EUROPEAN COURT OF HUMAN RIGHTS

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CHAMBER JUDGMENT
SEGERSTEDT-WIBERG AND OTHERS v. SWEDEN

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Segerstedt-Wiberg and Others v. Sweden*** (application no. 62332/00).

Concerning four of the applicants (Per Nygren, Staffan Ehnebom, Bengt Frejd and Herman Schmid), the Court held unanimously that there had been:

- a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights;
- a **violation of Article 10** (freedom of expression) of the Convention; and
- a **violation of Article 11** (freedom of assembly and association).

Concerning all five applicants (including Ingrid Segerstedt-Wiberg), the Court held unanimously that there had been:

- a **violation of Article 13** (right to an effective remedy).

Under Article 41 (just satisfaction), the Court awarded 3,000 euros (EUR) to Ms Segerstedt-Wiberg, EUR 7,000 each to Mr Nygren and Mr Schmid and EUR 5,000 each to Mr Ehnebom and Mr Frejd in respect of non-pecuniary damage. It awarded EUR 20,000 to the applicants, jointly, for costs and expenses. (The judgment is available in English and in French.)

1. Principal facts

The applicants, all Swedish nationals, are: Ms Segerstedt-Wiberg (born in 1911), Mr Nygren (1948), Mr Ehnebom (1952), Mr Frejd (1948) and Mr Schmid (1939). The first four applicants live in Sweden in, respectively, Gothenburg, Kungsbacka and Västra Frölunda (Mr Ehnebom and Mr Frejd). Mr Schmid lives in Copenhagen, Denmark.

The applicants all made unsuccessful requests to view in their entirety the records held about them by the Swedish Security Police. Their requests were refused on the ground that making them available might jeopardise crime prevention or national security. The authorities and domestic courts relied on Chapter 5, section 1(2), of the 1980 Secrecy Act; that it was "not clear that the information may be imparted without jeopardising the purpose of the decision or measures planned or without harm to future activities".

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[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Ms **Segerstedt-Wiberg** is the daughter of a well-known publisher and anti-Nazi activist, Torgny Segerstedt. From 1958 to 1970 she was a Liberal Member of Parliament. She is a prominent public figure in Sweden.

On 22 April 1998 she asked to view her Security Police records, claiming that damaging information was being circulated about her, including rumours that she was "unreliable" in respect of the Soviet Union. Her request was refused.

In the light of an amendment to the Secrecy Act, she asked whether or not her name was on the Security Police register and was subsequently granted authorisation to view certain records which concerned letter bombs which had been sent to her in 1990.

On 8 October 1999 she brought proceedings to be allowed to consult her file in its entirety. Her request was refused under Chapter 5, section 1(2).

On 13 December 2002 the Swedish Security Service decided to release all information (51 pages) stored on Ms Segerstedt-Wiberg up until 1976.

The Swedish Government has also informed the European Court of Human Rights that, in 2001, Ms Segerstedt-Wiberg was registered by the Security Service because of a new incident that could have been interpreted as a threat against her.

Mr **Nygren** is an established journalist at *Göteborgs-Posten*, one of the largest daily newspapers in Sweden. He had written a number of articles in the paper on Nazism and on the Security Police which have attracted wide public attention.

On 27 April 1998 the Security Police rejected a request from Mr Nydren for access to their quarterly reports on Communist and Nazi activities for the years 1969 to 1998. On 7 June 1999 he further requested permission to read his Security Police file and any other documents containing his name. He was given access to two pages of information, concerning his participation in a political meeting in Warsaw in 1967, but his requests were otherwise refused under Chapter 5, section 1(2).

Mr **Ehnebom**, has been a member of the *KPML(r)* - Marxist-Leninist (revolutionaries) Party - established in 1970) since 1978. He is an engineer and since 1976 has been employed by the Ericsson Group.

On 10 April 1999 he submitted a request to the Security Police to see all files that might exist on him. He was granted access to 30 pages of information, including copies of two security check forms concerning him from 1980 used by the *FMV* (the *Försvarets Materialverk,* an authority responsible for procuring equipment for the Swedish Army, and with whom the Ericsson Group worked). The forms noted that Mr Ehnebom was a member of the *KPML(r)* and in contact with leading party members of the party. Mr Ehnebom submitted that that information was behind the *FMV*'s call for him to be removed from his post.

His requests were otherwise refused under Chapter 5, section 1(2).

Mr **Frejd** has been a member of the *KPML(r)* since 1972 and since 1974 the Chairman of *Proletären FF*, a sports club with about 900 members. He is well known within sports circles in Sweden and has actively worked with children and young people in sport to foster international solidarity and facilitate social integration through sport.

On 23 January 1999 he requested access to information about him contained in the Security Police register. He was granted permission to see parts of his file which included a note that he was a active *KPML(r)* member and had stood for the party in a local election.

On 1 March 2000 he asked to see his file in its entirety and all other records that might have been entered concerning him. His request was refused under Chapter 5, section 1(2).

Mr **Schmid** was from 1999 to 2004 a member of the European Parliament, belonging to the GUE/NGL Group and sitting for the Swedish Left Party.

On 9 December 1997 he filed a request to have access to all information held about him by the Security Police. He was given access to selected files, but his request was otherwise rejected under Chapter 5, section 1(2). The entries viewed by Mr Schmid concerned mostly political matters such as participation in a campaign for nuclear disarmament and general peace movement activities, including public demonstrations and activities related to membership of the Social-Democratic Student Association. One entry, dated 12 May 1969, stated that he had extreme left-wing leanings and had suggested using guerrilla tactics and, if necessary, violence during a demonstration.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 7 October 2000 and declared partly admissible on 20 September 2005.

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

Jean-Paul **Costa** (French), ***President***,
András **Baka** (Hungarian),
Ireneu **Cabral Barreto** (Portuguese),
Antonella **Mularoni** (San Marinese),
Elisabet **Fura-Sandström** (Swedish),
Danutė **Jočienė** (Lithuanian),
Dragoljub **Popović** (citizen of Serbia and Montenegro), ***judges***,

and also Sally **Dollé**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

The applicants complain about the storage of certain information about them in Swedish Security Police files and the refusal to reveal the extent of the information stored. They rely on Article 8 (right to respect for private life) Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 13 (right to an effective remedy) of the Convention.

[1] This summary by the Registry does not bind the Court.

Decision of the Court

Article 8

Storage of the information released to applicants

The Court was satisfied that the storage of the information at issue had a legal basis in the 1998 Police Data Act. It noted in particular that Section 33 of the Act allowed the Security Police register to include personal information concerning a person suspected of a crime threatening national security or a terrorist offence, or undergoing a security check or where "there are other special reasons". While the Security Police had some discretion in deciding what constituted "special reasons", that discretion was not unfettered. For example, under the Swedish Constitution, no entry regarding a citizen could be made in a public register exclusively on the basis of that person's political opinion, without his or her consent. And, among other things, a general prohibition of registration on the basis of political opinion was set out in section 5 of the Police Data Act. Against that background, the Court found that the scope of the discretion conferred on the competent authorities and the manner of its exercise was indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference. Accordingly, the interference with the respective applicants' private life was "in accordance with the law", within the meaning of Article 8.

The Court also accepted that the storage of the information in question pursued legitimate aims, namely the prevention of disorder or crime, in the case of Ms Segerstedt-Wiberg, and the protection of national security, for the other applicants.

While the Court recognised that intelligence services might legitimately exist in a democratic society, it reiterated that powers of secret surveillance of citizens were tolerable under the Convention only in so far as strictly necessary for safeguarding democratic institutions. Such interference had to be supported by relevant and sufficient reasons and be proportionate to the legitimate aim or aims pursued. In the applicants' case, Sweden's interest in protecting national security and combating terrorism had to be balanced against the seriousness of the interference with the respective applicants' right to respect for private life.

Concerning Ms Segerstedt-Wiberg, the Court found no reason to doubt that the reasons for keeping on record the information relating to bomb threats in 1990 against her were relevant and sufficient as regards the aim of preventing disorder or crime. The measure was at least in part intended to protect her; there was therefore no question of any disproportionate interference with her right to respect for her private life.

However, as to the information released to Mr Nygren (his participation in a political meeting in Warsaw in 1967), the Court, bearing in mind the nature and age of the information, did not find its continued storage to be supported by reasons which were relevant and sufficient as regards the protection of national security.

Similarly, the storage of the information released to Mr Schmid (that he, in 1969, had allegedly advocated violent resistance to police control during demonstrations) could in most part hardly be deemed to correspond to any actual relevant national security interests for Sweden. Its continued storage, though relevant, could not be deemed sufficient 30 years later.

Therefore, the Court found that the continued storage of the information released to Mr Nygren and Mr Schmid entailed a disproportionate interference with their right to respect for private life.

The information released to Mr Ehnebom and Mr Frejd raised more complex issues in that it related to their membership of the *KPML(r)*, a political party which, the Swedish Government stressed, advocated the use of violence and breaches of the law in order to bring about change in the existing social order. The Court observed that the relevant clauses of the *KPML(r)* party programme rather boldly advocated establishing the domination of one social class over another by disregarding existing laws and regulations. However, the programme contained no statements amounting to an immediate and unequivocal call for the use of violence as a means of achieving political ends. Clause 23, for instance, which contained the most explicit statements on the matter, did not propose violence as either a primary or an inevitable means in all circumstances. Nonetheless, it affirmed the principle of armed opposition.

The Court reiterated its position that the constitution and programme of a political party could not be taken into account as the sole criterion for determining its objectives and intentions; the contents of the programme had to be compared with the actions of the party's leaders and the positions they defended.

The *KPML(r)* party programme was the only evidence relied upon by the Government, however. Beyond that they did not point to any specific circumstance indicating that the impugned programme clauses were reflected in actions or statements by the party's leaders or members or that they constituted an actual or even potential threat to national security when the information was released in 1999, almost 30 years after the party had come into existence. The reasons for the continued storage of the information about Mr Ehnebom and Mr Frejd, although relevant, could not be considered sufficient and therefore amounted to a disproportionate interference with their right to respect for private life.

The Court concluded that the continued storage of the information that had been released was necessary concerning Ms Segerstedt-Wiberg, but not for any of the remaining applicants. Accordingly, the Court found that there has been no violation of Article 8 concerning Ms Segerstedt-Wiberg, but that there had been a violation concerning the other four applicants.

Refusal to grant applicants full access to information stored about them by Security Police

The Court reiterated that a refusal of full access to a national secret police register was necessary where the State might legitimately fear that the provision of such information might jeopardise the efficacy of a secret surveillance system designed to protect national security and to combat terrorism. In the applicants' case the national administrative and judicial authorities involved had all found that full access would jeopardise the purpose of the system. The Court did not find any ground on which it could arrive at a different conclusion.

The Court concluded that Sweden was entitled to consider that the interests of national security and the fight against terrorism prevailed over the interests of the applicants in being advised of the full extent to which information was kept about them on the Security Police register. Accordingly, the Court found that there had been no violation of Article 8.

Articles 10 and 11
The Court considered that the storage of personal data related to political opinion, affiliations and activities that had been deemed unjustified for the purposes of Article 8 § 2 *ipso facto* constituted an unjustified interference with the rights protected by Articles 10 and 11. Having regard to its findings under Article 8, the Court therefore found that there had been violations of Articles 10 and 11 concerning all the applicants except Ms Segerstedt-Wiberg.

Article 13
Considering the applicants' access to an effective remedy under Article 13, the Court observed that the Parliamentary Ombudsman and Chancellor of Justice could receive individual complaints and had a duty to investigate them in order to ensure that the relevant laws had been properly applied. By tradition, their opinions commanded great respect in Swedish society and were usually followed. However, as the Court had found previously, they lacked the power to render a legally-binding decision. In addition, they exercised general supervision and did not have specific responsibility for inquiries into secret surveillance or into the entry and storage of information on the Secret Police register. The Court had already found neither remedy, when considered on its own, to be effective within the meaning of Article 13.

In the meantime, a number of steps had been taken to improve the remedies, notably authorising the Chancellor of Justice to pay compensation, with the possibility of judicial appeal against the dismissal of a compensation claim, and the establishment of the Records Board (empowered to monitor on a day-to-day basis the Secret Police's entry and storage of information and compliance with the Police Data Act). The Data Inspection Board had also been set up. Moreover, a decision by the Security Police whether to advise a person of information kept about him or her on its register could form the subject of an appeal to the County Administrative Court and the Supreme Administrative Court.

The Court noted that the Records Board had no competence to order the destruction of files or the erasure or rectification of information kept in the files.

It appeared the Data Inspection Board had wider powers. It could examine complaints made by individuals. Where it found that data was being processed unlawfully, it could order the processor, on pain of a fine, to stop processing the information other than for storage. The Board was not itself empowered to order the erasure of unlawfully stored information, but could make an application for such a measure to the County Administrative Court. However, the Court had received no information indicating the effectiveness of the Data Inspection Board in practice. It had therefore not been shown that that remedy was effective.

In addition the applicants had no direct access to any legal remedy as regards the erasure of the information in question. In the view of the Court, those shortcomings were not consistent with the requirements of effectiveness in Article 13 and were not offset by any possibilities for the applicants to seek compensation.

The Court found that the applicable remedies, whether considered on their own or together, could not satisfy the requirements of Article 13 and that there had therefore been a violation of Article 13.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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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.*