



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF RAVNSBORG v. SWEDEN

(Application no. 14220/88)

JUDGMENT

STRASBOURG

23 March 1994

In the case of Ravensborg v. Sweden*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,

Mr Thór VILHJÁLMSSON,

Mr F. GÖLCÜKLÜ,

Mr F. MATSCHER,

Mrs E. PALM,

Mr A.N. LOIZOU,

Sir John FREELAND,

Mr J. MAKARCZYK,

Mr D. GOTCHEV,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 October 1993 and 21 February 1994,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 19 February 1993, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 14220/88) against the Kingdom of Sweden lodged with the Commission under Article 25 (art. 25) by a Swedish national, Mr Göran Ravensborg, on 2 July 1988.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in

* Note by the Registrar: The case is numbered 5/1993/400/478. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

the proceedings. The President granted him leave to present his own case (Rule 30).

3. The Chamber to be constituted included ex officio Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 27 February 1993 the Vice-President, Mr R. Bernhardt, drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mr Thór Vilhjálmsson, Mr F. Gölcüklü, Mr F. Matscher, Mr A. N Loizou, Sir John Freeland, Mr J. Makarczyk and Mr D. Gotchev (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, through the Registrar, consulted the Agent of the Swedish Government ("the Government"), the applicant and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 23 July 1993 and the applicant's memorial on 23 August. On 17 September the Secretary to the Commission informed the Registrar that the Delegate did not intend to file a memorial in reply.

On 5 and 15 October 1993 the Commission produced a number of documents, as requested by the Registrar on the President's instructions, and the applicant submitted his claims under Article 50 (art. 50).

5. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 October 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

- for the Government

Ms E. JAGANDER, Legal Adviser,
Ministry for Foreign Affairs,

Agent,

Ms C. RENFORS, Legal Adviser,
Ministry of Justice,

Adviser;

- for the Commission

Mr Gaukur JÖRUNDSSON,

Delegate;

- the applicant

Mr G. RAVNSBORG.

The Court heard addresses by Ms Jagander, Mr Gaukur Jörundsson and Mr Ravensborg.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

A. Introduction

6. Mr Göran Ravnsborg, a university lecturer in law, is a Swedish citizen and lives in Lund in Sweden.

7. From late 1981 the applicant held a power of attorney from his adoptive mother, Mrs Karin Schieck, and, on 19 November 1982, he was appointed administrator (god man) for her friend, Mrs Marie Åkerblom. As both Mrs Schieck and Mrs Åkerblom became unable to care for themselves because of their advanced age, they were placed in a nursing home by the Municipality of Göteborg. The nursing home charged them for medical care and the applicant effected the relevant payments.

When he subsequently realised that the nursing home was a charitable association, he stopped paying the fees on the ground that the institution in question was not entitled to charge them. A dispute arose between the applicant and the nursing home and the latter brought a court action.

8. On 6 April 1987, while the above-mentioned proceedings were pending, the Board of the Principal Guardian (Överförmyndarnämnden - "the Board") in Göteborg asked the District Court (tingsrätten) in the same town to appoint an administrator for Mrs Schieck. The applicant, on his own and Mrs Schieck's behalf, filed a counter-claim and sought the immediate dismissal of the members of the Board. Referring to Article 6 para. 1 (art. 6-1) of the Convention, he asked for a public hearing.

9. On three occasions in the course of the ensuing proceedings the applicant was ordered by the relevant courts, under Chapter 9, Article 5, of the Code of Judicial Procedure (rättegångsbalken; see paragraphs 19-20 below), to pay fines for improper (otillbörliga) statements made in his written observations. The orders were made in the form of decisions (beslut). He appears to have paid the fines.

B. The first fine

10. In his written observations of 4 May 1987 to the District Court he stated, inter alia, that the Board could be described as "a basket of municipal rotten eggs of different colours with a common denominator and overriding ideology, namely fascism". Accordingly, the rights and legitimate interests of individuals within the municipality - if these were taken into account at all, so intoxicated were the authorities with power - were never given proper

consideration amounting to an effective examination of the needs of the community. As a result, such needs were defined by so-called democratically elected "peoples' courts" - officially named "boards" and "councils" of the municipality of Göteborg - the members of which "consist[ed] to a surprising degree of the local public mob" or "pure rotten eggs".

11. The District Court, considering the applicant's statements "improper" within the meaning of Chapter 9, Article 5, of the Code of Judicial Procedure, ordered him, at a sitting on 18 May 1987, to pay a fine of 1,000 Swedish kronor. It did not hold a hearing and adjourned its examination of the merits of the case (see paragraph 15 below).

C. The second fine

12. On 1 June 1987 the applicant appealed from the above decision to the Court of Appeal for Western Sweden (Hovrätten för Västra Sverige). He asked for an oral hearing and complained of not having had the possibility to defend himself orally before the District Court.

In his written observations, the applicant informed the Court of Appeal that, should it refuse his demands, he intended to lodge a further appeal (presumably to the Supreme Court) in order to bring his case to the Commission in Strasbourg or to the Human Rights Committee in Geneva. He expressed the opinion that the likelihood of his being granted leave to appeal was very small in view of the "generally lethargic[,]... lax and allergic attitude of the final instance", which resulted from the "anti-human rights indoctrination received by its members during their many years' service in public administration".

13. On 4 November 1987, without holding an oral hearing, the Court of Appeal confirmed the District Court's decision and ordered the applicant to pay a further fine of 1,000 kronor, finding that his written observations of 1 June 1987 also contained improper remarks prejudicing the good order of court proceedings.

14. The applicant then applied to the Supreme Court for leave to appeal, alleging that the lower and appellate courts had not only denied him a fair trial but had also violated his right to freedom of expression. Such leave was refused on 5 January 1988.

D. The third fine

15. In the meantime, on 17 June 1987, the District Court, without holding a hearing, accepted the applicant's and Mrs Schieck's objection against the Board's request for the appointment of an administrator, but rejected their demand for the dismissal of the members of the Board (see paragraph 8 above).

16. On 2 July 1987 the applicant, on his own and Mrs Schieck's behalf, lodged an appeal with the Court of Appeal, seeking to have the case referred back to the District Court for reconsideration, as well as an oral hearing before the lower court.

On this occasion, he asked that his case be heard by a specially composed District Court as he wished to have certain members disqualified from sitting. He alleged that one of its members, whom he named, had a "far-reaching tendentiously fascist way of presiding" over the court and was "grossly partial in favour of municipal interests, collegiate corruption and abuse of public power through high-handedness, terror and reactionary principles". When composed of the said judge and certain other members, who were also mentioned by name, the District Court had been generally autocratic and had applied the law in a manner which had been heavily in favour of the municipal authorities.

On 4 November 1987, in a separate decision from the one mentioned in paragraph 13 above, the Court of Appeal rejected the appeal. In addition, it again ordered the applicant to pay 1,000 kronor for improper remarks in his appeal. It did not hold a hearing.

17. The applicant, on his own behalf and on that of Mrs Schieck's estate (the latter had died on 7 July 1987), applied to the Supreme Court for leave to appeal, which was refused on 5 January 1988 (in a different decision from that referred to in paragraph 14 above).

II. THE RELEVANT DOMESTIC LAW

A. The Penal Code

18. Pursuant to Article 1 in Chapter 1 of the Penal Code (brottsbalken):

"A crime (brott) is constituted by any act for which the present code or other Law or Statute provides punishment (straff) as stated below."

According to Article 3, a reaction to crime (påföljd för brott) is understood in the code to mean the ordinary forms of punishment, notably fines and imprisonment.

B. Offences against the good order of court proceedings

19. Chapter 9, Article 5, of the Code of Judicial Procedure, as applicable at the material time, read:

"A person who, at a court sitting, disturbs the proceedings or takes photographs in the courtroom, or fails to comply with directions or prohibitions imposed under Chapter 5, Article 9, shall be ordered to pay a fine. The same punishment (straff) may

be imposed on a person who, in his oral or written observations to the court, expresses himself in an improper manner."

Chapter 5, Article 9, provides *inter alia* that the presiding judge may order a person who disturbs the proceedings or behaves in an improper manner to leave the courtroom.

20. Fines imposed under Article 5 could not exceed 1,000 Swedish kronor (Article 9 in Chapter 9, as applicable at the relevant time), unlike ordinary criminal-law fines which were income-based.

21. The question as to which court has jurisdiction in cases concerning offences against the good order of court proceedings (*rättegångsförseelser*) is governed by Article 5 in Chapter 19 - "Part II. On the procedure in criminal cases" ("II. Om rättegången i brottmål") - of the Code of Judicial Procedure. Under this Article it is for the court sitting in the proceedings - whether civil, criminal or other - in which the improper conduct has occurred to examine of its own motion whether it constitutes such an offence.

Article 1 in Chapter 20 (Part II of the code) reads:

"The court may not examine a question of criminal liability in the absence of a criminal charge. However, it may deal with issues of offences against the good order of court proceedings without a charge being brought."

In the proceedings under consideration, the courts followed the procedure laid down in the 1946 Act on the Handling of Court Matters (*lagen om handläggning av domstolsärenden 1946:807* - "the 1946 Act"). Section 1 provides:

"The present Act shall apply to matters relating to the administration of justice with which the ordinary lower courts must deal of their own motion or on application and which, according to statute or other regulation, do not fall to be examined under the procedure provided for in civil or criminal cases; however, it shall not apply to questions of punishment or other consequences of a criminal offence."

22. If the court in question finds that a person has contravened Chapter 9, Article 5, it may immediately order him to pay a fine. Such a measure is not entered in the police register.

C. Oral hearing in proceedings relating to offences against the good order of court proceedings

23. Pursuant to paragraph 2 of section 4 of the 1946 Act, a hearing may be held if the court in question considers that the person concerned should be heard orally. Should the court decide to hold one, it is, pursuant to section 5 of the 1946 Act, governed by the same provisions as apply to hearings in civil cases.

D. Conversion of fines

24. A fine imposed under Chapter 9, Article 5, of the Code of Judicial Procedure may, subject to the conditions laid down in the 1979 Act on the Enforcement of Fines (bötesverkställighetslagen 1979:189 - "the 1979 Act"), as amended in 1983 (Lag 1983: 352), be converted into a prison sentence.

According to sections 15 and 16 of the 1979 Act, the District Court must, upon the request of the public prosecutor, convert - by way of a decision (beslut) - uncollected fines into a term of imprisonment if it is obvious that the person concerned has intentionally failed to pay them or if there are other special reasons in the public interest for so converting them. A term of imprisonment imposed on this ground should be not less than fourteen days and not more than three months.

In proceedings concerning a request for the conversion of a fine into a prison sentence, the District Court must summon the prosecution and the defendant to appear at a hearing (section 17).

PROCEEDINGS BEFORE THE COMMISSION

25. In his application (no. 14220/88) to the Commission of 2 July 1988, Mr Ravensborg complained, firstly, that in the proceedings relating to the fines he had, in breach of Article 6 (art. 6) of the Convention, been refused an oral hearing and had not even had an opportunity to refute the charges against him. Secondly, he maintained that there was a further breach of this Article (art. 6) in that the Court of Appeal had refused to hold a public hearing before deciding on the issue of the appointment of an administrator. In addition, he alleged that the imposition of fines constituted a violation of Article 10 (art. 10) (right to freedom of expression) of the Convention and of Article 1 (right of property) of Protocol No. 1 (P1-1) to the Convention. Finally, he invoked Article 7 (art. 7) of the Convention, maintaining that the measures were based on provisions which were invalid.

26. On 10 October 1990 the Commission declared the second complaint inadmissible. On 9 January 1992 it found the first complaint admissible, but declared the remainder of the application inadmissible. In its report of 10 December 1992 (Article 31) (art. 31), the Commission expressed the opinion, by eleven votes to seven, that Article 6 (art. 6) being inapplicable, there had been no violation of this Article (art. 6). The full text of the

Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment*.

AS TO THE LAW

I. SCOPE OF THE CASE

27. Before the Court, the applicant reiterated a number of allegations which the Commission had declared inadmissible in its decision of 9 January 1992. He argued that the latter decision was flawed on the ground that the independence and impartiality of one of the Commission members taking part in its adoption were open to doubt.

However, the Court, in accordance with its established case-law (see, for instance, the *Helmers v. Sweden* judgment of 29 October 1991, Series A no. 212-A, p.13, para. 25), will deal only with the complaint declared admissible by the Commission, namely that the absence of an oral hearing in any of the proceedings relating to the fines violated Article 6 (art. 6) of the Convention.

In this connection it is not alleged that the applicant's "civil rights and obligations" were at issue. The only question is whether the proceedings related to a "criminal charge" against him within the meaning of Article 6 para. 1 (art. 6-1) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 (art. 6)

28. Paragraph 1 of Article 6 (art. 6-1), in so far as relevant, provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ..."

29. According to the applicant fines constituted one of the basic forms of criminal punishment under Swedish law (see paragraph 18 above) and should - without exception - be administered in a manner fulfilling the requirements of Article 6 (art. 6).

The Government contested the applicability of this Article (art. 6) to the proceedings in issue; in their view, these were not "criminal" but disciplinary in character. The Commission agreed.

In any event, the Government disputed that the absence of hearings gave rise to any breach of Article 6 (art. 6).

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 283-B of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

30. In order to determine whether Article 6 (art. 6) was applicable under its "criminal" head, the Court will have regard to the three alternative criteria laid down in its case-law (see, for example, the *Engel and Others v. the Netherlands* judgment of 8 June 1976, Series A no. 22, p. 35, para. 82; the *Lutz v. Germany* judgment of 25 August 1987, Series A no. 123, p. 23, para. 55; the *Weber v. Switzerland* judgment of 22 May 1990, Series A no. 177, pp. 17-18, paras. 31-34; the *Demicoli v. Malta* judgment of 27 August 1991, Series A no. 210, pp. 15-17, paras. 30-35).

A. Legal classification of the offence under Swedish law

31. It must first be ascertained whether the provisions defining the offence in issue belong, according to the domestic legal system, to criminal law.

32. The applicant maintained mainly that offences punishable by a fine were per se criminal, pursuant to the Penal Code, and that Article 5 in Chapter 9 of the Code of Judicial Procedure, which itself referred to fines as "punishment" ("straff"; see paragraphs 18-19 above), clearly fell within the criminal sphere. The Government and the Commission had mistakenly inferred from the preparatory work to this Article (Nytt juridisk arkiv II 1943, p.91) that the rule therein should be distinguished from the criminal law; this merely provided a description of the overlap between Article 5 and the relevant rules of the "Penal Code" ("allmänna strafflagen") in force at the material time. The correct distinction was that between the general criminal law, embodied in the Penal Code, and the special criminal law, found in other statutes; Article 5 belonged to the latter category. He also pointed to certain commentaries by legal authors describing Article 5 offences as being of a criminal character. Moreover, the statutory provision governing which court had jurisdiction in such matters and laying down that these may be examined without there being any prosecution were to be found in "Part II" of the Code of Judicial Procedure, entitled "On the procedure in criminal cases" (see paragraph 21 above). In his submission, the applicable procedure was but a slightly modified version of the ordinary criminal procedure, though the national courts in the case had by error followed the rules in the 1946 Act on the Handling of Court Matters which did not apply to questions of punishment (see paragraph 21 above). The applicant in addition placed emphasis on the possibility of converting fines imposed under Article 5 into a term of imprisonment (see paragraph 24 above). Consequently, in his view, Article 6 (art. 6) of the Convention was applicable to the criminal proceedings in which he was fined.

33. The Court notes that some of the factors relied on by the applicant might be taken as indicative of a criminal classification under Swedish law.

On the other hand, there are also a number of factors going the other way. As the Government and the Commission pointed out, when such

conduct as described in Article 5 occurs, it is for the court sitting in the particular case to examine of its own motion and without the involvement of the public prosecutor whether there has been an offence under that Article (see paragraph 21 above). Moreover, the said Article 5 deals only with offences against the good order of court proceedings, whilst improper behaviour of a more serious character may be considered a criminal offence under the relevant rules of the Penal Code. The proceedings relating to the fines imposed on the applicant were based on the 1946 Act on the Handling of Court Matters (see paragraph 21 above); although the applicability of this Act is contested by the applicant, the Court cannot in this regard substitute its own views for those of the Swedish courts (see, *mutatis mutandis*, the *Van der Leer v. the Netherlands* judgment of 21 February 1990, Series A no. 170-A, p. 12, para. 22; and the *Margareta and Roger Andersson v. Sweden* judgment of 25 February 1992, Series A no. 226-A, pp. 27-28, para. 82). Furthermore, unlike fines under the ordinary criminal law, the fines imposed under Article 5 were not income-based (see paragraph 20 above). Although this is not decisive, since in many criminal systems fines are not necessarily based on earnings, it is an indication that under Swedish law the fines in question are not viewed as an ordinary criminal-law sanction. Finally, in contrast to such sanction, the fines at issue were not entered on the police register.

As appears from the above, the formal classification under Swedish law is open to differing interpretations; on the evidence adduced, the Court cannot find it established that the provisions concerning sanctions against disturbance of the good order of court proceedings belong to criminal law under the domestic legal system.

B. The nature of the offence

34. It is therefore necessary to turn to the second criterion, namely the very nature of the offence.

The Court notes that Chapter 9, Article 5, second sentence, of the Code of Judicial Procedure applies to improper statements made orally or in writing to a court by a person attending or taking part in the proceedings, but not to such statements made in a different context or by a person falling outside the circle of people covered by that provision (see paragraph 19 above). It is for the court sitting in the particular proceedings in which the misconduct has occurred to examine, of its own accord, whether the misconduct falls foul of Article 5 (see paragraph 21 above).

In this respect the situation is different from those at issue in the cases of *Weber* and *Demicoli*, where the Court found Article 6 (art. 6) to be applicable (see the above-mentioned *Weber* judgment, p. 18, para. 33; and the above-mentioned *Demicoli* judgment, p. 17, para. 33). Rules enabling a court to sanction disorderly conduct in proceedings before it are a common

feature of legal systems of the Contracting States. Such rules and sanctions derive from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by courts under such rules are more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence. It is, of course, open to States to bring what are considered to be more serious examples of disorderly conduct within the sphere of criminal law, but that has not been shown to be the case in the present instance as regards the fines imposed upon the applicant (see paragraph 33 above).

For these reasons the Court reaches the conclusion that the kind of proscribed conduct for which the applicant was fined in principle falls outside the ambit of Article 6 (art. 6). The courts may need to respond to such conduct even if it is neither necessary nor practicable to bring a criminal charge against the person concerned.

C. The nature and degree of severity of the penalty

35. Notwithstanding the non-criminal character of the proscribed misconduct, the nature and degree of severity of the penalty that the person concerned risked incurring - the third criterion - may bring the matter into the "criminal" sphere. A fine imposed under Article 5 in Chapter 9 could amount to 1,000 kronor and actually did so in all three instances in the present case. Moreover, the fine was convertible under Swedish law into a term of imprisonment (see paragraphs 20 and 24 above).

However, in the Court's view, the possible amount of each fine did not attain a level such as to make it a "criminal" sanction. Unlike ordinary fines, the kind at issue was not to be entered on the police register (see paragraph 22 above). A decision to convert the fines could only be taken by the District Court in limited circumstances (see paragraph 24 above). What is more, it would then have been necessary to summon the applicant to appear before the District Court for an oral hearing in separate proceedings.

Accordingly, the Court shares the opinion of the Government and the Commission that what was at stake for the applicant was not sufficiently important to warrant classifying the offences as "criminal".

D. Conclusion

36. In sum, Article 6 (art. 6) did not apply to the matters complained of and has therefore not been violated in the present case.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the case is limited to the applicant's complaint concerning the absence of an oral hearing in any of the proceedings relating to the fines imposed upon him;
2. Holds that Article 6 (art. 6) did not apply to those proceedings and has not therefore been violated.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 March 1994.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar