AS TO THE ADMISSIBILITY OF

Application No. 25132/94
by B.B.
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 11 April 1996, the following members being present:

Mrs. G.H. THUNE, Acting President
MM. H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 21 July 1994 by B.B. against Sweden and registered on 13 September 1994 under file No. 25132/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Swedish citizen, born in 1937 and resident at Skärholmen.

The facts of the case, as submitted by the applicant or apparent from the documents adduced, may be summarised as follows.

In 1988 the applicant owned a construction company with about 40 employees and an annual turnover of 50.000.000 SEK (about 37.000.000 FF). In December 1988 he sold it to N and B for 1.400.000 SEK (about 1.000.000 FF). The purchase sum consisted of cash which the purchasers had been authorised to withdraw from the company's account. The applicant claims to have been unaware of this arrangement. Apparently suspecting N and B of dishonesty vis-à-vis creditors, he reported them to the police on 1 February 1989. The first interrogation with the applicant himself took place on 16 February 1989, although it is unclear in which capacity he was heard.

On 21 February 1989 the company was placed in bankruptcy. On 10 April 1989 the applicant was notified that he was being suspected of aggravated dishonesty vis-à-vis creditors together with N and B. He contended that he had been unaware that the purchase sum received by him had consisted of money from the company in question or that the purchase had otherwise jeopardised the interests of its creditors.

It transpires from the prosecutor's diary notes that the initial pretrial investigation lasted from April 1989 to September 1990, following which the prosecutor requested supplementary interrogations.

On 26 February 1991 charges were brought against the applicant and N and B. The Stockholm District Court (Stockholms tingsrätt) held an oral hearing in the case on 29 April as well as on 8, 11 and 12 May 1992. On 3 June 1992 the applicant was convicted and sentenced to two years' imprisonment. N and B were also convicted.

On 23 June 1992 the applicant appealed against his conviction and sentence to the Svea Court of Appeal (Svea hovrätt). At his request a new official counsel was appointed on 11 August 1992. On 5 November 1992 the Court of Appeal requested him to supplement his appeal. On 25 November 1992 he apparently requested that the police officer in charge of the pretrial investigation as well as two further persons involved in the economic transactions be heard as new witnesses. This request was granted.

The Court of Appeal ordered that its oral hearing should take place on 31 March as well as on 2, 5 and 6 April 1993. Due to B's counsel's illness the hearing was postponed to 11 and 14-16 June 1993. The further witnesses referred to by the applicant were heard.

On 30 June 1993 the Court of Appeal upheld the applicant's conviction but reduced his sentence to one year and six months' imprisonment. N's and B's appeals were rejected. On 8 February 1994 the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

On 12 April 1994 the Supreme Court rejected the applicant's request for a re-opening of the proceedings (resning). On 7 June 1994 it rejected his further request for a re-opening of the proceedings or, alternatively, for annulment on account of a serious procedural error (domvilla). On 14 July 1994 the Chancellor of Justice (justitiekanslern) decided to take no action on the applicant's petition challenging the manner in which his appeal to the Court of Appeal had been handled as well as its judgment. On 17 August and 1 September 1994 one of the Parliamentary Ombudsmen of Justice (Riksdagens justitieombudsmän) found no reason to make an investigation in regard to the applicant's petitions concerning the fairness of the proceedings.

COMPLAINTS

1. The applicant submits that he is innocent of the offence of which he was convicted and complains that both the prosecution and the courts were partial. He alleges, in particular, that the indictment had no legal basis and the prosecutor was not objective in his attitude towards the applicant. He further alleges that the Court of Appeal failed to investigate the case properly, allowed irrelevant circumstances to be invoked by the prosecution, failed to take into account certain evidence invoked by the applicant and did not afford the witnesses called by him enough time to study the relevant material.

2. The applicant also complains about the length of the proceedings and notably the period between the formal notification of the suspicions against him and the hearing before District Court, i.e. a period of about three years.

3. The applicant furthermore complains that the Supreme Court refused to re-open the proceedings despite further evidence presented by him.

4. Finally, the applicant complains that he had no effective remedy at his disposal, since the Supreme Court refused leave to appeal and the Ombudsmen and the Chancellor of Justice "failed to reply to his queries".

The applicant invokes Articles 6 and 13 of the Convention and Article 4 of Protocol No. 7.

THE LAW

1. The applicant in essence complains that the criminal proceedings against him were not fair. Both the prosecution and the courts were allegedly partial and notably the Court of Appeal failed to investigate the case properly by, for instance, allowing the witnesses sufficient time to prepare their testimony.

The Commission has examined this complaint under Article 6 paras. 1 and 3 (Art. 6-1, 6-3) of the Convention which, insofar as relevant to the present case, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
> ... d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

As the requirements of Article 6 para. 3 (Art. 6-3) represent particular aspects of the right to a fair trial guaranteed in Article 6 para. 1 (Art. 6-1), the Commission has examined the application from the point of view of these two provisions taken together (e.g., Eur. Court H.R., Lüdi judgment of 15 June 1992, Series A no. 238, p. 20, para. 43).

The Commission recalls that under Article 19 (Art. 19) of the Convention its sole task is to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention. It is not competent to examine applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law. The Commission is not competent to look into allegations concerning such errors except where, and to the extent that, they seem likely to have entailed a violation of the rights and freedoms guaranteed by the Convention (e.g., No. 19890/92, Dec. 3.5.93, D.R. 74 p. 234).

As a general rule, it is for the domestic courts to assess the evidence before them, in particular since they have the benefit of hearing witnesses and assessing their credibility (e.g., Eur. Court H.R., Klaas judgment of 22 September 1993, Series A no. 269-A, pp. 17-18, paras. 29-30). The Commission's task is to ascertain whether the proceedings, considered as a whole, including the way in which evidence was taken and submitted, were fair (e.g., the above-mentioned Lüdi judgment, loc.cit.). It follows that the Commission cannot examine whether or not the applicant was guilty or innocent of the offence of which he was convicted.

In the present case the Commission finds no substantiation of the allegation that the prosecution and the courts were biased. It furthermore observes that oral hearings were held both before the District Court and the Court of Appeal. The applicant was represented by official counsel throughout the proceedings and was even allowed to change his counsel in the appeal proceedings. At his request three further witnesses were heard before the Court of Appeal. There is no indication that the manner in which those witnesses were heard jeopardised the fairness of the proceedings.

The Commission therefore concludes that the proceedings against the applicant do not disclose any appearance of a violation of Article 6 (Art. 6) of the Convention on account of any of the points raised by the applicant in this complaint.

It follows that this complaint must be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains about the length of the criminal proceedings. The Commission has examined this complaint under the above-mentioned Article 6 para. 1 (Art. 6-1) of the Convention.

The Commission recalls that the period to be taken into consideration when assessing the length of proceedings for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention must be determined autonomously. It begins at the time when formal charges are brought against a person or when that person has otherwise been substantially affected by actions taken by the prosecuting authorities as a result of a suspicion against him (cf. e.g., Eur. Court H.R., Eckle judgment of 15 July 1982, Series A no. 51, p. 33, para. 73).

In the present case the Commission observes that the applicant was first interrogated by the police on 16 February 1989, although it is unclear if he was already suspected of having committed a criminal offence. On 10 April 1989 he was informed of the suspicions against him concerning aggravated dishonesty vis-à-vis his creditors. At the latest as from the last-mentioned date the applicant must be considered to have been substantially affected by the criminal investigation and, consequently, "charged" for the purposes of Article 6 para. 1 (Art. 6-1) of the Convention. The period of relevance to the assessment of whether the length of the overall proceedings was "reasonable" therefore began to run from that date. The proceedings terminated on 8 February 1994, when the Supreme Court refused leave to appeal. The total length of the proceedings which the Commission must assess under Article 6 para. 1 (Art. 6-1) of the Convention was thus approximately four years and ten months.

The reasonableness of the length of the proceedings is to be determined in the light of the circumstances of the case and with reference to the criteria laid down in the European Court's case-law, in particular the complexity of the case, the conduct of the applicant as well as that of the competent authorities. On the latter point, the importance of what is at stake for the applicant in the litigation has to be taken into account (e.g., Eur. Court H.R., Allenet de Ribemont v. France judgment of 10 February 1995, Series A no. 308, p. 19, para. 47).

As regards the complexity of the case, the Commission notes that the pretrial investigation and the ensuing court proceedings also involved two other suspects. Although the charge against the applicant was limited to one count of suspected dishonesty, the economic transactions which were under consideration were of some complexity.

As regards the applicant's conduct, the Commission observes that in the proceedings before the Court of Appeal he changed his official counsel and requested that further witnesses be heard, which probably caused some delay. Also the illness of B's counsel contributed to a similar delay.

As finally regards the conduct of the authorities and the courts, the Commission notes that a formal indictment was presented about one year and ten months after the beginning of the relevant period. The first instance judgment was given about fifteen months after the proceedings started before the District Court. The proceedings before the Court of Appeal lasted about one year and the leave to appeal proceedings before the Supreme Court some seven months.

Having particular regard to these various elements, including the fact that the proceedings were conducted before courts at three levels, the Commission concludes that the total length of the proceedings, which was less than five years, did not exceed a reasonable time within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Accordingly, there is no appearance of a violation in this respect either.

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant furthermore complains that the Supreme Court refused to re-open the proceedings despite further evidence presented by him.

The Commission recalls, however, that neither the Convention nor any of its Protocols guarantees any right to a re-opening of criminal proceedings.

It follows that this complaint is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

4. The applicant finally complains that he had no effective remedy at his disposal, since the Supreme Court refused leave to appeal and the Ombudsmen and the Chancellor of Justice "failed to reply to his queries".

The Commission has examined this complaint under Article 13 (Art. 13) of the Convention which reads as follows:

> "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."

The Commission recalls that an applicant who has no "arguable claim" that another Convention provision has been violated is not entitled to a remedy under Article 13 (Art. 13) (see, e.g., Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, pp. 14-15, paras. 31-33 and p. 20, para. 46).

Referring to its above findings, the Commission concludes that the applicant had no "arguable claim" of a breach of the Convention which would have entitled him to a remedy under Article 13 (Art. 13).

It follows that this complaint must also be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	Acting President of the Second Chamber
(M.-T. SCHOEPFER)	(G.H. THUNE)