AS TO THE ADMISSIBILITY OF

Application No. 31721/96
by Margit ERICSSON
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 21 May 1997, the following members being present:

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

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 26 February 1996 by Margit Ericsson against Sweden and registered on 4 June 1996 under file No. 31721/96;

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

Having deliberated;

Decides as follows:

THE FACTS

The applicant, a Swedish citizen born in 1929, resides in Västra Frölunda. Before the Commission she is represented by her lawyer, Ms. Ulla Jacobsson, Mölle.

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

On 26 October 1990 the applicant's father, E.O., was beaten to death in his flat in Lindome. Two persons, P.L. and L.L., were later arrested and charged. The estate of E.O., in which the applicant owned a share, claimed damages.

By judgment of 31 January 1991, the District Court (tingsrätten) of Mölndal sentenced P.L. to life imprisonment for murder, but acquitted L.L. of the charge of aiding and abetting murder. P.L. was ordered to pay damages to the estate of E.O. in the amount of 56,662 Swedish crowns (SEK).

P.L. appealed to the Court of Appeal (hovrätten) for Western Sweden. On 26 April 1991 the appellate court reversed the District Court's judgment. P.L. was accordingly acquitted and the estate's claim for damages rejected.

In January 1992 the applicant requested that the proceedings against P.L. and L.L. be reopened. She alleged that the public prosecutor had been negligent in formulating the charges against P.L. and L.L., which had prevented the courts from examining the case in full. She further claimed that there was new evidence in the case.

On 16 March 1995 the Court of Appeal rejected the applicant's request in so far as it concerned L.L. On 28 September 1995 the Supreme Court (Högsta domstolen) refused leave to appeal against this decision.

On 28 September 1995 the Supreme Court further refused to reopen the proceedings against P.L.

COMPLAINTS

The applicant claims, under Article 6 of the Convention, that she did not have a fair and impartial hearing in the criminal proceedings.

THE LAW

The applicant claims that she did not have a fair and impartial hearing in the criminal proceedings. She refers, inter alia, to the public prosecutor's alleged negligence and invokes Article 6 (Art. 6) of the Convention, the relevant parts of which read as follows:

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

The Commission recalls that the applicant, as party to the estate of her deceased father, claimed damages from P.L. and L.L. in the criminal proceedings. The Commission therefore considers that her "civil rights" were determined in these proceedings and that, thus, Article 6 para. 1 (Art. 6-1), per se, applies to her complaint.

The Commission is, however, not required to decide whether the facts alleged by the applicant disclose any appearance of a violation of the said Article as, under Article 26 (Art. 26) of the Convention, it "may only deal with the matter ... within a period of six months ...".

According to the established case-law of the Commission (cf., e.g., No. 10326/83, D.R. 35, p. 218), an application for reopening of proceedings cannot, as a general rule, be taken into account in the application of Article 26 (Art. 26). The Commission does not find any special circumstances in the present case which would justify a departure from that general rule.

Accordingly, the final judgments determining the estate's claims were the District Court's judgment of 31 January 1991 in so far as L.L. was concerned and the Court of Appeal's judgment of 26 April 1991 with regard to P.L. The present application was introduced on 26 February 1996, which is more than six months after these judgments.

It follows that the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber