AS TO THE ADMISSIBILITY OF

Application No. 28533/95
by Conny NORDLING
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 28 February 1996, the following members being present:

Mrs. G.H. THUNE, Acting President
MM. H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

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 22 May 1995 by Conny NORDLING against Sweden and registered on 15 September 1995 under file No. 28533/95;

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 telecommunications engineer born in 1948 and residing at Uppsala, is a Swedish citizen. Before the Commission he is represented by Mr. Mats El Kott, a lawyer practising at Östersund.

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

In 1980, the applicant was employed by the National Telecommunications Administration (Televerket). In 1992, the Administration commenced negotiations with the trade unions with a view to reducing the work-force. On 18 June 1992, as a result of these negotiations, the applicant was dismissed with ten months' notice. A number of other employees were also dismissed.

A dispute concerning the dismissals arose between the Administration and the applicant's trade union, the National Union of State Employees (Statsanställdas Förbund). The union claimed that the dismissal of 120 of its members, among them the applicant, violated the rules on priority under Section 22 of the Act on Security of Employment (Lagen om anställningsskydd, 1982:80) and a collective agreement applicable to the public sector. The dispute was settled when the Administration agreed to re-employ 35 persons. The applicant was not among these persons.

Subsequently, the applicant brought proceedings against the Administration. He claimed damages, maintaining, first, that he had been dismissed without objective grounds and, second, that the Administration had failed to comply with the obligation under Section 7 of the Act on Security of Employment (Lagen om anställningsskydd, 1982:80) to find alternative work for him. As the union, due to the settlement with the Administration, did not support his action, the case was first examined by the District Court (Tingsrätten) of Stockholm. Cases brought by a trade union on behalf of its members are exclusively determined by the Labour Court (Arbetsdomstolen).

The District Court, composed of three professional judges, held an oral hearing during which it heard the parties and several witnesses.

By judgment of 31 January 1994, the District Court rejected the applicant's claim. It found that the applicant had been dismissed due to lack of work and that there were, thus, objective grounds for his dismissal. It further considered that the Administration had not breached its obligation to find alternative work.

The applicant appealed to the Labour Court. In accordance with Chapter 3, in particular Section 6, subsection 2, of the Act on Litigation in Labour Disputes (Lagen om rättegången i arbetstvister, 1974:371), the Labour Court was composed of one legally trained and qualified member and two lay assessors. The president was an associate judge of appeal (hovrättsassessor). One assessor had been nominated by an employers' organisation, the Swedish Association of Local Authorities (Svenska Kommunförbundet). These two members had been appointed by the Government for a term of office of three years. They could not be removed from their posts during their term of office. The other assessor had been appointed by the Court, in accordance with Chapter 3, Section 4, subsection 3, to serve as a temporary substitute for this particular case. He was a former head of division at the Swedish Confederation of Trade Unions (Landsorganisationen), with which the National Union of State Employees was associated. Under Chapter 11, Section 2 of the Instrument of Government, all members of the Court were prohibited from taking instructions concerning their judicial duties from public authorities, including the Government and the Parliament.

The Labour Court held an oral hearing. At the hearing, the applicant complained that the participation of the two lay assessors violated Article 6 of the Convention, as the Court could not be considered independent and impartial. He claimed that the assessor nominated by the Swedish Association of Local Authorities represented the public employers and thus had interests corresponding to those of the opposite party. Referring to the settlement reached between the Administration and the trade union and the union's subsequent refusal to support his action, the applicant further challenged the impartiality of the assessor who had formerly been employed by the Swedish Confederation of Trade Unions. As regards the question of the independence of the Court, the applicant referred to the assessors' time-limited appointments. He further referred to the judgment of the European Court of Human Rights in the case of Langborger v. Sweden (Eur. Court H.R., Langborger judgment of 22 June 1989, Series A no. 155).

The Administration repudiated the applicant's complaints under Article 6. It noted that the Labour Court's composition was in accordance with the provisions of the Act on Litigation in Labour Disputes. It further claimed that the case at hand was different from the Langborger case, as the latter case concerned the composition of the Housing and Tenancy Court (Bostadsdomstolen) and as the members of the Labour Court had been appointed by organisations which were not parties to the dispute in question.

By decision of 11 November 1994, the Labour Court rejected the applicant's complaints regarding the composition of the Court.

By a final judgment of 30 November 1994, the Labour Court upheld the District Court's judgment.

COMPLAINT

The applicant claims that the Labour Court, when it examined his case, was not an independent and impartial tribunal as required by Article 6 para. 1 of the Convention.

THE LAW

The applicant claims that he was not heard by an independent and impartial tribunal as required by Article 6 para. 1 (Art. 6-1) of the Convention which, in so far as relevant, reads as follows:

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

The applicant refers to the participation in the Labour Court of lay assessors representing employers' and employees' interests and the time-limited appointments of the Court's members. He invokes the judgment of the European Court of Human Rights in the Langborger case.

In order to establish whether a specific body can be considered independent, regard must be had, inter alia, to the manner of appointment of its members and their term of office, to the existence of guarantees against outside pressures and to the question whether the body presents an appearance of independence. As to the question of impartiality, two tests must be made: a subjective test under which it is sought to establish the personal conviction of a given judge in a given case, and an objective test, aimed at ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (cf. above-mentioned Langborger judgment, p. 16, para. 32, and Eur. Court H.R., Holm judgment of 25 November 1993, Series A no. 279-A, p. 14, para. 30).

In the Langborger case, the Commission and the Court were seized with an issue of a similar nature regarding the Swedish Housing and Tenancy Court (Bostadsdomstolen) where the lay assessors had been nominated by the dominating unions on the housing and rent market and where the dispute before the Housing and Tenancy Court concerned the question whether a negotiation clause in the applicant's lease should be retained. The European Court of Human Rights stated, inter alia, as follows (Langborger judgment, p. 16, paras. 34-35):

> "34. Because of their specialised experience, the lay assessors, who sit on the Housing and Tenancy Court with professional judges, appear in principle to be extremely well qualified to participate in the adjudication of disputes between the landlords and tenants and the specific questions which may arise in such disputes. This does not, however, exclude the possibility that their independence and impartiality may be open to doubt in a particular case.
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> 35. In the present case there is no reason to doubt the personal impartiality of the lay assessors in the absence of any proof.
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> As regards their objective impartiality and the question whether they presented an appearance of independence, however, the Court notes that they had been nominated by, and had close links with, two associations which both had

an interest in the continued existence of the negotiation clause. As the applicant sought the deletion from the lease of this clause, he could legitimately fear that the lay assessors had a common interest contrary to his own and therefore that the balance of interests, inherent in the Housing and Tenancy Court's composition in other cases, was liable to be upset when the court came to decide his own claim.

The fact that the Housing and Tenancy Court also included two professional judges, whose independence and impartiality are not in question, makes no difference in this respect."

The Commission recalls that the president of the Labour Court and one of the lay assessors, like the members of the Housing and Tenancy Court in the Langborger case, had been appointed by the Government for a term of office of three years. They could not be removed from their posts during this period. Furthermore, all members of the Court were, under the Instrument of Government, protected from outside pressures. In these circumstances, the Commission finds no reason to doubt the independence of the Labour Court (cf. Langborger v. Sweden, Comm. Report 8.10.87, paras. 125-132, Eur. Court H.R., Series A no. 155, pp. 30-31).

As regards the question of impartiality, the applicant contests the participation of the lay assessors. He does not, however, call into question their personal impartiality. In the absence of any evidence to the contrary, the Commission finds no reason to doubt the personal impartiality of the lay assessors.

With respect to the objective impartiality of the lay assessors, the Commission considers that, in accordance with the principles developed in the Langborger case, the decisive issue is whether the balance of interests in the composition of the Labour Court was upset and, if so, whether any such lack of balance could make the Court not satisfy the requirements of impartiality in the determination of the particular dispute before the Court. This could be so either if the lay assessors had a common interest contrary to those of the applicant or if their interests, although not common, were such that they were nevertheless opposed to those of the applicant (cf. No. 12733/87, Stallarholmens Plåtslageri o Ventilation Handelsbolag and Others v. Sweden, Dec. 7.9.90, D.R. 66, p. 111).

In this respect, the Commission recalls that, in the Langborger case, the applicant had sought the deletion from his lease of a clause which had previously been agreed upon between organisations having close links with the organisations which had nominated the lay assessors sitting in that applicant's case. The dispute in that case had accordingly a clear link with the interests of the organisations. Consequently, both sides represented by the lay assessors could be said to have a common interest opposed to the applicant's claim.

In the present case, the dispute before the Labour Court was of a different nature. It concerned the question whether the applicant's employer, in dismissing the applicant, had breached the provisions of the Act on Security of Employment. The nature of this dispute was such that the lay assessors and the organisation which had nominated one of them could not objectively have had any other interest than to see to it that these provisions were correctly interpreted and applied. This interest could not be contrary to that of the applicant.

The Commission further notes that the applicant was a State employee while the lay assessor representing employers' interests had been nominated by the Swedish Association of Local Authorities. Moreover, at the time of the Labour Court's examination of the case, the lay assessor representing employees' interests no longer held a

position within the Swedish Confederation of Trade Unions.

In the light of the foregoing, the Commission considers that the applicant could not legitimately fear that the lay assessors had interests contrary to his own or that the balance of interests was upset to such an extent that they did not satisfy the requirements of impartiality.

It follows that 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)