



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

THE FACTS

Whereas the facts of the case as presented by the Applicant may be summarised as follows:

The Applicant is a Danish citizen, born in 1931 and at present detained in prison in Copenhagen. He is represented before the Commission by Mr. C, a barrister practising in Copenhagen.

The Applicant was charged before the High Court of Eastern Denmark (Østre Landsret) with rape committed on two occasions in 1963, and, according to the procedure applicable, a jury was set up to determine the question of his guilt.

During the proceedings before the Court on ... 1964, the Applicant's counsel requested that an account of the Applicant's previous convictions should not be given to the Court until the jury had reached its decision as to his guilt in the present case. This request was rejected by the Court which, in its decision on this point, referred to Article 877 of the Code of Procedure (retsplejeloven) which expressly provides that records of previous convictions may be used as evidence during proceedings before the High Court.

Following this decision of the Court, the Public Prosecutor gave an account of the Applicant's numerous previous convictions; in particular, on one occasion in 1956, he had already been convicted of rape and sentenced to six years' imprisonment.

On ... 1964, the jury found that the Applicant was guilty of the offenses charged and on the same day the High Court, considering that the Applicant would not be susceptible to the effects of a penal sentence, decided to place him in a special detention centre (saerlig forvaringsanstalt) as provided for in Article 70 of the Penal Code.

The Applicant appealed against the decision of the High Court, requesting primarily that the case be returned to the High Court for a new examination and, alternatively, that he be sentenced to detention for a fixed period of time. He maintained in his appeal that information about his criminal record ought not to have been given

before the jury had decided upon the question of his guilt and that, moreover, it could be assumed that he would not have been found guilty, if his previous convictions had not been known to the jury. He alleged that the procedure followed did not meet the requirements for a fair trial within the meaning of Article 6 of the Convention.

On ... 1965, the Supreme Court (Højesteret) rejected his appeal. In its decision, the Supreme Court stated that information about previous convictions had been given in accordance with Article 877 of the Code of Procedure and that, moreover, the detention of the Applicant in a special detention centre as provided for in Article 70 of the Penal Code was justified.

The Applicant now complains:

(1) that the Public Prosecutor was allowed to inform the jury of his previous convictions, not only in general terms but in considerable detail; and

(2) that he has been sentenced to detention for an indefinite period of time. He alleges violations of Articles 3, 4 paragraph (1), 6, paragraphs (1) and (2), of the Convention and requests a new trial before an unbiased jury and the annulment of his sentence of detention for an unlimited period.

#### THE LAW

Whereas, as regards the complaint that the jury was informed of the Applicant's previous convictions before determining the issue of his guilt in respect of two charges of rape, the Commission considers that the Application gives rise to questions of the interpretation of Article 6, paragraphs (1) and (2) (Art. 6-1, 6-2), of the Convention;

Whereas, when interpreting such fundamental concepts as "fair hearing" within the meaning of Article 6, paragraph (1) (Art. 6-1), and "presumption of innocence" within the meaning of Article 6, paragraph (2) (Art. 6-2), the Commission finds it necessary to take into consideration the practice in different countries which are members of the Council of Europe; whereas it is clear that in a number of these countries information as to previous convictions is regularly given during the trial before the court has reached a decision as to the guilt of an accused; whereas the Commission is not prepared to consider such a procedure as violating any provision of Article 6 (Art. 6) of the Convention, not even in cases where a jury is to decide on the guilt of an accused;

Whereas 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;

Whereas, as regards the Applicant's complaint that he was sentenced to detention for an indefinite time, it is to be considered whether the Applicant's detention is contrary to Article 5, paragraph (1) (a) (Art. 5-1-a), of the Convention which deals with the lawful detention of a person after conviction by a competent court";

Whereas detention in a special detention centre, as provided for in Article 70 of the Penal Code, is a measure which, in the interests of public safety, is applied to persons with certain mental defects;

Whereas, at certain intervals, the detention may be re-examined by a court at the instance of the Public Prosecutor, the director of the institution concerned or the supervising guardian;

Whereas the Commission has previously been called upon to consider whether other similar measures involving detention for an indefinite period are contrary to Article 5, paragraph (1) (a) (Art. 5-1-a);

Whereas, in these cases, the Commission has concluded that the Convention (see for instance, in regard to the German "Sicherungsverwahrung", the Commission's decision regarding Application No. [99/55 \(/sites/eng/Pages/search.aspx#{"appno":\["99/55"\]}\)](#) X. against the Federal Republic of Germany, *Annuaire I*, page 160);

Whereas, having regard to the nature of the measure complained of and to the Commission's previous jurisprudence in regard to similar measures, the Commission does not find any appearance of violation of the rights and freedoms set forth in the Convention and, in particular, in Article 5, paragraph (1) (a) (Art. 5-1-a); whereas it follows that this part of the Application is also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention.

Now therefore the Commission declares this Application inadmissible.