AS TO THE ADMISSIBILITY OF

Application No. 11581/85
by Peter DARBY
against Sweden

The European Commission of Human Rights sitting in private on 11 April 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER Secretary to the Commission

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

Having regard to the application introduced on 20 November 1984 by Peter Darby against Sweden and registered on 18 June 1985 under file No. 11581/85;

Having regard to:

- the Government's written observations dated 8 September 1986;
- the applicant's written observations in reply dated 6 October 1986;
- the submissions of the parties at the hearing on 11 April 1988;

Having deliberated;

Decides as follows:

THE FACTS

The facts of the case, as they appear from the parties' submissions, may be summarised as follows:

The applicant is a Finnish citizen of British origin, born in 1926. He is resident on the islands of Åland, Finland since 1966. The applicant is a medical practitioner by profession.

Particular circumstances

In 1977 the applicant started to work at Gävle in Sweden as an industrial physician to the Swedish State Railways. He rented a flat at Gävle, but spent the weekends with his family in Åland. From the end of 1981 he worked as a physician at Norrtälje, Sweden. As from August 1986 he has been working in Åland.

As from 1977 when the applicant worked in Sweden he was taxed

in Sweden according to Swedish tax legislation. The convention with Finland for the avoidance of double taxation (SFS 1977:812) stated no exemption in this case. The applicant was granted tax deduction for the cost of maintenance of two houses as well as for travelling expenses to and from Åland. As his stay in Sweden was regarded as non-permanent he was until 1980 taxed in the Common District (gemensamma distriktet) and his municipal tax was consequently reduced. The disadvantages were that the applicant was not entitled to full social benefits, inter alia, sickness benefits and old age pension benefits.

Following amendments to the taxation laws in 1978 (1978:812) which came into force on 1 January 1979, the applicant was, for tax purposes, regarded as domiciled in Sweden and previous tax deductions were disallowed. As a further result the applicant's municipal tax was no longer reduced. He thus had to pay full municipal tax, including church tax. The applicant was informed by the tax authorities that he could not claim exemption from the church tax unless he was formally registered as resident in Sweden. The applicant states that although he was regarded by the tax authorities as domiciled in Sweden the social insurance office regarded him as domiciled in Finland and he was accordingly excluded from full social benefits.

Subsequently the applicant obtained, on 19 February 1982, a decision from the National Tax Board (riksskatteverket) to the effect that if he travelled daily from Åland to his work in Sweden he would be taxed as a non-resident in Sweden. However, the applicant submits that daily commuting to Gävle was impossible and as a result he took a less responsible job with less pay at Norrtälje, in respect of which daily commuting was just possible.

As regards the taxation for the applicant's income for the year 1979, the applicant brought an appeal through the Swedish Administrative Courts. Originally, he was taxed by the Tax Board (taxeringsnämnden) as if he was a resident at Gävle. The applicant appealed to the Joint Municipal Tax Court (mellankommunala skatterätten) claiming that he was not to be regarded as living in Sweden. In a judgment of 25 February 1982 the Joint Municipal Tax Court rejected the applicant's appeal.

The applicant appealed to the Administrative Court of Appeal (kammarrätten) of Sundsvall which in a judgment of 22 October 1982 rejected the appeal.

The applicant lodged a further appeal with the Supreme Administrative Court (regeringsrätten) which in a decision of 15 October 1984 partly refused to grant leave to appeal and partly refused to accept that the applicant's complaints should be examined in the special appeals procedure provided for in the Taxation Act (taxeringslagen).

Parallel to the above procedure the applicant, in respect of the income year 1979, submitted an appeal to the County Administrative Court (länsrätten) of Gävleborg against the order to pay church tax. In support of his appeal he invoked that he was not a member of the Swedish Church and not a Swedish citizen, nor was he resident in Sweden. By a judgment of 19 May 1981 the County Administrative Court of Gävleborg rejected the applicant's appeal stating that the Act on Certain Reductions of the Tax Liability for a Person not belonging to the Swedish Church (lag 1951:691 om viss lindring i skattskyldigheten för den som icke tillhör svenska kyrkan, hereinafter referred to as "the Dissenter Tax Act") did not apply to the applicant.

The applicant appealed to the Administrative Court of Appeal of Sundsvall, which in a judgment of 22 October 1982 confirmed the judgment of the County Administrative Court. The applicant submitted a further appeal to the Supreme Administrative Court, which on 9 October

1984 refused to grant leave to appeal.

The applicant has also submitted a complaint to the Parliamentary Ombudsman (justitieombudsmannen) concerning the issue of reduction of the obligation to pay tax for a person who does not belong to the Swedish Church. As a result of his investigation, the Parliamentary Ombudsman, in a letter to the Government, proposed that the Act should be amended to the effect that it is no longer required that a person is registered as living in Sweden in order to obtain reduction in the obligation to pay church tax. From the decision of the Parliamentary Ombudsman, dated 16 April 1982, the following appears: Section 1 of the Act on Certain Reductions of the Tax Liability of a Person not belonging to the Swedish Church requires that the tax payer at the beginning of the income year does not belong to the Swedish Church and that he is registered as living in Sweden. The Parliamentary Ombudsman noted that this requirement had been questioned on several occasions, inter alia, in Parliament. It was further noted that this provision of the Act had consequences for persons who moved into or out of the country. The Ombudsman considered that the provisions were not satisfactory but stated that it was not a provision which was in conflict with the non-discrimination clauses which Sweden had adopted in the double taxation agreements. It was not a question of discrimination based on citizenship. But the Parliamentary Ombudsman could understand that the applicant questioned the regulations on this point. The Parliamentary Ombudsman concluded that the problem in the case was a limited question, but he considered that it was an issue of inconsistency of a fundamental nature in the tax legislation. There were no objective reasons which militated in favour of the rule in force and it was understandable if it caused irritation.

Relevant Swedish Legislation

The Swedish legislation regarding the municipal income taxation in general appears in the 1928 Municipal Tax Act (kommunalskattelagen). This Act has been amended several times through the years.

As to the liability to pay tax in Sweden Section 53 sub-section 1 of the Municipal Tax Act prescribes that a person resident in Sweden is liable to pay tax in Sweden on all his income. A person not resident in Sweden is liable to pay tax in Sweden on, among other things, income derived from employment in the Swedish public service, including a county council or a parish.

Under Article 19 of the then applicable tax agreement with Finland for the avoidance of double taxation, the right to tax income derived from public service - with certain exceptions not relevant here - falls to the State from which the remuneration is paid.

As to the place of taxation in Sweden, Section 59 sub-sections 1 and 3 of the Municipal Tax Act prescribes, in the wording applicable during the period in question, that income from employment earned by an individual when resident in Sweden is taxed in his place of domicile. Income from employment earned by an individual when not resident in Sweden is taxed in Stockholm for common municipal purposes. For this purpose a special taxation district is established, the Common District.

Provisions regulating which persons may be considered to be resident in Sweden and the definition of "place of domicile" are, as applicable to tax assessment for the tax year 1980, found in Section 68, Section 66 and sub-section 1 of the instructions to Section 66 of the Municipal Tax Act.

Since 1978 these provisions have been amended twice. Before 1979 a person with temporary abode in Sweden was, as far as income

from employment was concerned, taxed in the Common District which also meant a lower tax rate than if taxed elsewhere. From 1979 such a person was taxed on the same basis as a resident of Sweden and also at the same tax rates. From 1987 such a person is again taxed in the Common District but not only for income from employment, but also for income from capital (e.g. interest) or from real estate.

A small part of the municipal taxes consists of the church taxes, the rate of which is determined by the relevant parish council. This system has old traditions and is based on the fact that the Lutheran Church of Sweden is what is commonly described as a "State Church"; its parishes have municipal status according to the Constitution including the right of taxation. Since the population records (folkbokföringen) were introduced in the sixteenth century they have been administered by the parishes. The parishes are also entrusted with the administration and upkeep of churchyards and other public burial-grounds, not only for church members but for the whole population.

Under the 1951 Dissenter Tax Act the church tax may be reduced. Section 1 of the Act reads as follows:

> "Pursuant to the Act (1961:436) concerning parish councils, such church tax as is debited according to the decision of a vestry or is otherwise debited according to the same provisions as apply to the debiting of municipal tax, shall be levied on a person who was not a member of the Church of Sweden at the beginning of the income year and who is registered in this country for the income year, at only thirty per cent of the determined amount."

In order to benefit from the tax reduction it is thus required that the person liable to tax was not a member of the Church of Sweden at the beginning of the income year and that he was registered in Sweden for the income year. This means that the Dissenter Tax Act does not apply to those who are taxed in the Common District. According to the travaux préparatoires of the Act the reasons for this were that the demand for reduction could not be argued with the same force in regard to persons who are not resident in Sweden as to those who are, and that the procedure would be greatly complicated if tax reduction was to apply to such persons.

The part of the church tax that remains after reduction relates to the costs which the parishes bear for keeping the population records and administering the burial-grounds and which are evaluated at 30 per cent in average of the total parish budget.

As from 1 January 1987, Section 1 of the Disenter Tax Act has been amended to the effect that it is no longer required that the individual is registered as living in Sweden in order to benefit from the reduction of the church tax.

In the case of tax assessment for common municipal purposes, the tax amounts to 10 per cent pursuant to the Act Concerning Tax for Common Municipal Purposes (lagen om skatt för gemensant kommunalt ändamål). This tax is not divided into municipal tax, county tax and church tax but is used for levelling out the burden of taxation between different municipalities or other administrative entities.

A Swedish child born by parents who are members of the Church of Sweden is registered as a member unless the parents wish otherwise. As soon as a person has come of age he can choose whether he wants to remain a member or not. In case he does not, he simply has to announce his resignation to the parish of which he is a member. A person who is not a member can apply for membership.

Section 6 para. 1 of the Freedom of Religion Act

(religionsfrihetslagen) provides that only a Swedish citizen or a person domiciled in Sweden may be a member of the Church of Sweden.

In order to inform people how different tax provisions are to be interpreted in special cases the National Tax Board can give so called Advance Rulings (förhandsbesked). Such rulings must be followed by the taxation authorities and the tax courts.

COMPLAINTS

1. The applicant alleges that Article 9 of the Convention has been violated, since the Swedish tax authorities have enrolled him as a member of the Swedish State church and forced him to pay church tax. The applicant's only way of obtaining exemption from part of the church tax is to become a resident in Sweden and to apply for exemption from the church tax. The applicant considers that this is a complete disregard of his individual civil rights.

2. The applicant also alleges a violation of Article 6 para. 1 of the Convention. He states that the Swedish courts have regarded him as domiciled in Sweden despite the rules and provisions of the Convention for the avoidance of double taxation in Sweden and Finland and contrary to other court decisions. The applicant submits that his civil rights have been encroached upon by the Swedish State which regards him as domiciled in Sweden for one purpose and yet domiciled abroad for another.

3. The applicant contends that he has been discriminated against as a Finnish citizen domiciled in Åland and working in Sweden.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced with the Commission on 20 November 1984 and registered on 18 June 1985.

On 5 May 1986 the Commission decided to communicate the application to the Government for written observations on the admissibility and merits of the application.

The Government's observations were received by letter dated 8 September 1986 and the applicant's observations in reply were dated 6 October 1986.

On 7 October 1987 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application.

At the hearing, which was held on 11 April 1988, the Government were represented by their Agent, Mr. Hans Corell, Ambassador, Under-Secretary for Legal and Consular Affairs at the Ministry for Foreign Affairs and, as advisers, Mrs. Christina Westerling, Legal Adviser at the Ministry of Finance and Mr. Carl-Henrik Ehrenkrona, Legal Adviser at the Ministry for Foreign Affairs. The applicant presented his case himself.

SUBMISSIONS OF THE PARTIES

A. The Government

1. The Admissibility

The Government raise no objection under Article 26 of the Convention.

With regard to the applicant's allegation that Article 9 of the Convention has been violated, since he has been registered as a member of the Swedish Church and forced to pay church tax, the

Government submit that he has not been registered as a member of the Swedish Church. In this respect his complaint should be rejected as being manifestly ill-founded.

The applicant has also alleged a breach of Article 9 since he has no possibility to obtain exemption from part of the church tax except by becoming a resident in Sweden and then applying for such an exemption. However, such consequences of the Swedish tax legislation cannot be considered to be in conflict with Article 9. With reference to what is said below on the merits, this complaint should be rejected as being incompatible ratione materiae with the Convention for falling outside the scope of the Convention or, alternatively, as being manifestly ill-founded.

As regards Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention the Government submit, with reference to what is said below on the merits, that the complaint should be rejected as being incompatible ratione materiae with the Convention (only Article 6) or as being manifestly ill-founded.

In the Government's view, the case concerns the tax which the applicant paid on his income during 1979, i.e. the tax that was decided in the tax year of 1980. According to information provided by the local tax authorities the applicant's municipal tax for that year was 40,192 SEK. This amount includes church tax in the amount of 1,336 SEK. If the Dissenter Tax Act had been applicable in the applicant's case, the church tax would have been 30% of this amount, that is 401 SEK. Consequently, the reduction which the applicant could have been entitled to in 1980 would amount to 935 SEK.

The Government are aware of the fact that there is no Article in the Convention prescribing that the Commission should not examine cases which for different reasons could be regarded as being of minor importance. However, in the Government's opinion, it is important that the Commission looks not only to questions of principle. Such questions can always be put, also with reference to facts of a very minor, not to say minuscule nature. But the Commission must also look to the reality behind an application. The question must be asked: to what extent has the applicant been affected?

If a violation were found in the present case such a violation would be constituted by the fact that the applicant was due to pay church tax of 1,336 SEK instead of 401 SEK. In principle the obligation to pay church tax and the exemption therefrom could touch the ambits of Articles 9 and 14. However, it is not probable that it was such questions with which the authors of the Convention were concerned when Articles 9 and 14 were drafted. In the Government's view, it is obvious that there were problems of a totally different nature which the authors of the Convention had in mind and which the States envisaged when acceding to the Convention. It must be remembered that the applicant had several complaints about his tax situation before the Swedish authorities. Only one issue remains before the Commission, namely the question of the church tax, which - in regard to the other issues involved - seems more or less a coincidence.

2. Article 9 of the Convention

The Government submit that Article 9 protects everyone's right to freedom of religion. It is obvious that Article 9 primarily prohibits legislation that does not allow certain religions or prevents people from exercising their religion, either directly by prohibitions or by making it difficult for people to manifest their religion by other means. The Article also protects people from being forced to take part in religious activities which are incompatible with their own beliefs.

However, from the facts of the case it clearly appears that

the applicant has not been forced to take part in any activities or practices under the auspices of the Church of Sweden. What the Commission has to deal with in this case is only the question whether the Convention prohibits a State from contributing to religious activities or from giving support to religious associations with tax revenues if the State does not see to it that every citizen who so wishes can be exempted from the obligation to pay taxes for such purposes.

It is not unusual that Member States contribute to the funding of different religious associations or churches with tax revenues. This is also the case in Sweden. General tax revenues are used for State contributions to several religious associations and churches not connected with the State Church, for example the Pentecostal Movement, the Roman Catholic Church, the Methodist Church as well as Moslem groups and Jewish congregations. The tax revenues for the support of the Church of Sweden, however, arise from the special church tax decided by every parish. The Dissenter Tax Act provides that persons who do not belong to the Church of Sweden are granted a reduction of that tax and thus do not contribute to the costs of the religious activities of that church. Since there is no corresponding legislation applicable to national taxes or local taxes in general, every taxpayer contributes to religious activities of the free denominations in Sweden.

The Government contend that a Member State is free to contribute to religious associations, churches, State churches or others, as well as to other associations it finds worth supporting. It is then indifferent whether the tax revenues disposed arise from general taxes such as national taxes or local taxes or from special taxes like the Swedish Church tax. The Government are therefore of the opinion that there is no right under the Convention for the individual to be exempted from the obligation to pay taxes used for purposes now mentioned. Contributions to the State Church - apart from those contributions that cover activities which in many other countries are managed by ordinary administrative authorities - can very well be looked upon as contributions to cultural activities in general. A High Contracting Party to the Convention may support many different

cultural activities which certain persons may regard as incompatible with their conscience or religious beliefs. The Government are convinced that Article 9 was never meant to limit the possibilities for the Contracting Parties to support such activities.

The Government admit that the Dissenter Tax Act makes exemptions for persons who do not belong to the Church of Sweden and that the ratio legis for these provisions is that non-members should not be obliged to contribute to its religious activities - at least not to the same extent as members of this church. But this is one thing. When it comes to the construction of Article 9 of the Convention it must be concluded that the complaint that the applicant was not exempted from the obligation to pay church tax falls outside the ambit of this Article.

In case the Commission comes to the conclusion that the complaint falls within the scope of Article 9, the second paragraph of Article 9 must then be examined. The rights guaranteed shall be subject only to "such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

The Government do not argue that any of these interests can be invoked in the present case. However, in line with its argumentation above the Government contest that the effects of the Swedish tax legislation in the present case can constitute a limitation within the

meaning of Article 9 para. 2. In case the Commission does not share this view, the Government submit that there must at least be some level as to the effects of such limitations. Consideration must also be given to the circumstances in the particular case as well as to the intention behind the applicable legislation.

The right to be exempted from church tax goes back to a legislation adopted in 1908. At that time only those belonging to religious associations other than the Church of Sweden, and which were recognised by the Swedish State, were entitled to a reduction of church tax. In those days it was considered to be an obligation under the Constitution then in force to maintain and support the Lutheran Church of Sweden. The reasons for exempting persons from church tax were that due respect should be paid to the fact that these persons often had to pay tax to their own congregation or church. Account was taken also of the fact that there could be a risk that people left the church only to achieve reduction of the church tax, especially when considerable expenditures could be expected.

The Dissenter Tax Act of 1951, which is still in force although amended in certain parts, was based on the fact that the principle of freedom of religion led to all persons who had left the Church of Sweden and joined another religious association being exempted from contributions to the religious activities of the Church. However, the question whether a person who had chosen to leave the Church without joining another religious association should be entitled to tax reduction, was given careful consideration when the Act of 1951 was deliberated. It was not evident that the legislation should embrace also these persons. Among the reasons which were invoked for the solution finally chosen were not only the respect for

the individual's beliefs but also the fact that if church tax was paid by persons who were not members of the Church this would place the Church of Sweden in a more favourable position than other churches or religious associations. Still it was considered important that the provisions were drafted in such a way so as not to encourage people to leave the Church of Sweden only in order to obtain a reduction of tax.

The reasons for connecting the right of being exempted from church tax to registration in the country were mainly of a practical nature. The system had to be as simple as possible. In the Government Bill (1951:175, p. 144) in which this legislation was proposed to Parliament, the following was stated as to this question:

> "The right to a reduction of the liability to pay tax should not apply to persons who are not resident here. The demand for exemption could not be argued with the same force in this case and in addition hereto, the procedure would become more complex if the reduction would apply also to such persons."

The practical problem that arose was how the tax authorities could obtain information regarding those who were not members of the Church of Sweden without imposing on them an obligation to inform the authorities themselves. This problem was solved in such a way that the parishes, which administer the population records and also have access to the information regarding membership to the Church, should inform the tax authorities in this regard.

For that reason those who were not registered as resident in Sweden according to the population records, fell outside the system. If they were to enjoy the right of being exempted from church tax it would mean that they had to apply for it themselves and every such application had to be examined individually. Such a system would have been very difficult to administer in those days before the taxation control system had been computerised.

There seem to be no other reasons for the requirement that a person had to be registered as resident in Sweden in order to be entitled to reduction of church tax. It appears that the preparatory works to the legislation are concerned to a considerable extent with the apparently difficult question of how to administer the exemption within the existing system for the tax administration.

As far as the circumstances are concerned, consideration must be given to the fact that the complaint is based on the Swedish tax legislation and its application in a very special case. Tax legislation is often of a complex nature and must be applied to a great variety of situations. It goes without saying that the application of tax legislation in cases where the taxpayer lives in one country and works in another adds to the complexity and may also reveal inadvertencies in the legislation. One must also bear in mind that the applicant has subjected himself to the legislation in question by chosing to take employment in Sweden.
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Even if the consequences can be open to discussion it is nevertheless too far-fetched to argue that they come to such a level as to amount to a "limitation" within the meaning of Article 9 para. 2 of the Convention.

3. Article 1 of Protocol No. 1

The Government admit that the aplicant's complaint falls within the ambits of Article 1 of the Protocol No. 1 since this Article is applicable to tax legislation in general. However, the Government maintain that there has been no violation of the said provision. The church tax is decided upon in the same way, and after the same assessment of the taxable income, as for other taxes. The purposes of the church tax are laid down in the legislation and fall clearly within the wide margin of appreciation that the Strasbourg case-law in connection with Article 1 of Protocol No. 1 affords to the Contracting Parties. It follows that this complaint is manifestly ill-founded.

4. Article 14 of the Convention

The Government admit that the applicant was treated differently from persons who were registered as living in Sweden as regards the possibility to obtain exemption from part of the church tax. However this distinction - even if questioned - must be considered reasonable and objective and thus justified under the terms of Article 14 of the Convention. The Government stress that the requirement of residence in Sweden, in order to qualify for tax reduction in accordance with the Dissenter Tax Act, applies to Swedish citizens and foreigners alike.

The Government submit that the distinction had a legitimate aim when seen in the light of the practical consideration described above. The justification was entirely practical and based on administrative considerations.

The Government maintain that there was a reasonable proportionality with regard to the effects on the applicant in this case. When examining the question of a reasonable proportionality, each case must be examined on its merits with regard to the effects of the distinction in treatment.

The financial effect on the applicant due to the fact that he was not exempted from church tax in 1980 was that he was obliged to pay 1,336 SEK in church tax instead of 401 SEK. Such an effect cannot be regarded as disproportionate to the aim which was to provide a rule which would be easier to apply.

It could be argued that if the difference in tax had been greater, due to the amount of the total tax, another view could be taken. But that is to be decided in a case where such a situation is at hand. In this case the effect on the applicant amounts to less than one thousand Swedish Crowns. To this should be added that the applicant belonged to a group of people with a tax situation which differed from the ordinary taxpayer anyway, since he was residing abroad and thus was subject to other differences as well in regard to other rights and obligations.
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5. Article 6 of the Convention

Article 6 guarantees that everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his civil rights and obligations. However, the matters dealt with by the courts in this case do not concern the applicant's civil rights and obligations but his obligations under public law (tax legislation). Secondly, the subject matter was dealt with by tribunals which meet the requirements laid down in Article 6. Thirdly, the said Article does not contain any rules as to the assessment of facts and law which the court in question has to make. The Government submit that the complaint under Article 6 should be rejected as being incompatible ratione materiae with the Convention for falling outside the scope of the Convention or for being manifestly ill-founded.

6. Conclusions

The Government conclude

- concerning the admissibility

that the complaint under Article 6 para. 1 and Article 9 should be declared inadmissible for falling outside the scope of the Convention, alternatively and also in regard to Article 14 of the Convention and Article 1 of Protocol No. 1 for being manifestly ill-founded, and

- concerning the merits

that there has been no violation of the Convention.

B. The applicant

1. The Facts

From 1 October 1977 until 18 August 1986 the applicant was employed as a public servant in Sweden. He was domiciled in Åland, and according to the terms and definitions in the tax agreement between Sweden and Finland he should have been regarded as non-resident in Sweden for tax purposes during the whole of this time. In fact he was regarded as non-resident in Sweden during 1977 and 1978, and also from November 1981 until August 1986. From January 1979 until November 1981 he was taxed as if he had been resident in Sweden. From November 1981 until 18 August 1986 he was again regarded as non-resident in Sweden provided that he travelled daily from Åland to Sweden and did not spend the night in Sweden.

The interpretation of the municipal taxation law, which came into force in January 1980, resulted in economic disaster for the applicant. It was not only the church tax he had to pay. He also had to pay an extra 20% in municipal tax and also lost tax deductions for the extra cost of living in a foreign country and for maintaining two homes.

It is true that the applicant could choose to work in Sweden,

but when the rules of the game are changed the situation changes. The applicant was not able to obtain employment immediately in Åland. It took over 4 1/2 years. The consequence was that the applicant had to change job, take a less responsible job, and for 4 1/2 years commute daily.

The applicant submits that it was extraordinary that he could work for 2 years in Sweden and be treated as if he were non-resident and then for these 2 years be regarded as being resident in Sweden, and then during the time when he travelled backwards and forwards every day (4 1/2 years) he was regarded as not resident in Sweden again and entitled to the tax relief that he had before. There were also disadvantages in this situation in that he did not obtain the social benefits of a Swedish resident. He was not entitled to the full medical benefits and not entitled to the full pension that a Swedish citizen has.

The rules of church tax were so absurd when applied to him that it must have been obvious that there was a gross misinterpretation of this municipal law.

According to the convention on double taxation the State tax on the applicant's income for 1977 and 1978 as a public servant was paid in Sweden. Also according to the terms of the convention his municipal tax was paid in the Common District in Stockholm since he was non-resident in Sweden. Tax deductions were allowed for the extra costs of maintaining two establishments. These costs consisted of rent, heating and lighting for his apartment plus a deduction of 30 crowns daily each day that he was in Sweden. He was also allowed tax deductions for the cost of travelling home to Åland each weekend. These allowances were cancelled as a consequence of the decision that he was to be considered as domiciled in Sweden. The only tax deduction which remained was the cost of a journey home to Åland every second weekend.

The applicant protested against being obliged to pay church tax because this was one of the negative consequences of the decision that he was a resident of Sweden. He felt that a decision which regarded him as a resident of Sweden and yet not a resident of Sweden at one and the same time could not be correct.

According to Swedish law one has to be a Swedish citizen in order to qualify for a Swedish old age pension. According to the Inter-Nordic Convention, Finnish citizens have the right to a Swedish old age pension if they have had unbroken residence in Sweden for at least three years immediately preceding the application for a pension.

2. Article 9 of the Convention

According to Section 6 of the Freedom of Religion Act, only Swedish citizens or foreigners domiciled in Sweden may be members of the Swedish Church. Those who do not belong to the Swedish Church but who are registered as resident in Sweden, may apply for exemption from church tax under the Dissenter Tax Act. Section 4 of the Freedom of Religion Act provides that nobody is obliged to belong to a religious faith. Section 11 states that members of the Church must inform the pastor personally that they wish to resign or they must inform him in writing in a document which requires 2 witnesses.

The applicant was misinformed by the local tax officials, since not being a Swedish citizen and not being resident in Sweden he was prohibited by law from being a member of the Swedish Church. Had he been resident in Sweden he could have applied for exemption from that part of the church tax which is used for financing the religious activities of the Church.

The object of the Dissenter Tax Act is to allow persons of

other religious denominations to abstain from contributing to the economy of a religion whose moral and ethical principles are quite different from their own. A Jehovah's Witness, or a Moslem, or a Hindu, would be as outraged and insulted if they were forced to contribute in any way to the maintenance of a different faith.

Freedom of religion exists in a country which respects the acts and customs of all religions. To place the corpse of a Hindu or Moslem in a room decorated with Christian symbols would be insulting, and if no choice were given to the relatives this would in the applicant's opinion be a lack of religious freedom. Deliberately asking a Hindu to eat beef or a Moslem to partake of a meal consisting of pork would be bad manners, but to insist that they eat food which is prohibited by their religion would be to deny them freedom of religion. A Hindu would certainly not take kindly to being forced to contribute to the maintenance of burial grounds since burial is contrary to their religion.

It is not a valid argument to say that because he is not asked to perform the task of the executioner he can have no possible grounds for objecting to capital punishment. This is precisely the argument which the Government use when they state that the applicant has not been forced to take part in any activities or practices under the auspices of the Church of Sweden.

Freedom of religion is not confined to being allowed the freedom to congregate and worship according to one's own religion. Nor is it confined to the absence of compulsion to take part in a religious ceremony. There can be no dispute about the fact that Galileo was subject to religious persecution when he was made to recant his statement that the earth was not at the centre of the universe. Galileo was left in peace after his recantation.

The applicant was obliged to give economic support to the Church of Sweden and denied the opportunity to withdraw this support. The Government agree that it is wrong for persons not belonging to the Swedish Church to be obliged to contribute to the religious activities of the church. By deeming that he was domiciled in Sweden the applicant was obliged to pay municipal tax in the municipality in which he first earned money. By ruling that he was also domiciled abroad he was refused the right to claim exemption from this tax. The assertion that the Swedish State contributes to the activities of many different religious denominations gives a false impression. The money contributed by the State is payment for the costs of maintaining a register of that part of the population which does not adhere to the civil register. In Sweden certificates of birth and place of residence are required for a multitude of purposes and this part of the Church's activity is subsidised by the State.

Every citizen has a duty to pay tax but he has no obligation to pay more tax than is necessary. Payment of church tax was but one of the negative effects which followed the decision that the applicant was a resident of Sweden.

The applicant points out that the legislation concerning municipal tax was changed two years after he started working in Sweden. The real point is that this legislation should not have been applied to him as a non-resident of Sweden.

The decision that he was no longer to be regarded as non-resident in Sweden and thus no longer entitled to tax deductions for the costs of maintaining an apartment in Sweden meant that it was economically impossible for him to continue working in a pleasant, interesting and well paid job at Gävle. He was obliged to take a less well paid job at Norrtälje to which he could travel daily from Åland. He was obliged to travel to work each day from Åland to Sweden for some four and a half years, until he could find work on Åland again.

The winter time-table of the ferries between Åland and Sweden made it impossible to spend more than four hours each night in his bed. The observation that he chose to take employment in Sweden is true. However, comparable employment in Åland did not exist at the time. Once having gone to Sweden he was obliged to wait for a vacant post before he could return.

3. Article 14 of the Convention

The applicant submits that the Government do not explain why it was right and just to force him, as a non-resident, to pay the church tax. They have stated that it was inconvenient to change the legislation, but today they have done so. Moreover, the tax regulations have been changed back to what they were previously.

In the applicant's view the real reason for the insistence that he should pay church tax was that the tax authorities were determined that he should be regarded as resident in Sweden for tax purposes and therefore liable to pay higher municipal tax and also be ineligible to claim tax allowances for the expenses of maintaining two homes.

Residents of Sweden have the opportunity to abstain from paying church tax. Immigrants to Sweden are obliged to pay church tax on at least one occasion because the tax authorities have decided that an application for exemption must be made before the 1st of January preceding the year of taxation.

For the applicant it was impossible to claim tax exemption from church tax unless he officially registered himself as a resident of Sweden. Only then could he apply for exemption. This would have meant losing his voting rights as a resident of Åland; losing rights to purchase land and property; losing rights to purchase certain shares; losing his right to hold any public appointment or to engage in official politics in Finland; and also losing his hunting and fishing rights.

4. Article 6 of the Convention

The civil rights are dependent upon the applicant's place of domicile. For example he was obliged to be resident in Åland for five years before he could apply for Finnish citizenship. Without Finnish citizenship he could not be registered in Finland as a physician and was thus previously debarred from holding a permanent public appointment as a physician. Without his Åland citizenship he was not allowed to own land or property on Åland.

The applicant's objection is that his place of domicile has been decided by the tax authorities and the courts according to a provision in the Swedish municipal tax legislation and not by the Swedish law as a whole. Had it been accepted that he had been domiciled in Åland during the whole time that he had been employed in Sweden none of this trouble would have arisen.

THE LAW

1. The applicant complains that he has been obliged to pay church tax in Sweden. He submits that this obligation violates Article 9 (Art.9) of the Convention. He also complains that he has been discriminated against since he would have been entitled to a reduction of the church tax had he been resident in Sweden.

The Commission has examined the latter complaint under Article 14 (Art. 14) of the Convention in conjunction with Article 9 (Art. 9) of the Convention as well as under Article 14 (Art. 14) of the Convention in conjunction with Article 1 of Protocol No. 1 (P1-1) to

the Convention.

Article 9 (Art. 9) of the Convention reads:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 14 (Art. 14) of the Convention reads:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1 (P1-1) to the Convention reads:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submit that the applicant's complaints are inadmissible, either for being incompatible ratione materiae with the provisions of the Convention or for being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

They argue that the Commission should examine to what extent the applicant has been affected by the church tax complained of. The reduction claimed by him amounts to less than 1,000 SEK for 1980. The applicant had several complaints about his taxation before the Swedish authorities, but only the issue of the church tax remains before the Commission. It is unlikely that the authors of the Convention had such a situation in mind when drafting Articles 9 and 14 (Art. 9, 14) .

The Commission has examined this argument in particular under Article 25 (Art. 25) of the Convention which authorises it to receive applications from persons "claiming to be the victim of a violation" of the Convention. It finds, however, that it is not empowered under this clause or any other provision of the Convention to reject an application on the ground that the claim is of minor importance or that the consequences of a possible violation are insignificant. This is also admitted by the Government. It follows that it is not necessary in the present case to determine as an issue of admissibility whether the claim is in fact of "minor importance".

The Commission has further examined whether the applicant is nevertheless precluded from bringing this application on the ground

that he has no valid legal interest or that there is no need for legal protection (cf. Nos. 7289/75 and 7349/76, Dec. 14.7.77, D.R. 9 pp. 57 and 73, and No. 11394/85, Dec. 5.3.86, to be published in D.R.). It here notes that the legislation complained of has in the meanwhile been amended. However, this did not retroactively affect the taxation of the applicant in 1980.

The Commission concludes that the application cannot be declared inadmisible on the ground that the applicant cannot claim to be a "victim" in the sense of Article 25 (Art. 25) of the Convention.

The applicant submits that he has been "enrolled as a member of the Swedish State Church" by the tax authorities. The Commission finds it established that the applicant has not been registered as a member of the Church of Sweden. In this respect his complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

However, as a result of his obligation to pay taxes in Sweden in the same way as a person domiciled in Sweden, the applicant has also been obliged to pay full church tax. The church tax is a small part of the municipal taxes and forms part of the general taxes. The rate of the church tax is determined by the relevant parish council. The applicant has been refused reduction of the church tax under the Dissenter Tax Act.

The Commission considers that an issue arises as to whether the applicant's obligation to pay, contrary to his wishes, church tax to the Church of Sweden is in conformity with his right to freedom of religion as protected by Article 9 para. 1 (Art. 9-1) of the Convention. Further issues arise under Article 14 (Art. 14) read in conjunction with Article 9 (Art. 9) of the Convention and with Article 1 of Protocol No. 1 (P1-1) to the Convention respectively as to whether the difference in treatment between residents and non-residents, in relation to the payment of the church tax, has an objective and reasonable justification.

After a preliminary examination of these issues in the light of the parties' submissions, the Commission considers that these issues raise questions of fact and law which are of such a complex nature that their determination requires an examination of the merits. These complaints cannot therefore be declared inadmissible as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention, but must be declared admissible, no other ground for declaring them inadmissible having been established.

2. The applicant also invokes Article 6 para. 1 (Art. 6-1) of the Convention, which in its first sentence provides:

"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."

As regards the proceedings brought by the applicant concerning the exemption from the church tax, the Commission can leave open the question whether Article 6 para. 1 (Art. 6-1) of the Convention applied to those proceedings. In any event, the Commission finds that the facts of the case and the applicant's submissions disclose no appearance of a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

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

3. Finally, with regard to the applicant's remaining complaints

concerning his taxation in general, the Commission has examined these complaints under Article 1 of Protocol No. 1 (P1-1) to the Convention, both taken alone and in conjunction with Article 14 (P1-1+Art 14) of the Convention. However, from the applicant's submissions there is no appearance of any possible violation of these provisions in that respect.

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

It is true that the applicant has also invoked Article 6 (Art. 6) of the Convention in regard to the procedure regarding his taxation in general, notably that the different decisions of the Swedish courts are not logical and that the agreement between Finland and Sweden for the avoidance of double taxation has been incorrectly applied. In this respect, the Commission recalls that, according to its case-law, Article 6 para. 1 (Art. 6-1) does not apply to proceedings relating to tax assessments (see inter alia No. 9908/82, Dec. 4.5.83, D.R. 32, p. 266).

Consequently, insofar as the applicant complains of the proceedings concerning his taxation, this complaint, insofar as it has not been dealt with above under 2, 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

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint that he was obliged to pay church tax;

DECLARES INADMISSIBLE the remainder of the application.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)