AS TO THE ADMISSIBILITY OF

Application No. 25419/94
by Martin DENEV
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA

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 8 July 1994 by Martin DENEV against Sweden and registered on 13 October 1994 under file No. 25419/94;

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

Having regard to the observations submitted by the respondent Government on 20 September 1996 and the observations in reply submitted by the applicant on 2 October 1996;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swedish and Bulgarian citizen born in 1938, is a scientist. He resides at Velingrad, Bulgaria.

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

A. The particular circumstances of the case

On 28 March 1990 the applicant applied to the Patent and Registration Office (Patent- och registreringsverket) for the registration of a design of a target for the practice of, inter alia, golf, tennis and hockey shots.

On 15 January 1991 the Patent and Registration Office rejected the application. It found that the design was not distinct from what was widely known and that it thus did not meet the requirements under Section 2 of the Design Protection Act (Mönsterskyddslagen, 1970:485).

On 15 March 1991, within the applicable time-limit, the applicant appealed by telefax to the Court of Patent Appeals (Patentbesvärsrätten). By letter of 19 September, the court ordered the applicant to sign the appeal petition and return it by 18 October at the risk of his appeal being dismissed if he did not comply with the order. A certificate of service (delgivningskvitto) was enclosed, also to be signed and returned by the applicant as evidence of his having been served the order.

By decision of 13 December 1991, the Court of Patent Appeals dismissed the appeal without entering on the merits, finding that the applicant had failed to comply with the order.

On 10 February 1992 the applicant appealed against the decision of the Court of Patent Appeals to the Supreme Administrative Court (Regeringsrätten). He submitted a receipt from the post office in Semmering, Austria dated 24 September 1991 showing that he had sent a registered letter to the Court of Patent Appeals that day and a declaration by the post office of 6 February 1992 that the letter had been delivered to the court on 26 September 1991. He claimed that the registered letter contained the signed appeal petition and that he thus had complied with the court's order.

On 10 January 1994 the Supreme Administrative Court refused the applicant leave to appeal.

B. Relevant domestic law

Provisions on the protection of designs are found in the Design Protection Act.

The person who has created a design may obtain, through registration by the Patent and Registration Office, an exclusive right to exploit the design (Sections 1 and 9 of the Act). Certain conditions apply to the registration, inter alia that the design has to differ substantially from what is already known (Section 2).

A registration of a design is valid for a period of five years from the date of the filing of the application for registration and may, upon application, be renewed for two further periods of five years (Section 24).

A decision by the Patent and Registration Office may be appealed against to the Court of Patent Appeals and a decision by that court may, subject to leave to appeal, be appealed against to the Supreme Administrative Court (Section 22).

The proceedings before the Court of Patent Appeals are regulated by the Act on the Court of Patent Appeals (Lag om patentbesvärsrätten, 1977:729). Sections 2 and 4 of that Act stipulate that the court shall be composed of three members with either legal or technical competence. In design protection cases, at least two members must be legally qualified.

In some respects, the Act on the Court of Patent Appeals refers to provisions of the Administrative Procedure Act (Förvaltningsprocesslagen, 1971:291). Sections 3, 5 and 44 of the latter act are thus made applicable to cases before the Court of Patent Appeals. Section 3 provides, inter alia, that an appeal petition shall be signed by the appellant or his representative. Under Section 44, a telegram or any other unsigned message shall be confirmed by the sender with his signature if so requested by the court. According to Section 5, the court shall order the appellant, at the risk of his appeal being dismissed, to remedy a deficiency of the appeal petition if the petition is incomplete to the extent that it cannot be considered on the merits. The same applies to petitions which do not meet the

requirements of Section 3.

Section 47 of the Design Protection Act provides that decisions of the Court of Patent Appeals may be appealed against to the Supreme Administrative Court. This remedy, which is subject to leave to appeal being granted, is regulated in Sections 35-37 of the Administrative Procedure Act. Section 36 reads as follows:

(Translation)

> "Leave to appeal is granted,
> 1. if it is of importance for the direction of the application of the law that the case is examined by the Supreme Administrative Court or
> 2. if there are special reasons for such an examination, for example that grounds to reopen the case exist or that the outcome of the case in [the Court of Patent Appeals] depends on gross oversight or gross error.
> ..."

COMPLAINTS

1. The applicant contends that he has been denied a determination of his civil rights by an independent tribunal in violation of Article 6 para. 1 of the Convention, as the Court of Patent Appeals failed to examine his case on the merits and as the Supreme Administrative Court refused him leave to appeal.

2. He further claims that his case was not determined within a reasonable time as required by Article 6 para. 1 of the Convention.

3. Also under Article 6 para. 1 of the Convention, he complains of the failure of the Supreme Administrative Court to state reasons for its decision of 10 January 1994.4. Moreover, he complains of a violation of Article 1 of Protocol No. 1 to the Convention. He argues that the courts destroyed the signed appeal petition and that their decisions were unfair and constituted a de facto expropriation of his right to the design in question.

5. Finally, he claims that the alleged violations are results of discrimination on account of his being an immigrant. In this respect, he invokes Article 14 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 8 July 1994 and registered on 13 October 1994.

On 17 January 1996 the Commission (First Chamber) decided to communicate the application to the respondent Government, pursuant to Rule 48 para. 2 (b) of the Rules of Procedure. The Government were requested to deal with the questions whether the applicant's application for the registration of a design concerned the determination of a "civil right" within the meaning of Article 6 para. 1 of the Convention and, if so, whether the applicant had access to a court for that determination and whether the proceedings in the case were concluded within a reasonable time.

The Government's written observations were submitted on 2 April 1996 after an extension of the time-limit fixed for that purpose. The applicant replied on 10 June 1996.

THE LAW

1. The applicant contends that he has been denied a determination of his civil rights by an independent tribunal in violation of

Article 6 para. 1 (Art. 6-1) of the Convention, as the Court of Patent Appeals failed to examine his case on the merits and as the Supreme Administrative Court refused him leave to appeal.

Article 6 para. 1 (Art. 6-1) reads, in relevant parts, as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal ..."

The respondent Government first call into question whether proceedings determining, as in the present case, whether the conditions for the registration of a design are fulfilled actually concern a "civil right" and thus fall within the ambit of Article 6 para. 1 (Art. 6-1). They contend that it is the decision to register a design that confers an exclusive right to exploit the design and that, before registration, there is no right protected by the national judicial system. The Government further state that the decision by the Patent and Registration Office not to confer a design right on the applicant did not affect his economic situation, as he was not deprived of any material wealth. Moreover, no question of alleged infringements of recognised rights arose.

Should the Commission find that Article 6 para. 1 (Art. 6-1) applies, the Government submit that the present complaint is, in any event, manifestly ill-founded. They argue that the applicant had access to a court and indeed availed himself of the possibility to institute court proceedings against the decision of the Patent and Registration Office. However, he failed to fulfil the requirements of Section 3 of the Administrative Procedure Act in that his appeal petition was not signed. When later instructed by the Court of Patent Appeals to confirm the appeal petition with his signature, such confirmation was not received according to the court's file record. As regards the registered letter sent by the applicant to the Court of Patent Appeals on 24 September 1991 and delivered to the court on 26 September, its contents can hardly be established with any certainty. However, on the latter date the court received from the applicant the certificate of service. It had been signed by the applicant on 24 September, i.e. the very day the registered letter was sent to the court.

The applicant submits that the right to a design is an intellectual property right similar to a patent and that it is, accordingly, a "civil right". He claims that, as it was not possible to reject his application for registration of his design on the merits, the courts destroyed the signed appeal petition in order to enable them to dismiss his case on formal grounds. In reply to the Government's statement that the Court of Patent Appeals only received the certificate of service, the applicant states that the signed appeal petition was sent by the same registered letter. Thus, it is not true that the registered letter only contained the certificate.

The Commission first finds that the dispute in the present case was decisive for the registration of the applicant's design and thus his exclusive right to exploit that design. This right, representing a financial value, was of a pecuniary nature. The legal protection of a design is, in this respect, comparable to that of a patent. The Commission therefore considers that the proceedings at issue involved a determination of "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1), which is thus applicable to the present case (cf. Eur. Court HR, British-American Tobacco Company Ltd. v. the Netherlands judgment of 20 November 1995, para. 67, and Comm. Report 19.5.94, paras. 51-52, Series A no. 331, pp. 23 and 33 respectively).

As to the present complaint, the Commission finds that the applicant had access to court, in particular the Court of Patent

Appeals and the Supreme Administrative Court, and that these courts met the requirements laid down in Article 6 para. 1 (Art. 6-1). It considers, in this connection, that the applicant's allegation that they were not independent has not been substantiated.

The question remains, however, whether, in view of the decision to dismiss his appeal, the applicant was given a fair hearing by the courts. In examining this question, the Commission must examine the proceedings as a whole. In so doing, the Commission recognises the need of regulating the procedure before national courts provided that such regulation is for the good administration of justice. In this respect, the Contracting States enjoy a certain margin of appreciation.

The Commission recalls that the applicant was ordered by the Court of Patent Appeals to sign and return his appeal petition before 18 October 1991 at the risk of his appeal being dismissed. On 13 December 1991 the appeal was indeed dismissed, as the court found that the applicant had not signed and returned the appeal petition.

It appears that, in ordering the applicant to sign his appeal petition, the Court of Patent Appeals requested him, in accordance with the relevant provisions of the Administrative Procedure Act, to confirm his identity and his intention to appeal against the decision of the Patent and Registration Office. The Commission finds that the order had a legitimate aim and thus served the good administration of justice. In so finding, the Commission attaches importance to the fact that the applicant was informed of the possible consequence should he fail to comply with the order.

The applicant alleges that he sent the signed appeal petition by registered letter which was received by the Court of Patent Appeals on 26 September 1991 and that he thus complied with the order. The contents of that letter are, however, a matter of dispute between the parties, the Government claiming that the court only received the certificate of service of the order. The Commission finds that it is not possible to establish which document or documents were included in the registered letter. It notes that only after the Government had submitted their observations did the applicant claim that the letter contained both the signed appeal petition and the certificate of service. The Commission finds, in these circumstances, that the evidence in the case does not show that the applicant complied with the order and that the court's finding of 13 December 1991 was erroneous.

Accordingly, the Commission cannot find that the decision to dismiss the applicant's appeal rendered the proceedings in the case unfair. The applicant's submissions in support of the present complaint thus fail to disclose any appearance of a violation 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.

2. The applicant further claims that his case was not determined within a reasonable time as required by Article 6 para. 1 (Art. 6-1) of the Convention. He considers that the period to be taken into account is the period between 28 March 1990, when he applied for the registration of the design, and 10 January 1994, when the Supreme Administrative Court refused him leave to appeal, i.e. a period of about three years and nine and a half months. He claims that the examination of an application for the registration of a design normally takes one month at each level. He further contends that, had his design eventually been registered, the protection afforded would have been practically useless given the fact that it would have been valid for five years from the date of the filing of his application.

The Government agree with the applicant with regard to the period

to be taken into account and admit that the proceedings in the case were not concluded within a reasonable time. The Government point to the fact that the registration of a design is valid for only five years and acknowledge that the issues involved were not complex and that certain delays in the proceedings may be attributed to the State.

The Commission considers, in the light of the criteria established by the case-law of the Convention organs on the question of "reasonable time", and having regard to all the information in its possession, that an examination of the merits of the complaint, including the question of the applicability of Article 6 (Art. 6) to the proceedings before the Supreme Administrative Court, is required.

3. Also under Article 6 para. 1 (Art. 6-1) of the Convention, the applicant complains of the failure of the Supreme Administrative Court to state reasons for its decision of 10 January 1994. The Commission recalls that this decision only concerned the question whether to accept the applicant's petition for leave to appeal to the court of last resort. It did not review the decision of the Court of Patent Appeals, nor did it deal with the merits of the applicant's application for a design registration.

The Commission accepts that under specific circumstances the absence of reasons in a court decision might raise an issue as to the fairness of the procedure which is guaranteed by Article 6 para. 1 (Art. 6-1) of the Convention. However, even assuming that this provision applies to the decision of the Supreme Administrative Court, the Commission considers that if the domestic law, as in the present case, subjects the acceptance of an appeal to a decision by the competent court whether it considers that the appeal raises important legal issues or there are other special reasons, as specified by the relevant legal provision, it may be sufficient for this court simply to accept or reject this petition (cf. No. 8769/79, Dec. 16.7.81, D.R. 25, p. 240).

Thus, in the circumstances of the case, the Commission cannot find that the absence of reasons in the Supreme Administrative Court's decision rendered the proceedings unfair. The applicant's submissions in this regard thus fail to disclose any appearance of a violation 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.

4. The applicant complains of a violation of Article 1 of Protocol No. 1 (P1-1) to the Convention. He argues that the courts destroyed the signed appeal petition and that their decisions were unfair and constituted a de facto expropriation of his right to the design in question.

Article 1 of Protocol No. 1 (P1-1) provides the following:

> "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 Commission considers that this complaint is in substance identical to that already examined and rejected in the context of

Article 6 para. 1 (Art. 6-1) of the Convention (see above under 1). Consequently, no separate issue arises under Article 1 of Protocol No. 1 (P1-1) in relation to the matters complained of (cf. the above-mentioned British-American Tobacco Company Ltd. v. the Netherlands judgment, Series A no. 331, p. 29, para. 91).

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

5. Finally, the applicant claims that the above alleged violations are results of discrimination on account of his being an immigrant. In this respect, he invokes Article 14 (Art. 14) of the Convention, which reads as follows:

> "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."

The Commission finds that the applicant has failed to substantiate the present complaint.

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

For these reasons, the Commission, unanimously,

DECLARES ADMISSIBLE, without prejudging the merits of the case, the applicant's complaint that his case was not determined within a reasonable time;

DECLARES INADMISSIBLE the remainder of the application.

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