

**APPLICATION/REQUÊTE N° 11122/84**

Victor WELTER v/SWEDEN

Victor WELTER c/SUÈDE

**DECISION** of 2 December 1985 on the admissibility of the application

**DÉCISION** du 2 décembre 1985 sur la recevabilité de la requête

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**Article 6, paragraph 1 of the Convention :** *This provision does not prevent Contracting States from regulating access to appeal jurisdictions, especially as far as time limits are concerned.*

**Article 26 of the Convention :** *A foreigner, who is not detained and who alleges that he does not understand a judgment and a notice of appeal which are both in the language of the court, is not absolved from the duty to exhaust available remedies.*

**Article 6, paragraphe 1 de la Convention :** *Cette disposition n'empêche pas les Etats contractants de réglementer l'accès aux juridictions de recours, notamment quant aux délais.*

**Article 26 de la Convention :** *N'est pas dispensé d'exercer les recours disponibles l'étranger en liberté qui allègue ne pas comprendre le jugement et l'indication des voies de recours, rédigés dans la langue du tribunal.*

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**THE FACTS (Extract)**

(français : voir p. 250)

The facts of the case, as submitted by the applicant, may be summarised as follows :

The applicant is a German citizen born in 1941. He is an engineer by profession and resides at Glinde near Hamburg, Federal Republic of Germany. Before the Commission he is represented by Professor Hugo Tibergh of Sollentuna, Sweden.

On the night of 12 July 1983 the applicant navigated his sailing boat towards Arkösund in the Swedish archipelago outside Norrköping, with the intention of reaching Arkösund. However, due to the darkness and poor visibility he felt unsure of his navigation and decided to stop at an island where three other boats were moored. He reached the island at 2 a.m. and like the others tied bows to land and with an anchor aft.

At 9.30 a.m. a coastguard vessel arrived and informed the applicant and the other (Swedish) skippers that they had moored at Kopparholmarna, on which there is a general prohibition, for Swedes as well as for foreigners, against landing, photographing etc. according to an Act of 17 March 1940. An inquiry was arranged by the coastguards, after which the applicant was required to proceed to Arkösund for interrogation by the police, which interrogation occurred on the same day at noon. The applicant stated that he had landed on the island which was rendered in the police protocol in Swedish as "Welter admits having landed in military area where landing prohibition applies".

The applicant submitted to the police that he was not aware of having landed in a prohibited area. He had consulted the charts and a sailing map and found nothing indicating that Kopparholmarna might be a prohibited area. He had indeed seen certain signs but all with a Swedish text which he did not understand. Since there were already three Swedish boats there he felt no reason to assume that there would be any prohibition. He could not admit any offence but only the factual circumstances. The applicant had no means of controlling the police protocol since he neither speaks nor understands Swedish, nor did he at any time receive any detailed information of the charges against him in a language which he understood.

At the police station the applicant signed a power of attorney for a policeman from Norrköping to be his "representative". This was done on a form printed in Swedish, Danish and Finnish containing, as he now knows, the words in these three languages "I have taken notice of the information on the back of this document and understand the significance of the power of attorney". Before signing his name, however, the applicant inserted "Unterschrift unter Vorbehalt Sprachschwierigkeit" (signed subject to language difficulty). He had the impression that unless he signed the document he would have been detained.

On 18 July 1983 the Swedish police wrote a personal statement concerning the applicant, stating his annual income as 159,000 Swedish crowns. It is not clear how the police obtained this figure since the applicant was no longer in the area.

On 26 August 1983 the public prosecutor summoned the applicant before the District Court of Norrköping. As evidence of the offence the summons stated the applicant's "confession". The court proceedings were to take place on 15 September 1983. The summons was sent to the police officer whom the applicant had authorised by his signature and was received by him without communication with the applicant.

The proceedings on 15 September 1983 took five minutes with the policeman acting as the applicant's representative. He was sentenced to pay 20 "day fines" of 100 Swedish crowns each. In the power of attorney the applicant had declared himself prepared to pay 30 day fines of 80 Swedish crowns each.

The judgment was sent via ordinary mail to the applicant in Hamburg. It was accompanied by a notice of the right of appeal, according to which "appeal against this judgment must be brought no later than 6 October 1983". The applicant does not remember when he received it, but the letter was postmarked 22 September 1983. Since it was entirely in Swedish he could not understand the contents. On 5 October 1983 he sent the Swedish Consulate in Hamburg a letter in which he gave a full account of the circumstances and declared himself innocent of any offence and unwilling to accept any penalties. The letter was forwarded on 6 October 1983 by the Consulate together with a cover note from the Consulate requesting that the answer be sent to the Consulate since the applicant "neither speaks nor reads Swedish".

The District Court, according to its protocol of 11 October 1983, construed the applicant's letter as a proper appeal but rejected the appeal as introduced out of time since it had not reached the Court on the prescribed day.

The applicant then turned to an advocate who appealed to the Göta Court of Appeal against the District Court's refusal to accept the appeal, but the Court of Appeal decided on 16 December 1983 to dismiss the appeal.

The applicant thereafter requested the Supreme Court to grant him leave to appeal against the dismissal of his appeal and furthermore for leave to appeal out of time against the judgment of the District Court. In particular the applicant pointed out that he had not received the judgment in German, nor had he received it through diplomatic channels. The judgment of 15 September 1983 was not translated until 6 October 1983 which would therefore be the earliest date on which he could react to it. Also the applicant maintained that he had "appealed" to the Swedish Consulate in Hamburg on 5 October 1983 and this should be sufficient.

Furthermore the applicant complained that the circumstances of the case amounted to a breach of Article 6 para. 3 of the Convention in that he had not had the possibility of obtaining the assistance of a lawyer or an interpreter. Finally he invoked Article 7 of the Convention since he found that the facts of the case did not relate to anything illegal under Swedish law.

On 9 March 1984 the Supreme Court refused leave to appeal against the lower courts' decisions to dismiss the appeal as being introduced out of time. On 12 March 1984 the Court refused to grant permission to appeal out of time against the judgment of the District Court of 15 September 1983 since the applicant, in the opinion of the Court, had not shown that he was legally excused (*laga förfall*) for his omission to appeal in time.

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## THE LAW (Extract)

1. Under Article 6 of the Convention the applicant has complained that he was not given the opportunity to defend himself through a representative of his own choosing and that he did not get a fair trial in particular since he was convicted on the basis of a confession which he had never made.

It is true that Article 6 of the Convention guarantees to everyone charged with a criminal offence the right to a fair hearing and the right to defend himself by representation of his own choosing. However, under Article 26 of the Convention the Commission is only required to decide whether or not the facts alleged by the applicant disclose an appearance of a violation of the Convention if all domestic remedies have been exhausted according to the generally recognised rules of international law.

In the present case the applicant appealed against the judgment of the District Court to the Court of Appeal. However, his appeal was rejected since it had been submitted out of time. The applicant has in this respect complained that the national regulations have in fact barred him from appealing against the District Court judgment.

The Commission has already decided that the Contracting Parties are not debarred from making regulations governing the access of litigants to an appellate court (cf. No. 8407/78, Dec. 6.5.80, D.R. 20 p. 179). Regulations concerning time-limits within which appeals have to be lodged undoubtedly serve the purpose of assuring a proper administration of justice.

In the applicant's case it cannot be found that the Swedish regulations in question prevented the applicant from lodging his appeal in time. In this respect the Commission recalls that the judgment was sent to the applicant on 22 September 1983 and that he maintains that he does not remember when he received it. In these circumstances the Commission finds that the applicant has not substantiated that he did not have time enough to mail an appeal directly to the court as the time-limit for doing so did not expire until 5 October 1983. The fact that the applicant received the judgment and appeal instructions in Swedish does not change that. Under the Convention the Contracting Parties are under no obligation as such to provide translations of their courts' judgments or their procedures as to an appeal against these judgments.

Consequently the applicant cannot be considered as having exhausted the remedies available to him under Swedish law and it follows that the applicant's complaints as to the fairness of his trial must be rejected under Article 27 para. 3 of the Convention.

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