

Application No. 11581/85

Peter DARBY

against

SWEDEN

REPORT OF THE COMMISSION

(adopted on 9 May 1989)

11581/85

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## I. INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

### A. The application

2. The applicant is a Finnish citizen of British origin, born in 1926. He is resident in Åland, Finland, since 1966. The applicant is a medical practitioner by profession.

3. The application is directed against Sweden. The respondent Government are represented by their Agent, Mr. Hans Corell, Ambassador, Under-Secretary at the Ministry for Foreign Affairs, Stockholm.

4. The case relates to the applicant's complaint of the obligation to pay, as part of the general taxes, a church tax, to a church of which he is not a member. His only way of obtaining an exemption from the church tax is to become registered as domiciled in Sweden. The applicant considers that this disregards his individual civil rights and it discriminates against him as a Finnish citizen resident in Åland and working in Sweden. He alleges violations of Articles 9 and 14 of the Convention.

### B. The proceedings

5. The application was introduced with the Commission on 20 November 1984 and registered on 18 June 1985. On 5 May 1986 the Commission decided, in accordance with Rule 42 para. 2 (b) of its Rules of Procedure, to give notice of the application to the respondent Government and to invite them to present before 18 August 1986 their observations in writing on the admissibility and merits of the application.

6. The Government's observations were, after an extension of the time-limit, dated 8 September 1986 and the applicants' observations in reply were dated 6 October 1986.

7. On 7 October 1987 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application.

At the hearing, which was held on 11 April 1988, the Government were represented by their Agent, Mr. Hans Corell, Ambassador, Under-Secretary for Legal and Consular Affairs at the Ministry for Foreign Affairs, and as advisers Mrs. Christina Westerling,

Legal Adviser at the Ministry of Finance, and Mr. Carl Henrik Ehrenkrona, Legal Adviser at the Ministry for Foreign Affairs. The applicant presented his case himself.

8. On 11 April 1988 the Commission decided to declare admissible the applicant's complaints under Articles 9 and 14 of the Convention. The remainder of the application (complaints under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention) were declared inadmissible.

9. The parties were then invited to submit any additional observations on the merits of the application which they wished to make.

10. The Government submitted further observations by letter of 13 October 1988 and the applicant submitted further observations on 3 October 1988. The observations of each party were communicated to the other party for information.

11. After declaring the case admissible the Commission, acting in accordance with Article 28 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. In the light of the parties' reactions the Commission now finds that there is no basis on which a friendly settlement can be effected.

C. The present Report

12. The present Report has been drawn up by the Commission in pursuance of Article 31 of the Convention and after deliberations and votes in plenary session, the following members being present:

MM. J.A. FROWEIN, Acting President  
S. TRECHSEL  
E. BUSUTTIL  
A.S. GÖZÜBÜYÜK  
A. WEITZEL  
J.-C. SOYER  
H.G. SCHERMERS  
H. DANELIUS  
Mrs. G.H. THUNE  
Sir Basil HALL  
MM. F. MARTINEZ  
C.L. ROZAKIS  
Mrs. J. LIDDY

The text of the Report was adopted by the Commission on 9 May 1989 and is now transmitted to the Committee of Ministers in accordance with Article 31 para. 2 of the Convention.

13. The purpose of the Report, pursuant to Article 31 para. 1 of the Convention, is:

(1) to establish the facts, and

(2) to state an opinion as to whether the facts disclose a breach by the State concerned of its obligations under the Convention.

14. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application forms Appendix II.

15. The full text of the parties' submissions, together with the documents lodged as exhibits, are held in the archives of the Commission.

## II. ESTABLISHMENT OF FACTS

### A. The particular circumstances of the case

16. In 1977 the applicant started to work at Gävle in Sweden as an industrial physician to the Swedish State Railways. He rented a flat at Gävle, but spent the weekends with his family in Åland. From the end of 1981 he worked as a physician at Norrtälje, Sweden. As from August 1986 he has been working in Åland.

17. As from 1977 when the applicant worked in Sweden he was taxed in Sweden according to Swedish tax legislation. The convention with Finland for the avoidance of double taxation (SFS 1977:812) stated no exemption in this case. The applicant was granted tax deduction for the cost of maintenance of two houses as well as for travelling expenses to and from Åland. As his stay in Sweden was regarded as non-permanent he was until 1980 taxed in the Common District (gemensamma distriktet) and his municipal tax was consequently reduced. The disadvantages were that the applicant was not entitled to full social benefits, inter alia, sickness benefits and old age pension benefits.

18. Following amendments to the taxation laws in 1978 (1978:812) which came into force on 1 January 1979, the applicant was, for tax purposes, regarded as domiciled in Sweden and tax deductions of a kind which had previously been allowed were no longer allowed. As a further result the applicant's municipal tax was no longer reduced. He thus had to pay full municipal tax, including church tax. The applicant was informed by the tax authorities that he could not claim exemption from the church tax unless he was formally registered as resident in Sweden. The applicant states that although he was regarded by the tax authorities as domiciled in Sweden the social insurance office regarded him as domiciled in Finland and he was accordingly excluded from full social benefits.

19. Subsequently the applicant obtained, on 19 February 1982, a decision from the National Tax Board (riksskatteverket) to the effect that if he travelled daily from Åland to his work in Sweden he would be taxed as a non-resident in Sweden. However, the applicant submits that daily commuting to Gävle was impossible and as a result he took a less responsible job with less pay at Norrtälje, in respect of which daily commuting was just possible.

20. As regards the taxation for his income for the year 1979, the applicant brought an appeal through the Swedish Administrative Courts. Originally, he was taxed by the Tax Board (taxeringsnämnden) as if he was a resident at Gävle. The applicant appealed to the Joint Municipal Tax Court (mellankommunala skatterätten) claiming that he was not to be regarded as living in Sweden. In a judgment of 25 February 1982 the Joint Municipal Tax Court rejected the applicant's appeal.

21. The applicant appealed to the Administrative Court of Appeal (kammarrätten) of Sundsvall which in a judgment of 22 October 1982 rejected the appeal.

22. The applicant lodged a further appeal with the Supreme Administrative Court (regeringsrätten) which in a decision of 15 October 1984 partly refused to grant leave to appeal and partly refused to accept that the applicant's complaints should be examined in the special appeals procedure provided for in the Taxation Act (taxeringslagen).

23. Parallel to the above procedure the applicant, in respect of the income year 1979, submitted an appeal to the County Administrative Court (länsrätten) of Gävleborg County against the order to pay church tax. He stated that he was not a member of the Swedish Church and not

a Swedish citizen, nor was he resident in Sweden. By a judgment of 19 May 1981 the County Administrative Court of Gävleborg County rejected the applicant's appeal. It held that the Act on Certain Reductions of the Tax Liability for a Person not belonging to the Swedish Church (lag 1951:691 om viss lindring i skattskyldigheten för den som icke tillhör svenska kyrkan, hereinafter referred to as "the Dissenter Tax Act") did not apply to the applicant.

24. The applicant appealed to the Administrative Court of Appeal of Sundsvall, which in a judgment of 22 October 1982 confirmed the judgment of the County Administrative Court. The applicant submitted a further appeal to the Supreme Administrative Court, which on 9 October 1984 refused to grant leave to appeal.

25. The applicant has also submitted a complaint to the Parliamentary Ombudsman (justitieombudsmannen) concerning the issue of a limitation of the obligation to pay tax for a person who does not belong to the Swedish Church. As a result of his investigation, the Parliamentary Ombudsman, in a letter to the Government, proposed that the Dissenter Tax Act should be amended to the effect that it should no longer be required that a person be registered as living in Sweden in order to obtain a limitation of his obligation to pay church tax. From the decision of the Parliamentary Ombudsman, dated 16 April 1982, the following appears: Section 1 of the Dissenter Tax Act requires that the tax payer, at the beginning of the income year, does not belong to the Swedish Church and that he is registered as living in Sweden. The Parliamentary Ombudsman noted that this requirement had been questioned on several occasions, inter alia, in Parliament. It was further noted that this provision of the Act affected persons who moved into or out of the country. The Ombudsman considered that the provisions, while not satisfactory, were not in conflict with the non-discrimination clauses which Sweden had adopted in the double taxation agreements. There was no discrimination based on citizenship. But the Parliamentary Ombudsman could understand the applicant's complaint. The Parliamentary Ombudsman concluded that the problem was a limited question, but an issue of a fundamental inconsistency in the tax legislation. There were no objective reasons which militated in favour of the rule in force and it was understandable if it caused irritation.

26. The applicant paid church tax in the amount of 1.336 SEK for the income year 1979. If the applicant had been exempted from the obligation to pay full church tax in accordance with the Dissenter Tax Act he would have had to pay 401 SEK.

27. For 1980 and 1981 the applicant paid church taxes in the amount of 1.717 SEK and 1.325 SEK respectively. If he had been exempted from part of the church tax under the Dissenter Tax Act he would have paid 515 SEK and 397 SEK respectively.

#### B. Relevant Domestic Law

28. The provisions regarding municipal income taxation in general are included in the 1928 Municipal Tax Act (kommunalskattelagen). This Act has been amended several times through the years.

29. As to the liability to pay tax in Sweden Section 53 sub-section 1 of the Municipal Tax Act provides that a person resident in Sweden is liable to pay tax in Sweden on all his income. A person not resident in Sweden is liable to pay tax in Sweden on, among other things, income derived from employment in the Swedish public service, including a county council or a parish.

30. Under Article 19 of the then applicable tax agreement with Finland for the avoidance of double taxation, the right to tax income derived from public service - with certain exceptions not relevant

here - falls to the State from which the remuneration is paid.

31. As to the place of taxation in Sweden, Section 59 sub-sections 1 and 3 of the Municipal Tax Act provides, in the wording applicable during the period in question, that income from employment earned by an individual when resident in Sweden is taxed in his place of domicile. Income from employment earned by an individual when not resident in Sweden is taxed in Stockholm for common municipal purposes. For this purpose a special taxation district is established, the Common District.

32. Provisions regulating which persons may be considered to be resident in Sweden and the definition of "place of domicile" are, as applicable to tax assessment for the tax year 1980, found in Section 68, Section 66 and sub-section 1 of the instructions to Section 66 of the Municipal Tax Act.

33. Since 1978 these provisions have been amended twice. Before 1979 a person with temporary abode in Sweden was, as far as income from employment was concerned, taxed in the Common District which also meant a lower tax rate than if taxed elsewhere. From 1979 such a person was taxed on the same basis as a resident of Sweden and also at the same tax rates. From 1987 such a person is again taxed in the Common District but not only for income from employment, but also for income from capital (e.g. interest) or from real estate.

34. A small part of the municipal taxes consists of the church taxes, the rate of which is determined by the relevant parish council. This system has old traditions and is based on the fact that the Lutheran Church of Sweden is what is commonly described as a "State Church"; its parishes have municipal status according to the Constitution including the right of taxation. Since the population records (folkbokföringen) were introduced in the sixteenth century they have been administered by the parishes. The parishes are also entrusted with the administration and upkeep of churchyards and other public burial-grounds, not only for church members but for the whole population.

35. Under the 1951 Dissenter Tax Act, as subsequently amended, the church tax may be reduced. Section 1 of the Act reads as follows:

(Swedish)

"Sådan församlingsskatt enligt lagen (1961:436) om församlingsstyrelse, som efter kyrkofullmäktiges beslut eller eljest debiteras efter samma grunder som gälla för debitering av kommunalskatt, skall påföras den, som vid ingången av inkomståret icke tillhörde svenska kyrkan och som är mantalsskriven här i riket för inkomståret, efter endast trettio procent av det för debiteringen bestämda beloppet."

(English translation)

"Pursuant to the Act (1961:436) concerning the parish administration, such church tax as is imposed according to the decision of a parish council or is otherwise imposed according to the same provisions as apply to the imposition of a municipal tax, shall be levied on a person who was not a member of the Church of Sweden at the beginning of the income year and who is registered in this country for the income year, at only thirty per cent of the determined amount."

In order to benefit from the tax reduction it is thus required that the person liable to tax was not a member of the Church of Sweden at the beginning of the income year and that he was registered in Sweden for the income year. This means that the Dissenter Tax Act does not apply to those who are taxed in the Common District. According to

the travaux préparatoires of the Act the reasons for this were that the demand for reduction could not be argued with the same force in regard to persons who are not resident in Sweden as to those who are, and that the procedure would be greatly complicated if tax reduction was to apply to such persons.

The part of the church tax that remains after reduction relates to the costs which the parishes bear for keeping the population records and administering the burial-grounds and which are evaluated at 30 per cent in average of the total parish budget.

36. As from 1 January 1987, Section 1 of the Dissenter Tax Act has been amended to the effect that it is no longer required that the individual be registered as living in Sweden in order to benefit from the reduction of the church tax.

37. In the case of tax assessment for common municipal purposes, the tax amounts to 10 per cent pursuant to the Act Concerning Tax for Common Municipal Purposes (lagen om skatt för gemensamt kommunalt ändamål). This tax is not divided into municipal tax, county tax and church tax but is used for levelling out the burden of taxation between different municipalities or other administrative entities.

38. A Swedish child born by parents who are members of the Church of Sweden is registered as a member unless the parents decide otherwise. As soon as a person has come of age he can choose whether he wants to remain a member or not. In case he does not, he simply has to announce his resignation to the parish of which he is a member. A person who is not a member can apply for membership.

39. Section 6 para. 1 of the Freedom of Religion Act (religionsfrihetslagen) provides that only a Swedish citizen or a person domiciled in Sweden may be a member of the Church of Sweden.

40. In order to inform people how different tax provisions are to be interpreted in special cases the National Tax Board may give so called advance rulings (förhandsbesked). Such rulings must be complied with by the taxation authorities and the tax courts.

### III. OPINION OF THE COMMISSION

#### A. Points at issue

41. The issues to be determined are:

- whether there has been a violation of Article 9 (Art. 9) of the Convention;
- whether there has been a violation of Article 14 of the Convention in conjunction with Article 9 (Art. 14+9) of the Convention;
- whether there has been a violation of Article 1 of Protocol No. 1 to the Convention in conjunction with Article 14 (P1-1+14) of the Convention.

#### B. Article 9 (Art. 9) of the Convention

42. The applicant complains that the obligation to pay a special tax to the Swedish State Church, although he is not a member of that Church, violates his right to freedom of religion as guaranteed by Article 9 (Art. 9) of the Convention.

The Government submit that the complaint is ill-founded. The applicant could have avoided the tax by becoming a resident in Sweden. Moreover, the church tax was only a minor aspect of the applicant's disagreement with the Swedish authorities and the tax he had to pay

was insignificant. The State must be free to use the taxes for purposes which the individual may object to.

43. Article 9 (Art. 9) of the Convention reads:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

44. Paragraph 1 of Article 9 (Art. 9-1) can be divided into two parts. The first limb of paragraph 1 (Art. 9-1) guarantees a general right to freedom of religion. Under the second limb of paragraph 1 (Art. 9-1) a more specific right to change and manifest one's religion is protected. Paragraph 2 of Article 9 (Art. 9-2) only permits limitations of the freedom to manifest one's religion. Consequently, under Article 9 para. 1 (Art. 9-1), a Contracting State is obliged to respect everyone's general right to freedom of religion and that right may not be restricted.

45. A State Church system cannot in itself be considered to violate Article 9 (Art. 9) of the Convention. In fact, such a system exists in several Contracting States and existed there already when the Convention was drafted and when they became parties to it. However, a State Church system must, in order to satisfy the requirements of Article 9 (Art. 9), include specific safeguards for the individual's freedom of religion. In particular, no one may be forced to enter, or be prohibited from leaving, a State Church.

46. The Commission has previously been faced with cases where a member of a church has been obliged to pay contributions to that church. In one case (No. 9781/82, Dec. 14.5.84, D.R. 37 p. 42) the Commission stated:

"The obligation (to pay church contributions) can be avoided if they choose to leave the church, a possibility which the State legislation has expressly provided for. By making available this possibility, the State has introduced sufficient safeguards to ensure the individual's freedom of religion."

47. In another type of case, the Commission has been seized with complaints that the fact that tax money is used by the State for a specific purpose violates the Convention rights of the tax payer. For example, in one case where it was alleged that the obligation to contribute through taxation to arms procurement was in breach of Article 9 (Art. 9), the Commission held (No. 10358/83, Dec. 15.12.83, D.R. 37 p. 142):

"The obligation to pay taxes is a general one which has no specific conscientious implications in itself. Its neutrality in this sense is also illustrated by the fact that no tax payer can influence or determine the purpose for which his or her contributions are applied, once they are collected. Furthermore, the power of taxation is expressly recognised by the Convention system and is ascribed to the State by Article 1 (of Protocol No. 1 (P1-1) to the Convention).

It follows that Article 9 (Art. 9) does not confer on the applicant



the right to refuse, on the basis of his convictions, to abide by legislation, the operation of which is provided for by the Convention, and which applies neutrally and generally in the public sphere, without impinging on the freedoms guaranteed by Article 9 (Art. 9)."

48. The present case differs from both these types of cases on important points. First, the present applicant was not a member of the Swedish State Church to which he was obliged to contribute by paying a tax. Secondly, the applicant's complaint is not that part of the tax money is used for a purpose which is contrary to his convictions but that he is obliged to pay a specific tax to the Church. In fact, the church tax is imposed by virtue of the taxation power which the Church itself enjoys in Sweden. It is paid to the tax authorities as a small but identifiable part of what is called "municipal taxes" and then transferred to the Church.

49. Consequently, the issue which the Commission must examine is whether the applicant's obligation to pay a church tax to a church of which he is not a member is compatible with his right to freedom of religion protected by Article 9 (Art. 9) of the Convention.

50. The Commission considers that the applicant's payment of church tax, on the basis of the legal obligation incumbent upon him, cannot be characterised as a "manifestation" of his religion. What is at issue here is thus the applicant's general right to freedom of religion under the first limb of Article 9 para. 1 (Art. 9-1).

51. In the Commission's view, this right protects everyone from being compelled to be involved directly in religious activities against his will without being a member of the religious community carrying out those activities. The paying of taxes to a church for its religious activities in the circumstances described above (para. 48) must be seen as such involvement.

52. The Government argue that the applicant could have avoided the full church tax by becoming resident in Sweden. The Commission is not persuaded by this argument. It cannot be accepted that an individual should be forced to move from his home and take up residence in the State concerned before he could enjoy the right to have his freedom of religion respected by that State.

53. The Government also argue that the applicant disagreed with the Swedish authorities mainly on whether he should at all be considered to be resident in Sweden for tax purposes. The question of the church tax was, in the Government's submissions, a subsidiary point. The Commission finds it sufficient to point out that the applicant already at the domestic level raised the question of the church tax. Whether this aspect was more or less important than the question of his obligation to pay general taxes in Sweden is not decisive for the question whether there has been a violation of Article 9 (Art. 9).

54. The Government also argue that, when examining whether the applicant's rights under Article 9 (Art. 9) of the Convention have been violated, regard must be had to the fact that the complaint is related to the tax legislation which is of a complex nature, which is to be applied to a variety of situations and which may in specific situations reveal inadvertencies. They also argue that regard must be had to the fact that the effects on the applicant of the church tax were of a minor nature pointing out that, if the applicant had been exempted from the church tax in 1979, he would have paid 401 SEK instead of 1.336 SEK, which means that the financial effect was only 935 SEK.

55. The Commission cannot accept these arguments. The fact that the tax legislation is complicated cannot absolve the State from its

obligation to respect the right to freedom of religion. Moreover, leaving aside that the applicant has been obliged to pay church tax not only for 1979 but also for 1980 and 1981 (cf. paras. 26 and 27 above), the right to freedom of religion does not lend itself to an assessment in financial terms.

56. The Government further argue that the State must be free to use the taxes collected for purposes which the individual may object to. This argument is, in the Commission's view, relevant with regard to general taxes (cf. decision No. 10358/83, quoted above). The duty to pay general taxes which are not ear-marked for a specific religious purpose cannot, in the Commission's view, be considered to raise any problem in regard to the freedom of religion, even if the State uses money, collected by way of taxes, to support religious communities or religious activities. As regards general taxes there is no direct link between the individual taxpayer and the State's contribution to the religious activities.

57. The situation is different where, as in the present case, the church is itself allowed to levy taxes. In such a situation the individual is obliged to contribute directly to the church and its religious activities. This distinction between general taxes and specific church taxes is not purely formal. For the individual concerned it may be of great significance.

58. In such cases, Article 9 para. 1 (Art. 9-1) of the Convention requires that a State respects the religious convictions of those who do not belong to the church, for instance by making it possible for them to be exempted from the obligation to make contributions to the church for its religious activities.

59. Under the Swedish system this is in principle done through the Dissenter Tax Act which allows for exemption from part of the church tax. However, at the relevant time the Dissenter Tax Act did not apply to the applicant's situation on the ground that he was not registered as resident in Sweden. This is however not a reason which can justify a departure from the obligation under Article 9 (Art. 9) of the Convention to respect the applicant's right to freedom of religion.

60. Consequently, Sweden has failed to respect the applicant's right to freedom of religion as guaranteed by Article 9 para. 1 (Art. 9-1) of the Convention. No question of a justification under Article 9 para. 2 (Art. 9-2) arises (cf. paras. 44 and 50).

#### Conclusion

61. The Commission concludes, by 10 votes to 3, that there has been a violation of Article 9 (Art. 9) of the Convention.

C. Article 14 of the Convention in conjunction with Article 9 (Art. 14+9) of the Convention.

62. The applicant complains that he has been discriminated against as a Finnish citizen domiciled in Åland and working in Sweden. If he had been registered as living in Sweden he would not have paid full church tax. The applicant alleges a violation of Article 14 of the Convention in conjunction with Article 9 (Art. 14+9).

The Government submit that the Dissenter Tax Act applies to Swedish citizens and foreigners alike. The distinction between residents in Sweden and non-residents had a legitimate aim and was justified under Article 14 (Art. 14) of the Convention.

63. Article 14 (Art. 14) of the Convention reads:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination

on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

64. The Commission has found above (para. 61) that Article 9 (Art. 9) has been violated. It finds it necessary, in the circumstances of the present case, also to examine the applicant's complaint under Article 14 in conjunction with Article 9 (Art. 14+9).

65. According to the case-law of the Convention organs, Article 14 (Art. 14) of the Convention has no independent existence, but plays an important role by supplementing the other provisions of the Convention and the Protocols. Article 14 (Art. 14) safeguards individuals, placed in similar situations, from discrimination in the enjoyment of the rights set forth in those other provisions. A measure which as such could be in conformity with the normative provision may therefore nevertheless violate that provision taken in conjunction with Article 14 (Art. 14), if it is applied in a discriminatory manner. It is as if Article 14 (Art. 14) formed an integral part of each of the provisions laying down the specific rights and freedoms. The Convention organs have furthermore constantly held that a distinction is discriminatory if it "has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see inter alia, Eur. Court of H.R., Belgian Linguistic judgment of 23 July 1968, Series A no. 6, pp. 33-34, paras. 9-10).

66. The discriminatory treatment alleged by the applicant is the difference between him, as a non-resident in Sweden, and residents in Sweden in the enjoyment of the right to reduction of the church tax under the Dissenter Tax Act.

67. Here the Swedish State has itself established a system of exemption, on grounds of religion, from part of the church tax. Such a system must not be discriminatory.

68. The reasons invoked by the Government for the distinction made are that it was practical to connect the right of exemption to registration in Sweden. The system had to be simple. The practical problem that arose was how the tax authorities could obtain information regarding those who were not members of the Church of Sweden without imposing on them an obligation to inform the authorities themselves. This problem was solved by requiring the parishes, which administer the population records and also have access to the information regarding membership of the Church, to inform the tax authorities in this regard. For that reason those who were not registered as resident in Sweden, according to the population records, fell outside the system. If they were to enjoy the right of being exempted from church tax it would mean that they had to apply for it themselves and every such application had to be examined individually. Such a system would have been very difficult to administer at a time when the taxation control system had not yet been computerised. The Government have not referred to any other reason for the difference in treatment complained of by the applicant.

69. The Commission considers that the question of the distinction between residents and non-residents is an essential and most striking feature in the present case. The reasons invoked by the Government are not such as to justify the distinction in the enjoyment of the right to freedom of religion.

70. Consequently, there has also been a violation of the applicant's right under Article 14 of the Convention in conjunction with Article 9 (Art. 14+9) of the Convention.

## Conclusion

71. The Commission concludes, by 9 votes to 4, that there has been a violation of Article 14 of the Convention in conjunction with Article 9 (Art. 14+9) of the Convention.

D. Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) to the Convention

72. Article 1 of Protocol No. 1 (P1-1) to the Convention protects the right to peaceful enjoyment of possessions. The obligation to pay taxes, consequently, falls within the scope of this Article 1 (P1-1).

73. The question could arise whether, on the facts of the present case, there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1).

74. The Commission considers, however, that in view of its conclusions above under paras. 61 and 71, it is unnecessary to investigate the case also in this regard.

## Conclusion

75. The Commission concludes, by 11 votes to 2, that it is not necessary to examine whether there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) to the Convention.

## E. Recapitulation

76. - The Commission concludes, by 10 votes to 3, that there has been a violation of Article 9 (Art. 9) of the Convention (para. 61).
- The Commission concludes, by 9 votes to 4, that there has been a violation of Article 14 of the Convention in conjunction with Article 9 (Art. 14+9) of the Convention (para. 71).
- The Commission concludes, by 11 votes to 2, that it is not necessary to examine whether there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) to the Convention (para. 75)

Secretary to the Commission

Acting President of the Commission

(H.C. KRÜGER)

(J.A. FROWEIN)

Partly dissenting opinion by Mr. Trechsel

While generally in agreement with the majority of the Commission, I have voted against finding a violation of Article 9 in conjunction with Article 14 (Art. 9+14) (para. 71). In my view, Article 14 (Art. 14) forms an integral part of other Convention Articles. If there has been a violation of such an Article, there is no room for a separate examination of Article 14 (Art. 14) in conjunction with that same Article.

Dissenting Opinion of Mr. Schermers and Sir Basil Hall

We do not agree with the opinion of the majority of the Commission that there was in this case a violation of Article 9 (Art. 9) of the Convention. The fact that the applicant had to pay a tax to defray expenditure incurred by church parish councils does not in our opinion infringe a right conferred on him by Article 9 (Art. 9). He continued to have freedom to practise a religion, to manifest a religion, or to refrain from practising a religion.

We do not think that the facts at issue fall within the ambit of Article 9 (Art. 9) and conclude that Article 14 (Art. 14) is therefore inapplicable in conjunction with that Article (Art. 9).

It is then to be considered whether there is a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) to the Convention. According to the jurisprudence of the Commission, taxation falls within the general scope of Protocol No. 1 (P1), and is in principle an interference with the right conferred by its first paragraph (P1-1). The prohibition in Article 14 (Art. 14) of the Convention accordingly applies to taxation.

It is plain that there is a differentiation in the treatment of persons working in Sweden in respect of their liability to church tax between those registered as living in Sweden and those not so registered.

The Swedish Parliamentary Ombudsman has concluded that there were no objective reasons in favour of the rule. We too conclude that no objective and reasonable justification for the differentiation has been shown.

Accordingly in this case there has been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) to the Convention.

Opinion dissidente de M. Martinez

A mon très grand regret je ne partage pas l'avis de la majorité de la Commission.

La majorité voit dans le cas d'espèce un problème de liberté de religion, alors que je n'y vois qu'une question fiscale.

Pour le problème qui nous concerne, c'est-à-dire la taxe de l'Eglise, il y a en Suède deux catégories de contribuables: les résidents et les non-résidents.

Les premiers (nationaux ou étrangers) sont soumis à l'impôt sur tous leurs revenus, qu'ils soient acquis en Suède ou à l'étranger; les non-résidents ne sont soumis à l'impôt que sur certains revenus notamment sur ceux qu'ils acquièrent en Suède d'un emploi public (voir rapport de la Commission, par. 29).

Les résidents - qui paient l'impôt sur tous leurs revenus - ont par ailleurs certains autres désavantages ainsi que certains avantages. Parmi les désavantages, on peut citer une taxe locale plus élevée. Par contre les résidents ont de plus larges avantages sociaux.

Une petite partie de la taxe locale constitue l'impôt en faveur de l'Eglise luthérienne de Suède, considérée comme l'église d'Etat (voir rapport de la Commission, par. 34).

Les résidents peuvent bénéficier d'une réduction (70%) de la partie de la taxe locale dévolue à l'église s'ils n'appartiennent pas à l'Eglise de Suède (rapport de la Commission par. 35). Cette possibilité n'est pas offerte aux non-résidents. En d'autres termes,

les résidents qui n'appartiennent pas à l'église officielle peuvent bénéficier d'une certaine réduction de la taxe locale, tandis que les non-résidents ne peuvent en bénéficier, qu'ils professent ou non la religion officielle.

C'est sur cette différence de régime que repose tout le problème.

La majorité voit dans cette différence une atteinte à la liberté de religion garantie par l'Article 9 (Art. 9) de la Convention. En ce qui me concerne, je n'y vois rien d'autre qu'une différence à porter au bilan des avantages et des inconvénients attachés à la situation des contribuables qui sont résidents et de ceux qui ne le sont pas.

Des allégations du requérant ne se dégagent pas l'impression qu'il déclare souffrir dans sa foi ou sa conscience. Ses soucis semblent essentiellement financiers, car il voudrait bien pouvoir alléger le fardeau de la taxe locale qu'il a à payer, comme peuvent le faire les résidents qui n'appartiennent pas à l'église.

Le requérant s'en prend au système fiscal suédois. Que celui-ci soit considéré comme bon ou mauvais, comme juste ou injuste, il n'en est pas moins hors du domaine couvert par la Convention.

La Commission trouve une violation de la liberté de religion proclamée par l'Article 9 (Art. 9) de la Convention parce qu'elle considère que l'individu est protégé de l'obligation d'avoir à contribuer directement aux activités religieuses d'une communauté à laquelle il n'appartient pas (voir rapport de la Commission, par. 51).

Ce propos de la Commission me semble trop général. Cela dit, je ne vois pas que le requérant soit obligé de payer une somme d'argent déterminée en faveur des activités de l'église suédoise. Il n'est obligé à rien d'autre qu'à payer les impôts qui correspondent aux revenus, qui proviennent précisément des fonds publics de la Suède, et à les payer dans les conditions que la loi suédoise établit selon que le contribuable est résident ou non-résident.

Le requérant (qui n'est pas ressortissant suédois) est allé travailler en Suède de son propre gré. Il y a trouvé un emploi public avec la rétribution et les charges fiscales établies par les lois suédoises.

S'il éprouve un conflit de conscience, rien ne l'oblige à persister dans une activité rémunérée par un Etat dont les impôts ont, dans une certaine mesure, un but ecclésiastique. (D'après les allégations du Gouvernement - non contredites par le requérant - la Suède contribue aussi à d'autres cultes que celui de l'église d'Etat).

Le requérant n'a pas été forcé de changer sa résidence et d'habiter en Suède pour avoir un emploi public en Suède.

Le requérant cherche à payer le moins d'impôts possible mais je ne trouve pas que sa foi religieuse, sa conscience ou sa pensée aient subi quelque violence.

APPENDIX I

HISTORY OF THE PROCEEDINGS

Date	Item
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20 November 1984	Introduction of the application
18 June 1985	Registration of the application
Examination of admissibility	
5 May 1986	Commission's deliberations and decision to invite the Government to submit observations on the admissibility and merits of the application.
8 September 1986	Government's observations
6 October 1986	Applicant's reply
7 October 1987	Commission's decision to invite the parties to a hearing on the admissibility and merits
11 April 1988	Hearing on admissibility and merits and Commission's decision to declare the application partly admissible and partly inadmissible
Examination of the merits	
11 April 1988	Commission's deliberations on the merits
3 October 1988	Applicant's further observations on the merits
13 October 1988	Government's further observations on the merits
10 December 1988	Commission's consideration of state of proceedings
4 May 1989	Commission's deliberations on the merits and final votes
9 May 1989	Adoption of the Report