AS TO THE ADMISSIBILITY OF

Application No. 26604/95
by Odd F. LINDBERG
against Norway

The European Commission of Human Rights (Second Chamber) sitting in private on 26 February 1997, the following members being present:

Mr. J.-C. GEUS, Acting President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
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 26 June 1994 by Odd F. LINDBERG against Norway and registered on 1 March 1995 under file No. 26604/95;

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 is a Norwegian citizen, born in 1945. He is a journalist and freelance photographer. He submits that he is at present in hiding in Sweden. In the proceedings before the Commission he is represented by Mr Percy Bratt and Mr Jan Södergren, lawyers practising in Stockholm.

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

In his capacity as Sealing Inspector appointed by the Ministry of Fisheries the applicant was on board M/S Harmoni, a seal-hunting vessel, during the seal-hunting seasons 1987 and 1988. He subsequently wrote a report dated 30 June 1988 and later appeared in TV programmes on Norwegian and Swedish television where he spoke about the events. He also produced a film on the subject.

As a result, 19 members of M/S Harmoni's crew summoned the applicant to appear in court charged with defamation. They also wanted a prohibition on the publication of the report of 30 June 1988 as well as the film. Sarpsborg City Court (byrett) pronounced judgment on 25 August 1990 and as a consequence, several statements were declared

null and void and deleted from the report and the film. The applicant was further requested to pay NOK 13,000 in compensation to each member of M/S Harmoni's crew and NOK 150,000 in costs. Leave to appeal was rejected by the Appeals Selection Committee of the Supreme Court (Høyesteretts Kjæremålsutvalg) on 16 May 1991.

COMPLAINTS

The applicant complains of a violation of his right to freedom of expression and invokes Article 10 of the Convention.

By letter of 2 January 1995 the applicant furthermore alleged that he did not have a fair trial by an independent and impartial tribunal and that he was not presumed innocent as required by Article 6 paras. 1 and 2 of the Convention. He also maintained in the letter that his case disclosed a violation of Article 13 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The complaint concerning Article 10 of the Convention was introduced by letter of 15 November 1991 in which the applicant briefly described the facts and referred to Article 10 of the Convention. The letter concluded as follows:

> "For practical reasons I am enclosing a copy of the front page and the conclusion of the [Sarpsborg byrett] judgment, and a copy of the Supreme Court decision which turned down my appeal. The Supreme Court decision was of the 16th May 1991, and came to my knowledge some days later.
>
> I will shortly send a formal argument in support of my application against Norway.
>
> I am presently taking legal advice on this matter.
>
> Please acknowledge [receipt] of this letter." On 17 January 1992 the Commission's Secretariat acknowledged receipt of the above letter as requested and enclosed a copy of the Convention and a notice to applicants containing information as to how to submit an application to the Commission.

By letter of 26 June 1994 Mr Percy Bratt introduced himself as a representative of the applicant and requested "information concerning the status of the above-mentioned matter".

By letter of 7 July 1994 Mr Bratt was informed that since the applicant had not pursued the application since January 1992 no further action had been taken.

By letter of 2 January 1995 the applicant's representatives submitted a completed application alleging breaches of Articles 6, 10 and 13 of the Convention.

By letter of 21 February 1995 the applicant submitted the following explanation for the delay in pursuing the application.

> "The public opinion in Norway became very harsh to members of the Lindberg family, which was heightened by the authorities insisting upon Mr Lindberg being a liar (the report of the Seal Commission - although framed in an official jargon - was not in the least devastating). He became 'a people's enemy'.
>
> His family was already drained of money from the legal proceedings. His wife was fired from her job without

reasonable grounds. His children were harassed in school. He could not pay the legal fees requested by his Norwegian lawyer in order to complete the application. He subsequently had to move out of the country. Further he did not receive any royalty payments from the producers of the programs which were sent before the prohibition of publication.

As apparent from what is mentioned above he still lives in Sweden and his living conditions are still very tight. He did not have the possibility to benefit from his efforts in the West Ice. Recently his book written about the sealhunt was withdrawn by his Swedish publisher - Norstedts Förlag - since this company is sued for damage by the Norwegian Sealhunters, due to some thirty copies of the book was sold in Norway. This case - among others - are pending in Norway. Some judgments are already delivered. It seems to be a never ending story.

Added to the above, while residing in Sweden there was a burglary in Mr Lindberg's house in Norway, where several documents were taken. This has not facilitated neither for him, nor his lawyers, in completing the application.

It also seems impossible to obtain any documents or evidence of any value from Norwegian authorities. This is apparent not in the least from the fruitless efforts in trying to obtain inter alia the tapes from the hearing of the former sealhunting inspector Eva Munk-Madsen. In all this more than sufficiently amounts to due causes for the delay - not in the least since the Government does not play an insignificant part in causing Mr Lindberg the dilemmas."

The application was registered on 1 March 1995.

THE LAW

The applicant complains of an unjustified interference with his right to freedom of expression and alleges that he did not have a fair trial. He invokes Articles 6, 10 and 13 (Art. 6, 10, 13) of the Convention.

Pursuant to Article 26 (Art. 26) of the Convention, the Commission has first considered the question of the date of introduction of the present application. In this respect the Commission recalls that the applicant's first communication to the Commission was dated 15 November 1991 in which he announced his intention to complete the application in due course. However, he did not resume the correspondence with the Commission until 26 June 1994.

In accordance with its established practice, the Commission considers the date of introduction of an application to be the date of the first letter indicating an intention to lodge an application and giving some indication of the nature of the complaint. However, where a substantial interval follows before an applicant submits further information as to his proposed application, the Commission examines the particular circumstances of the case in order to decide what date shall be regarded as the date of introduction and from which to calculate the running of the six month period set out in Article 26 (Art. 26) of the Convention (see No. 4429/70, Dec. 1.2.71, Collection 37, p. 109).

The Commission finds that one of the purposes of the six months rule is to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time.

There is a parallel between the aim pursued in Article 26 and Article 6 para. 1 (Art. 26, 6-1) of the Convention in that both Articles should secure a determination of a case within a reasonable time. The express obligation mentioned in Article 26 (Art. 26) of the Convention, however, only relates to the lodging of an application but the Commission has in this respect so far been generous in accepting that the date of introduction was the submission of the first letter concerning the complaint without imposing any further restrictions.

However, it would be contrary to the spirit and the aim of the six month rule set out in Article 26 (Art. 26) of the Convention if, by any initial communication, an applicant could set into motion the proceedings under Article 25 (Art. 25) of the Convention and then remain inactive for an unexplained and unlimited length of time. The Commission has constantly rejected applications where an applicant submitted an application more than six months after the date of the final decision when there were no special circumstances suspending the running of this period. The Commission finds that it would be inconsistent with the aim and purpose of the six month rule to deviate from this rule in a situation where an application has been introduced under Article 25 (Art. 25) of the Convention within six months from the final decision but thereafter has not been pursued. Delays in pursuing the case are only acceptable in so far as they are based on reasons connected with the case (cf. e.g. No. 22507/93, Dec. 5.4.95, D.R. 81-A, p. 67). Such reasons may consist of the exhaustion of remedies which an applicant has reason to believe was necessary (see Nos. 9024/80 and 9317/81, Dec. 9/7/82, D.R. 28, p. 138). In such circumstances, however, the Commission finds that it follows from the purpose and aim of Article 26 (Art. 26) of the Convention that the application must be pursued by the applicant within a period of six months after the date of the final decision obtained (cf. No. 10626/83, Dec. 7.5.85, D.R. 42, p. 205).

In the present case the Commission recalls that approximately two years and seven months passed until the applicant, on 26 June 1994, resumed the correspondence with the Commission and an additional six months and one week passed before he submitted the completed application with supporting documents on 2 January 1995. The Commission does not find that the reasons which caused these delays, as submitted by the applicant, are of a kind which could have suspended the running of the six month period referred to in Article 26 (Art. 26) of the Convention.

Therefore, notwithstanding the applicant's initial submission of 15 November 1991 the Commission considers in the present case 26 June 1994 to be the date of introduction of the application and it follows that, having thus been introduced out of time, it 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	J.-C. GEUS
Secretary	Acting President
to the Second Chamber	of the Second Chamber