

AS TO THE ADMISSIBILITY OF

Application No. 14191/88
by Carl G. HOLM
against Sweden

The European Commission of Human Rights sitting in
private on 9
January 1992, the following members being present:

MM.C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Sir Basil HALL
Mr.F. MARTINEZ RUIZ
Mrs.J. LIDDY
MM.L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

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 24 January 1987 by Carl G. Holm against Sweden and registered on 6 September 1988 under file No. 14191/88;

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

Having regard to the observations submitted by the respondent Government on 23 August 1990 and the applicant's observations in reply submitted by the applicant on 30 November 1990, as well as the submissions of the parties at the hearing on 9 January 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Swedish citizen, born in 1949. He is an economist and resides at Täby, Sweden. Before the Commission he is represented by his lawyer, Mr. Bertil Malmjöf, Stockholm.

The facts of the case, as submitted by the parties, may be summarised as follows.

A. Particular facts of the case

In 1985 a book called "Till höger om neutraliteten" ("On the Right of Neutrality") was published by Tidens Bokförlag AB. The author, Sven-Ove Hansson, was employed by the publishing house and had inter alia served as an ideological consultant to the Social Democratic Party. The aim of the book was inter alia to survey organisations and persons on the right wing of the political spectrum. One of the chapters in the book concerned the applicant, partly his personal activities and partly an organisation, Contra, of which he was a member. Contra had inter alia critically examined the Social Democratic Party in Sweden.

On 15 April 1986 the applicant instituted private prosecution proceedings for libel in the District Court (tingsrätten) of Stockholm against Mr. Sven-Ove Hansson. In the same proceedings he also sued the author and the publishing house, Tidens Bokförlag AB, claiming 200,000

Swedish crowns in damages for alleged libellous remarks in the book.

As the defendant so requested, the case was to be adjudged by a jury in accordance with the procedure under the Freedom of the Press Act (tryckfrihetsförordningen). On 10 November 1986 a court session was held in order to select a jury from the list of jurors at the Court. The list indicated the political affiliation of each juror. The applicant immediately requested the Court to reject all members of the Social Democratic Party (SAP) maintaining that Tidens Bokförlag AB was closely associated with the SAP. In its decision rejecting the applicant's request the District Court stated:

(translation)

"As reason for the request for disqualification (the applicant) has referred to the ownership situation of Tidens Förlag AB (in the case it is undisputed that Tidens Förlag AB is owned completely by the ARE company which again is owned by the labour movement) and that the company is the 'mouthpiece' of the social democratic movement.

The company has disputed that these circumstances

constitute a ground for disqualification as alleged; the company has furthermore denied that it is a 'mouthpiece' as alleged.

Regardless of whether the company can be considered as a 'mouthpiece' as alleged, the District Court finds that the reasons invoked do not amount to disqualifying circumstances for the jurors concerned."

The applicant appealed against this decision to the Svea Court of Appeal (Svea hovrätt) submitting that the ARE company owned all shares in Tidens Bokförlag AB and that the SAP owned 85% of the shares in ARE. He maintained that the case had political undertones for which reason jurors who were members of the SAP should not be allowed to participate.

On 4 December 1986 the Court of Appeal rejected the applicant's appeal. The Court did not state any reasons. A further appeal against this decision was not possible.

On 14 October 1987 the merits of the applicant's lawsuit were examined by the District Court of Stockholm sitting

with a jury of nine members. Five of the jurors were members of the SAP and all of them had or had had certain public assignments, appointed as members of the SAP. By judgment of the same day the applicant's private prosecution as well as his claim for damages were dismissed and costs were awarded against him.

B. Relevant domestic legislation

The procedure in trials concerning offences against the freedom of the press is regulated in the Freedom of the Press Act (tryckfrihetsförordningen). This Act is one of three fundamental laws that form the Swedish Constitution. The fundamental laws differ from ordinary laws in that they can only be adopted or amended by means of two decisions by the Swedish Parliament. The decisions have to be of identical wording. The second decision may not be taken until elections for the parliament have been held throughout the country and the newly-elected parliament has been convened.

The concept of fundamental law was developed in 1766 when Sweden received its first Freedom of the Press Act. The

present Freedom of the Press Act was adopted in 1949 (hereinafter "the FPA").

According to the FPA, the protection of the printed word rests on a number of basic principles. First, the FPA provides protection against actions by the authorities to raise obstacles to the printing, publication, or dissemination of printed matter (Chapter 1 Section 2). Secondly, the freedom to establish new enterprises for printing, distribution, etc. is guaranteed (Chapter 4 Section 1). Furthermore, "any Swedish subject or any Swedish legal person shall have the right to sell, dispatch, or otherwise disseminate printed matter, either alone or with the assistance of others" (Chapter 6 Section 1).

The FPA provides special court procedures in cases concerning infringements of the FPA.

The jury system

In cases concerning the freedom of the press the District Courts are composed of three legally trained judges and of a jury, unless both parties agree to refer the case to the court for decision

without a jury. The hearing is chaired by one of the legally trained judges who acts as the president of the Court. In the Swedish legal system participation of a jury occurs only in trials concerning the freedom of the press. Lay judges may, however, participate in other cases. Unlike ordinary court proceedings in which lay judges participate, the task of the jury is limited to examining the question whether a criminal offence has been committed. It has no influence on the penal sanctions to be imposed or on the amount of damages. These questions are decided by the professional judges.

The jury is composed of nine members. The jury's answer to the question whether a criminal offence has been committed shall be considered to be in the affirmative if at least six members concur in that opinion (FPA, Chapter 12 Section 2).

If the jury finds that no criminal offence has been committed, the defendant shall be acquitted by the District Court. If the jury finds that a criminal offence has been committed, this question is also

to be considered by the Court. If the opinion of the Court differs from that of the jury, the Court is entitled to acquit the defendant or to apply a penal provision imposing a milder sanction than that corresponding to the offence established by the jury. If an appeal is lodged against the judgment of the District Court, the appeal court may not depart further than the District Court from the verdict passed by the jury (FPA, Chapter 12 Section 2).

The FPA also contains a special instruction:

(translation)

"Each person entrusted with passing judgment on abuses of the freedom of the press or otherwise ensuring compliance with this Act shall constantly bear in mind that freedom of the press is fundamental to a free society, direct his attention always more to illegality of subject-matter and thought than to illegality in the form of expression, to the aim rather than to the manner of presentation, and, in case of doubt, acquit rather than convict." (Chapter 1 Section 4)

The list of jurors

According to the FPA, jurors are appointed for each County (län).

They shall be divided into two groups with sixteen jurors in the first group and eight in the second. The jurors in the second group must be or have been lay members of a court (FPA, Chapter 12 Section 3).

Jurors are appointed for a term of four calendar years.

In each County the jurors shall be elected by the County Council (landstinget) or, where in the County there is a Municipality which does not belong to any County Council, jointly by the County Council and the Municipal Assembly (kommunfullmäktige) (FPA, Chapter 12 Section 4). The County Council is the elected democratic assembly of a regional municipality (landstingskommun). The jurors are elected by simple majority.

Jurors shall be selected from among Swedish nationals resident in the County. They shall be known for soundness of judgment, independence and fair-mindedness. Different social groups, currents of opinion and various parts of the County shall be represented among the jurors (FPA, Chapter 12 Section 5). There are also

special rules

in the FPA about the right of jurors to withdraw from their duties and

about the consequences of a juror ceasing to be eligible (FPA, Chapter 12 Sections 6 and 7).

Complaints concerning the election of jurors shall be lodged with

the District Court, which may declare the election invalid. Even where

no complaint has been lodged, the Court shall examine the

qualifications of the persons elected (FPA, Chapter 12 Section 8).

Persons elected as jurors shall be entered in a jurors' list in which

each group shall be listed separately (FPA, Chapter 12 Section 9).

According to the 1949 Act on Certain Provisions concerning the

Proceedings in Freedom of the Press Cases (lagen (1949:164) med vissa

bestämmelser om rättegången i tryckfrihetsmål;

Section 5), the jury has

to take the following oath before participating in the trial:

(translation)

"I (name) do solemnly swear and assure on my faith and

honour that I, as a member of this jury, shall, to the best

of my ability, answer the questions posed by the court and, keep in absolute secrecy what is uttered during the deliberations of the jury and how the jurors vote. This, as an honest and upright judge, I will and shall faithfully observe."

The composition of the jury for a trial

When legal proceedings in which a jury is to participate have been initiated, the Court shall present the jurors' list and raise the question whether there are grounds for disqualification of any person included in the list. The legal provisions relating to the disqualification of judges shall apply (FPA, Chapter 12 Section 10).
(See "The disqualification of a juror", below).

The jury shall then be composed of non-disqualified jurors in the following manner: Each party has the right to exclude three jurors in the first group and one in the second. No reason has to be given for excluding a juror. Then the Court selects substitutes by lot among those who remain until six jurors are left in the first group and three in the second (FPA, Chapter 12 Section 10).

According to the FPA no person may evade the duties of a juror without having a legally acceptable excuse (Chapter 12 Section 12).

The disqualification of a juror

The provisions relating to the disqualification of judges apply also to the disqualification from a certain trial of any person included in the list of jurors (FPA, Chapter 12 Section 10). The grounds for disqualification of judges are enumerated in the Code of Judicial Procedure (rättegångsbalken), Chapter 4 Section 13.

A judge shall be disqualified from examining a case if any of the following circumstances are at hand:

(translation)

"1.If he is a party therein or otherwise has an interest in its subject-matter or can expect special advantage or damage from the outcome of the action;

2.if he and one of the parties are, or have been, married, or are related by blood or marriage in lineal ascent or descent, or are brothers or sisters, or are in such a relationship by marriage that one of them is, or

has
been, married to a brother or sister of the other, or if
he
is similarly related to one of the parties;

3.if he is related as specified in 2. to anyone who has
an interest in the subject-matter or can expect special
advantage or damage from the outcome of the case;

4.if he, or anyone related to him as specified in 2., is
a guardian of, or otherwise serves as a representative
of,
a party, or is a member of the board of a corporation,
partnership, co-operative, association or similar
society,
foundation or similar institution, which is a party, or,
when a municipality or similar community is a party,
if he
is a member of the board in charge or administration
of the
subject area within which the case falls;

5.if he, or anyone related to him as specified in 2., is
related in the way stated in 4. to anyone who has an
interest in the subject-matter or can expect special
advantage or damage from the outcome of the case;

6.if he is the adversary of a party, though not if the
party has cast him in that role in order to disqualify
him;

7.if he, acting as a judge or officer of another court,
has rendered a decision concerning the matter in
dispute,

or if he, at an authority other than a court, or as an arbitrator, has dealt with the matter;

8.if he has served in the case as an attorney for, or an assistant to, one of the parties, or has been a witness or an expert therein; or

9.if some other particular circumstance exists that is likely to undermine confidence in his impartiality in the case."

COMPLAINTS

The applicant maintains that his case against Sven-Ove Hansson and Tidens Bokförlag AB was not determined by an independent and impartial tribunal due to the fact that five of the jurors were members of the SAP which was the dominant shareholder in a company owning the defendant company. He invokes Article 6 para. 1 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 24 January 1987 and registered on 6 September 1988.

On 7 May 1990 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on its admissibility and merits. The Government's observations were submitted on 23 August 1990 and the applicant's observations in reply were submitted on 30 November 1990.

On 14 October 1991 the Commission decided to invite the parties to appear before it at a hearing on the admissibility and merits of the application.

Legal aid under the Addendum to the Commission's Rules of Procedure was granted to the applicant on 13 December 1991.

At the hearing, which was held on 9 January 1992, the parties were represented as follows:

The Government

Mr. Carl Henrik Ehrenkrona
Ministry for Foreign Affairs, Agent

Mr. Bertil Wennberg
Office of the Chancellor of Justice,
Adviser

The applicant

Mr. Bertil Malmjöf Counsel for the applicant
Ms. Pia Attoff Adviser

The applicant, Mr. Carl G. Holm, was also present.

THE LAW

The applicant complains that the case, brought by him against the author of a book and the publisher, was not determined by an independent and impartial tribunal. He invokes Article 6 para. 1 (Art. 6-1) of the Convention which reads:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the

opinion
of the court in special circumstances where publicity
would
prejudice the interests of justice."

The applicant submits in support of his complaint, in
essence,
that the author of the book in question as well as the
publisher were
affiliated to the Swedish Social Democratic Party
(SAP), the former
having served as an ideological consultant to the SAP
and being well-
known within the party, the latter being owned by
another company in
which the SAP is the sole shareholder. Furthermore,
five of the nine
jurors deciding the case were members of the SAP and
were politically
active, representing the party's political views, for
which reason, so
the applicant submits, the tribunal deciding his case
could not be
regarded as being independent and impartial as
required by Article 6
para. 1 (Art. 6-1) of the Convention.

The Government submit, in essence, that the
appointment of lay
judges through elections by democratic assemblies
has a very long
tradition in Sweden and ensures that jurors possess
the qualities
required, i.e. sound judgment, independence and

fair-mindedness. The jurors serve on the jury as independent judges regardless of which political party they might be affiliated to. The Government maintain that there is no proof in the present case of any subjective or objective partiality of the jurors for which reason the applicant was not denied the right to an independent and impartial tribunal as secured to him by Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission has taken cognizance of both parties' written and oral submissions. After a preliminary examination of the case the Commission has reached the conclusion that it raises serious issues as to the interpretation of Article 6 para. 1 (Art. 6-1) of the Convention and its application to the particular facts of the present case and that these issues can only be determined after a full examination of their merits. It follows that the application cannot be regarded as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Deputy Secretary to the Commission
President of the
Commission

(J. RAYMOND) (C.A. NØRGAARD)