AS TO THE ADMISSIBILITY OF

Application No. 41250/98
by Ulrik STEGLICH-PETERSEN
against Denmark

The European Commission of Human Rights (Second Chamber) sitting in private on 21 October 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
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 30 March 1998 by Ulrik STEGLICH-PETERSENT against Denmark and registered on 18 May 1998 under file No. 41250/98;

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 1957. He resides in Copenhagen.

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

a. Particular circumstances of the case

I

In 1995 the applicant instituted private criminal proceedings before the City Court of Copenhagen (Københavns Byret) against A, who is a member of the Danish Parliament (Folketinget), and B, who is the editor of a large Danish newspaper. He requested A's conviction for defamation pursuant to Section 267 subsections 1 and 3 of the Penal Code (straffeloven), because of statements made by A in articles in the above mentioned newspaper on 17 October and 17 November 1993. The statements referred to another set of proceedings instituted by the applicant against some members of Parliament. The applicant requested B's conviction for defamation pursuant to Section 268 in the Penal Code alleging that B in the newspaper article of 17 November 1993 knowingly spread incorrect information in public about the applicant. The applicant also claimed damages from the defendants and requested that the alleged offensive passages in the articles be considered unwarranted.

Before the City Court the applicant requested that B and 21 witnesses be heard during the trial. On 26 April 1996 the City Court refused to hear B and the witnesses pursuant to Section 341 of the Administration of Justice Act (retsplejeloven) as their testimonies were found to be without relevance for the matter under consideration. This decision was upheld by the High Court of Eastern Denmark (Østre Landsret) on 15 May 1996.

On 10 December 1996 the City Court found in favour of the defendants. This judgment was upheld by the High Court on 4 June 1997.

On 26 May 1996 the applicant lodged an application with the Commission concerning the above mentioned domestic proceedings. On 8 December 1997 the application was rejected under Article 27 of the Convention due to the fact that the applicant had not applied for leave to appeal to the Supreme Court (Højesteret) and had not, therefore, exhausted the remedies available under Danish law (No. 37610/97, Dec. 8.12.97, unpublished).

Subsequently, on 5 January 1998, the applicant applied for leave to appeal to the Supreme Court pursuant to Section 371 of the Administration of Justice Act. On 24 March 1998 the Leave to Appeal Board (Procesbevillingsnævnet) refused to consider his request as it had not been submitted within the ordinary eight weeks time-limit. The Board furthermore found that the applicant's failure to submit his request in time was not

excusable and that no special circumstances in the case spoke in favour of considering the applicant's request for leave to appeal under Section 371, subsection 2, second sentence.

II

On 20 November 1996 B.N. brought a civil libel suit against the applicant before the City Court of Copenhagen alleging that the applicant had published two photographs of her without her consent. On 20 November 1997 the City Court found in favour of B.N. and awarded her damages in the amount of 5,000 DKK.

The applicant applied for leave to appeal to the High Court of Eastern Denmark pursuant to Section 368 subsections 1 and 2 of the Administration of Justice Act. On 2 March 1998 the Leave to Appeal Board refused to grant him leave to appeal as the case did not involve any matters of principle and as no special circumstances in the case spoke in favour of granting the applicant leave to appeal.

b. Relevant domestic law and practice

Section 368 of the Administration of Justice Act (retsplejeloven) reads, as far as relevant, as follows:

(Translation)

"(1) The parties to a case may appeal against the City Court's judgments to the High Court whose judicial district comprises the City Court. If the case concerns a claim not exceeding 10,000 DKK, the judgment can only be appealed with leave from the Leave to Appeal Board, cf. subsection 2.

(2) The Leave to Appeal Board may grant leave to appeal against the judgments, mentioned in subsection 1 second sentence, if the case involves matters of principle or if special circumstances in the case speak in favour thereof. A request for leave to appeal must be submitted to the Board within a period of four weeks from pronouncement of the judgment. However, exceptionally the Board may grant leave to appeal if the request is submitted later albeit within a period of one year from the pronouncement.
..."

Section 371 of the Administration of Justice Act reads as follows:

(Translation)

"(1) Judgments pronounced by a High Court acting as an appeal court cannot be appealed against. However, the Leave to Appeal Board may grant leave to appeal to a court of third instance if the case involves matters of principle.

(2) A request for leave to appeal pursuant to subsection 1 second sentence must be submitted to the Leave to Appeal Board within a period of eight weeks from the pronouncement of the judgment. However, exceptionally the Board may grant leave to appeal if the request is submitted later albeit within a period of one year from the pronouncement."

COMPLAINTS

1. The applicant complains that the City Court's decision of 26 April 1996, upheld by the High Court on 15 May 1996, violated his right to a fair hearing as it refused to hear the witnesses proposed by him, cf. I above.

2. He complains, furthermore, that he was denied the right to have his case heard by courts at two levels as the Leave to Appeal Board did not grant him leave to appeal to the High Court, cf. II above.

The applicant invokes Article 6 of the Convention.

THE LAW

1. The applicant complains that the City Court's decision of 26 April 1996, upheld by the High Court on 15 May 1996 violated his right to a fair hearing in the ensuing court proceedings as it refused to hear the witnesses proposed by him. He invokes in this respect Article 6 of the Convention which, in so far as relevant, reads as follows:

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

However, 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, under Article 26 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

In this respect, the Commission recalls that according to its established case-law a request for leave to appeal to the highest court of appeal, in casu the Supreme Court, is a remedy that normally must be sought before the Commission may deal with the matter (cf. inter alia No. 10789/84, Dec. 11.10.84, D.R. 40, p. 298).

The Commission recalls further that the applicant's application to the Commission of 26 May 1996 (No. 37610/97) was rejected by the Commission on 8 December 1997 as the applicant had failed to apply for leave to appeal to the Supreme Court. Thus, on 5 January 1998 he requested the Leave to Appeal Board to grant leave to appeal. On 24 March 1998 the Board rejected his request, however, as it had not been submitted within the ordinary eight weeks time-limit and as no extraordinary circumstances spoke in favour of considering the applicant's request for leave to appeal outside this time-limit.

The Commission recalls that there is no exhaustion of domestic remedies where a domestic appeal is not admitted because of a procedural mistake (cf. No. 6878/75, Dec. 6.10.76, D.R. 6, p. 79). The non-observance of a time-limit which leads to the dismissal of an appeal or the rejection of a request for leave to appeal will only in case of special circumstances absolve the applicant from the obligation which follows from Article 26 of the Convention (see No. 13467/87, Dec. 10.7.89, D.R. 62, p. 269).

In the present case the Commission recalls that the Leave to Appeal Board found that the applicant's failure to submit his request in time was not excusable. Furthermore, the Commission finds that an examination of the case, as it has been submitted, does not disclose the existence of any such special circumstances which might have absolved the applicant from submitting his request within the ordinary period of time applicable to a request for leave to appeal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must therefore be rejected under Article 27 para. 3 of the Convention.

2. Finally, the applicant complains, under Article 6 of the Convention, that he was denied the right to have his case heard by courts at two levels as the Leave to Appeal Board in the libel suit instituted by B.N. did not grant him leave to appeal to the High Court.

The Commission notes, however, that neither Article 6 nor any other provision of the Convention or its protocols guarantees a right to an appeal in civil cases.

It follows that this part of the application must be dismissed as incompatible ratione materiae with the Convention and its Protocols pursuant to Article 27 para. 2 of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	J.-C. GEUS
Secretary	President
to the Second Chamber	of the Second Chamber