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EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 10426/83

Bengt PUDAS
against
SWEDEN

Report of the Commission

(Adopted on 4 December 1985)

STRASBOURG

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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 Substance of the Application

2. The applicant, Mr Bengt Pudas, is a Swedish citizen, born in 1959 and resident at Hedenäset. He is a taxi owner by profession. He is represented by Mr Göran Ravnsborg, a senior lecturer at the University of Lund.

3. The case relates to the revocation of the applicant's licence to operate interurban traffic on certain routes. The applicant complains that he was deprived of the licence in breach of Art. 1 of Protocol No. 1 and that he had no possibility of having the revocation of the licence examined by a court. In this respect he alleges a violation of Art. 6 of the Convention. He also complains that he has no effective remedy in Sweden contrary to Art. 13 of the Convention.

B. Proceedings before the Commission

4. The application was introduced on 30 March 1983 and registered on 3 June 1983. On 10 October 1983 the Commission decided, in accordance with Rule 42, para. 2, sub-para. b of its Rules of Procedure, to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits.

The Government were represented by their Agent, Mr. Hans Corell, Under-Secretary at the Ministry of Foreign Affairs. The Government's observations were dated 10 January 1984 and the applicant's observations in reply were dated 26 February 1984. The Government submitted further observations in a letter of 30 March 1984 and the applicant replied by a letter of 4 May 1984.

On 12 October 1984 the Commission, after a further examination of the admissibility of the application, decided to adjourn its examination.

5. On 5 December 1984 the Commission decided to declare admissible, as raising issues under Arts. 6 and 13 of the Convention, the applicant's complaint that he had no remedy before a court in respect of the revocation of his interurban route licence. The remainder of the complaints were declared inadmissible ⁽¹⁾.

6. The parties were then invited to submit any additional observations on the merits of the issues under Arts. 6 and 13 of the Convention which they wished to make.

The Government indicated in a letter of 22 February 1985 that they did not consider further observations necessary. The applicant submitted additional observations on 25 February 1985, which were transmitted to the Government.

(1) See decision on admissibility, Appendix II.

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7. On 9 March 1985 the Commission considered the state of proceedings of the case. On 9 October 1985 the Commission decided to adjourn its examination of the merits of the case. On 4 December 1985 it deliberated on the merits of the case and took the final votes in the case.

8. Legal aid under the Addendum to the Commission's Rules of Procedure was granted to the applicant on 18 September 1984.

9. Following its decision on the admissibility the Commission, acting in accordance with Art. 28, para. b of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement of the matter. In the light of the parties' reactions the Commission now finds that there is no basis on which a friendly settlement can be effected.

C. The Present Report

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

MM. C. A. NØRGAARD, President
J. A. FROWEIN
G. JÖRUNDSSON
G. TENEKIDES
S. TRECHSEL
B. KIERNAN
A. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL

The text of the Report was adopted by the Commission on 4 December 1985 and is now transmitted to the Committee of Ministers in accordance with Art. 31, para. 2 of the Convention.

11. A friendly settlement of the case not having been reached, the purpose of the present Report is accordingly:

(1) to establish the facts, and

(2) to state an opinion as to whether the facts found disclose a breach by the Government of their obligations under the Convention.

12. 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 forms Appendix II.

13. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

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II. ESTABLISHMENT OF THE FACTS

A. The Particular Facts of the Case

14. On 1 February 1980 the County Administrative Board (länsstyrelsen) of Norrbotten granted the applicant a taxi traffic licence, and on 20 May 1980 he was granted a licence to operate interurban traffic on certain routes. These licences were in practice taken over from the former taxi owner. The applicant commenced his business under the said licences on 20 May 1980. No time-limit was set for the licences, which means that they were valid until further notice.

15. The licence of 20 May 1980 reads as follows:

"Licence to operate interurban route traffic for passengers and connected goods transportation

The County Administrative Board issues a licence, under the 1979 Act on Commercial Transportation (yrkestrafiklagen), for Bengt Pudas, personal number 590219-8950, to perform, until further notice, interurban route traffic for passengers and connected goods transportation on the routes Luppio-Armasjärvi-Ekfors-Liehittäjä and Ekfors-Liehittäjä-Pukhori-Armasjärvi-Övertorneå with a branch to Kiilisjärvi.

For the transportation of goods it is permitted to use during each tour a trailer with a load of maximum 1,000 kilograms. In addition, it is permitted to transport goods weighing a maximum of 500 kilograms each time in a bus of normal construction.

For the transportation, it is only permissible to use those vehicles which have been reported to the County Administrative Board for that purpose. A document showing that the vehicle has passed a test for roadworthiness, should be attached to the report.

The holder of the licence is obliged, while transporting, carefully to comply with the applicable legislation and the instructions issued by the competent authorities as well as to pay the fees, which may be established by the County Administrative Board.

The licence holder is obliged, at the latest within three months from the date on which this decision acquired legal force, to commence the transportation, failing which the licence may be revoked."

16. In his combined taxi and interurban traffic business the applicant used one Peugeot, essentially for the taxi traffic, and one Citroën for the interurban traffic. The business employed the applicant, his father and a third driver on part-time. Under the

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interurban traffic licence, the applicant offered a service of two regular tours a week. The tours were offered on a demand basis and had to be ordered one day in advance.

17. On 2 April 1981 the County Company (länstrafiken i Norrbotten AB), the so called Principal (huvudman) for the area, filed an application with the County Administrative Board, for a licence to perform interurban route transportation covering Övertorneå-Luppio-Liehittäjä-Kiilisjärvi-Ekfors-Armasjärvi-Orjasjärvi-Övertorneå. The County Company also requested that the interurban route traffic licence, which the applicant had, be revoked, as well as another licence held since 1973 by Mr Wälimaa and others.

The applicant opposed the revocation of his licence.

18. On 17 August 1981 the County Administrative Board gave its decision. The County Company was granted a licence to conduct interurban route transportation of passengers and goods on the route which it had requested, valid as of 1 September 1981 until further notice.

In another decision on the same day, the County Administrative Board revoked the applicant's interurban route traffic licence.* The Board ordered that the applicant's licence should cease to be valid as from the end of August 1981. This order was subsequently amended to the effect that the licence should cease to be valid as from the date on which the decision of 17 August 1981 had become final.

19. The applicant appealed to the Council of Transportation (transportrådet), which, by a decision of 14 May 1982, rejected the appeal.*

20. The applicant lodged a further appeal with the Government (Ministry of Transport). The appeal was rejected on 21 October 1982.

21. By a decision of 13 January 1983, the Government, having received a further request from the applicant, refused to review their decision of 21 October 1982.

B. Relevant Domestic Law

22. Commercial and public transportation is governed by the 1979 Act on Commercial Transportation and the 1979 Ordinance on Commercial Transportation (yrkestrafikförordningen). Commercial transportation is defined as the transportation service - by car, truck or bus - offered to the public for a fee. Such transportation may only be conducted by persons having obtained a valid transportation licence.

* As regards the reasons for this decision, see the decision on admissibility in Appendix II.

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23. Licences are issued for either goods or passenger transportation. There are three kinds of passenger transportation licences, namely licences for

- transportation on demand (where the vehicle is put at the customer's disposal and the price is decided according to his use of the vehicle, "beställningstrafik"),
- tourist transportation (commissioned tours of sightseeing, etc., "turisttrafik"), and
- interurban route transportation ("linjetrafik").

Licences are only to be given to persons (physical or legal), who are deemed apt to conduct the service. In examining applications, such factors as professional know-how, personal and economic circumstances are considered. The reason for these prerequisites is the wish of the State to ensure that the transportation is carried out under safe conditions by economically stable entrepreneurs.

Other conditions are - for passenger transportation and interurban route transportation of goods - that the intended service is deemed necessary and appropriate. The reason for this is the overall objective to establish an adequate network of transportation and to counteract a harmful surplus service. Those transport businesses which provide a service also on days and at hours that are not profitable, should not be subjected to uncontrolled competition from others, who only offer their services when profitable.

Specific conditions are often appended to passenger transportation licences. They include the obligation for holders of licences for transportation on demand with lighter vehicles (taxis) and for interurban route transportation to offer regular services for passengers and their baggage. Licences for interurban route transportation are often given for a defined stretch of road. The time-table for the route is to be approved by the licensing authority. For transportation by taxi, there should generally exist a dispatch centre. The rates not to be exceeded are fixed by a public authority.

24. A licence can be revoked, on condition that the licence has been misused in such a way that the holder can no longer be deemed apt to conduct the service. In less serious cases, a warning may be issued. If the service is not maintained, the licence should also be revoked. Finally, licences may be revoked to make it possible to improve transportation services.

25. Licences are in general issued by the County Administrative Board. These Boards also decide what specific conditions should be met under the licence. In addition the Boards have a supervisory function. Finally, it is within the competence of the Boards to revoke licences. A decision by a Board can be appealed against to the Council of Transportation. As a last instance, the Government may review decisions by the Council.

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26. In some vast areas Sweden is very sparsely populated. It is therefore necessary to have well developed plans for passenger transportation. A sufficient transportation service cannot be provided in these areas unless public transportation is offered. The costs of this service can never be completely covered by the income from customers' fares. It is estimated that an average of 50 per cent of the costs is covered out of public funds. In the northern parts of Sweden this percentage is even higher.

27. The establishment and administration of transportation is to a large extent a public responsibility. Certain agencies (so-called Principals) have the overall responsibility for the public transportation within each County. The County Council (landstinget) and the local communities (kommunerna) within each County have the joint responsibility for the organisation of these Principals. In some Counties the Principals consist of a public regional society (kommunalförbundet), in others they are represented by a corporation, jointly owned by the County Council and the local communities.

The Principals are responsible for the transportation network and are to ensure good transportation facilities at costs which will not impose an undue burden on the taxpayers. The Principals therefore have a considerable influence on the transportation structure. They may either hold the licences themselves or operate a system where the licences are held by private transporters.

Where the Principals hold the licences, they could perform the transportation services under their own management. However, normally private transporters operate the traffic under a contract with the Principal. In the other case, where licences are held by the private transporter, the factual situation is about the same. For the profitability of this enterprise, the transporter is dependent on funding from the Principal to cover the deficit and consequently he is in fact operating under a contract.

If it is likely that the transportation service would be improved if the licence were held by the community or the Principal, an application for a licence submitted by the community or the Principal should be granted. Licences already issued for the same transportation purposes are then to be revoked. This appears from Chapter 3, Section 2, para. 2 of the 1979 Act which reads:

"Previous licences for transportation shall be revoked where a community applies for a transportation licence and makes it probable that the supply of transportation within the area concerned will be improved if the transportation services are performed by the applicant community. The same applies for a county council, a local transportation enterprise, or such public regional society or limited liability company as referred to in the Act (1978:438) on the Function as Principal for Certain Collective Passenger Transportation (lagen om huvudmannaskap för viss kollektiv persontrafik)."

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Private licence holders may also apply for the revocation of licences held by others. The applicant must in such a case prove that there are extraordinary reasons (synnerliga skäl) for such a revocation of a licence in order to organise the transportation in the most efficient way possible.

28. When a licence has been revoked, the new licence holder must - at the request of the former holder - compensate the former holder for the values of all the vehicles and other equipment used in his enterprise. A redemption case is to be examined and settled by the Bus and Taxi Assessment Board under the provisions laid down in the 1969 Ordinance on the Bus and Taxi Assessment Board (kungörelsen om buss- och taxivärderingsnämnden).

The request for redemption should be lodged with the County Administrative Board not later than two months after the revocation became effective. The County Administrative Board is to forward the request to the Bus and Taxi Assessment Board. This Board will decide the scope of the redemption and the amount to be paid. Property is to be given a value corresponding to what could be obtained through a sale under normal conditions. If the assessment would give a manifestly unfair result, the amount could, however, be adjusted.

The Board is to give the parties the opportunity to state their case in writing or orally. The Board may also initiate an investigation through separate experts. Expenses for this procedure are to be paid, as a rule, by the new holder of the licence.

The Bus and Taxi Assessment Board is composed of a chairman and two other members. The chairman shall be a lawyer and experienced judge.

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III. SUBMISSIONS OF THE PARTIES

29. The parties' principal submissions have been made at the admissibility stage in their written observations, which included arguments as to the merits. These submissions appear in the decision on admissibility, which is annexed to this Report as Appendix II. The Commission refers to the relevant parts of this decision.

At present, the Commission will limit itself to recalling the parties' main arguments and supplement them by the observations made on the merits.

A. The Applicant

30. The applicant submits that the administrative decisions and actions which have affected him, in particular the revocation of his licence for interurban route transportation, can find no trustworthy explanation in the argument that this revocation aimed at the improvement of the communications on the route in question.

Even if this were so, the administrative decisions and actions taken imply, due to the way in which they were prepared and realised and to their results, the most serious violations of the applicant's rights as set forth in Arts. 6 and 13 of the Convention.

31. The applicant's licence for interurban route transportation is identically the same as previous licences for that route at least back to 1947 and as the "new route licence" of 1981 of the County Company with the exception of the unnecessary addition of Orjasjärvi. The place Orjasjärvi, which had seven inhabitants in 1980, plays a completely disproportionate role in the argumentation of the County Company and of the Swedish authorities.

32. The applicant submits that the conclusive decisions concerning interurban route transportation in the area are taken by the County Company. The background to the County Company's application to the County Administrative Board in this case was secret agreements between the company and certain selected entrepreneurs in competition with others. This competition became unfair since one entrepreneur (Mr Wälimaa) was secretly favoured at the expense of the applicant.

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In its application to the County Administrative Board the County Company alleged that a "new route" had to be created. The applicant submits that it is obvious from the facts that no "new line" or "new route" was ever created by the revocation of his licence. The real background for the application by the County Company is the secret agreement between at least the County Company and Mr Wälimaa concerning certain rearrangements in the car and bus licensed route traffic within the County of Norrbotten. The applicant states that it seems obvious that the secret agreements had come to a conclusion when the County Company made its application to the County Administrative Board. Mr Wälimaa and others gave up their licence for another route and transferred it to the County Company.

The applicant submits that these agreements came about as a result of regular bargaining concerning those licences. The agreed compensation was for one of the routes about 70,000 Swedish Crowns and for the other about 10,000 Swedish Crowns. In addition to this the County Company offered the right to perform as entrepreneur the traffic on the route which up to then had been defined by the licence held by the applicant.

The applicant asks why his licence was chosen as an object for this bargaining. This agreement was subsequently confirmed by the decisions of the County Administrative Board and finally by the Government. Thus, it seems to be in the Swedish public interest that Mr Wälimaa has got a remarkable amount of money for his voluntary transfer of his licence to the County Company. It also appears to be in the Swedish public interest, not only that the applicant was completely disregarded by the parties, but also that he lost his licence and thereby most of his livelihood without one single coin as compensation.

The applicant submits that the background and the real intentions behind the actions taken by the County Company and the Swedish authorities when the applicant was deprived of his licence cannot be excused by reference to paragraph 2 of Art. 1 of Protocol No. 1. The revocation of his licence is, in the applicant's view, a perfect illustration of the concept "abuse of power".

33. The applicant submits that the revocation of his licence for interurban route transportation made it immediately impossible for him to offer transportation services, to negotiate concerning route transportation agreements and to agree upon such transportation. As a result of the revocation he lost his route transportation enterprise and a source of income. The applicant states that he has not asked for any guarantees with a reference to his income, nor has he asked for an extra licence after having lost a competition for a new licence. He complains of being deprived of the licence which he had already received and thereby of his route transportation enterprise.

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The applicant states that previously the fact that a licence was issued until further notice meant the highest degree of security for the holder. Only serious crimes relevant to the transportation activities could jeopardise the licence. Now the Government introduce the reverse situation, any random rationalisation idea by a County Company may result in revocation of anyone's licence "in the public interest". It is submitted that this serious and sudden change in the bureaucratic legal usage is unacceptable.

The applicant maintains that the compensation ensured by the Act on Commercial Transportation is strictly limited and unacceptable.

34. The revocation of the applicant's licence for interurban route transportation affects his freedom of trade most seriously. The general freedom of trade has to be considered one of the most fundamental civil rights in the sense of this concept as set forth in Art. 6 of the Convention within those legal systems which are in force in the respective states co-operating in the Council of Europe.

In Sweden the general freedom of trade was for the first time legally secured for every citizen in a Royal Decree of 18 June 1864. This Decree was abrogated in 1968 (SFS 1968:552).

The applicant states that it gives a very odd impression when the Government try to deny the legal nature of the general freedom of trade.

Concerning in particular the right to use cars professionally in transportation business the applicant submits that there were no restrictions set forth in the Royal Decree of 1864 and this state of affairs continued until the Royal Decree on Traffic with Cars in 1906 gave the first set of restricting provisions including the requirement of a special driving licence and a taxi permit.

35. The applicant concludes that he has without acceptable reasons been deprived of his licence for interurban route transportation and that he has been left without any possibility of receiving fair compensation. The fact that the applicant lost his licence through an exclusively bureaucratic procedure without any possibility effectively to defend his rights as set forth in the Convention violates Art. 6 and Art. 13 of the Convention.

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B. The Government

36. As regards the withdrawal of the applicant's interurban traffic licence the Government refer to the König case (Eur. Court H.R., König judgment of 28 June 1978, Series A no. 27) where it was held, i.a., that withdrawal of licences to practise the medical profession falls within the meaning of "determination" of an individual's "civil rights or obligations", and to the Ringeisen case (Eur. Court H.R., Ringeisen judgment of 16 July 1971, Series A no. 13) where the Court held that rulings under a provision requiring the approval of the authorities on purchases of land are a determination of civil rights.

The Government submit that compared to the situation of the persons in these cases the holder of a public transportation licence is in an entirely different position. First of all, under the licence, he has a public obligation to offer the services called for by the licence. This obligation is a result of an administrative decision on an administrative matter. The situation can be defined as one, in which those responsible for the service are in fact hiring an entrepreneur to carry out his duty. Thus the "contract" exists in fact between the entrepreneur and the responsible entities. This "contract" even puts limits to the fees charged by the entrepreneur. The space for the entrepreneur to enter into a legal agreement with his passenger customers is therefore virtually non-existent. Secondly, for the profitability of the operation, he is dependent on money out of public funds. Thirdly, the conditions under which licences are granted and revoked are laid down in Statute Law. Each applicant for a licence is made aware of these provisions and the conditions for keeping his licence, once it is obtained.

There is also another aspect of this case compared to the König case. If someone is deprived of a licence to exercise a profession he is in fact prevented from earning his living - at least in his own country - by working in this profession. The revocation of a licence to perform transportation on a certain route, however, does not mean that the person concerned cannot exercise his profession as a driver or, for that matter, obtain another licence in the same area or in some other place within the country.

The Government thus contend that the applicant's complaint falls outside the scope of Art. 6, para. 1 of the Convention.

37. In case the Commission does not share this opinion, the question arises whether the applicant was afforded the guarantees of Art. 6, para. 1.

The Government recall that the granting or revocation of transportation licences are administrative matters under Swedish law. Consequently, the ordinary courts cannot deal with these matters. Should an applicant who has applied in vain or should a person who has had his licence revoked want a remedy or compensation he may, however,

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sue the authorities or the Principal. In doing so he can allege that the defendant is guilty of misconduct of official duties, or, where the Principal is concerned, of breach of contract. Such cases are dealt with by the ordinary courts. Thus, it is submitted that the applicant is afforded the guarantees of Art. 6 as regards compensation.

In this context the Government also refer to the Bus and Taxi Assessment Board. However, the applicant has not made any request for redemption.

For these reasons, the Government contend that the applicant has not been the victim of a breach of Art. 6 of the Convention.

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IV. **OPINION OF THE COMMISSION**

A. Points at issue

38. The following are the principal points at issue:

- whether the decision to revoke the applicant's interurban route traffic licence concerned a "determination" of a "civil right" within the meaning of Art. 6, para. 1 of the Convention and, if so, whether the applicant had the possibility of bringing the revocation of his licence before a "tribunal" satisfying the requirements of that provision; and

- whether in the circumstances of the case the applicant had the right to "an effective remedy before a national authority" as guaranteed by Art. 13 of the Convention.

B. Art. 6 of the Convention

I. General considerations

39. Art. 6, para. 1, first sentence 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."

Art. 6, para. 1 would only be applicable to the proceedings by which the applicant's interurban route traffic licence was revoked, if these proceedings were decisive for a dispute (French: "contestation") which related to a "civil right" of the applicant.

40. The Convention organs have on several occasions addressed the issue of the interpretation of the expression "civil rights and obligations" in Art. 6. The case-law can be summarised as follows:

The concept of "civil rights and obligations" cannot be interpreted solely by reference to the domestic law of the respondent State, but it must be given an autonomous interpretation in the light of the object and purpose of the Convention (cf. e.g. Eur. Court H.R., König judgment of 28 June 1978, Series A no. 27, para. 88).

Consequently, it is not decisive for the application of Art. 6, para. 1 in the present case whether the issue in the case is regarded in Swedish law as one of private law or as one of administrative law. This does not mean that the legislation of the State concerned is without importance. Whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right - and not its legal classification - under the domestic law of the State concerned.

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The term "civil rights and obligations" covers all proceedings the result of which is decisive for private rights and obligations (cf. e.g. Eur. Court H.R., Ringeisen judgment of 16 July 1971, Series A no. 13, para. 94). Although it is not necessary that both parties to the proceedings should be private persons, there must be a direct relationship between the dispute and a civil right. A tenuous connection or remote consequences do not suffice for Art. 6, para. 1. Civil rights and obligations must be the object - or one of the objects - of the "contestation" (dispute), and the result of the proceedings must be directly decisive for such a right (Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, para. 47).

The "contestation" (dispute) contemplated by Art. 6, para. 1 may bear upon not only the actual existence of the right but also the scope of such a right or the manner in which the beneficiary may avail himself thereof (ibid., para. 49). The dispute must be "genuine and of a serious nature" (Eur. Court H.R., Benthem judgment of 23 October 1985, Series A no. 97, para. 32).

41. In application of these general principles, the Court has found Art. 6, para. 1 to be applicable inter alia to proceedings regarding:

- a) the approval by a public authority of a purchase of land, such approval being a condition for the legal validity of that purchase (Ringeisen judgment, loc. cit. and Eur. Court H.R., Sramek judgment of 22 October 1984, Series A no. 84);
- b) a permit by a public authority which was a condition for the transfer of ownership through expropriation (Eur. Court H.R., Sporrang and Lönnroth judgment of 23 September 1982, Series A no. 52);
- c) the withdrawal of a licence to practise the medical profession or to run a medical clinic (König judgment, loc. cit., Le Compte, Van Leuven and De Meyere judgment, loc. cit., and Albert and Le Compte judgment of 10 February 1983, Series A no. 58); and
- d) the grant of a licence to exploit an installation for delivering liquid petroleum gas, that licence being a requirement for the exercise of part of a garage owner's business activities (Benthem judgment, loc. cit.).

II. As to the applicability of Art. 6, para. 1

42. As regards the facts of the present case, the Commission has first considered the question whether any "rights" are involved at all in the case.

In this respect it is recalled that the decision by which the applicant obtained the traffic licence was not appealed against and hence became final. Having obtained the licence, the applicant had, in the Commission's opinion, acquired certain "rights" flowing from that licence.

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It is true that, under the provisions of the 1979 Act on Commercial Transportation, the licence is always subject to modification or even withdrawal by the authorising body. This, however, does not, in the opinion of the Commission, alter the fact that it confers a "right" for the purposes of Art. 6, para. 1.

43. As to whether the right to operate traffic business under the interurban route traffic licence was "civil" in character, the Commission considers that the legal position, contrary to what the Government have submitted, is essentially similar in character to the rights in question in the König, Le Compte, Van Leuven and De Meyere and Albert and Le Compte cases in that it was a right to carry on an occupation in the private sector, albeit subject to administrative authorisation and supervision in the public interest.

The present case is also similar to the Benthem case in which the dispute as to the grant of the licence related to part of the applicant's commercial activities.

44. Under Swedish law the transportation service is not of a state monopoly character. On the contrary licences may be obtained by either public entities or private - physical or legal - persons. Furthermore, the relationships between the holder of the licence and the passengers are usually contractual and directly established between individuals on a personal basis although public authorities may have a direct influence on the transportation service and the fees to be paid.

The private character of the right to operate the traffic business at issue does not, in the Commission's opinion, change because it is subject to administrative supervision, or because the licence holder may be dependent on public subsidies for the profitability of the operation of the transportation or as a result of the fees being restricted.

45. The Commission concludes therefore that the right in question here was of a private nature and therefore a "civil" right for the purposes of Art. 6, para. 1.

46. The Commission considers that a "genuine" contestation (dispute) "of a serious nature" (cf. Benthem judgment, para. 32) arose between the applicant and the Swedish authorities concerning his right according to the licence in question, as the applicant maintains that the revocation was unjustified, the authorities being in abuse of power. The applicant therefore in fact challenges the lawfulness under Swedish law of the measures taken.

47. The Government have pointed out that the applicant was not totally prevented from exercising his profession as a driver, as one of his licences, the taxi licence, was left intact and he could avail himself of the opportunity to apply for other licences in the area concerned or in other parts of Sweden.

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However, this submission does not affect the conclusion that the "right", which was the subject of "determination" before the administrative authorities, was civil in character. As mentioned above Art. 6, para. 1 is applicable, when the scope of a civil right or the manner in which the beneficiary may avail himself thereof is at issue (cf also the Court's statement in the Benthem judgment, loc. cit. para. 36).

48. In summary, the Commission considers that the revocation of the applicant's interurban licence related to a dispute concerning the "civil right" of the applicant to continue to run his traffic business based on his interurban traffic route licence.

Accordingly, Art. 6, para. 1 was applicable to the proceedings concerning the withdrawal of the applicant's interurban route licence.

III. As to the compliance with Art. 6, para. 1

49. The applicant has claimed that no court remedy exists under Swedish law.

The Government have admitted that the ordinary courts in Sweden cannot deal with questions of the granting or revocation of transportation licences, including the licence at issue here, as these questions are administrative matters under Swedish law. The Government submit however that Art. 6 is complied with, since the applicant could sue the authorities or the Principal before the ordinary courts. In so doing the applicant could allege that the defendant was guilty of misconduct of official duties or, as regards the Principal, of breach of contract. The Government submit that in such proceedings the applicant could have obtained compensation.

50. The Commission recalls its finding above that Art. 6, para. 1 was applicable to the proceedings concerning the withdrawal of the applicant's interurban route traffic licence. The initial decision to revoke the licence was taken by the County Administrative Board. This decision was upheld on appeal first by the Council of Transportation and finally by the Government.

Before the Commission, the Government have not alleged that the procedure before the above organs satisfied the conditions of Art. 6, para. 1.

51. In this respect, the Commission recalls that in the case law of the Convention organs as regards the meaning of an "independent and impartial tribunal established by law" in the context of Art. 6, para. 1, the following elements have been considered relevant.

The word "tribunal" is not necessarily to be understood as signifying a court of law of the classic kind, integrated with the standard judicial machinery of the country (Eur. Court H.R., Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 76). A tribunal established by law is, within the meaning of Art. 6, a body, independent of the parties and impartial, upon which the national legislation confers a power of binding decision in a particular area, its judicial function being to determine matters within its competence on the basis of rules

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of law, following proceedings conducted in a prescribed manner (ibid. para. 76 and Sramek judgment, loc. cit. para. 36). In determining whether a body can be considered to be an "independent" tribunal - notably independent of the executive and of the parties to the case - regard must be had to the manner of appointment of its members and the duration of their term of office, the existence of regulations governing their removal or guarantees for their irremovability, laws prohibiting their being given instructions by the executive in their adjudicatory role, the existence of legal guarantees against outside pressures, the question whether the body presents an appearance of independence and the attendance of members of the judiciary in the proceedings (see, inter alia, the aforementioned Campbell and Fell judgment, paras. 78-81 with further references).

52. In the opinion of the Commission it is evident that none of the administrative bodies dealing with the applicant's case constituted a "tribunal" for the purposes of Art. 6, para. 1.

53. The Commission moreover notes, and this is not in dispute, that the Government's decision on the revocation of the applicant's licence was not open to any ordinary appeal to the ordinary or administrative courts.

54. The Government have also referred to the possibility of suing the authorities or the Principal before the ordinary courts claiming compensation on the ground that the authorities had been guilty of misconduct of official duties, or that the Principal had been in breach of contract.

In this respect, the Commission recalls that the "determination" for which the applicant was entitled under Art. 6, para. 1 to a procedure satisfying the conditions of Art. 6 related to the question whether under Swedish law the applicant's licence should be revoked or not. The court actions suggested by the Government do not relate to that question, and they are therefore not sufficient for the purposes of Art. 6, para. 1 in this case. Moreover, the Government did not even suggest that any authority had been guilty of misconduct of official duties, or that the Principal had been in breach of contract.

55. Finally, the Government have also referred to the Bus and Taxi Assessment Board, but without claiming that the possible procedure before that Board would comply with Art. 6, para. 1 for the purposes of the issue at stake here.

The Commission observes that the said Board is concerned with the determination of claims against a new licence holder for redemption of the values of vehicles and other equipment which have been used by the former licence holder. Accordingly, the determination at issue in such proceedings does not relate to the revocation of the licence as such, but only to certain aspects of the effects of the revocation.

56. It follows that the applicant did not have at his disposal a procedure satisfying the requirements of Art. 6, para. 1 in respect of the revocation of his interurban route traffic licence.

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Conclusion

57. The Commission concludes by a unanimous vote that there has been a breach of Art. 6, para. 1 of the Convention.

C. Art. 13 of the Convention

58. The applicant has also maintained that he had no effective remedy before a national authority in respect of the violations of which he complained. He relied on Art. 13 which provides:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

59. Having regard to its conclusion under Art. 6, para. 1, the Commission considers that it is not necessary to examine the case under Art. 13. This is so because the requirements of Art. 13 are less strict than, and are here absorbed by, those of Art. 6, para. 1 (see, inter alia, Sporrang and Lönnroth judgment, loc. cit., para. 88).

Conclusion

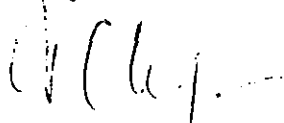
60. The Commission finds unanimously that no separate issue arises under Art. 13 of the Convention.

D. Summing up of the Commission's conclusion and finding

61. - The Commission concludes by a unanimous vote that there has been a breach of Art. 6, para. 1 of the Convention (para. 57).
- The Commission finds unanimously that no separate issue arises under Art. 13 of the Convention (para. 60).

Secretary to the Commission

President of the Commission


(H. C. KRÜGER)


(C. A. NØRGAARD)

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Separate opinion of Mr. Danelius joined by MM. Nørgaard
Jörundsson, Trechsel, Kiernan and Schermers

In a number of cases, the Commission has been called upon to examine questions about the application of Art. 6, para. 1 of the Convention to different kinds of decisions of the public administration. In dealing with those cases, I have been one of those members of the Commission who have advocated a cautious approach and have warned against an extensive application of Art. 6, para. 1 to disputes which are essentially of a public law character. The reasons for this view have been developed at some length in the Commission's reports in the cases *Bentham v. Netherlands* (Comm. Report, 8.10.83), *Feldbrugge v. Netherlands* (Comm. Report, 9.5.84) and *Deumeland v. Federal Republic of Germany* (Comm. Report, 9.5.84), and I need not repeat them here. If this general approach was adopted also in the present case, the result would presumably be that a dispute concerning the withdrawal of a licence to operate interurban traffic should not be considered to concern a determination of "civil rights and obligations" within the meaning of Art. 6, para. 1.

However, the case-law of the European Court of Human Rights has developed in a different direction. In a number of cases (*König* case, case of *Le Compte, Van Leuven and De Meyere*, and case of *Albert and Le Compte*), the Court found that Art. 6, para. 1 was applicable to the withdrawal of a licence to practise the medical profession or to run a medical clinic.

Even after these rulings, there could remain some doubt as to whether Art. 6, para. 1 should apply also to disputes regarding the withdrawal of licences which did not confer a right to exercise a certain profession or trade as such but which, although being related to an occupation of this kind, had a more limited scope and concerned a more specific activity. However, after the Court's recent judgment in the *Bentham* case - which concerned a licence to operate an installation for delivery of liquid petrol gas - it is hardly possible to uphold a distinction of this kind.

In view of the Court's case-law in regard to Art. 6, para. 1, I find it inevitable in the present case to conclude that the withdrawal of a licence to operate interurban traffic is also a matter regarding "civil rights and obligations" and that, since there was clearly no right to a court determination of this issue in Swedish law, Art. 6, para. 1 has been violated.

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APPENDIX I

HISTORY OF PROCEEDINGS

Item	Date	Note
Introduction of the Application	30 March 1983	
Registration of the Application	3 June 1983	
<u>Examination of Admissibility</u>		
Commission's deliberations and decision to invite the Government to submit observations on the admissibility and merits of the application	10 October 1983	MM Nørgaard Sperduti Frowein Fawcett Busuttil Opsahl Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Soyer Schermers Batliner
Receipt of the Government's observations	10 January 1984	
Receipt of the applicant's reply	26 February 1984	
Receipt of the Government's further observations	30 March 1984	
Receipt of applicant's further observations	4 May 1984	

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Item	Date	Note
Commission's deliberations and decision to adjourn the examination of the application	12 October 1984	MM Frowein Sperduti Jörundsson Trechsel Kiernan Melchior Weitzel Soyer Schermers Danelius Batliner Anton Campinos Vandenberghe Mrs Thune
Commission's deliberations and decision to declare the application partly admissible and partly inadmissible	5 December 1984	MM Nørgaard Frowein Jörundsson Tenekides Trechsel Kiernan Gözübüyük Soyer Schermers Danelius Batliner Anton Campinos Vandenberghe Mrs Thune
<u>Examination of the merits</u>		
Commission's considerations of the state of proceedings	9 March 1985	MM Nørgaard Sperduti Frowein Ermacora Busuttil Jörundsson Tenekides Trechsel Kiernan Carrillo Gözübüyük Soyer Schermers Danelius Batliner Campinos Vandenberghe Mrs Thune Sir Basil Hall

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Item	Date	Note
Government's letter	22 February 1985	
Submission of applicant's further observations	25 February 1985	
Consideration of state of proceedings	9 March 1985	MM Nørgaard Sperduti Frowein Ermacora Busuttil Jörundsson Tenekides Trechsel Kiernan Carrillo Gözübüyük Soyer Schermers Danelius Batliner Campinos Vandenberghe Mrs Thune Sir Basil Hall
Commission's deliberations on the merits, and decision to adjourn the examination	9 October 1985	MM Nørgaard Sperduti Jörundsson Tenekides Trechsel Kiernan Gözübüyük Weitzel Soyer Schermers Danelius Batliner Campinos Mrs Thune Sir Basil Hall
Commission's deliberations on the merits, final votes and adoption of the Report	4 December 1985	MM Nørgaard Frowein Jörundsson Tenekides Trechsel Kiernan Gözübüyük Weitzel Soyer Schermers Danelius Batliner Vandenberghe Mrs Thune Sir Basil Hall