AS TO THE ADMISSIBILITY OF

Application No. 21037/92
by T. K.
against Sweden

The European Commission of Human Rights (Second Chamber) sitting in private on 2 September 1994, the following members being present:

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

Mr. K. ROGGE, 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 15 September 1992 by T. K. against Sweden and registered on 4 December 1992 under file No. 21037/92;

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 Swedish citizen born in 1943 and residing at Mjölby, Sweden, is an industrial worker. Before the Commission he is represented by Mr. Per Svensson, a lawyer practising in Njurunda, Sweden.

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

On 10 October 1990 the applicant was convicted of fraud by the District Court (Tingsrätten of Norrköping). He was given a suspended sentence and a fine of 6000 SEK. Before the District Court the applicant was represented by a public defence counsel (offentlig försvarare) who had been appointed ex officio by the Court.

The applicant appealed against his conviction to the Court of Appeal (Göta hovrätt). At the same time he lodged a request to have his defence counsel replaced by a lawyer he had chosen himself. He stated that he had no confidence in the appointed counsel.

By decision of 27 August 1991 the Court of Appeal rejected the applicant's request for a change of public defence counsel, stating that the applicant had not shown sufficient grounds for a change. In a letter dated 9 September 1991, the applicant appealed against this decision. He also requested the Court of Appeal to dismiss the public

defence council and to give him adequate time to appoint another counsel. Furthermore, he claimed that his request constituted an obstacle (rättegångshinder) to holding a main hearing in the fraud case.

On 16 September 1991 the Supreme Court (Högsta domstolen) refused leave to appeal against the Court of Appeal's decision not to replace the defence counsel.

On the same day, 16 September 1991, before the applicant was informed of the decision of the Supreme Court, the Court of Appeal held its main hearing in the fraud case. Neither the applicant nor his defence counsel appeared. In the minutes of the hearing it was noted that the applicant had told his counsel that he did not intend to appear at the hearing. It was further noted that on 27 August 1991 the applicant had been served a summons to appear at the hearing at the risk of his appeal being declared forfeited if he failed to appear. Thus, the Court of Appeal decided to dismiss the appeal on account of the applicant's non-appearance, the absence of any reasons to believe that he had a lawful excuse (laga förfall) for his non-appearance and the impossibility to hold the hearing in his absence. The Court of Appeal, however, stated that the case could be reopened, if the applicant would show that there had been a lawful excuse of which he had not been able to give notice in time.

The applicant then requested the Court of Appeal to reopen the case. He submitted that he had not appeared at the hearing as he had presumed it had been postponed pending the Supreme Court's decision regarding his request for a change of public defence counsel. By decision of 4 October 1991, the Court of Appeal rejected the request, stating that the applicant had not shown that there had been a lawful excuse for his failure to appear at the hearing.

On 18 March 1992 the Supreme Court refused the applicant leave to appeal against the decision not to reopen the case.

COMPLAINTS

The applicant alleges that, by not postponing the hearing pending the Supreme Court's decision regarding his public defence counsel, the Court of Appeal has not respected his right to appeal against its decision not to replace the public defence counsel and has also denied him the right to appoint a defence counsel of his own choosing. He maintains that if a defendant is dissatisfied with his public defence counsel, he has, firstly, a right to request a change of that counsel and, secondly, if that request is rejected, a right to appoint a defence counsel of his own choosing. The applicant invokes Article 6 paras. 1 and 3 c) of the Convention.

THE LAW

The applicant complains that his right to appeal against the Court of Appeal's decision not to replace his public defence counsel and his right to appoint a defence counsel of his own choosing have been denied in violation of Article 6 paras. 1 and 3 c) (Art. 6-1, 6-3-c) of the Convention, which, in so far as relevant, read as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require"

The Commission reiterates that the requirements of para. 3 of Article 6 (Art. 6-3) are specific aspects of the general concept of a fair hearing guaranteed in para. 1 of the same Article (cf., e.g., Eur. Court H.R., F.C.B. v. Italy judgment of 28 August 1991, Series A no. 208-B, p. 20, para. 29). The Commission will therefore examine the applicant's complaint from the point of view of these two provisions in conjunction.

The Commission recalls its case-law to the effect that Article 6 para. 3 c) (Art. 6-3-c) does not guarantee the right to choose which defence counsel is to be appointed by the court any more than it guarantees the right to be consulted about the choice of officially appointed defence counsel (cf. No. 6946/75, Dec. 6.7.76, D.R. 6 p. 114, and No. 12152/86, Dec. 9.5.89, D.R. 61 p. 171). Accordingly, the question whether to change an officially appointed counsel is to be determined by the competent national court or authority, having regard to the principle of equality of arms as included in the concept of a fair hearing.

In the present case, a public defence counsel had been appointed for the applicant by the District Court. In its decision not to replace the counsel, the Court of Appeal stated that the applicant had not submitted sufficient grounds for a change. The Commission finds that there is nothing in the file to show that this decision violated the principle of equality of arms or otherwise denied the applicant his right to a fair hearing.

The Commission further considers that neither the appointment of the public defence counsel nor the decision not to replace the counsel prevented the applicant from appointing, at any moment, a lawyer of his own choosing to defend him in the Court of Appeal. In this respect, the Commission notes that when the applicant requested the Court of Appeal to replace his public defence counsel he indicated which lawyer he wished to have as his representative. Thus, he could have appointed that lawyer as his private counsel and did not have to await the Supreme Court's decision whether to appoint that lawyer as a public defence counsel. The Commission, therefore, does not find it contrary to Article 6 (Art. 6) that the Court of Appeal did not postpone the hearing, and, as the applicant had been served a summons according to which his appeal might be dismissed if he did not appear at the hearing, and as he did not appear, the dismissal of the appeal due to the applicant's default was not in violation of Article 6 (Art. 6).

The Commission concludes that the examination of the applicant's complaints does not disclose any appearance of a violation of Article 6 (Art. 6) of the Convention.

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 — President of the Second Chamber

(K. ROGGE) — (S. TRECHSEL)