AS TO THE ADMISSIBILITY OF

Application No. 22506/93
by Erland LUNDGREN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 17 May 1995, the following members being present:

Mrs. G.H. THUNE, Acting President
MM. H. DANELIUS
G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

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 28 June 1993 by Erland LUNDGREN against Sweden and registered on 23 August 1993 under file No. 22506/93;

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 1938, resides at Backa, Sweden.

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

In July 1991, the applicant, at the time employed as a teacher at a vocational school in Sollefteå, Sweden, joined the teachers' trade union (Lärarnas riksförbund). As a member, the trade union's statute including the provisions mentioned below, adopted in 1988, became applicable to him.

I

Also in July 1991, the applicant brought proceedings against the County Council (Landstinget) of Västernorrland, the authority responsible for the above school, and the headmaster of the school. The applicant claimed that certain negotiations between representatives of the school and two trade unions had been conducted in an incorrect manner and that the minutes from these negotiations were faulty.

By judgments of 23 August and 11 December 1991, respectively, the District Court (Tingsrätten) of Sollefteå and the Labour Court (Arbetsdomstolen) rejected the applicant's claims, finding them manifestly ill-founded. It appears that the applicant's trade union refused to represent him in the Labour Court.

II

In May 1992, the applicant brought an action for damages against his trade union. He claimed that the union, as his representative in another dispute between him and his employer, had been negligent and thereby breached its statute, in particular Section 1 which stated, inter alia, that the union should look after the interests of its members and Section 5 which provided that a member was entitled to legal and other aid in matters within the union's field of activities.

By decision of 14 May 1992, the Labour Court dismissed the case, finding that it lacked jurisdiction.

On 24 June 1992 the District Court of Stockholm dismissed the case, referring to Section 10 of the trade union statute which stated that "disputes between the union and an individual member concerning a legal matter ... is submitted ... at the request of either party to settlement according to the procedure prescribed by [the Arbitration Act (Lagen om skiljemän, 1929:145)]". The Court considered that Section 10 barred the Court from examining the case. On 11 February 1993 the decision was upheld on appeal by the Svea Court of Appeal (Svea hovrätt). On 27 May 1993 the Supreme Court (Högsta domstolen) refused the applicant leave to appeal.

COMPLAINTS

1. The applicant claims that in the first set of proceedings he was denied access to court as a result of his trade union's refusal to represent him in the Labour Court. He invokes Article 6 of the Convention.

2. The applicant further claims, under Article 6 of the Convention, that in the second set of proceedings he was denied access to court by the courts' decision to dismiss his action for damages against the trade union.

THE LAW

1. The applicant claims that in the first set of proceedings he was denied access to court in violation of Article 6 (Art. 6) of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

The Commission is, however, not required to decide whether the Article invoked is applicable to this complaint or, if so, 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 ...". The Commission recalls that the Labour Court gave judgment in this case on 11 December 1991 and that the present application was introduced on 28 June 1993, which is more than six months after the judgment.

It follows that this part of the application has been introduced out of time and must be rejected under Articles 26 and 27 para. 3 (Art. 26, 27-3) of the Convention.

2. The applicant further claims, under Article 6 (Art. 6) of the Convention, that in the second set of proceedings he was denied access to court by the courts' decision to dismiss his action for damages against the trade union.

In regard to this complaint, the Commission first recalls that

the "right to a court" is not an absolute right but is subject to certain limitations. An individual may, for instance, waive his right to have his case dealt with by a tribunal. Waivers of this kind are frequent, notably in the shape of arbitration clauses in contracts. Waivers do not in principle offend against the Convention, provided that they are made without constraint (cf. Eur Court H.R., Deweer judgment of 27 February 1980, Series A no. 35, p. 25-26, para. 49).

In the present case, the applicant's action was dismissed due to the arbitration clause contained in Section 10 of the trade union statute. The statute applied to the applicant on account of his membership in the union. The provision in question had been adopted before the applicant joined the union and he could thus, at the time of becoming a member of the union, foresee that future disputes concerning legal matters between him and the union would be resolved through arbitration. It has not been alleged by the applicant nor does the case-file show that the arbitration clause was imposed on him by the union by improper means.

In view of the above, the Commission considers that the courts' decision to dismiss the applicant's action for damages against his trade union do not disclose any appearance of a violation of Article 6 (Art. 6) 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, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

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