Series A no. 161). The Commission finds, however, that what happened to the applicant at the hands of the DDR authorities cannot in the circumstances be considered to be so exceptional as to engage the responsibility of Denmark.

It follows that, in so far as the applicant complains of an alleged violation of Article 5 (Art. 5) by an act of the respondent Government, and leaving aside the question of the exhaustion of domestic remedies, this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. As already indicated above the applicant also complains that the incident during the night between 9 and 10 September 1988 in the Danish

Embassy violated Articles 2 and 4 of Protocol No. 4 as well as Article

1. of Protocol No. 7 (P4-2, P4-4, P7-1) to the Convention. He maintains

that he was deprived of his right to move freely on Danish territory,

that he was, together with his 17 friends, collectively expelled and that the decision to expel him was not taken in accordance with law.

The Commission finds that although, as stated above, a State party to the Convention may be held responsible either directly or indirectly for acts committed by its diplomatic agents, the provisions

invoked by the applicant must be interpreted in the light of the special circumstances which prevail in situations as the one which is

at issue in the present case. It is clear that Embassy premises are not

part of the territory of the sending state. Consequently as the applicant, while the incident took place, was not on Danish territory,

the provisions invoked by him are not applicable to his case.

This part of the application is accordingly incompatible *ratione*

materiae with the provisions of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

3. Under Article 6 (Art. 6) of the Convention the applicant complains that he did not get a fair hearing when the circumstances surrounding his "visit" to the Danish Embassy were examined by the Board for Foreign and Political Affairs. It is true that the applicant

was neither heard nor otherwise involved in these proceedings, but the

Commission recalls that Article 6 (Art. 6) applies only where either the applicant's "civil rights" or a "criminal charge" against him are

determined in the proceedings concerned. The Commission finds that this

was not so in the present case. It follows that this part of the application is also incompatible *ratione materiae* with the provisions

of the Convention and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

4. Under Article 6 (Art. 6) of the Convention the applicant also complains of the proceedings in the High Court of Eastern Denmark. The

Commission notes the applicant's submission that the proceedings were

discontinued after the ambassador died in September 1990. It appears,

however, from the other material submitted that the registration fee

due in order to allow the High Court to proceed with the case was never paid. Nor has the applicant submitted any material to substantiate that he in fact intended to pursue the matter in the High Court after his request for legal aid had been rejected.

In these circumstances the Commission finds that the applicant's submissions do not disclose any appearance of a violation of the Convention, and it follows that his complaints in respect of the proceedings in the High Court are manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. Finally the applicant complains, under Articles 7, 8 and 11 (Art. 7, 8, 11) of the Convention, of an unjustified interference with his private and family life, his home and his correspondence as well as an unjustified interference with his right to freedom of assembly.

The Commission has examined these complaints as submitted by the applicant. It considers that the Danish diplomatic authorities have not interfered with the rights secured to the applicant under these provisions, nor have they acted in a way as to engage the responsibility of the respondent Government under the Convention.

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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber
Chamber

President of the Second
Chamber

(K. ROGGE)

(S. TRECHSEL)