Application No. 12631/87

Hans FEJDE

against

SWEDEN

REPORT OF THE COMMISSION

(adopted on 8 May 1990)

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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, Hans Fejde, is a Swedish citizen, born in 1927.

He is a businessman and resides at Västra Frölunda, Sweden. Before the Commission the applicant is represented by Mr. Christer Arnewid, a lawyer practising in Göteborg.

3. The Government of Sweden are represented by their Agent, Mr. Carl Henrik Ehrenkrona, Ministry for Foreign Affairs, Stockholm.

4. The case concerns the appeal proceedings in the Court of Appeal for Western Sweden (hovrätten för Västra Sverige) in which the applicant's appeal against his conviction in a criminal case was dealt with without a public hearing in accordance with Chapter 51, Section 21 of the Swedish Code of Judicial Procedure (rättegångsbalken). The applicant considers that this procedure violated his right to a public hearing as guaranteed by Article 6 para. 1 of the Convention.

B. The proceedings

5. The application was introduced on 28 July 1986 and registered on 18 December 1986. On 7 October 1988 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, inviting them to submit written observations on the admissibility and merits of the case.

6. The Government's observations were submitted on 27 December 1988 and the applicant's observations in reply were submitted on 13 July 1989.

7. Legal aid under the Addendum to the Commission's Rules of Procedure was granted to the applicant on 17 March 1989.

8. On 4 October 1989 the Commission decided to declare admissible the applicant's complaint under Article 6 para. 1 of the Convention which concerned the lack of a public hearing in the Court of Appeal. The remainder of the applicant's complaints was declared inadmissible.

9. The parties were then invited to submit any additional observations on the merits which they wished to make. On 3 November 1989 the Government informed the Commission that they did not intend to submit further observations on the merits of the case. No further observations were received from the applicant.

10. After declaring the case admissible the Commission, acting in accordance with Article 28 para. 1 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the case. Consultations with the parties took place between 12 October and 3 November 1989. The Commission now finds that there is no basis upon which such a settlement can be effected.

C. The present Report

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

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE

Mrs. G.H. THUNE
Sir. Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

12. The text of this Report was adopted on 8 May 1990 and is now transmitted to the Committee of Ministers of the Council of Europe in accordance with Article 31 para. 2 of the Convention.

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

(i) to establish the facts, and

(ii) to state an opinion as to whether the facts found 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 as Appendix II.

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

II. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

16. Subsequent to the death of the applicant's stepfather his mother moved house. At that time the applicant owned a removal firm for which reason he was in charge of the removal. Among the furniture was a saloon rifle which eventually was stored together with other furniture at the applicant's property.

17. After some years the applicant's removal firm went bankrupt and among the inventory the saloon rifle was found. It appears that this was brought to the attention of the local police which investigated the case and subsequently charged the applicant with a violation of the Firearms Act (vapenlagen). The case was heard in the District Court (tingsrätten) of Göteborg on 27 August 1984 where the applicant had the opportunity to address the Court. In its judgment of the same day the District Court stated:

(translation)

"(The applicant) has contested criminal liability and has made the following statement: the weapon in question was owned by RT, who was married to his mother. RT is dead. When (the applicant's) mother moved house some ten years ago the weapon ended up in (the applicant's) storage room together with furniture for which there was no room in his mother's new home. The weapon was found in the storage room in connection with (the applicant's) bankruptcy. He was aware of the weapon being there all the time but he did not think of it as a weapon. The rifle lacks a breech-block and there was never any ammunition. (The applicant) does not consider himself the owner of the rifle since it is his mother, now 82 years old, who is the formal owner of it.

The Court finds that (the applicant) cannot avoid being held responsible for the possession of the weapon, but that the violation of the Firearms Act is of a minor character. Accordingly no other punishment but a small fine is required."

18. The applicant was fined 300 Swedish crowns and in its judgment the District Court also decided to forfeit the rifle. In doing this the District Court referred to an official record containing the decision to seize the rifle. In this record the object seized was described as follows: "one piece of bullet rifle, manufacture FN, calibre 22 LR, manufacturing number 314741, breech-block missing. Weapon in cover."

19. On 4 September 1984 the applicant appealed against the judgment to the Court of Appeal for Western Sweden. In his appeal the applicant maintained that the police had not investigated the case properly, that new information had appeared, that the judgment would have a negative effect on his future life, that the Firearms Act had been misinterpreted and he questioned whether he could at all be held responsible. In particular the applicant pointed out that the owner of the rifle was a son of his stepfather and not his mother and, secondly, he maintained that the rifle could not be considered a weapon within the meaning of the Firearms Act since the breech-block was missing. In respect of the latter, he suggested to hear his mother and his brother as witnesses in order to have established that the rifle was without a breech-block.

20. On 23 October 1984 the applicant was informed by the Court of Appeal that, according to Chapter 51, Section 21 of the Code of Judicial Procedure, his case could be dealt with by the Court of Appeal without an oral hearing. Therefore he was asked to state whether or not he wanted such a hearing and, if so, what kind of evidence he would rely upon.

21. In reply to the above, the applicant informed the Court of Appeal on 24 October 1984 that, since he was without means, he would like the Court to appoint counsel and, furthermore, he concluded that this of course also meant that a hearing should take place with the parties present. By letter of 15 February 1985 the applicant in addition informed the Court of Appeal that he had been refused certain jobs as attendant due to the fact that he had been found guilty by the District Court. Accordingly he maintained that the case was no longer to be considered as a trifle but that it was very important for him to have his name cleared.

22. From notes made on the applicant's above letter by one of the Court's officials it appears that the applicant was called by telephone on 18 February 1985 and informed how the case would now proceed. Furthermore it appears that the applicant, during a telephone conversation on 4 March 1985, explained that he wished to have a defence counsel appointed. The notes finally indicate that the applicant did not maintain his request for the hearing of witnesses since the question of the missing breech-block was no longer in dispute.

23. By decision of 27 February 1985 the Court of Appeal refused to appoint counsel for the applicant, finding no reasons to justify such appointment. The applicant appealed against this decision to the Supreme Court (Högsta domstolen) which, however, refused leave to appeal on 19 June 1985.

24. In the meantime the applicant had received, on 6 March 1985, a letter from the Court of Appeal informing him that, since the case could be dealt with without an oral hearing, he had ten days to submit his final written submissions. On 11 March 1985 the applicant sent a letter to the Court of Appeal in which he maintained, inter alia, that the rifle could not be considered a weapon within the meaning of the Firearms Act since it had no breech-block. He suggested that his brother be heard as a witness in order to substantiate that the rifle had never had a breech-block while in the applicant's possession.

25. In this letter the applicant also complained of the Court of Appeal's refusal to appoint counsel. The respondent Government have submitted that the Court of Appeal did not regard the submissions of 11 March 1985 by the applicant as final submissions in the case. They were regarded as an appeal against the Court's decision of 27 February 1985 on the question of defence counsel. The respondent Government submit that these submissions were therefore forwarded to the Supreme Court and did not form part of the case file of the Court of Appeal.

26. The case was examined by the Court of Appeal on 22 August 1985. On this day the Court of Appeal also decided that an oral hearing in the Court would be manifestly unnecessary and that the case therefore could be dealt with without such a hearing in accordance with Chapter 51, Section 21 of the Code of Judicial Procedure. It was decided that this decision should be made public on the same day as the judgment was delivered.

27. On 2 October 1985 the Court of Appeal delivered its judgment in the case, in which it stated:

(translation)

"(The applicant) has submitted to the Court of Appeal the same information as was mentioned in the judgment of the District Court and added: When (his stepfather) and his mother separated (his stepfather) forgot the rifle at the mother's place of residence at Furuby. Since (the applicant's stepfather) has died it is his son ... who now owns the rifle.

It is undisputed that (the applicant) has been in possession of the rifle without a permit. Regardless of how it came into his possession and who owns it, he shall therefore be convicted for having violated the Firearms Act. The sentence should be as determined by the District Court.

The Court of Appeal, which accepts (the applicant's) information as to how the rifle came into his possession, finds that he is at least not the owner of it. The question of confiscation of the rifle accordingly concerns a person who is not accused in this case. The question of confiscation should be directed against the owner of the rifle in accordance with Section 17 of the Act of 1946 concerning the promulgation of a new Code of Judicial Procedure. This has not happened in the present case. The request for confiscation is therefore rejected."

28. The applicant asked for leave to appeal against the judgment to the Supreme Court. In his request for leave to appeal, the applicant maintained that he had not violated the Firearms Act since the rifle could not be considered a weapon as it had no breech-block. He complained that the lower courts had disregarded this vital information although he had pointed it out in his submissions and although he had requested a hearing in order to hear witnesses in this respect. Furthermore he maintained that the conviction had had unforeseeable consequences for him.

29. On 3 March 1986 the Supreme Court refused leave to appeal.

B. Relevant domestic law

30. The Firearms Act contains specific rules for the control of the right to possess and acquire firearms and ammunition. According to Section 5 of the Firearms Act the possession of firearms is prohibited unless a permit to this end has been granted. In Section 1 a definition of the concept of firearms is found. It is provided, inter alia, that a firearm is a weapon which can fire a bullet, shot, harpoon or other projectile by means of gunpowder, carbonic acid, compressed air or

other similar means. The Firearms Act also provides that the provisions apply accordingly to certain separate parts of a weapon, e.g. a breech-block or barrel, and to weapons which are unusable if the weapon would count as a firearm had it been usable. Anyone who intentionally possesses a firearm without a permit is, according to Section 37 of the Act, liable to imprisonment for a maximum period of two years. If the act has been committed by negligence, or if the offence is of a minor character, the offender is liable to pay a fine or to imprisonment not exceeding six months.

31. Violations of the Firearms Act are considered criminal offences and the Code of Judicial Procedure is thus applicable. By virtue of this Code judgments in criminal matters shall as a rule be rendered after a main oral hearing. This rule applies to proceedings in the lower courts as well as in appeal courts. Exceptions to this rule exist, however, at the appellate level. Thus Chapter 51, Section 21 of the Code of Judicial Procedure, as amended as from 1 July 1984, reads as follows in the relevant parts:

"Hovrätten får avgöra mål utan huvudförhandling,
1. om talan av åklagaren förs endast till den tilltalades förmån,
2. om talan, som förs av den tilltalade, biträtts av motparten,
3. om det är uppenbart att vadetalan är ogrundad, eller
4. om det inte finns anledning att döma den tilltalade till ansvar eller att ådöma honom påföljd eller döma honom till annan påföljd än böter eller villkorlig dom eller sådana påföljder i förening.

...

Har i fall som avses i första stycket en part begärt huvudförhandling, skall sådan hållas, om det inte är uppenbart obehövligt.

...

För prövning som inte avser själva saken behöver huvudförhandling inte hållas."

(translation)

"The Court of Appeal may decide an appeal without a main hearing,
1. if the prosecutor appeals only for the benefit of the accused,
2. if an appeal brought by the accused is supported by the opposing party,
3. if the appeal is plainly unfounded, or
4. if no reason exists to hold the accused legally liable, or to impose a sanction upon him, or to impose a sanction other than a fine or a conditional sentence, or a combination of such sanctions.

...

If, in a case referred to in the first paragraph, a party has requested a main hearing, such a hearing shall be held unless manifestly unnecessary.

...

For a ruling not related to the merits a main hearing need not be held."

32. Swedish appeal courts review criminal cases with respect to law as well as facts. However, there are certain limitations to the Court of Appeal's full jurisdiction. Chapter 51, Section 25 of the Code of Judicial Procedure contains a prohibition against reformatio in pejus in certain cases. This provision reads as follows:

"Ej må hovrätten i anledning av den tilltalades talan eller talan, som av åklagare föres till hans förmån, döma till brottspåföljd, som är att anse såsom svårare än den, vartill underrätten dömt. Har den tilltalade av underrätten dömts till fängelse, äge hovrätten förordna om villkorlig dom, skyddstillsyn eller överlämnande till särskild vård, så ock

jämte villkorlig dom, skyddstillsyn eller överlämnande till vård inom socialtjänsten döma till böter ävensom jämte skyddstillsyn döma till fängelse enligt 28 kap. 3 § brottsbalken. Har underrätten meddelat förordnande som nu sagts, äge hovrätten döma till annan påföljd."

(translation)

"Upon an appeal lodged by the accused, or by the prosecutor for the benefit of the accused, the Court of Appeal may not sentence the accused to a criminal sanction more severe than the one imposed by the lower court. If the accused was sentenced by the lower court to imprisonment, the Court of Appeal may order a suspension of sentence, probation or placing under special care; in addition to suspension of sentence and to probation or placing under care within the social service, the Court of Appeal may impose a fine or probation coupled with imprisonment, pursuant to Chapter 28, Section 3 of the Penal Code. When the lower court has ordered a sanction of the kind referred to above, the Court of Appeal may impose a different kind of sanction."

III. OPINION OF THE COMMISSION

A. Point at issue

33. The issue to be determined in the present case is whether the proceedings before the Court of Appeal when it examined the applicant's appeal against the judgment of the District Court violated his right to a "fair and public hearing" as guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention.

B. Applicability of Article 6 para. 1 (Art. 6-1) of the Convention

34. Article 6 para. 1 (Art. 6-1) reads as follows:

"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 interests 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."

35. It is not in dispute between the parties that the above provision applies to the appeal proceedings in question. This also follows from the case-law of the Commission and the European Court of Human Rights according to which a State which institutes courts of appeal is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6 (Art. 6) of the Convention (see notably Eur. Court H.R., Delcourt judgment of 17 January 1970, Series A no. 11, p. 13, para. 25, and Eur. Court H.R., Axen judgment of 8 December 1983, Series A no. 72, p. 12, para. 27). Accordingly, although Article 6 (Art. 6) does not guarantee an appeal in criminal proceedings, the guarantees of Article 6 (Art. 6) continue to apply to the appeal proceedings where the opportunity to lodge an appeal in regard to the determination of a criminal charge is provided for under domestic law, since these proceedings form part of the whole proceedings which determine the criminal charge at issue.

36. Furthermore, leaving aside the question of the authority of

Protocol No. 7 to the Convention which had not yet entered into force at the time when the circumstances of the present case were examined in the domestic courts, the Commission recalls that the European Court of Human Rights has found no warrant for the view that the addition of this Protocol was intended to limit, at the appellate level, the scope of the guarantees contained in Article 6 (Art. 6) of the Convention (cf. Eur. Court H.R., Ekbatani judgment of 26 May 1988, Series A no. 134, p. 12, para. 26).

37. It follows that Article 6 (Art. 6) applied, not only to the proceedings in the District Court, but also to the proceedings in the Court of Appeal.

C. Compliance with Article 6 para. 1 (Art. 6-1) of the Convention

38. It is established that the applicant had the opportunity to present his case in person in the District Court at a public hearing, in proceedings which were not at variance with Article 6 (Art. 6) of the Convention. It is also established that the applicant did not have the same opportunity in the Court of Appeal as there was no public hearing. It follows, however, from the case-law of the Commission and the European Court of Human Rights that the manner of application of Article 6 (Art. 6) to the proceedings before courts of appeal depends on the particular circumstances of the case (cf. the above-mentioned Axen judgment p. 12, para. 27). The question before the Commission is therefore whether a departure from the principle that there should be a public hearing could, in regard to the proceedings before the Court of Appeal, be justified in the circumstances of the present case.

39. In determining this question, the Commission must have regard to the nature of the national appeal system, the scope of the Court of Appeal's powers and the manner in which the applicant's interests were actually presented and protected before the Court of Appeal (cf. Eur. Court H.R., Ekbatani judgment of 26 May 1988, Series A no. 134, p. 13, para. 28).

40. As regards the nature of the national appeal system the Commission recalls that it has, as well as the European Court of Human Rights, on a number of occasions held that, provided that there has been a public hearing at first instance, the absence of a public hearing before a second or third instance may be justified in certain circumstances. The Commission refers in this respect to the above-mentioned Axen judgment (p. 12, para. 28) and the Sutter case (Eur. Court H.R., Sutter judgment of 22 February 1984, Series A no. 74, p. 13, para. 30). In both cases the Court found no breach of Article 6 (Art. 6). In the Axen case the reason was that the first instance court and the appeal court had heard the case in public and the German Federal Court (Bundesgerichtshof), which determines solely issues of law, could - short of holding hearings - only dismiss the appeal on points of law. In the Sutter case the Court of Cassation had not ruled on the merits of the case and had dismissed Mr. Sutter's appeal in a judgment devoted solely to the interpretation of the legal provisions concerned.

41. The Commission had, in earlier cases, acknowledged that the absence of an oral procedure before appeal courts does not necessarily constitute a violation of Article 6 para. 1 (Art. 6-1). For example, it decided so in the case of the dismissal of appeals on points of law in criminal proceedings by the German Federal Court (No. 599/59, Dec. 14.12.61, Collection 8 p. 12), and by the Court of Appeal (Kammergericht) in Berlin (No. 1169/61, Dec. 24.9.63, Yearbook 6 p. 520), and of the dismissal by the Swiss Federal Court of an appeal (No. 7211/75, Dec. 6.10.76, D.R. 7 p. 104).

42. The Commission and the European Court of Human Rights have on the other hand held that where a court of appeal is called upon to

examine a case as to the facts and the law and has to make a full assessment of the question of guilt and innocence, it cannot, as a matter of fair trial, determine such questions without a direct assessment of the evidence given in person by the accused, who claims that he has not committed the act alleged to constitute a criminal offence (cf. the above-mentioned Ekbatani judgment, p. 14, para. 32).

43. In the present case the Commission recalls that under Swedish law the case against the applicant was dealt with by the national courts as a "criminal" case, the applicant being the accused person. Furthermore, the applicant disputed ever having possessed a weapon within the meaning of the Firearms Act and he contested having violated any laws. Under the Swedish Code of Judicial Procedure the nature of the appeal was accordingly in principle a full appeal where the Court of Appeal was called upon to examine the case both as to the facts and the law.

44. The scope of the Court of Appeal's powers are set out in Chapter 51, Section 21 of the Code of Judicial Procedure as amended as from 1 July 1984 (para. 31 above). It follows from this provision, inter alia, that where no reason appears for the Court of Appeal to sentence a person to a more severe sentence than a fine, a conditional sentence or a combination of such sanctions the Court of Appeal is not obliged to hold an oral hearing regarding the appeal but can base its judgment exclusively on the case file and the written submissions of the parties. It is an optional procedure and the Court of Appeal is not supposed to resort to it if a hearing can be expected to give the Court a better basis for deciding on the appeal. Furthermore, an oral hearing shall be held at the request of either party unless the Court finds it manifestly unnecessary.

45. The Commission notes that under Chapter 51, Section 21 the Court of Appeal may, without a public hearing, convict a person who has been acquitted by the District Court and may, without a public hearing, impose a higher fine on the defendant than the one imposed by the District Court. However, in the present case no such question of a possible worsening of the applicant's situation arose, or could arise, since only the applicant appealed against the judgment of the District Court, and in view of the prohibition of reformatio in pejus in Chapter 51, Section 25 of the Code of Judicial Procedure, the Court of Appeal could not, in the absence of an appeal by the Public Prosecutor, increase the sentence imposed on the applicant by the District Court.

46. The situation in the present case was accordingly that the Court of Appeal could decide to uphold the judgment pronounced by the District Court, or decide in the applicant's favour either by reducing the fine or by acquitting him.

47. The Government have acknowledged that the proceedings before the Court of Appeal involve both questions of fact and questions of law. They submit that Swedish procedural law does not distinguish between questions of fact and questions of law and there are no rules restricting the scope of the proceedings in the courts of appeal in this respect. This fact, however, does not automatically lead to the conclusion that there has been a violation of the Convention. In the Government's view account ought to be taken, for example, of the type of offence, to what extent the facts adduced are denied and whether they are relevant or not. Furthermore the fact that Swedish courts of appeal have the power to review also the facts of the case should not be looked upon as a disadvantage for the accused. The need for the personal appearance of the accused, and for an oral hearing, should be adjudged according to the way the case lies before the appeal court in question. The present case, the Government submit, is different from the above-mentioned Ekbatani case in that the facts were undisputed. The main task for the Court of Appeal was accordingly to establish whether the act committed was punishable or not. In practice the task

of the Court of Appeal was restricted to an interpretation of the legal rules involved. An oral hearing where the applicant was present would not have added anything relevant to these proceedings.

48. Finally as regards the manner in which the applicant's interests were actually presented and protected before the Court of Appeal the Government have submitted that the principle of equality of arms was respected in that the applicant as well as the Public Prosecutor had the right to submit pleadings in writing and neither appeared in person before the Court of Appeal.

49. The Commission notes that both parties in the present case had equal opportunities to present their case in writing. However, the Court of Appeal was called upon to examine the case as to the facts and the law. It had to make a full assessment of the question of guilt or innocence and was not in doing so limited in its competence in any way. The limitations on the Court of Appeal's powers as a result of the prohibition of reformatio in pejus related only to sentencing and cannot therefore be considered to be relevant to the decisive question in the determination of the criminal charge, i.e. the question of guilt or innocence. Furthermore, when determining this question the Court of Appeal did not base its examination exclusively on the District Court file. Both parties were given the opportunity to submit further written observations and the applicant indeed did so.

50. The right of the accused to be present when a court determines whether or not he is to be found guilty of the criminal charges brought against him, and to be able to present to the court what he finds is of importance in this respect, is not only an additional guarantee that an endeavour will be made to establish the truth, but it also helps to ensure that the accused is satisfied that his case has been determined by a tribunal, the independence and impartiality of which he could verify. Thereby justice is from the accused's point of view seen to be done. Furthermore, the object and purpose of Article 6 (Art. 6) taken as a whole require that a person charged with a criminal offence has a right to take part in a hearing. Sub-paragraphs (c) and (d) of paragraph 3 (Art. 6-3-c, 6-3-d) guarantee the right to defend oneself in person and to examine or have examined witnesses and such rights cannot be exercised without the accused being present (cf. also Eur. Court H.R., Colozza and Rubinat judgment of 12 February 1985, Series A no. 89, p. 14, para. 27).

51. The guarantee of a public hearing in Article 6 para. 1 (Art. 6-1) of the Convention is one of the fundamental principles of any democratic society. By rendering the administration of justice visible publicity contributes to the maintenance of confidence in it. The public nature of the hearings, where issues of guilt and innocence are determined, ensures that the public is duly informed and that the legal process is publicly observable.

52. Where a power as the one conferred on the Court of Appeal, as described above in para. 49, is exercised in proceedings which form a normal part of the determination of the criminal charge brought against the applicant, the Commission finds that Article 6 para. 1 (Art. 6-1) of the Convention requires that he should be allowed a hearing and to be present at such a hearing if he so requests. Since he did not, however, obtain such a hearing Article 6 para. 1 (Art. 6-1) has been violated. In these circumstances the Commission does not find it necessary to determine whether other elements of the proceedings in the Court of Appeal were at variance with this provision.

Conclusion

53. The Commission concludes, by seventeen votes to two, that there has been a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

Secretary to the Commission President of the Commission

H.C. KRÜGER C.A. NØRGAARD

Dissenting opinion of MM. G. Jörundsson and H. Danelius

It follows from the case-law of the European Court of Human Rights that the absence of a public hearing before a court of appeal may be justified by the special features of the appeal proceedings. Thus, the Court has accepted that Article 6 para. 1 of the Convention did not require a public hearing in leave-to-appeal proceedings (Monnell and Morris judgment, Series A no. 115, p. 22, para. 58) and in proceedings involving only questions of law (Sutter judgment, Series A no. 74, p. 13, para. 30).

In the Ekbatani case, which concerned the question whether a public hearing had been required before a Swedish Court of Appeal, the European Court, after a detailed examination of the nature of the case and the powers of the Court of Appeal, concluded that in that case there had been no special features to justify a denial of a public hearing and of the applicant's right to be heard in person (Ekbatani judgment, Series A no. 134, p. 14, paras. 32-33).

In our opinion, however, the present case is so different from the Ekbatani case as to justify a different conclusion. Our reasoning is as follows.

The applicant Ekbatani was charged with having threatened a civil servant, who was the complainant in the case. Ekbatani denied the facts upon which the charge was based and presented a different version of what had happened. However, he was convicted by the District Court on the basis of the evidence given by the complainant. For the Court of Appeal the crucial question therefore concerned the credibility of the two persons involved. The Court of Appeal had to consider whether the evidence given by the complainant was sufficiently reliable to refute the different story told by Ekbatani or whether there still existed a doubt which would lead to Ekbatani's acquittal. The Court of Appeal decided, without a hearing, to confirm the District Court's conviction. The European Court of Human Rights considered that the question of the applicant's guilt or innocence "could not, as a matter of fair trial, have been properly determined without a direct assessment of the evidence given in person by the applicant - who claimed that he had not committed the act alleged to constitute a criminal offence ... - and by the complainant". Accordingly, the European Court considered that "the Court of Appeal's re-examination of Mr. Ekbatani's conviction at first instance ought to have comprised a full rehearing of the applicant and the complainant" (para. 32 of the judgment).

The present case is in our view of a different character insofar as no question of credibility or of assessment of conflicting evidence arose. The District Court found it established that the saloon rifle had been in the applicant's possession, and this was not contested by the applicant. Nor did the applicant claim to have been the holder of a licence under the Firearms Act. The Court of Appeal found those uncontested facts to be sufficient to lead to a finding of guilt.

The facts upon which the applicant based his defence, namely that he had not been the owner of the rifle and that the breech-block of the rifle had been missing, were, as the courts saw it, irrelevant since they could not relieve the applicant of responsibility under the Firearms Act.

In Swedish criminal procedure a review upon appeal is in principle a full review of the case. Nevertheless, the particular grounds on which the appeal is based are an important element in the proceedings, and the Court of Appeal will in the first place examine whether these grounds are such as to lead to a reversal of the judgment of the lower court. Insofar as relevant facts relating to the offence are not contested in the appeal, the Court of Appeal will normally find no reason to proceed to a new examination of these facts, in particular where - as in the present case - the facts are trivial and involve only a minor offence and where moreover the penalty is merely a modest fine.

Consequently, there was no need in the present case for clarification of any facts in the proceedings before the Court of Appeal. The questions raised in the appeal were legal in character. They were, in particular, whether the possessor of a firearm, who is not at the same time its owner, is responsible under the Firearms Act, and whether the Firearms Act is applicable to a rifle whose breech-block is missing.

In these circumstances, we consider that the features of the appeal proceedings in the present case were such as to justify the absence of a hearing. We have therefore voted against the conclusion in para. 53 of the Report.

APPENDIX I

HISTORY OF THE PROCEEDINGS

Date	Item
28 July 1986	Introduction of the application
18 December 1986	Registration of the application
Examination of admissibility	
7 October 1988	Commission's decision to give notice of the application to the respondent Government
27 December 1988	Submission of the Government's observations
13 July 1989	Submission of the applicant's observations
4 October 1989	Commission's decision to declare part of the application admissible
Examination of the merits	
10 February 1990	Consideration of the state of proceedings
8 May 1990	Commission's deliberations on the merits, final votes and adoption of the Report