

APPLICATION/REQUÊTE N° 11532/85

HAMMERDAHLS STORMARKNAD AB v/SWEDEN

HAMMERDAHLS STORMARKNAD AB c/SUÈDE

DECISION of 9 October 1985 on the admissibility of the application

DÉCISION du 9 octobre 1985 sur la recevabilité de la requête

Article 10, paragraph 1 of the Convention : This provision does not concern a dispute over the refusal by a press distribution company to supply newspapers to a retailer who intends to sell them below the fixed price.

Article 10, paragraphe 1, de la Convention : Un litige portant sur le refus d'une entreprise de presse de livrer des journaux à un détaillant les vendant au-dessous du prix fixé ne relève pas de cette disposition.

THE FACTS

(français : voir p. 279)

The facts of the case, as they appear from the applicant's submissions, may be summarised as follows.

The applicant is a limited liability company with its seat at Växjö. It is represented before the Commission by Mr. Lennart Jakobsson, a lawyer practising at Lund.

The applicant company operates a supermarket at Växjö, where *inter alia* newspapers are sold.

Presam AB is a limited liability company, owned mainly by the Swedish press. Its task is impartially to distribute and sell newspapers and magazines.

The applicant company sells products at a low price. Its intention was also to sell daily newspapers at a lower price, 2:25 Swedish Crowns instead of 2:50 Swedish Crowns, which was the fixed price for the newspapers. As a result of this, Presam AB refused to deliver newspapers to the applicant.

The applicant reported this refusal to the Free Trade Ombudsman (näringsfrihetsombudsmannen) who in a decision of 29 September 1983 struck the case off his list.

The applicant appealed to the Market Court (marknadsdomstolen) claiming that the Court should remove the limitation on the free commercial competition which resulted from the refusal of Presam AB to deliver newspapers to the applicant. The applicant invoked the 1982 Act on Commercial Competition (konkurrenslagen), the aim of which is to promote free competition by preventing undesirable restrictive trade practices. Under that Act the Market Court has power to prescribe measures against restrictive trade practices, which are considered to have "prejudicial effects". By judgment of 11 April 1984 the Market Court rejected the applicant's claim stating that it had not been shown that the refusal of Presam AB to deliver newspapers to the applicant, on the conditions requested by the applicant, had "prejudicial effects" within the meaning of the 1982 Act.

COMPLAINTS

The applicant complains that its right to freedom of expression as guaranteed by Article 10 of the Convention has been violated.

THE LAW

The applicant company has complained of a breach of Article 10 of the Convention.

Article 10 of the Convention guarantees the right to freedom of expression, which includes freedom to hold opinions and to receive and impart information and ideas.

The fact on which the applicant company bases its allegation of a breach of Article 10 is that the company which distributes newspapers refuses to deliver newspapers to the applicant, the reason being the applicant's wish to sell the newspapers at a lower price than the fixed price, and that this refusal has been accepted by the Market Court.

The Commission notes that the applicant is not prevented from selling newspapers. The dispute between the applicant and the distributor only relates to the commercial conditions for the sale of newspapers. This, in the opinion of the Commission, is not an issue which relates to the applicant's "freedom of expression" as this concept is to be understood in the Convention. Accordingly, the Commission

finds that the applicant's complaint falls outside the scope of Article 10 of the Convention.

It follows that the application is incompatible *ratione materiae* within the meaning of Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.