

The European Commission of Human Rights sitting in private on 16 October 1986, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
E. BUSUTTIL
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs G. H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ

Mr. H. C. KRÜGER, Secretary to the Commission

Having regard to Article 25 (Art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 29 June 1984 by K. V.N. against Sweden and registered on 1 February 1985 under file No. 11366/85;

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 1932. He is a teacher of languages and resides at Skottorp, Sweden. Before the Commission he is represented by his lawyer, Mr. Einar Höier Harksen of Gothenburg.

In 1981 the applicant was the owner of a business called "Persiska Salongen" which dealt with the purchase and sale of handmade carpets. In a local daily newspaper a number of articles appeared in October 1981 in which it was allegedly insinuated that the applicant was a swindler, having sold fake carpets and musical instruments and that the affair concerned millions of Swedish crowns.

Owing to the publication of these articles the applicant instituted legal proceedings against the editor of the newspaper. In his summons to the District Court of Halmstad (Halmstads tingsrätt) the applicant argued that the defendants should be held legally responsible for serious slander within the meaning of Chapter 5 Section 2 of the Penal Code (brottsbalken) and Chapter 7 Section 4 para. 9 of the Freedom of the Press Act (tryckfrihetsförordningen).

In its judgment of 1 June 1983, however, the District Court sitting with a jury found that the published articles did not contain elements which could amount to a violation of the above Acts and the applicant's claims for legal liability and damages were accordingly rejected.

The applicant appealed against the judgment to the Court of Appeal for Western Sweden (Hovrätten för Västra Sverige) maintaining his arguments submitted to the District Court. In its judgment of 14 December 1983 the Court of Appeal partly dismissed the case since, according to Chapter 12, Section 2 para. 2 of the Freedom of the Press Act, the jury's verdict was final and could not be reconsidered in the Court of Appeal. Furthermore, the Court of Appeal found that no procedural errors had been committed and thus upheld the District Court's judgment insofar as it was competent to do so.

The applicant subsequently applied to the Supreme Court (Högsta Domstolen) for leave to appeal against the judgment of the Court of Appeal. He relied on his arguments before the lower instances and further argued that the Supreme Court should consider the matter despite Chapter 12, Section 2 para. 2 of the Freedom of the Press Act. Before the Supreme Court the applicant also maintained that the judgments of the lower instances had violated his human rights.

On 13 February 1984 the Supreme Court refused to grant leave to appeal.

COMPLAINTS

The applicant has not invoked any Articles of the Convention but submits that due to the decision of the Swedish courts he has been denied redress in regard to the slanderous and untrue accusations against him published in the newspaper in question. Therefore the Swedish courts have failed to protect his right to respect for his private and family life.

THE LAW

The applicant has complained that the Swedish courts, by their decisions in the present case, failed to protect his right to respect for his private and family life.

The Commission notes that the articles concerned were published by a newspaper outside the control of the Swedish authorities and that the respondent State therefore has no responsibility for the contents of these articles.

Nevertheless, as the European Court of Human Rights has held in the case of *Ireland v. the United Kingdom* (Eur. Court H. R. judgment of 18 January 1978, Series A No. 25, para 239), the Convention does not merely oblige the authorities of the Contracting States to respect for their own part the rights and freedoms embodied in it, but it also requires them to secure the enjoyment of these rights and freedoms by preventing and remedying any breach thereof (cf. the words "shall secure" in Article 1 (Art. 1) of the Convention). The obligation to secure the effective exercise of the Convention rights may therefore involve positive obligations on a State in a number of areas, and these obligations may involve the adoption of measures even in the sphere of the relations of individuals between themselves.

An obligation of this kind exists, for instance, in regard to the right to respect for private and family life guaranteed by Article 8 (Art. 8) of the Convention (see Eur. Court H.R., *X and Y v. the Netherlands*, judgment of 26 March 1985, Series A No. 91, para. 23). However, where a question arises of interference with private life through publication in mass media, the State must find a proper balance between the two Convention rights involved, namely the right to respect for private life guaranteed by Article 8 (Art. 8) and the right to freedom of expression guaranteed by Article 10 (Art. 10) of the Convention.

The Commission notes that the newspaper articles criticised by the applicant dealt with a criminal investigation regarding large-scale

fraud and swindle committed through the sale of false carpets and musical instruments. Consequently, they concerned a matter of some public interest, and the applicant's name was not mentioned in the articles. The Commission considers that they affected the applicant's honour and points out that a person's honour is protected in Swedish law by provisions on defamation in the Penal Code and in the Freedom of the Press Act. On the basis of these provisions, the applicant brought defamation proceedings before a court sitting with a jury which in the present case found that there was no breach of the provisions of the Penal Code and the Freedom of the Press Act.

The fact that the applicant was not successful in bringing proceedings against the editor of the newspaper does not mean that the respondent State has failed in its obligation to provide adequate protection for his rights under Article 8 (Art. 8) of the Convention. As stated above, it is necessary in a case of this kind to strike a balance between the rights protected under Articles 8 and 10 (Art. 8, art. 10) of the Convention, and the Commission finds no indication that, in striking this balance, the court gave inadequate consideration to the applicant's rights under Article 8 (Art. 8).

The Commission finds, therefore, that the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Secretary to the Commission

(H. C. KRÜGER)

President of the Commission

(C. A. NØRGAARD)