AS TO THE ADMISSIBILITY OF

Application No. 29189/95
by Peter GEDIN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 27 November 1996, 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 25 September 1995 by Peter GEDIN against Sweden and registered on 9 November 1995 under file No. 29189/95;

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 1945, resides in Helsingborg. He is a self-employed lawyer.

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

In December 1993 the applicant submitted a value added tax (VAT) declaration for September and October 1993 to the tax authorities, indicating that the VAT received and the VAT paid during the period totalled 7,749 and 1,241 Swedish crowns (SEK) respectively. The VAT received was, under Section 42 of the Act on Value Added Tax (Lagen om mervärdeskatt, 1968:430), payable to the tax authorities on 5 December 1993. The applicant did not pay, however. Basing itself on the applicant's declaration, the tax authorities, on 7 February 1994, fixed the applicant's VAT debt at SEK 7,749. Under Sections 51 and 52 of the Act on Value Added Tax, the applicant may, within six years, appeal against this decision to the administrative courts. He has not done so, however.

On 20 April 1994, the debt still being outstanding, the tax authorities registered the applicant as being in arrears with his taxes. The register on taxes in arrears (restlängden) was sent to the

Enforcement Office (Kronofogdemyndigheten) in order to enforce the payment of the debt. The Office ordered the applicant to pay before 10 May. On 11 May the VAT paid by the applicant during the period in question - SEK 1,241 - was deducted from the VAT debt. On 30 May the applicant paid the remainder of the debt.

When the register on taxes in arrears arrives at the Enforcement Office the information is entered in an enforcement register (utsökningsregister). The information in the latter register is kept for three years and is normally available and accessible to anybody, i.a. credit information agencies. It is regulated by the Enforcement Register Act (Utsökningsregisterlagen, 1986:617).

In November 1994 the applicant applied for a mobile telephone subscription. The telephone company made an inquiry at a credit information agency and was informed of the registered VAT debt. The subscription was therefore refused.

On 7 December 1994 the applicant requested the Enforcement Office to delete the information on the VAT debt from the enforcement register. He claimed that the debt had been erroneously registered as he, at the time of the registration, had a larger counter-claim on the tax authorities consisting of surplus payments of preliminary income tax for 1993. He had allegedly been told by his accountant that the VAT debt would be set off against this counter-claim. On 31 May 1994 the tax authorities had decided to reimburse the applicant for surplus payments totalling SEK 11,599. The amount had been paid to the applicant in June 1994.

By decision of 28 December 1994, the Enforcement Office refused to delete the information on the VAT debt. The Office noted that the debt had been registered due to the applicant's failure to pay in time.

The applicant appealed to the District Court (tingsrätten) of Stockholm in accordance with the directions given by the Enforcement Office. In an opinion submitted to the Court, the National Tax Board (Riksskatteverket) maintained that, according to the applicable legal provisions, appeals against decisions by the Enforcement Office should be examined by the Board.

On 1 March 1995 the District Court, agreeing with the opinion of the National Tax Board, dismissed the applicant's appeal.

On 22 June 1995 the National Tax Board rejected the applicant's appeal against the Enforcement Office's decision. The Board noted that the VAT paid by the applicant during the period in question had already been deducted and that there was no legal basis for further set-offs. Thus, the debt had been correctly entered in the enforcement register. The Board's decision was final.

COMPLAINTS

1. The applicant claims that he has been subjected to "economic slander", as the information originally registered by the tax authorities and eventually made available to credit information agencies was false. He does not invoke any Articles of the Convention in this respect.

2. Under Articles 6 and 13 of the Convention, the applicant further complains of a lack of access to court. He states that he wished to bring before a court the question whether he had a valid counter-claim on the tax authorities which would set off the VAT debt.

THE LAW

1. The applicant claims that he has been subjected to "economic slander", as the information originally registered by the tax

authorities and eventually made available to credit information agencies was false. He maintains that, by the registration of the VAT debt, the tax authorities have deemed him not creditworthy, although he was not insolvent. In any case, it is unreasonable that the debt is registered for three years. The registration may have many adverse effects for the applicant, as is shown by the telephone company's refusal to give him a telephone subscription. The applicant does not invoke any Articles of the Convention in this respect.

The Commission considers that this complaint is to be examined under Article 8 (Art. 8) of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

The Commission first considers that the registration of the applicant's VAT debt in the enforcement register available, inter alia, to credit information agencies can as such be regarded as an interference with the applicant's right to respect for his private life as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention.

It must therefore be examined whether this interference was justified under para. 2 of that provision. In this respect, the Commission finds that it was in accordance with the law, in particular the Enforcement Register Act, and had legitimate aims, namely the economic well-being of the country and the protection of the rights of others. The Commission further considers that access to information of the kind registered in the applicant's case is of great importance in modern economic life, not least to banks and other credit institutions. Having regard to the margin of appreciation left to the Swedish authorities, the Commission therefore considers that the registration in question can reasonably be regarded as "necessary in a democratic society" within the meaning of Article 8 para. 2 (Art. 8-2) 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 complains of a lack of access to court. He states that he wished to bring before a court the question whether he had a valid counter-claim on the tax authorities which would set off the VAT debt. He invokes Articles 6 and 13 (Art. 6, 13) of the Convention.

Article 6 (Art. 6) reads, in so far as relevant, as follows:

> "1. In the determination of his civil rights ..., everyone is entitled to a ... hearing ... by [a] ... tribunal ..."

Article 13 (Art. 13) provides the following:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission notes that when the applicant requested the

Enforcement Office and, on appeal, the National Tax Board, to delete the information on the VAT debt from the enforcement register, maintaining that the registration was erroneous, he effectively claimed that the debt should have been set off by his larger counter-claim for surplus payments of preliminary income tax. The issues raised by this claim thus concerned the assessment of taxes.

The Commission recalls its established case-law according to which Article 6 (Art. 6) is not applicable to proceedings regarding taxation (cf., e.g., No. 11189/84, Dec. 11.12.86, D.R. 50 p. 121, and No. 13013/87, Dec. 14.12.88, D.R. 58 p. 163).

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

As regards Article 13 (Art. 13) of the Convention, the Commission recalls that it has been interpreted by the European Court of Human Rights as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (cf., e.g., Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52).

Having regard to its findings with respect to the separate complaints submitted, the Commission considers that the applicant does not have an "arguable claim" of a violation 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.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber