



## Requiring a Swedish national to bring defamation proceedings in the UK courts following a transborder television broadcast was not reasonable

In today's **Chamber** judgment<sup>1</sup> in the case of **Arlewin v. Sweden** (application no. 22302/10) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (access to court) of the European Convention on Human Rights.**

The case concerned the Swedish courts' decision to decline jurisdiction in defamation proceedings arising out of the content of a transborder television programme service. The programme in question had been broadcast live in Sweden and had accused Mr Arlewin, the applicant, of organised crime in the media and advertising sectors. The Swedish courts subsequently declined jurisdiction to examine Mr Arlewin's complaint, finding that a UK-based company, which had up-linked the programme to a satellite and transmitted it to viewers in Sweden, was responsible for its content.

The Court found in particular that, except for the technical detail that the broadcast had been routed via the UK, the programme and its broadcast were for all intents and purposes entirely Swedish. Moreover, the alleged harm to Mr Arlewin had occurred in Sweden. In those circumstances, the Swedish State had had the obligation under Article 6 of the European Convention to provide Mr Arlewin with an effective access to court. However, Mr Arlewin had been put in a situation in which he could not hold anyone responsible under Swedish law for his allegation of defamation. Requiring him to take proceedings in the UK courts could not be said to have been a reasonable and practical alternative for him. In the Court's view, the limitations on Mr Arlewin's right of access to court had therefore been too far-reaching and could not, in his particular case, be considered proportionate.

### Principal facts

The applicant, Raja Arlewin, is a Swedish national who was born in 1970 and lives in Stockholm. He is a self-employed businessman.

In October 2006 Mr Arlewin attempted to bring private prosecution proceedings and a claim for damages for gross defamation against X, following the live broadcast in Sweden of a programme in which he was accused of, among other things, involvement in organised crime in the media and advertising sectors. The television programme had been produced in Sweden in the Swedish language and was backed by Swedish advertisers.

In a preliminary ruling of May 2008 the Stockholm District Court declined jurisdiction. In its view, and with reference to the relevant Swedish law, the programme had not originated in Sweden. It had been sent from Sweden by satellite to a London-based company, Viasat Broadcasting UK Ltd, which was responsible for the content of the programme, and thereafter up-linked to a satellite, which had in turn transmitted the programme to viewers in Sweden. The Court of Appeal upheld this decision, finding that Mr Arlewin had not established that the decisions concerning the content of the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

programme had been taken in Sweden, and that the material before it indicated that it would be possible for him to bring proceedings before a court in the United Kingdom.

Mr Arlewin appealed, alleging that the Swedish courts' position ran contrary to Community law and requesting that a question concerning the interpretation of the Brussels I Regulation be referred to the Court of Justice of the European Union (ECJ) for a preliminary ruling. According to him, the regulation entitled a person claiming non-contractual damages to bring actions where the harm had actually occurred, namely in Sweden in his case. In September 2009 the Supreme Court rejected Mr Arlewin's referral request and refused leave to appeal in the case, finding no reason to request a preliminary ruling from the ECJ.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (access to court), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) of the European Convention on Human Rights, Mr Arlewin essentially complained that he had been denied access to a court in Sweden for a determination on the merits of his defamation action.

The application was lodged with the European Court of Human Rights on 18 March 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Luis **López Guerra** (Spain), *President*,  
Helena **Jäderblom** (Sweden),  
George **Nicolaou** (Cyprus),  
Helen **Keller** (Switzerland),  
Johannes **Silvis** (the Netherlands),  
Dmitry **Dedov** (Russia),  
Branko **Lubarda** (Serbia),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### [Article 6 § 1 \(access to court\)](#)

First, the Court addressed the relevance to Mr Arlewin's case of two instruments adopted within the framework of the European Union, namely the EU Audiovisual Media Services Directive<sup>2</sup> and the Brussels I Regulation<sup>3</sup>.

The Court was not convinced by the Government's argument that the Directive determined, even for the purposes of EU law, the country of jurisdiction when an individual brought a defamation claim and wished to sue for damages. In particular under Article 28 of the Directive, which addresses the situation where a person's reputation and good name have been damaged in a programme, it only talks about the right of reply, and does not deal with defamation proceedings or a related claim for damages. The Court therefore considered that the Directive did not regulate the matter of jurisdiction when it came to defamation proceedings arising out of the content of a transborder programme service.

Rather, jurisdiction under EU law was regulated by the Brussels I Regulation, and under Articles 2 and 5 of that Regulation, it would appear that both the United Kingdom and Sweden had jurisdiction over the subject matter of Mr Arlewin's case. On the one hand, X is domiciled in Sweden, and, on the

<sup>2</sup> Directive 2010/13/EU.

<sup>3</sup> Council Regulation (EC) No. 44/2001.

other, Viasat Broadcasting UK Ltd is registered, and thus domiciled in the United Kingdom. Furthermore, it could be argued that the harmful event had occurred in either country, as the television programme had been broadcast from the United Kingdom and the alleged injury to Mr Arlewin's reputation and privacy had manifested itself in Sweden.

That being said, the Court noted that the content, production and broadcasting of the television programme as well as its implications had very strong connections to Sweden. The programme had been produced in Sweden in the Swedish language, was backed by Swedish advertisers, and was to be shown live to an exclusively Swedish audience. Moreover, the alleged harm to Mr Arlewin had occurred in Sweden. Except for the technical detail that the broadcast had been routed via the United Kingdom, the programme and its broadcast were for all intents and purposes entirely Swedish in nature.

In those circumstances the Swedish State had an obligation under Article 6 of the Convention to provide Mr Arlewin with an effective right of access to court. However, in Mr Arlewin's case, the programme was broadcast in a manner which had made the national courts consider that it had not originated in Sweden and that had led to a situation in which Mr Arlewin could not hold anyone responsible under Swedish law. Requiring Mr Arlewin to take proceedings in the UK courts could not be said to have been a reasonable and practical alternative for him. The Swedish State could not therefore escape responsibility under Article 6 by referring to that alternative.

In dismissing Mr Arlewin's action without an examination of the merits, the Swedish courts had impaired the very essence of his right of access to court. In the Court's view, the limitations on Mr Arlewin's right of access to court had therefore been too far-reaching and could not, in the circumstances of the case, be considered proportionate. There had, accordingly, been a violation of Article 6 § 1.

### Other articles

The Court held that no separate issues arose under Articles 8 or 13 of the Convention.

### Article 41 (just satisfaction)

The Court held that Sweden was to pay Mr Arlewin 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 20,000 for costs and expenses.

### Separate opinion

Judge Silvis expressed a concurring opinion which is annexed to the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.