AS TO THE ADMISSIBILITY OF

Application No. 16511/90
by Carl Gustaf BJÖRKELUND
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 1995, the following members being present:

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

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 29 September 1989 by Carl Gustav BJÖRKELUND against Sweden and registered on 26 April 1990 under file No. 16511/90;

Having regard to :

- the reports provided for in Rule 47 of the Rules of Procedure of the Commission;

- the observations submitted by the respondent Government on 8 February 1993 and the observations in reply submitted by the applicant on 1 December 1993;

Having deliberated;

Decides as follows:

THE FACTS

The facts, as submitted by the parties, may be summarised as follows.

The applicant is a Swedish citizen, born in 1935, and residing in Elsinore, Denmark. He is an assistant professor of law by profession.

A. The particular circumstances of the case

In 1970 the applicant became an assistant professor (docent) in civil law at the University of Lund. The applicant also gave a number of courses outside the University for a private organisation, "Kursverksamheten i Lund", which provided him with substantial extra income. In order for these courses to attract students, it was necessary to have them approved by the Governing Board of the Legal Department (institutionsstyrelsen - "the Board") at the University, a body consisting of representatives of the students, the professors and the administrative staff. The President of the Board was the Dean of

the Faculty, C.

The applicant's extra income from external courses stopped in 1979 as the Board decided not to approve his courses. As a result the applicant's financial situation became difficult. He was declared bankrupt in 1979 and C, who had accepted to stand surety for certain bank loans, was forced to honour his surety engagements.

The applicant was indicted for fraud in connection with some of his bank loans, but he was eventually acquitted of these charges in 1985.

In 1984 C approached the applicant in order to recover what he had paid under his surety engagements. The applicant informed him, however, that he was unable to pay for which reason C, on 24 April 1984, instituted proceedings in the District Court (tingsrätt) of Lund. C claimed a total of 29,000 SEK plus interest referring to three bank loans he had paid under the surety engagements. The applicant did not reject C's claims as such but objected to the claims being dealt with in the District Court of Lund as he did not consider this court to be the correct forum following his move to Denmark. On 31 July 1984 the District Court rejected the forum objection, indicating that an appeal against this decision was only possible in connection with an appeal against the subsequent judgment on the merits of the case.

The applicant's father died in November 1984 and on 20 December 1984 the applicant transferred his part of the inheritance to his wife as payment for certain claims. On 21 December 1984 the District Court ordered that the applicant's property should be attached as security for C's claims.

On 4 January 1985 the applicant requested legal aid which was granted by the Court on 28 February 1985.

On 20 May 1985 the District Court held the first preparatory hearing. Both parties were present and represented by counsel. C claimed a total of 29,099 SEK plus interest referring to the fact that he had been forced to pay this amount under his surety engagement. Again the applicant did not as such dispute that C had been forced to pay the bank loans in question but he now presented counter-claims totalling 29,750 SEK maintaining that C had caused him such a financial loss due to the fact that C, as President of the Board in 1979, had participated in deciding not to approve his external courses.

In the course of the examination of these claims the Court warned the applicant of the consequences of attempting to delay the case by presenting objections and counter-claims which were manifestly ill-founded. After further discussions the parties reached an agreement according to which the case could be settled if the applicant paid 17,500 SEK to C before 20 June 1985. The Court then adjourned the case and called the parties to appear again on 16 September 1985.

It appears that the applicant and C could not agree on the conditions for payment. The applicant deposited the amount of 17,500 SEK with the Enforcement Office (kronofogdemyndigheten) on 19 June 1985 and considered that he had thereby complied with the conditions of the agreement, whereas C maintained that the agreement was null and void as it had been reached on the basis of false preconditions and since he had not received any money before 20 June 1985.

In these circumstances the applicant instituted proceedings on 3 July 1985 against C in the District Court of Lund claiming damages for non-fulfilment of the agreement of 20 May 1985. He furthermore requested the Court to attach C's property as security for his claims.

On 23 July 1985 the Court rejected the applicant's claim of attachment, decided to join the two cases and called the parties to another preparatory hearing on 16 September 1985.

On 16 September 1985 C appeared before the Court assisted by counsel. The applicant did not appear but his counsel, who was present, submitted that this did not constitute an obstacle to proceeding with the case. C reiterated his original claims, maintained that the agreement of 20 May 1985 was null and void and rejected the applicant's claims for damages. Counsel for the applicant maintained that C was liable to pay damages due to the fact that C had allegedly caused the applicant a financial loss in his capacity as President of the Board which refused to accept the applicant's external courses in 1979. Furthermore, he maintained that the case should be dismissed due to the fact that C had not complied with the conditions of the agreement of 20 May 1985, which again had caused the applicant a further financial loss for which he also claimed damages.

After having heard the parties' submissions the presiding judge asked the parties whether they agreed to proceed immediately to the main hearing (omedelbar huvudförhandling).

The applicant's counsel stated that he opposed such a hearing as he intended to call a witness to testify regarding C's contacts with "Kursverksamheten i Lund" in the summer of 1979. Furthermore, he might have to adjust his claims in view of certain information which he had received on the telephone from the Enforcement Office in the course of the preparatory hearing. In addition, he could not indicate his client's position with regard to all of C's claims.

C had no objection to proceeding with the case. He furthermore maintained that the only purpose of the applicant's request to call a witness was to further delay the proceedings as it was clear that C's position on the Board in 1979 could not form the basis of any claim for damages.

On the basis of the above the Court decided to proceed with the case. At the end of the hearing the presiding judge requested counsel for the applicant to comment, on the latter's behalf, on the provisions in the Code of Judicial Procedure (rättegångsbalken) which concern sanctions for abuse of trial (rättegångsmissbruk). Counsel replied that these provisions could not be commented upon.

On 18 September 1985 the applicant submitted a letter to the Court in which he explained that he had been unable to appear in court on 16 September 1985 due to a stomach complaint and expressed his astonishment as to the fact that the Court had referred to the provisions of the Code of Judicial Procedure concerning abuse of trial. In so far as this was correct he requested the Court to examine whether he had been guilty of abuse of trial. He assumed that, if this was the case, the Court would extensively state its reasons therefor.

By judgment of 14 October 1985 the District Court ordered the applicant to pay to C 29,099 SEK plus interest, being the amount C had paid in order to honour his surety engagements. It furthermore rejected the applicant's claims for damages. Finally, the Court ordered the applicant to pay the costs of the proceedings and revoked the applicant's grant of legal aid. As regards the question of abuse of trial the Court stated as follows:

(translation)

"The claims and the grounds put forward by (the applicant) show that he did not wish to have a serious examination of the case. There is no other explanation for his behaviour than his wish to delay the proceedings and make them unpleasant for the other party.

The presiding judge warned (the applicant and his counsel) in the course of the first hearing of the consequences of a behaviour which delayed the case.

What has occurred justifies holding (the applicant) liable to a penalty (åläggas straffansvar) in accordance with Chapter 9, section 3, of the Code of Judicial Procedure for having attempted to delay the proceedings by making clearly unfounded allegations and objections."

The penalty imposed was 50 day-fines of 20 SEK each.

On 23 October 1985 the applicant appealed against the judgment of the District Court to the Court of Appeal (hovrätten) of Skåne and Blekinge. He requested firstly that the Court of Appeal quash the judgment as the District Court was not the right forum. Secondly, he requested that the judgment be quashed due to a procedural error committed by the District Court in that it had proceeded to a hearing of the case on 16 September 1985 despite the applicant's objections.

In the alternative the applicant requested the Court of Appeal to accept his counter-claims, to annul the penalty for abuse of trial and to reinstate him in his right to legal aid. Finally, the applicant requested an oral hearing should the Court of Appeal decide to examine the case on its merits and also permission to submit at a later stage the evidence he intended to rely on.

The applicant's forum objection was rejected by the Court of Appeal by decision of 30 May 1986, which was pronounced on 18 June 1986. It was indicated that the decision could only be appealed against in connection with the judgment on the merits. The Court then directed the applicant to complete his petition with respect to the grounds for the appeal and to specify his evidence.

The applicant completed his appeal in a submission of 27 August 1986. He referred to his previous submissions of 23 October 1985 and maintained his position. As regards in particular the penalty for abuse of trial the applicant maintained that he had not had the possibility of defending himself and that the District Court had not been able to substantiate the allegation that his objections and counter-claims had been made with the intention of delaying the case. The applicant did not in his submissions refer to any other evidence or witnesses which he wanted the Court of Appeal to examine.

While the case was pending before the Court of Appeal the applicant submitted a complaint against the judge of the District Court to the Parliamentary Ombudsman. By decision of 22 January 1988 the Ombudsman found, noting that the case was still pending, that the summons whereby the applicant had been called to appear in court on 16 September 1985 had been incorrectly drafted which, however, had been of no importance to the case. Furthermore, the Ombudsman criticised the fact that, on one occasion, the Court had not replied to a letter from the applicant. Otherwise the Ombudsman did not find any reason to criticise the judge in so far as the present case was concerned and thus decided to take no further action.

On 27 September 1988 the Court of Appeal pronounced judgment in the case without having held an oral hearing. Its judgment reads as follows:

(translation)

"Claims before the Court of Appeal

Maintaining that the District Court was not empowered to proceed to a main hearing immediately following the

preparatory hearing, (the applicant) has requeted that the Court of Appeal quash the judgment and refer the case back to the District Court for renewed examination. Secondly, he has claimed that the Court of Appeal accept his set-off defence and find that he cannot be required to pay (C) as requested. In the alternative (the applicant) has requested that the Court of Appeal limit his liability towards (C) to the amount on which the parties agreed in accordance with the settlement reached and that the Court of Appeal decide that (C) must pay damages for the losses (the applicant) has suffered due to (C's) breach of the settlement. (The applicant) has furthermore requested that the Court of Appeal revoke the attachment order, relieve him of the obligation to pay (C's) costs in respect of the District Court proceedings, oblige (C) to pay (the applicant's) costs in respect of his own work during the District Court proceedings, revoke the District Court's penalty in the form of day-fines for abuse of trial and quash the District Court's decision to revoke the grant of legal aid. Finally, (the applicant) has requested compensation for legal costs in the Court of Appeal.

The Court of Appeal judgment

The Court of Appeal finds, as did the District Court, that the case is obvious. Accordingly, the District Court was empowered to proceed as it did with the main hearing in a simplified way immediately following the preparatory hearing. It follows that (the applicant's) requests to quash the District Court judgment and to remit it to the District Court shall be rejected.

Also (the applicant's) other grounds of appeal are, in so far as they concern the main claims, obviously unfounded. Thus, the judgment of the District Court shall be confirmed in these respects.

Like the District Court the Court of Appeal finds that (the applicant) shall be liable to a penalty (ådömas straffansvar) pursuant to Chapter 9, section 3, of the Code of Judicial Procedure.

For the reasons advanced by the District Court, and since it is not obviously unjust, the applicant's right to legal aid shall cease."

Following this judgment the applicant applied for leave to appeal to the Supreme Court (Högsta domstolen). In his submissions of 17 October and 1 December 1988 and of 5 February 1989 he maintained inter alia his forum objection and his objections in respect of the proceedings in the District Court. He furthermore complained that the Court of Appeal had held no oral hearing and that he had not been requested to submit his list of evidence.

On 6 April 1989 the Supreme Court refused leave to appeal.

B. Relevant domestic law

Provisions concerning the determination of civil cases before district courts are found in Chapters 42 and 43 of the Code of Judicial Procedure (hereinafter "the Code"). The main rule is that a case may only be determined subsequent to the holding of a main hearing. There are, however, some exceptions to that rule. Thus, the court may, inter alia, issue a default judgment and a judgment based on a party's consent to a claim during the preparatory stages of the proceedings (Chapter 42, section 18).

In some cases the court may hold a main hearing in a simplified form with the consent of the parties. Such a main hearing may take place immediately following a preparatory hearing. The court may also hold an immediate main hearing regardless of the consent of the parties if the appropriate resolution of the case is obvious to the court. The relevant provision was subject to minor amendments in 1988. At the time at issue in the present case, however, Chapter 42, section 20, subsections 2 and 3, read as follows:

(translation)

"If the parties consent the main hearing may be held in a simplified form if no impediment of the kind referred to in Chapter 43, section 2, exists. Such a main hearing may take place immediately following the preparation or, provided that the same judge presides, within fifteen days of the final preparatory hearing. Regardless of the consent of the parties, a main hearing in the simplified form may be held immediately following the preparation if the case appears to be obvious.

At a main hearing in the simplified form all the attendant circumstances at the session when the preparatory hearing was concluded shall be considered to have occurred also at the main hearing without a need to repeat it at the latter."

According to Chapter 43, section 2, a main hearing shall be cancelled and scheduled for a new date if a party who should be present in person has appeared only through his counsel; if a witness or an expert who should be examined fails to appear; if a party wants to submit new, important arguments or to present new evidence, and it is found that postponement is required in order to provide the adverse party with a reasonable opportunity to meet the new arguments or evidence; or if there is otherwise an impediment to immediate examination and final determination of the case.

There has been an opportunity for the court to conduct a main hearing in a simplified form ever since the enactment of the Code in 1942. According to the travaux préparatoires, this procedure was intended to be used in minor cases and cases which did not require an extensive investigation. Furthermore, a simplified main hearing against a party's wishes could only take place if it was manifest that the circumstances invoked by the plaintiff could not lead to the granting of his claim or if the defendant's repudiation of the claim was manifestly ill-founded (cf. Nytt Juridiskt Arkiv (NJA) II 1943 p. 534).

The provisions regarding an ordinary main hearing are in principle applicable to a main hearing in a simplified form. However, the court may be composed of one professional judge instead of three. This entails a limitation of the possibility to hold a main hearing in a simplified form in cases where there is a need for a more extensive examination of evidence. Examination of evidence should only to a limited extent be made by a single judge (Government Bill 1983/84:78 p. 69).

The court has an obligation to ensure that a case is sufficiently investigated and that irrelevant matters are not involved in the examination (Chapter 43, section 4, of the Code). If the court finds that a fact, which a party wishes to prove, is of no importance to the case or that an item of evidence is unnecessary or evidently would be of no relevance, the court shall reject it (Chapter 35, section 7, of the Code).

Provisions to the effect that a case may be determined in the absence of a party are found in Chapter 44 of the Code. Section 6 of that Chapter provides for the possibility to determine a case despite

the fact that the party, who has been ordered to appear in person, is only present at the hearing through counsel or despite the fact that the party is not present at all.

It is for the court to decide at the time of the hearing whether the personal presence of the party is in fact needed (cf. NJA II 1943 p. 536). According to general provisions concerning proceedings in civil cases, a party shall attend a main hearing in a district court in person, unless his presence can be assumed to be without importance for the examination of the case (the Code, Chapter 11, section 5).

Provisions concerning proceedings in civil cases before a court of appeal are found in Chapter 50 of the Code. According to section 4 of that Chapter, an appeal petition shall contain certain information, such as a specification of the evidence relied upon by the appellant. It also provides that the appellant shall indicate what he intends to prove by each specified item. The court shall request the appellant to complete his petition if it does not comply with section 4 or is otherwise incomplete.

As a main rule, the petition shall be served upon the appellee with a notice directing him to file a reply (Chapter 50, section 8). However, the court of appeal may immediately pass judgment, without any further communication with the parties, if it is manifest that the petition is unfounded. According to the travaux préparatoires, this possibility may be used mainly in cases where the appellant has lodged his appeal against the judgment of the district court in order to prevent that judgment from gaining legal force or for some other undue purpose (cf. Government Bill 1983/84:78 p. 80).

The court of appeal may determine a civil case on the basis of the case-file, i.e. without holding an oral (main) hearing, in some instances. Chapter 50, section 21, provides, inter alia, that the court of appeal may dispose of an appeal on the merits without a main hearing, if the appellant's claim is consented to, if it is obvious that the claim is unfounded, if both parties have requested that the appeal be disposed of on the merits without a main hearing or have declared that they have no objection thereto.

An appeal may always be decided on the merits without a main hearing if it is plain that such a hearing is not required.

When the court of appeal has decided that a case shall be determined without an oral hearing, the parties shall be requested to conclude their submissions in writing, unless it is obvious that they have already done so (Chapter 50, section 22).

Chapter 9 of the Code contains provisions with regard to certain types of procedural offences. Sections 1-3 regulate abuse of trial while section 5 encompasses, inter alia, improper behaviour in court. A party who is found guilty of abuse of trial within the framework of a civil case can only be punished in accordance with the Code. Section 1 deals with the case where a party, against his better judgment, initiates or causes the initiation of a civil action. Section 2 concerns cases where a person, against his better judgment, appeals against a judgment or a court order.

Chapter 9, section 3, which is the relevant provision in the present case, has undergone minor changes in 1992. However, at the relevant time, the provision read as follows:

(translation)

"A party in a civil case, or an injured party in a criminal case, who endeavours to prolong the course of litigation by making clearly unfounded allegations or defences, by withholding evidence, or by any other improper measure, is

punished by day-fines. What has been said of a party shall also apply to an intervenor, even if he does not have standing as a party."

Liability according to Chapter 9, section 3, requires that a party acts in an undue manner in order to delay the trial. Until 1 January 1992, the sanction for abuse of trial according to Chapter 9, section 3, was so-called day-fines. They ranged from a minimum of one fine to a maximum of 120 fines. Each fine was an amount of money ranging from 10 SEK to 1,000 SEK depending on the financial situation of the person concerned.

The question of whether a person is guilty of abuse of trial is dealt with by the court of its own accord (Chapter 19, section 5, subsection 1, of the Code). The matter can only be dealt with during the particular proceedings in which the abuse has taken place and only by that court. The court is competent to examine the issue of abuse of trial in the composition it had at the time when the offence took place. The sanction for abuse of trial does not presuppose prosecution. Nor is it necessary to issue a summons (Chapter 20, section 1 and Chapter 45, section 2, subsection 1 of the Code). The court may immediately decide on a sanction for abuse of trial by issuing a decision during the course of the hearing. However, it may also make a decision on this issue in its judgment or in a final decision pertaining to the case.

The Code of Judicial Procedure does not contain any provisions according to which the sum of money a court has ordered a person to pay for abuse of trial may be converted into a term of imprisonment. Such matters are regulated in the 1979 Act on the Enforcement of Fines (bötesverkställighetslagen, 1979:189). A conversion may happen but only after a court has so decided in proceedings conducted according to the rules governing public prosecution.

COMPLAINTS

In respect of the proceedings in the District Court the applicant complains, under Article 6 para. 1 of the Convention, that the dispute with C was not determined by an impartial tribunal.

In respect of the proceedings as a whole the applicant furthermore complains that he did not have a fair hearing within the meaning of Article 6 para. 1 of the Convention.

Finally, with reference to Article 6 para. 3 of the Convention the applicant complains that he was fined for abuse of trial without having had the possibility of defending himself in person.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 29 September 1989 and registered on 26 April 1990.

On 14 October 1992 the Commission (Second Chamber) decided 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's observations were submitted on 4 February 1993.

On 20 October 1993 the Commission decided in the particular circumstances of the case to extend the time-limit for the submission of the applicant's observations in reply until 1 December 1993.

The applicant's observations were submitted on 1 December 1993.

THE LAW

1. The applicant has raised a number of questions under Article 6 (Art. 6) of the Convention relating to his right to a fair hearing by an impartial tribunal. Article 6 (Art. 6) reads, as far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal ... .
> ..."

The applicant has raised in particular the question of the impartiality of the presiding judge of the District Court.

The Commission recalls that the existence of impartiality for the purposes of Article 6 para. 1 (Art. 6-1) must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge or jury in a given case, and also according to an objective test, that is ascertaining whether the judge or the jury offered guarantees sufficient to exclude any legitimate doubt in this respect (cf. Eur. Court H.R., Fey judgment of 24 February 1993, Series A no. 255, p. 12, para. 28). As regards the subjective test, the Commission and the Court of Human Rights have constantly held that the impartiality of a judge or a juror must be presumed until the contrary is established (cf. for example, Eur. Court H.R., Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, p. 25, para. 58).

In the present case the applicant maintains that the presiding judge showed bias against him, exemplified by the judge's decision to revoke the grant of legal aid, to order the applicant to pay C's personal costs, to fine him for abuse of trial, to proceed with the case despite counsel's objections and to refuse to lift the attachment order concerning the applicant's property. Furthermore, the applicant alleges that the judge did not give sufficient reasons for the decisions taken and allegedly applied the provisions of the Code of Judicial Procedure wrongly.

The Commission finds that concerning the objective impartiality appearances may be of a certain importance and account must be taken of questions of internal organisation. In this respect the Commission has found nothing in the actual organisation of the adjudication which would reflect adversely on the District Court's or the presiding judge's objective "impartiality". There remains the fact that the applicant might not have seen the Court or the presiding judge as being free from bias due to the fact that the dispute in question, as well as associated points of legal aid, costs, etc. were determined against him. However, the existence of such a sentiment on the part of a party against whom the decisions are taken is not sufficient to establish a lack of impartiality. The Commission has found no other evidence which could raise doubt as to the impartiality of the District Court or the presiding judge within the meaning of Article 6 (Art. 6) of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-3) of the Convention.

2. The applicant also complains that he did not have a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. In support of this allegation the applicant refers to his above hesitations against the proceedings in the District Court and to the fact that the Court of Appeal did not ask him to submit his list of evidence and subsequently decided the case without an oral hearing as requested by him. In particular the applicant complains of the fact that the District Court judge, on 16 September 1985, decided to proceed with an immediate main hearing, something the applicant considers is contrary to the provisions of the Code of Judicial Procedure as his

claims were not obviously unfounded, as he was not present and as he wanted to call a witness. Furthermore, the applicant maintains that the fairness of the hearing was affected by the decision to fine him for abuse of trial.

As regards the proceedings in the Court of Appeal the applicant maintains, in particular, that the Court disregarded his wish to present written and oral evidence and wrongfully classified the case as being "obvious". Furthermore, he had expressly indicated that he wanted an oral hearing in order to substantiate his claims.

Accordingly, the applicant considers, having regard to the case as a whole, that he was not afforded a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

The Government point out that the proceedings in question concerned C's attempt to recover the sums he had been forced to pay under his surety engagements and that it is evident that the applicant resorted to any possible means by which he could hope to prevent a judgment in C's favour. The Government contend that there were well-founded reasons to proceed with a main hearing on 16 September 1985 despite the applicant's absence or counsel's protests. They refer in particular to C's right to have the dispute determined within a reasonable time and to the fact that the applicant was present during the first preparatory hearing on 20 May 1985, that counsel for the applicant had announced that the latter's absence on 16 September 1985 did not prevent the preparatory hearing from taking place, that no further evidence was produced by the plaintiff and that, therefore, the determination of the case by the District Court was based solely on points of law. Furthermore the Government maintain that the decision to fine the applicant for abuse of trial was a separate issue of no relevance to the outcome of the civil suit itself.

As regards the proceedings in the Court of Appeal the Government point out that according to established case-law an oral hearing in the appeal court is not always required as other considerations may justify its omission. In the present case the Government refer to the fact that an oral hearing was held in the District Court and that the issue to be decided was of a fairly legal character. The applicant failed to mention which evidence he wished to rely on and his physical attendance was not essential. Furthermore, the Government point out that the applicant had the opportunity to submit further written observations, and the appeal did not raise any questions of fact or law which could not adequately be resolved on the basis of the case-file. In these circumstances the Government maintain, having regard to the Contracting States' discretion as regards the choice of means to ensure compliance with Article 6 (Art. 6) of the Convention, that the applicant was afforded a fair hearing within the meaning of this provision.

The Commission recalls that the question whether a hearing conforms with the standard laid down by Article 6 para. 1 (Art. 6-1) of the Convention must be decided on the basis of the court proceedings as a whole including, in the present case, not only the proceedings in the District Court but also those of the Court of Appeal. Following the granting of legal aid to the applicant a court hearing was held on 20 May 1985 in the District Court where the parties and their counsel were present. It is clear from the minutes of this hearing that C's claim and the applicant's counter-claims were thoroughly discussed. It is also clear that the Court decided to adjourn the case and ordered the parties to reappear on 16 September 1985, an order which was repeated by the Court on 23 July 1985 after it was clear that no settlement had been achieved. On 16 September 1985 the applicant did not appear but his counsel expressly stated this did not constitute an obstacle to proceeding with the case. C's claims and the applicant's counter-claims were discussed once more following which the parties finalised their pleadings.

Having regard to the above the Commission finds that the applicant was afforded a public hearing before the District Court within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Furthermore, the Commission finds that the applicant was afforded ample opportunity to present to the Court everything which in his opinion was of importance to the case. The Commission notes that the applicant maintains that the District Court could not, under the Code of Judicial Procedure, proceed directly to a main hearing. However, even assuming this to be the case, this would not constitute in itself a violation of the Convention (cf. Eur. Court of H.R., Oberschlick judgment of 23 May 1991, Series A no. 204, p. 23, para. 42). Furthermore, the Commission does not find that the Court, in its refusal to adjourn the case on 16 September 1985 went beyond its discretion in respect of the question of taking evidence. The applicant's remaining hesitations against the proceedings in the District Court do not, in the Commission's view, disclose any appearance of a violation of the right to a fair hearing.

As regards the proceedings in the Court of Appeal it is true that the Court decided the case on the basis of the case-file, thereby refusing the applicant's request for an oral hearing, as the Court found that the case was obvious. The Commission recognises the value attaching to the publicity of legal proceedings, but even where a court of appeal has jurisdiction to review, as in the present case, both facts and law Article 6 (Art. 6) does not always require a public hearing irrespective of the nature of the issues to be determined (cf. Eur. Court H.R., Helmers judgment of 29 October 1991, Series A no. 212-A, p. 16, para. 36). Provided a public hearing has been held at first instance, the absence of such a hearing before a court of second or third instance may accordingly be justified by the special features of the proceedings at issue. Having regard to these features as submitted the Commission finds that the applicant's appeal in respect of his dispute with C did not raise any questions of fact or law which could not be adequately resolved on the basis of the case-file. The Court of Appeal could, as a matter of fair hearing, properly decide to examine the appeal without the applicant having a right to present his arguments at a public hearing also in this Court.

Likewise the Commission does not consider that the Court in any way prevented the applicant from submitting lists of evidence or other material which he found to be of relevance. Being well versed in the routines of judicial procedure the applicant had ample opportunity to present his list of evidence, something which he did not do despite the fact that the case was pending before the Court of Appeal for quite some time.

Thus, having regard to the entirety of the proceedings before the Swedish courts and to the nature of the dispute between the applicant and C, the Commission finds no appearance of a violation of the applicant's right to a fair hearing within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains, with reference to Article 6 para. 3 (Art. 6-3) of the Convention, that he was fined for abuse of trial. Article 6 para. 3 (Art. 6-3) of the Convention reads as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
> b. to have adequate time and facilities for the

preparation of his defence;
c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
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;
e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

The applicant maintains that the fine was imposed without his having had the possibility of defending himself in person. He refutes the courts' findings that he attempted to delay the proceedings and also that his objections and counter-claims were unfounded. Furthermore, the applicant submits that he was represented by a member of the Swedish Bar Association in the proceedings for which reason he should not have been personally liable.

The Government maintain that Article 6 (Art. 6) is not applicable to the proceedings in question or, in the alternative, that the applicant's complaints under this provision are manifestly ill-founded. They argue that under Swedish law abuse of trial offences are not considered to constitute criminal offences and their determination rather constitutes an examination in the exercise of judicial control of the proper administration of justice. The sanction does not presuppose prosecution and is not entered in the criminal register. It cannot be applied to any person other than a party to a court case and the issue is dealt with by the particular court in question of its own accord. Finally, neither the penalty nor the rather theoretical possibility of a term of imprisonment can make the sanction a "criminal" one. In the alternative the Government maintain that in so far as relevant the applicant was afforded all the guarantees set out in Article 6 para. 3 (Art. 6-3) of the Convention.

The Commission considers that rules enabling a court to sanction disorderly conduct in proceedings before it are a common feature of legal systems of the Contracting States. Such rules and sanctions are derived from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by the courts under such rules are more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence and the courts may need to respond to such conduct even if it is neither necessary nor practicable to bring a criminal charge against the person concerned.

In the present case the applicant was sanctioned under Chapter 9 of the Code of Judicial Procedure, which applies only to inappropriate behaviour during court proceedings by a person attending or taking part in the proceedings but not to acts by a person falling outside the circle of persons concerned by this chapter. It is for the court sitting in the particular proceedings in which the misconduct has occurred to examine, of its own accord, whether the misconduct violates the provisions of the Code of Judicial Procedure in question. In these circumstances the Commission finds that the kind of proscribed conduct for which the applicant was fined falls outside the ambit of Article 6 (Art. 6) (cf. Eur. Court H.R., Ravnsborg judgment of 23 March 1994, Series A no. 283-B, pp. 29-30, paras. 33-34).

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

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)