AS TO THE ADMISSIBILITY OF

Application No. 17505/90
by Claes NYDAHL
against Sweden

The European Commission of Human Rights sitting in private on 11 January 1993, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 20 November 1990 by Claes NYDAHL against Sweden and registered on 29 November 1990 under file No. 17505/90;

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

Having regard to the observations submitted by the respondent Government on 29 April and 17 September 1992, and the observations submitted by the applicant on 21 August 1992;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Swedish citizen, born in 1946. By profession he is an editor and the secretary to a private local radio association (Östra Sörmlands Närradioförening) consisting of a number of different organisations. He resides at Vagnhärad. Before the Commission he is represented by Mr. Percy Bratt, a lawyer practising in Stockholm.

A. The particular facts of the case

I

In November 1989 the applicant applied for a licence to broadcast community radio (närradio) in his personal capacity in the area of

Vagnhärad. On 15 November 1989 the Community Broadcasting Commission (närradionämnden), hereinafter the CBC, refused the application on the grounds that according to Section 4 of the Community Radio Act (närradiolagen) a licence to broadcast community radio could only be granted to associations which fulfilled certain conditions set out in the Act and that, in the preparatory works to the Community Radio Act (Government Bill No. 1984/85:145, p. 20), it was expressly stated that individual persons could not be granted such a licence.

The applicant appealed against this decision to the Administrative Court of Appeal (kammarrätten) of Stockholm arguing that his basic right to freedom of expression as guaranteed by Chapter 2, Section 1, of the Instrument of Government (regeringsformen) had been violated and that Section 4 of the Community Radio Act could not, therefore, be applied against him. By judgment of 19 March 1990 the Administrative Court of Appeal found that the impugned provision of the Community Radio Act could not be considered to be in conflict with the Instrument of Government and it agreed with the assessment made by the CBC. The appeal was accordingly rejected.

On 7 June 1990 the Supreme Administrative Court (regeringsrätten) refused leave to appeal.

II

In 1986 a number of organisations obtained licences to broadcast community radio under the Community Radio Act. These organisations formed the association "Östra Sörmlands Närradioförening" and this association, under the name of "Radio Nova", obtained a broadcasting licence on 5 November 1986. The applicant was appointed secretary to Radio Nova and as programme supervisor he was responsible for Radio Nova's broadcasts in accordance with the Community Radio Act.

On 31 May 1991 the applicant, in his capacity as station chief and the person responsible for the activities of Östra Sörmlands Närradioförening, was charged with having broadcast information over the association's transmitter (Radio Nova) although all broadcasting licences obtained by the different member organisations of the association as well as the licence of the association itself had been withdrawn for non-compliance with the provisions of the Community Radio Act.

By judgment of 23 September 1991 the District Court (tingsrätten) of Nyköping, before which the applicant relied on his right to freedom of expression under Article 10 of the Convention, found the applicant guilty of the charge brought against him and sentenced him to pay fines totalling 2000 SEK. The applicant appealed against the judgment to the Svea Court of Appeal (Svea Hovrätt) which upheld the judgment on 1 April 1992. Leave to appeal to the Supreme Court (Högsta domstolen) was refused on 15 July 1992.

B. Relevant domestic law and practice

Constitutional legislation

Prior to 1 January 1992, i.e. during the period relevant to the present case, freedom of expression in radio and television was provided for primarily by the Instrument of Government and by ordinary legislation with particular regard to radio and television.

Chapter 2, Section 2, of the Instrument of Government, as it was in force at the material time, read in its relevant parts as follows:

(translation)

> "All citizens shall be guaranteed the following in their relations with the public administration:

1. freedom of expression: the freedom to communicate information and to express ideas, opinions and emotions, whether orally, in writing, in pictorial representations, or in any other way;

2. freedom of information: the freedom to obtain and receive information and otherwise acquaint oneself with the utterances of others;

..."

As of 1 January 1992, a new constitutional law entered into force, the Freedom of Expression Act (yttrandefrihetsgrundlagen). An amendment to Chapter 2, Section 2, of the Instrument of Government was made at the same time in that the following was added:

(translation)

"In the case of the freedom of the press and the corresponding freedom of expression with regard to radio, television and certain similar transmissions, films, videogrammes and other recordings of moving pictures and sound recordings, the provisions of the Freedom of the Press Act [tryckfrihetsförordningen] and the Freedom of Expression Act shall apply."

The rights and freedoms safeguarded in the Instrument of Government may only be restricted if certain criteria are fulfilled. These are found in Chapter 2, Section 12, which in its relevan provides:

(translation)

"The rights and freedoms referred to in Section 1, subsection 1 - 5, in Sections 6 and 8, and in Section 11, subsection 2, may be restricted by law to the extent provided for in Sections 13 - 16. After authorisation in law, they may be restricted by statutory order in the cases referred to in Chapter 8, Section 7, subsection 1, no. 7, and in Chapter 8, Section 10. Freedom of assembly and the freedom to demonstrate may similarly be restricted also in the cases referred to in Section 14, subsection 1, second sentence.

The restrictions referred to in the preceding paragraph may be imposed only to achieve a purpose acceptable in a democratic society. The restriction may never exceed what is necessary having regard to the purpose which occasioned it, nor may it be carried so far as to constitute a threat to the free formation of opinion as one of the foundations of democracy. No restriction may be imposed solely on grounds of political, religious, cultural or other such opinions."

As regards freedom of expression Chapter 2, Section 13, of the Instrument of Government furthermore provides:

(translation)

"Freedom of expression and freedom of information may be restricted having regard to the security of the Realm, the national supply, public safety and order, the integrity of the individual, the sanctity of private life, or the prevention and prosecution of crime. Freedom of expression may also be restricted in economic activities. Freedom of expression and freedom of information may otherwise be restricted only where particulary important reasons so

warrant.

In judging what restrictions may be made by virtue of the preceding paragraph particular regard shall be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters.

The issuing of rules and regulations which govern in detail a particular manner of disseminating or receiving information without regard to its content shall not be deemed to restrict freedom of expression or freedom of information."

According to Chapter 1, Section 1, of the Freedom of Expression Act which, as mentioned above, entered into force on 1 January 1992, all citizens are guaranteed the freedom publicly to express ideas, opinions and emotions and otherwise to impart information, on any subject, in radio, television and certain similar transmissions, films, videogrammes and other recordings of moving pictures and sound recordings. The purpose of freedom of expression according to the Act is to secure a free exchange of opinions, free and pluralistic information and free artistic creation. No restrictions on these freedoms other than those the Act allows for may be made.

As regards licensing of commercial radio the Freedom of Expression Act provides in Chapter 3, Section 2, that there may be provisions in law on licences and conditions for broadcasting. Furthermore, it states that what should be aimed at is that radio frequencies are utilised in a manner that will lead to the widest possible freedom of expression. In its last paragraph, there is a provision to the effect that there shall be possibilities for associations to receive permits to broadcast radio programmes locally to the extent permissible by available radio frequencies. According to Chapter 3, Section 3, of the Act, restrictions on broadcasting allowed for by Section 2 are to be subjected to the limitations prescribed in the Instrument of Government, Chapter 2, Section 12, subsection 2, and Section 13.

The Community Radio Act

The Community Radio Act of 10 June 1982 reads as follows:

(translation)

"Section 1. This Act contains provisions concerning the right of certain associations to transmit community radio. By community radio is meant limited-range broadcast transmissions of sound radio programmes.

In this Act, the terms broadcasting, radio transmitters and radio programmes shall be understood in the same way as in the Radio Act (1966:755).

Section 2. A Community Broadcasting Commission shall be appointed to review issues relating to community radio, and to exercise supervision over community radio activities.

The Chairman and Vice Chairman of the Commission shall be learned in law and experienced in judgment.

More detailed provisions concerning the Commission are to be published by the Government.

Section 3. Community radio may not be transmitted without the permission of the Community Broadcasting Commission.

Section 4. Permission to transmit community radio can be extended to associations that are legal persons, although not to other such persons than:

1. Local voluntary associations that conduct activities within the transmission area. Unless particular reasons suggest otherwise, permission may be extended only on condition that the activities in question have been conducted for at least one year prior to the date of application,

2. Local voluntary associations that have been formed in order to transmit programmes on community radio, that constitute part of an activity conducted within the transmission area by a national organisation. Permission may be granted on condition that the national organisation has conducted activities within the transmission area for at least one year prior to the date of application. If special grounds exist, permission may be granted also if the activity in question has not been conducted for at least one year,

3. Congregations within the Swedish (Lutheran) Church,

4. Compulsory associations of students at universities and colleges of higher education,

5. Associations of several licence-holders for joint purposes relating to community radio (community radio associations).

Section 5. Permission to transmit community radio is extended only after the association in question has stated who has been appointed programme supervisor in accordance with the Act (1982:460) concerning Liability for Community Radio.

Section 6. Community radio may only be transmitted via such radio transmitters as the Swedish Telecommunications Administration makes available.

Section 7. For each transmitter, the Community Broadcasting Commission shall decide what associations shall be permitted to transmit, and during which times transmissions may take place.

Section 8. Transmission time shall be distributed as far as possible in accordance with the wishes of the associations. If their wishes are incompatible, priority shall be given to the association judged to have the greatest interest in being permitted to transmit at a certain time.

All decisions on broadcasting times shall be valid until further notice, up to a maximum of one year.

Section 9. Sections 6 and 7 of the Radio Act(1966:755) do not apply to community radio.

Section 10. Commercial advertising shall not be transmitted by community radio.

A programme or item of a programme transmitted in community radio shall not be paid for by money or other goods made available to the association on condition that the programme or element of that programme is transmitted.

Section 11. The association's programme supply may not contain material that has not been produced entirely for its own activities, other than to a limited extent.

The programme supply of a community radio association may contain only:

1. information on programmes and transmission times, and other information relating to community radio activities in the area,

2. transmissions from events of common interest to licence-holders in the area,

3. information, to a limited extent, on local municipal activities, and

4. trial transmissions of programmes produced by associations without a licence to transmit, for a maximum of three months in each case.

Section 12. The Government, or such authority as the Government may nominate, shall publish regulations concerning charges in matters affecting community radio.

Section 13. Permission to transmit community radio may be revoked if the association

1. no longer fulfils the requirements laid down in Section 4,

2. is in breach of a decision concerning transmission times, and allows another party to use transmission time that has been assigned to the association in its place,

3. transmits a programme despite the fact that there exists neither a duly appointed programme supervisor, nor a substitute for a programme supervisor, in accordance with the Act (1982:460) concerning Liability for Community Radio, or despite the fact that no notice has been given of who has been appointed programme supervisor,

4. has transmitted a programme that has been found, in a judgment that has acquired legal force, to contain a breach of the rules regarding freedom of speech, and which constitutes a serious abuse of the freedom of speech in community radio,

5. is in breach of the provisions laid down in Sections 10 or 11,

6. fails to utilise its right to transmit for three consecutive months, or

7. fails to pay a charge relating to community radio within the prescribed time, if the association had been ordered to pay such charge on pain of loss of licence.

Before a judgment as referred to in subsection 1 no. 4 has acquired legal force, the Community Broadcasting Commission may temporarily rescind permission to transmit.

When a licence is revoked, the Commission may determine a period of at least one year within which the association cannot be granted a new licence.

Section 14. At the request of the community broadcasting authority, an association shall make available to it a recording as referred to in Section 8 of the Act (1982:460) concerning Liability for Community Radio.

If the association fails to comply with such a request, the authority may impose a fine.

Section 15. The decisions of the Community Broadcasting Commission regarding permission under Sections 4 and 13, or the distribution of transmission time under Sections 7 and 8, may be appealed against to the Administrative Court of Appeal; the said appeal to be lodged in the form of a grievance. Other decisions made under this Act are not subject to appeal.

Unless otherwise so prescribed, decisions made in accordance with this Act shall enter into force immediately."

It follows from the Act that community radio may not be transmitted without permission of the CBC, cf. Section 3, and that a licence may only be granted to associations which are legal entities, cf. Section 4.

Other legislation

A Bill regarding the establishment of a system of so-called private local radio (privat lokalradio), which may be commercially financed, has been submitted to Parliament. The new legislation will, if adopted by Parliament, enter into force in 1993. Under the new system, the community radio could also be commercially financed.

COMPLAINTS

The applicant complains of a violation of Article 10 of the Convention on the ground that he was not granted a community broadcasting licence. He submits that the scope and purpose of Section 4 of the Community Radio Act goes beyond what ought to be considered a justified interference with the freedom of expression under Article 10 of the Convention as interpreted by the European Court of Human Rights. He maintains that freedom of speech is, by its very nature, an individual right and that a regulation which means that an individual cannot exercise this right constitutes a violation of Article 10.

In his observations of 21 August 1992 the applicant also complains of a violation of Article 14 read in conjunction with Article 10 of the Convention, referring to the principle of equal treatment.

Finally, he invokes in his observations of 21 August 1992 Article 13 of the Convention complaining that the Swedish courts in the criminal proceedings brought against him convicted him only with reference to domestic law and without examining his case also under Article 10 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 20 November 1990 and registered on 29 November 1990.

On 10 February 1992 the Commission decided to bring the application to the notice of the respondent Government and to invite them to submit written observations on the admissibility and merits of

the application.

The Government submitted their observations on admissibility and merits on 29 April 1992. The applicant's observations in reply were submitted on 21 August 1992. Further observations were submitted by the Government on 17 September 1992.

THE LAW

1. The applicant complains of a violation of Article 10 (Art. 10) of the Convention which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The first question the Commission must examine is whether there has been an interference with the applicant's rights under Article 10 para. 1 (Art. 10-1) of the Convention.

The present case concerns the refusal by the Swedish authorities to grant a broadcasting licence to the applicant. It relates principally to the freedom enshrined in Article 10 para. 1 (Art. 10-1) "to ... impart information and ideas without interference by public authority".

However, according to the third sentence of Article 10 para. 1 (Art. 10-1) of the Convention, Article 10 (Art. 10) does "not prevent States from requiring the licensing of broadcasting ... enterprises". The third sentence refers to "broadcasting" rather than the reception of broadcasts. By envisaging a licensing system, the third sentence appears to limit the protection afforded by the rights in the first and second sentences of Article 10 para. 1 (Art. 10-1).

In its earlier case-law on Article 10 para. 1 (Art. 10-1), third sentence, the Commission found that there existed in many Convention States a system of monopoly enterprises for radio and television, and that Article 10 para. 1 (Art. 10-1), third sentence, could not be understood as excluding a broadcasting monopoly as such (see No. 3071/67, Dec. 7.2.68, Collection 26 p. 71; No. 6452/74, Dec. 12.3.76, D.R. 5 p. 43). Subsequently, the Commission found that if Article 10 para. 1 (Art. 10-1), third sentence, permitted a State to enact legislation requiring the licensing of broadcasting enterprises, the State could also enact legislation ensuring compliance with the licence in question (see No. 10799/84, Dec. 17.5.84, D.R. 37 p. 236). On the other hand, the Commission found that, while broadcasting enterprises have no guarantee of any right to a licence under the Convention, the rejection by a State of a licence application must not be manifestly arbitrary or discriminatory (see No. 10746/84, Dec. 16.10.86, D.R. 49 p. 126).

The European Court of Human Rights was confronted with the interpretation of Article 10 para. 1 (Art. 10-1), third sentence, in the Groppera case, where it held:

"... the third sentence of Article 10 para. 1 (Art. 10-1), insofar as it amounts to an exception to the principle set forth in the first and second sentences, is of limited scope ... (T)he purpose of the third sentence of Article 10 para. 1 (Art. 10-1) of the Convention is to make it clear that States are permitted to control by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects. It does not, however, provide that licensing measures shall not otherwise be subject to the requirements of paragraph 2, for that would lead to a result contrary to the object and purpose of Article 10 (Art. 10) taken as a whole" (see Eur. Court H.R., Groppera Radio AG and Others judgment of 28 March 1990, Series A no. 173, p. 24, para. 61; see also Autronic AG judgment of 22 May 1990, Series A no. 178, p. 24, para. 52).

Thus, the third sentence of Article 10 para. 1 (Art. 10-1) is made subject to the requirements under Article 10 para. 2 (Art. 10-2) for the justification of any interference with the right to freedom of expression. Therefore, the Commission does not consider that the licensing requirement limits in principle the rights guaranteed by the first and second sentences of Article 10 para. 1 (Art. 10-1). The freedom to impart information also through duly licensed broadcasting is, for these reasons, in principle guaranteed by Article 10 (Art. 10) of the Convention.

In the present case the applicant cannot as a private individual obtain under Swedish law a licence to broadcast community radio. It follows that there has been an interference with the applicant's rights under Article 10 para. 1 (Art. 10-1) of the Convention. Nevertheless Article 10, para. 1 (Art. 10-1), third sentence, remains relevant in that States are permitted to control by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects, for instance in the determination and allocation of frequencies, without interfering with the rights under Article 10 para. 1 (Art. 10-1) of the Convention (see the Groppera judgment, loc. cit., p. 24, para. 61).

In the present case, it was not on technical grounds that the applicant was refused a broadcasting licence. It follows that the third sentence of Article 10 para. 1 (Art. 10-1), in the interpretation given to it by the European Court of Human Rights, does not cover the interference with the applicant's rights under Article 10 para. 1 (Art. 10-1) to freedom of expression, in particular the freedom to impart information. The Commission must therefore examine whether the interference satisfied the conditions of Article 10 para. 2 (Art. 10-2) of the Convention.

It is not in dispute between the parties that the interference was prescribed by law. It follows from the Community Radio Act that the applicant cannot be granted a licence to broadcast community radio. The Commission is furthermore satisfied that this legislation is sufficiently clear and precise to consider the interference to be "prescribed by law" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

The next question to be examined under Article 10 para. 2 (Art. 10-2) of the Convention is whether the interference had an aim which is legitimate.

In the Government's submissions, which the applicant contests, the legislation concerned aims at preserving the purpose of community radio, i.e. to enable local associations to broadcast, within their communities, messages concerning their activities. Furthermore, the Government refer to the problems arising if, in the technical sense,

a completely free use of radio frequencies would be allowed. Accordingly, the Government rely on the prevention of disorder and the protection of the rights of others as legitimate aims.

The Commission finds that generally speaking broadcasting must be organised in such a manner as to prevent disorder. This is confirmed by the reference to licensing in the third sentence of Article 10, para. 1 (Art. 10-2) of the Convention which concerns the technical aspects of broadcasting. This regulation in the technical sense must be understood as leaving the Contracting States with a possibility of creating a licensing structure which would avoid harmful consequences and secure an orderly functioning of broadcasting in areas where it would be technically impossible to allow an unlimited access to the available radio frequencies. Having regard to this, the Commission is satisfied that, within these technical limitations, the licensing system as adopted by Sweden served the purpose of protecting the rights of others which is one of the legitimate aims envisaged by Article 10 para. 2 (Art. 10-2) of the Convention.

What remains is accordingly to examine whether the interference was "necessary in a democratic society" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

The Government submit in summary that, when examining the necessity test, the overall purpose of Swedish community radio should be borne in mind and that it ought to be justified, also for technical reasons, to limit licensing in the manner employed by the Community Radio Act. Furthermore, the Government submit that the applicant could resort to other means if he wanted to voice his opinion publicly. They also stress that the refusal to grant the applicant an individual community radio broadcasting licence did not amount to any form of censorship and, having regard to the fact that the applicant's freedom of expression was not seriously hampered, they consider that no excessive burden was placed on him. Therefore the Government conclude, having regard to the States' margin of appreciation, that the interference was "necessary" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention.

The applicant submits in summary that the prohibition in question amounted to his total exclusion from a community radio broadcasting licence, something which he considers to be disproportionate to any legitimate aim. Furthermore, he submits that, having regard to the state of technology today, there is no compelling reason for treating electronic media in substance differently from print media. With reference to the European Convention on Transfrontier Television the applicant also considers that a blanket prohibition on radio broadcasting by private individuals is inconsistent with the tenor of this Convention which emphasises the principles of the free flow of information and ideas. Finally, the applicant maintains that the Government have failed to demonstrate any pressing social need or other compelling reasons why the aim of fairly distributing scarce frequency resources could not be pursued by a system of licensing which permitted private individuals to apply for a licence. Thus the applicant considers that a necessity for the interference has not been convincingly established.

The Commission recalls that the term "necessary in a democratic society" within the meaning of Article 10 para. 2 (Art. 10-2) of the Convention implies that the interference must correspond to a "pressing social need" and be proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" the Convention organs must also take into account that a margin of appreciation is left to the Contracting States (see Eur. Court H.R., Autronic AG judgment, ibid., p. 26, et seq., para. 61; Markt Intern Verlag GmbH and Klaus Beermann judgment of 20 November 1989, Series A no. 165, p. 19 et seq., para. 33).

In the Commission's opinion, this margin of appreciation is of particular relevance in an area as complex and fluctuating as that of radio or television broadcasting. Article 10 (Art. 10) of the Convention itself confirms the need for a broad margin of appreciation in that it envisages in the third sentence of para. 1 a licensing system for broadcasting enterprises.

The Commission is aware of the different solutions adopted in the member States of the Council of Europe with regard to broadcasting in general. These solutions include systems whereby private broadcasting licences are granted within a system of public broadcasting, for instance by limiting them to special times or features. The possibility to obtain a licence may also vary as to local, regional or nationwide broadcasting. The present case concerns a system of private broadcasting at a local level and it is clear, therefore, that the system adopted by Sweden in general makes allowance for private initiative which would enable private licence holders to enjoy their freedom to impart information within the meaning of Article 10 (Art. 10) of the Convention.

It is true that in the present case the applicant could not, in his capacity as a private individual, obtain a licence to broadcast community radio. This did not mean, however, that he was completely barred from taking advantage of the Swedish community radio system. The present case exemplifies this. The applicant was station chief of an association consisting of a number of organisations which were all granted community radio broadcasting licences under the applicable legislation, and it is undisputed that the applicant was the responsible manager of the association's broadcasting. Thus, the Commission does not find that the Swedish Community Radio Act placed an excessive burden on the applicant to the extent that he wanted to impart information through this medium. In these circumstances it is not necessary to examine in further detail the overall purpose of establishing and maintaining a community radio system as the one at issue in this case. It suffices to recall that in Sweden it is possible to obtain licences for community radio broadcasting and that the applicant, within this system, had the possibility of taking advantage thereof. Furthermore, the Commission does not find that Sweden transgressed the margin of appreciation left to it under the Convention when obliging private individuals to comply with the Community Radio Act in order to allow them to impart information by way of community radio broadcasts.

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. In his observations of 21 August 1992 the applicant also complains of a violation of Article 14 read in conjunction with Article 10 (Art. 14+10) of the Convention.

The Commission considers that his complaint of discrimination under Article 14 (Art. 14) of the Convention can be distinguished from the complaint dealt with above. However, leaving aside the question whether the applicant raised this complaint, either in form or in substance, in the domestic proceedings, the Commission is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this provision, as Article 26 (Art. 26) of the Convention provides that the Commission "may only deal with the matter ... within a period of six months from the date on which the final decision was taken".

In the present case the decision of the Supreme Administrative Court, which was the final decision regarding the subject of this particular complaint, was given on 7 June 1990, whereas the complaint was submitted to the Commission on 21 August 1992, that is, more than six months after the date of this decision. Furthermore, an examination

of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of that period.

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

3. Finally the applicant invokes, in his observations of 21 August 1992, Article 13 (Art. 13) of the Convention complaining that the Swedish courts, in the criminal proceedings brought against him, convicted him on the basis of domestic law only and without examining his case from the point of view of Article 10 (Art. 10) of the Convention. He did not therefore, have an effective remedy at his disposal.

The Commission notes that the facts relating to this complaint did not constitute part of the applicant's application concerning the refusal of a broadcasting licence, but that the Government in their observations of 29 April 1992 referred to the circumstances surrounding the applicant's conviction and sentence. Furthermore, the Commission recalls that the final decision in respect of the criminal proceedings was the Supreme Court's refusal to grant leave to appeal of 15 July 1992 for which reason the Commission cannot reject this part of the case with reference to Article 26 (Art. 26) of the Convention as suggested by the Government.

However, the Commission recalls that neither Article 13 (Art. 13) nor the Convention in general prescribes any particular manner in which the Contracting States should ensure within their internal law the effective implementation of the provisions of the Convention (cf. Eur. Court H.R., Swedish Engine Drivers' Union judgment of 6 February 1976, Series A no. 20, p. 18, para. 50). Furthermore the Court has stated the following:

> "By substituting the words `shall secure' for the words `undertake to secure' in the text of Article 1 (Art. 1), the drafters of the Convention also intended to make it clear that the rights and freedoms set out in Section I would be directly secured to anyone within the jurisdiction of the Contracting States. That intention finds a particularly faithful reflection in those instances where the Convention has been incorporated into domestic law" (Eur. Court. H.R., Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 91, para. 239).

It follows that Sweden is not obliged to transform the text of the Convention into Swedish law.

Furthermore, there is no indication which would allow the Commission to conclude that the national courts, in the criminal proceedings instituted against the applicant, did not consider the applicant's case also from the point of view of freedom of expression. In these circumstances the Commission finds no appearance of a violation of Article 13 (Art. 13) 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.

Secretary to the Commission President of the Commission

(H.C. Krüger) (C.A. Nørgaard)