AS TO THE ADMISSIBILITY OF

Application No. 29033/95
by Tomas SANDRÉN
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 16 October 1996, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
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 21 August 1995 by Tomas Sandrén against Sweden and registered on 31 October 1995 under file No. 29033/95;

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 Swedish citizen, born in 1939 and residing at Henån. He is a former telecommunication worker, presently on early retirement pension. Before the Commission he is represented by Mrs. Siv Westerberg, a lawyer in Gothenburg.

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

Due to a back injury the applicant was declared incapable of work in 1986 and started receiving a sickness allowance. He has been receiving an early retirement pension since September 1989.

The applicant started carrying out administrative tasks as a volunteer for a non-profit organisation. As the Social Insurance Office of Bohuslän (Bohusläns allmänna försäkringskassa) was informed of his activities, it contacted him so as to re-assess whether he was still incapable of work and thereby entitled to a full pension.

In the beginning of 1995 an official of the Social Insurance Office requested the applicant to undergo an examination by one of its physicians of confidence (förtroendeläkare), who had not previously

examined him, or he would allegedly lose his pension.

The applicant objected to this allegedly forced examination but, since he did not want to risk losing his pension, he nevertheless underwent the examination on 16 March 1995. In view of the fresh medical findings the Social Insurance Office has apparently proposed that his early retirement pension should be reduced by 50%.

According to the 1962 Insurance Act (lag 1962:381 om allmän försäkring), a person entitled to a certain benefit within the meaning of the Act may lose it if he or she refuses to be examined by a physician (chapter 20, section 3). An appeal lies with the administrative courts against a decision by the Social Insurance Office or the National Insurance Office concerning entitlement to a benefit (chapter 20, section 11).

COMPLAINTS

1. The applicant complains that his right to respect for his private life under Article 8 para. 1 of the Convention was infringed, since he allegedly had to undergo a medical examination against his will.

2. He also complains under Article 6 para. 1 of the Convention that he had no access to a court so as to obtain a review of the Social Insurance Office's order that he be examined by its physician of confidence.

3. He finally complains under Article 13 of the Convention that he had no effective remedy before a national authority against the Social Insurance Office's order.

THE LAW

1. The applicant complains that his right to respect for his private life was infringed, since he allegedly had to undergo a medical examination against his will. He invokes Article 8 (Art. 8) of the Convention which reads, as far as relevant, as follows:

> "1. Everyone has the right to respect for his private ... life, ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that a compulsory medical intervention, even if it is of minor importance, must be considered an interference with the right to respect for private life (see, e.g., No. 21132/93, Dec. 6.4.94, D.R. 77-A pp. 75,79).

In the present case the Social Insurance Office apparently ordered the applicant to undergo an examination by a physician appointed by itself. The Commission notes that he could nevertheless have refused to be examined. Such a refusal would not necessarily in itself have prejudged the outcome of the proceedings for the purpose of re-assessing his right to a full early retirement pension. A decision in that respect would initially have to be made by the competent administrative body and, on his possible appeal, by an administrative court.

Even assuming that in these circumstances the examination order amounted to an interference with the applicant's right to respect for

his private life within the meaning of Article 8 para. 1 (Art. 8-1), the Commission considers that this interference was justified under Article 8 para. 2 (Art. 8-2) for the following reasons.

In order to be justified under the terms of Article 8 para. 2 (Art. 8-2) an interference must satisfy three conditions: it must be "in accordance with the law", it must pursue one or more of the legitimate aims enumerated in Article 8 para. 2 (Art. 8-2) and it must be "necessary in a democratic society" for that or those legitimate aims. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, requires that it be proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society", the Commission will also take into account that a margin of appreciation is left to the Contracting States. The Commission's review is not limited to ascertaining whether a respondent State exercised its discretion reasonably, carefully and in good faith. It must also determine whether the reasons adduced to justify the interferences at issue were "relevant and sufficient" (cf. e.g., Eur. Court HR, Olsson v. Sweden judgment of 24 March 1988, Series A no. 130, pp. 31-32, paras. 67-68).

In the present case the Commission notes that the examination order was based on chapter 20, section 3 of the 1962 Act and was thus issued "in accordance with the law". The aim of the order was to obtain fresh medical evidence of relevance to the question whether the applicant's state of health continued to entitle him to a full early retirement pension. This aim must be considered "legitimate" in that it served the interests of the economic well-being of the country.

The Commission finally notes that in ordering the applicant to undergo an examination by one of its physicians of confidence, who had not previously examined him, the Social Insurance Office sought to obtain fresh medical evidence enabling it to re-assess whether the applicant remained incapable of work and thereby entitled to a full pension. The Commission considers that this reason was clearly relevant and sufficient to justify the examination order. It also observes that the Social Insurance Office's order in no way prevented the applicant from adducing medical opinions submitted by physicians of his own choosing. For these reasons the examination order was not disproportionate to the aim sought to be achieved.

Having regard, moreover, to the State's margin of appreciation, the Commission is satisfied that the Social Insurance Office was reasonably entitled to consider its examination order necessary in a democratic society for the purpose of achieving the above-mentioned legitimate aim. Accordingly, there is no appearance of any violation of Article 8 (Art. 8).

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also complains under Article 6 para. 1 (Art. 6-1) of the Convention that he had no access to a court so as to obtain a review of the examination order issued by the Social Insurance Office. Article 6 para. 1 (Art. 6-1) reads in its relevant parts:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by ... [a] tribunal ..."

The applicability of Article 6 para. 1 (Art. 6-1) depends on whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, and, if so, whether this right was of a "civil" character within the meaning of that provision. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and the results of the proceedings

concerning the dispute must be directly decisive for such a right (see, e.g., Eur. Court HR, Zander v. Sweden judgment of 25 November 1993, Series A No. 279-B, p. 38, para. 22).

The Commission has already found that the applicant could have refused to undergo the medical examination on 16 March 1995 and that such a refusal would not necessarily in itself have prejudged the outcome of the proceedings for the purpose of re-assessing his right to a full early retirement pension. Any decision in that respect can - or could initially be appealed against to the County Administrative Court which is competent to review all the evidence presented to it, including expert reports submitted by physicians of the applicant's own choosing.

Accordingly, even assuming that the Social Insurance Office's examination order was directly decisive for any of the applicant's "civil rights" within the meaning of Article 6 para. 1 (Art. 6-1), the Commission notes that he had - or has - access to a "tribunal" within the meaning of the same provision.

It follows that this complaint is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant finally complains under Article 13 (Art. 13) of the Convention that he had no effective remedy before a national authority against the examination order. Article 13 (Art. 13) reads as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls that Article 13 (Art. 13) has been interpreted by the European Court of Human Rights as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, e.g., Eur. Court HR, Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A No. 172, p. 15, para. 33).

The applicant's complaint under Article 8 (Art. 8) of the Convention has just been considered manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2). The Commission therefore finds that the applicant had no arguable claim of a violation of his Convention rights. Consequently, there is no appearance of any violation of Article 13 (Art. 13).

It follows that this complaint is likewise 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.

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