AS TO THE ADMISSIBILITY OF

Application No. 28064/95
by Henry Krog PEDERSEN
against Denmark

The European Commission of Human Rights (Second Chamber) sitting in private on 10 September 1997, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
E. BIELIUNAS
E.A. ALKEMA
A. ARABADJIEV

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 19 March 1995 by Henry Krog Pedersen against Denmark and registered on 31 July 1995 under file No. 28064/95;

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 Danish citizen born in 1918. He resides in Kollund, Denmark.

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

I

On 5 October 1988 and subsequently on 22 November 1988 the applicant instituted civil defamation proceedings in the Aabenraa City Court (byretten) against several journalists and the chief editors of several newspapers as well as a private association. The applicant maintained that the defendants had, on various occasions, referred to him as a Nazi or otherwise made statements which connected him with Nazi activities or propaganda.

As the journalists and newspapers as well as the association in question resided, or had their business addresses, in different parts of the country the Aabenraa City Court decided on 21 March 1989 to refer the case to the competent city courts, i.e. to the city courts of Gråsten, Sæby, Copenhagen and Randers. A part of the case remained, however, in Aabenraa. As far as the proceedings in the Aabenraa City

Court are concerned no further information has been submitted.

II

The case against the private association was examined by the Gråsten City Court. By decision of 2 April 1991 the Court dismissed the case as the applicant had failed to comply with an order to present his case through a lawyer. On 25 October 1995 the applicant wrote to the Ministry of Justice and requested that the case be re-opened since the City Court judge had, in his opinion, acted unlawfully. On 14 November 1995 the applicant was informed that the Ministry had no competence to intervene in the matter.

III

It appears that the City Court of Sæby pronounced judgment in the case, as referred to it, on 3 September 1990. Whereas the outcome of the case remains unknown to the Commission it furthermore appears that neither the applicant nor the defendant appealed against the judgment.

IV

As far as the proceedings in the Copenhagen City Court are concerned it appears that several court sessions took place. Eventually the Court dismissed the case on 21 June 1994 since the applicant had failed to comply with an order to present his case through a lawyer.

V

As far as the proceedings in the Randers City Court are concerned it appears that, following the decision of the Aabenraa City Court of 21 March 1989, they commenced on 13 July 1989. These proceedings involved a newspaper and its chief editor as well as a private individual. Judgment was pronounced in June 1996 and the applicant appealed, on 16 July 1996, against the judgment to the High Court of Western Denmark (Vestre Landsret). On 14 January 1997 the High Court fixed 27 October 1997 as the date of the hearing. Accordingly, the case is still pending.

COMPLAINTS

The applicant complains, under Article 6 of the Convention, that he has not had a fair hearing within a reasonable time in the above proceedings.

He also complains of discrimination as he has allegedly been denied legal aid due to his political views. He invokes in this respect Article 14 of the Convention.

THE LAW

1. The applicant complains that he did not have a fair hearing within a reasonable time in respect of a number of court proceedings in Denmark. He invokes Article 6 (Art. 6) of the Convention which as far as relevant reads as follows:

> "In the determination of his civil rights ..., everyone is entitled to a fair and public hearing within a reasonable time ... ."

However, as far as the court proceedings referred to above under I - IV are concerned, 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".

As far as the proceedings in the Aabenraa City Court are concerned the applicant's complaint relates to the Court's decision of 21 March 1989 to transmit parts of the case to other city courts. In the case before the Gråsten City Court the proceedings ended on 2 April 1991, in Sæby they ended on 3 September 1990 and in Copenhagen on 21 June 1994.

The application to the Commission was on the other hand submitted on 19 March 1995, that is, more than six months after the dates of any of these decisions. Furthermore, an examination of the case does not disclose the existence of any special circumstances which might have interrupted or suspended the running of the periods involved.

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.

2. The applicant also complains of a lack of a fair hearing within the meaning of Article 6 (Art. 6) of the Convention in the defamation proceedings which commenced in the Randers City Court on 13 July 1989 and which are at present pending before the High Court of Western Denmark.

In respect of this complaint the Commission recalls that according to its established case-law, in order to determine whether Article 6 para. 1 (Art. 6-1) of the Convention has been complied with, the Commission must examine the proceedings as a whole once they have been concluded, although it is not excluded that a particular procedural element could be so decisive to the proceedings that the conduct thereof should be assessed at an earlier stage (cf. No. 9938/82, Dec. 15.7.1986, D.R. 48, p. 21). In the present case the Commission does not find it necessary to consider any particular procedural element separately and thus finds, in the light of the fact that the proceedings are still pending, that it is premature to consider whether these are, as to their fairness, conducted in conformity with Article 6 para. 1 (Art. 6-1) 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.

3. The applicant also complains of the length of the above proceedings. The Commission has examined this complaint under Article 6 para. 1 (Art. 6-1) of the Convention in so far as it secures to everyone a right to have his case determined within a reasonable time. In this respect the Commission recalls that the proceedings commenced in the Randers City Court on 13 July 1989 and that they are at present pending before the High Court of Western Denmark where a hearing has been fixed for 27 October 1997. The Commission considers that it is not sufficiently informed to decide on the admissibility of this complaint and finds it necessary to obtain from the parties written observations first.

4. Finally, the applicant complains, under Article 14 (Art. 14) of the Convention, that he has been subjected to discrimination because of his political views since he has been refused legal aid.

The Commission has examined this part of the application as submitted by the applicant. It finds, however, that it does not disclose any appearance of a violation of Article 14 (Art. 14) 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

DECIDES TO ADJOURN the examination of the applicant's complaint that the court proceedings which commenced in the Randers City Court on 13 July 1989 have not been terminated within a reasonable time,

unanimously
DECLARES INADMISSIBLE the remainder of the application.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber