

THE FACTS

The facts of the case, as submitted by the applicant, may be summarised as follows:

The applicant who describes himself as stateless was born in 1930 and is at present resident in F. (Sweden). When introducing his application he was held in detention on remand in Stockholm.

From the applicant's statements and the documents he has submitted it appears that he was arrested on .. September 1971 on suspicion of theft. At the same time the police seized a number of documents in his apartment. Further documents were seized on later occasions in another building and in the apartment.

The applicant was convicted of theft at the Stockholm District Court (Stockholms tingsrätt) on .. September 1971 and given a suspended sentence. The Court also ordered that the applicant should be expelled and forbidden to return to Sweden within ten years. Both the applicant and the Public Prosecutor appealed but later withdrew their appeals. The Svea Court of Appeal (Svea hovrätt) therefore struck the appeals off the list of cases on .. December 1971.

The applicant and two other persons then applied to the King-in-Council (Kungl. Maj:t) that the expulsion order should be repealed but this petition was rejected on .. January 1972.

The Provisional Authority in Stockholm (länsstyrelsen i Stockholms län) then considered the question of how the expulsion order should be executed. In a decision dated .. January 1972 the Provisional Authority noted that the applicant's United States passport had been revoked and that he had obtained a Swedish travel document. Moreover, it was recorded that the applicant had lost his United States citizenship on .. August 1971 after he had renounced it. The United States Embassy in Stockholm had stated that the applicant could not be received in the United States before the matter had been investigated and a decision to admit him had been taken in that country. The applicant's fiancée had submitted a copy of a draft order dated in June 1970, the authenticity of which had not been proved. In accordance with the relevant provisions of the Swedish Aliens Act (utlänningslagen) the Provisional Authority referred the question of execution to the National Board for Immigration and Naturalisation (Statens invandrarverk) for a decision. The applicant has not indicated whether or not any such decision has as yet been taken.

The applicant also complained to the Parliamentary Commissioner (Justitieombudsmannen), inter alia, about the alleged refusal to allow him to see his defence counsel. The Parliamentary Commissioner decided on .. January 1972 that no action was called for as there was no reason to suspect that any official who had dealt with the pre-trial investigation had committed any error or shown negligence.

Furthermore the applicant complained to the Public Prosecutor and to the police authorities in Stockholm alleging that he had been deprived of certain property which had been seized by the police in connection with his arrest and shortly afterwards. The Public Prosecutor decided on .. April 1972 that there was no basis for prosecuting anybody for negligence in carrying out his official duties. He noted that certain carbons referred to in the applicant's complaint had been returned to the applicant and that an identity card which had been shown not to have been issued for the applicant had been forwarded to the United States authorities. As regards the remainder of the belongings listed by the applicant, the Public Prosecutor stated that there was no evidence of these having been seized by the police. He found, however, that there had been certain deficiencies in drawing up the records of the seizure and a failure to notify the applicant without delay as to

the property which had been seized. The Public Prosecutor then referred the matter to the Chief Constable (polismästaren) of Stockholm for such action as he might find appropriate.

The Chief Constable decided on .. November 1972 that no action was called for apart from drawing the attention of the police officers concerned to the great importance of observing the strict formalities laid down for keeping records of seizure. In particular, the records should set out, in detail, all actions which had been taken in such a way that the chronological order of events became clear. Moreover, the objects should be carefully described.

In addition to the above documents the applicant has also submitted a copy of complaint dated .. January 1972 addressed to the Parliamentary Commissioner in which two of the applicant's friends criticized the police investigation and the evidence produced by the police at the trial and accused the police of bias. In particular, it was maintained that, contrary to what had been stated at the trial, the applicant could expect to be sentenced to a long period of imprisonment for desertion if he was forced to return to the United States. The applicant has not submitted any information as to the decision of the Parliamentary Commissioner with regard to this complaint.

In a letter dated 4 December 1972 the Commission's Secretary asked the applicant to submit at once information on the following points:

"- In what way do you allege that your expulsion to the United States or to any other country to which you are likely to be expelled would be contrary to any of the specific rights and freedoms defined in the Convention or in the Protocols Nos 1 and 4?

- have you received any further information as to when your expulsion is expected to take place and as to the country to which you will be expelled?

- have you made any further appeal to the National Board for Immigration and Naturalisation (Statens invandrarverk) or the King-in-Council (Kungl. Maj:t) with regard to the execution of the expulsion order and have any further decisions been taken in this respect by the competent authorities? What were the grounds for such appeals, if any?"

The applicant was also requested to submit copies of all further decisions concerning the execution of the expulsion order including the decision taken by the King-in-Council on .. January 1972.

The applicant replied to these questions in a letter dated .. December 1972. He stated that he expected to be sent to the United States and that his expulsion would result in a long period of imprisonment for nothing more than political reasons. The applicant also said that he and his lawyer did not know the date when the expulsion order would be executed as the file was marked "Secret". He claimed that he had made a desperate appeal to the National Board for Immigration and Naturalisation without receiving any reply. Furthermore, the applicant submitted a copy of the decision taken by the King-in-Council of .. January 1972. The decision does not give any reason for refusing the request.

The applicant also submitted a copy of a letter written by him on .. January 1972 to the King-in-Council. In this letter the applicant claimed that his return to the United States would result in life imprisonment or, at least, many years in prison. He stated that he had served in the United States Armed Forces for seventeen years in Korea and Vietnam. According to the applicant he had the rank of Master Sergeant when he fled to Sweden in July 1970. The applicant also stated that he wanted to stay in Sweden and marry his Swedish fiancée.

In his application form and letters submitted to the Commission the applicant has complained of the following matters:

- his alleged ill-treatment by the police at the time of his arrest on .. September 1971;
- the alleged refusal to allow him to consult his lawyer for a period of two weeks or to receive visits from his fiancée and friends and the alleged withholding of all his outgoing mail while he was in detention on remand;
- the failure of the authorities to provide him with an interpretation from Swedish to English;
- the conduct of his trial at the District Court in particular the alleged refusal to allow anybody but witnesses for the prosecution to appear;
- the expulsion order as a result of which he was likely to be sent to a country (the United States) where his life and freedom would be in great danger;
- the alleged denial of his right to appeal;
- the seizure by the police of certain documents and other private property belonging to him and the alleged failure of the police to return this property;
- the failure of the authorities to deliver to him, until November 1972 four letters from a friend dated in November and December 1971;
- the detrimental effects on him and his fiancée of having to live under the threat of the expulsion order;

The applicant alleges a violation of Articles 6 (2) and (3) (a) (c) and (d), 7, 8, 13, 14, 18, 26 and 50 of the Convention and Articles 2 and 4 of Protocol No. 4.

He claims damages to the amount of 250,000 Swedish Crowns for the loss of property and 50,000 for having been ill-treated while in police custody.

The applicant has also asked the Commission to request the Swedish authorities to suspend all action until the matter before the Commission has been settled.

THE LAW

1. The Commission has first examined the applicant's complaints insofar as he complains of:

- (a) his alleged ill-treatment by the police at the time of his arrest on .. September 1971;
- (b) the alleged refusal to allow him to consult his lawyer for a period of two weeks or to receive visits from his fiancée and friends and the alleged withholding of all his outgoing mail while he was in detention on remand;
- (c) the failure of the authorities to provide him with an interpretation from Swedish to English;
- (d) the conduct of his trial at the District Court in particular the alleged refusal to allow anybody but witnesses for the prosecution to appear;
- (e) the seizure by the police of certain documents and other private

property belonging to him and the alleged failure of the police to return this property.

In examining these complaints the Commission has had regard to the provisions of Articles 3, 5 (2), 6 (1) and 3 (a), (b), (d) and (e) and 8 (Art. 3, 5-2, 6-1, 6-3-a, 6-3-b, 6-3-d, 6-3-e, 8) of the Convention and Article 1 of Protocol No. 1 (P1-1).

However, the Commission is not required to decide whether or not the facts alleged by the applicant in this connection disclose any appearance of a violation of these provisions as, 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.

In the present case the applicant failed to raise these complaints before the competent Swedish courts or authorities and has, therefore, not exhausted the remedies available to him under Swedish law. In this connection, the Commission observes that the various complaints made by the applicant or his friends to the police or the Public Prosecutor with regard to certain of these matters did not constitute effective remedies for the purpose of Article 26 (Art. 26) of the Convention. Moreover, an examination of the case as it has been submitted, including an examination made ex officio, does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and the application must in these respects be rejected under Article 27 (3) (Art. 27-3) of the Convention.

2. The applicant has further complained of the expulsion order made by the District Court on .. November 1971 as a result of which he fears that he will be expelled to the United States where his life and freedom would allegedly be in great danger.

In this connection, the Commission first recalls that according to its established case-law the right to asylum and the freedom from expulsion are not as such included among the rights and freedoms set forth in the Convention (see the decisions on the admissibility of applications No 2134/64, Yearbook, Vol. 7, p. 328, No. 1611/62, Yearbook, Vol. 8, p. 168 and No. 3040/67, Yearbook, Vol. 10, pp. 522-524).

Nevertheless, the Commission has frequently held that the expulsion of a person may, in certain exceptional circumstances raise an issue under the Convention and in particular under Article 3, namely, where there are serious grounds to fear that the person concerned will be subjected, in the State to which he is to be sent, to treatment which is in violation of this Article (see decisions on the admissibility of applications No. 1802/62, Yearbook, Vol. 6, p. 480 and No. 5012/71, Collection of Decisions, Vol. 40, p. 62). The Commission here notes that, in accordance with Swedish law, the order did not specify to which country the applicant was to be expelled but the Commission has considered the obvious possibility that he might be expelled to the United States of America. However, the applicant withdrew his appeal to the Court of Appeal against the District Court's expulsion order. He has therefore not exhausted the remedies available to him under Swedish law in respect of the order itself. The Commission again finds that there are no special circumstances which could have absolved him from the duty, under Article 26 (Art. 26) of the Convention, to exhaust all domestic remedies. In particular there is not the slightest evidence to support the applicant's assertion that he was denied his right to appeal. On the contrary, he appears to have abandoned his appeal without any form of coercion.

3. The Commission has next considered the question whether the execution of the expulsion order should be looked at as a separate matter having regard to the fact that in this respect the applicant had apparently exhausted the remedies available to him under Swedish law.

However, the Commission does not find it necessary to determine this question in the present case as even assuming that the execution of the order should be considered separately, the applicant's complaint in this respect, which again is only to be considered under Article 3 (Art. 3), is, in any event, inadmissible on other grounds.

In the present case there is no reason whatsoever to believe that the applicant would be subjected to any such treatment if he were to be sent to the United States which itself is not certain but, as mentioned above, is obviously possible. In this connection the Commission refers to its decision on the admissibility of applications Nos. 3803/68 and 3804/68 v. Sweden (unpublished) with regard to the complaint made under Article 3 (Art. 3) of the Convention by two deserters from the United States Armed Forces whose expulsion from Sweden had been ordered and who expected to be charged with desertion if they were sent to the United States.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

4. The applicant has further complained of the alleged delay in delivering certain letters to him and of the detrimental effects on him and his fiancée by reason of his having to live under the threat of the expulsion order.

It is true that Article 8 (Art. 8) of the Convention secures to everyone the right to respect for his private and family life, his home and his correspondence.

However, an examination by the Commission of this complaint as it has been submitted, does not disclose any situation which could amount to a violation of the rights and freedoms set forth in the Convention and in particular in the above Article.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

For these reasons, the Commission DECLARES THIS APPLICATION INADMISSIBLE