COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

CASE OF KHURSHID MUSTAFA AND TARZIBACHI v. SWEDEN

(Application no. 23883/06)

JUDGMENT

STRASBOURG

16 December 2008

FINAL

16/03/2009

This judgment may be subject to editorial revision.

In the case of Khurshid Mustafa and Tarzibachi v. Sweden**,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Egbert Myjer,
Luis López Guerra,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 25 November 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 23883/06) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Swedish nationals, Mr Adnan Khurshid Mustafa and Mrs Weldan Tarzibachi ("the applicants"), on 12 June 2006.

2. The applicants were represented by Mr U. Isaksson, a lawyer practising in Stockholm, and by Mr P.-G. Nyström and Ms S. Wikström, lawyers of the Stockholm Tenants' Association. The Swedish Government ("the Government") were represented by their Agent, Mr C.-H. Ehrenkrona, Ministry for Foreign Affairs.

3. The applicants alleged that their eviction from their flat following their refusal to remove a satellite dish resulted in violations of Articles 8 and 10 of the Convention.

4. On 22 June 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, a married couple of Iraqi origin, were born in 1957 and 1963 respectively and live in Västerås. They have three children, who are now eighteen, sixteen and eight years of age.

6. From 1 November 1999 they rented a flat in Rinkeby, a suburb of Stockholm. Rule 13 of the special provisions of the tenancy agreement stipulated the following:

> "The tenant undertakes not to erect, without specific permission, placards, signs, sunblinds, outdoor aerials and such like on the house."

The agreement further stipulated, as a general condition, that the tenants were obliged to take proper care of the flat and to maintain good sanitary conditions, order and good practice in the house.

7. It appears that when the applicants moved in, there was a satellite dish mounted on the façade, next to one of the windows of the flat. The applicants made use of this in order to receive television programmes in Arabic and Farsi.

8. In October 2003 the applicants' landlord changed. The new landlord, a real-estate company, demanded that the satellite dish be dismantled. The applicants did not comply and, by letter of 2 April 2004, the company gave the applicants notice of termination of the tenancy agreement with effect from 31 July 2004.

9. Further, in April 2004, the landlord initiated proceedings before the Rent Review Board (*hyresnämnden*) in Stockholm against the applicants and some other tenants who had installed satellite dishes in the same house. The landlord sought execution of the notice of termination, claiming that the applicants' satellite installation violated the express ban in Rule 13 of the tenancy agreement and that, by not complying with the instruction to dismantle the dish, they had failed to maintain good sanitary conditions, order and good practice. Stating that it objected only to satellite dishes mounted on or outside the façade of the house, while allowing, for instance, dishes placed on a balcony, the landlord claimed that the ban on such installations was of considerable importance as the installations a) risked causing injuries to persons and property for which the landlord would be held responsible, b) damaged the house physically and aesthetically and c) obstructed rescue workers' and the landlord's access to the flat.

10. Shortly after having received the notice of termination, the applicants dismantled the satellite dish. However, in its place they installed a new device by placing on the kitchen floor an iron stand from which an arm, on which the satellite dish was mounted, extended through a small open window. The installation could be pulled back into the kitchen when

not being used. At the request of the Tenants' Association, an engineer, Mr S. Tornefelt, examined the installation on 26 August 2004. He found that it was very stable but recommended that, for safety reasons, a steel wire be fixed between the dish and the stand. The applicants made the recommended addition.

11. The applicants, as well as the other tenants summoned, contested the landlord's claims before the Rent Review Board. They stated that, by mounting satellite dishes for the reception of television programmes, some of which were broadcast in their mother tongues, they were exercising their freedom to receive information, as protected by the Swedish Constitution, Article 10 of the Convention and EC law. The landlord's interests, as provided for in Chapter 12, section 25 of the Land Code (*Jordabalken*), had to be balanced against this freedom. The applicants further claimed that they had now complied with the landlord's demand that the earlier satellite installation be dismantled. The new installation was, they claimed, in conformity with the rules of the tenancy agreement. Referring to Mr Tornefelt's opinion, they further maintained that it was safe and did not damage the house.

The landlord submitted, in addition to what it had previously stated, that it was working on the possibility of installing broadband and internet access in the house, which would allegedly give access to the desired television channels.

12. Following an inspection of the applicants' satellite installation, the Rent Review Board gave a decision on 21 October 2004 finding in their favour. The Board noted in general that the assessment of whether tenants had failed to comply with their obligations by mounting satellite dishes had to involve the balancing of the interests of the landlord – which could be more or less strong depending on how the actual installations had been made – and the interests of the tenants in using a satellite dish – which could also vary depending on whether there were alternative means of receiving the television channels in question. In the applicants' case, the Board found that the fact that the new satellite installation extended through a window did not involve a breach of Rule 13 of the tenancy agreement. With regard to the general obligation to maintain good sanitary conditions, order and good practice in the house, the Board considered that the actual installation did not and could not damage the house. Moreover, the landlord's liability for damage to persons and property could not reasonably be incurred unless it were able to prevent the mounting and use of the satellite dish, which was not the case if the Board found that the landlord had no right to such prevention. Moreover, having regard to Mr Tornefelt's opinion and its own inspection, the Board considered that the risk of damage caused by the installation was negligible. Nor could it not find any evidence that the installation would obstruct rescue workers' access to the flat. The only inconvenience for the landlord was the aesthetic aspect. However, the

applicants' interest in being able to watch television programmes that were not accessible by other available means weighed more heavily, and the satellite installation could not therefore be considered as contrary to good sanitary conditions, order and good practice.

13. The landlord appealed to the Svea Court of Appeal (*Svea hovrätt*). The court held an oral hearing at which, *inter alia*, Mr Tornefelt gave evidence. It also made an inspection of the applicants' satellite installation. By a final decision of 20 December 2005, the court found that the applicants had disregarded their obligations as tenants, under the tenancy agreement and Chapter 12, section 25 of the Land Code, to such a degree that the agreement should not be extended, pursuant to Chapter 12, section 46, subsection 1(2) of the Code. They were given a respite until 31 March 2006 to move from the flat. The court found that the landlord had made a reasonable distinction between acceptable and unacceptable satellite installations and had submitted weighty reasons for prohibiting dishes mounted on the façade or otherwise extending outside of it. It noted that the evidence showed that the applicants' dish was virtually always positioned outside the kitchen window and thus constituted a permanent installation, and concluded, contrary to the findings of the Rent Review Board, that its placement breached Rule 13 of the tenancy agreement. In assessing the seriousness of this breach of contract, the court first concluded, with reference to Mr Tornefelt's testimony, that the satellite installation met the reasonable requirements of stability and safety. However, noting that the landlord's main reason for not allowing the installation was the safety aspect, the court considered that the landlord was entitled to make general risk assessments and should not have to determine whether an individual installation was unsafe or inconvenient. It went on to state that, while the applicants' interest in receiving the broadcasts of the television channels in question had to be taken into consideration and that it was desirable that technical solutions for such reception be found, the right to freedom of information relied on did not have such a bearing on the case that it could be considered to have any real importance. It noted, finally, that the applicants had been fully aware of the importance that the landlord attached to the issue of the placement of satellite dishes and of the consequences that could follow from a refusal to comply with the landlord's instructions in this respect. Although their satellite installation did not pose any real safety threat, their interests could not be allowed to override the weighty and reasonable interest of the landlord that order and good custom be upheld.

14. The landlord offered the applicants the option of staying in their flat if they agreed to remove the satellite dish. They did not agree to do this, however, and instead moved on 1 June 2006. They have stated that, largely because of the scarcity of flats for rent in the Stockholm area but also due to there being a court eviction order against them, they were forced to move to Västerås, approximately 110 km west of Stockholm. As a consequence, the

first applicant now had much longer and costlier trips to and from work and the applicants' three children had had to change nursery and school and leave friends.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Land Code

15. The renting of a flat is regulated primarily in Chapter 12 of the Land Code.

16. Section 2 provides that a tenancy agreement shall be in writing if the landlord or the tenant so request. In the event that a provision in the agreement is difficult to interpret, it is in practice ultimately interpreted to the disadvantage of the person who formulated the agreement. As it is almost always the landlord who draws up the tenancy agreement, the landlord has to take the responsibility for an agreement that is difficult to interpret. In most cases, landlords use standard agreements, the content of which is the result of negotiations between rental market organisations.

17. Section 3 contains provisions for the term and cancellation of tenancies. A tenancy agreement which is applicable for an indefinite period, as in the present case, must be cancelled for it to cease to apply. According to section 4, an indefinite tenancy agreement can be cancelled and thus cease to apply on the first day of the month following three months' notice. Section 8 provides that, in a case such as the present, a notice of cancellation shall be in writing and comply with certain rules governing service.

18. Section 23 provides, *inter alia*, that a tenant may not use the flat for a purpose other than that intended. Under section 24, the tenant is under an obligation to take good care of the flat. In general, he or she shall take care of it in a way that can be reasonably expected of an orderly person. Further, the tenant is liable to make good all damage caused by his or her carelessness or negligence.

19. Section 25 contains provisions on disturbances and demands on the tenant for keeping the flat sound, orderly and in good condition. Subsection 1 provides:

> "When using the flat, the tenant shall ensure that persons living in the vicinity are not subjected to disturbances which may be harmful to their health or otherwise impair their dwelling environment to an extent not reasonably tolerable ... . In his use of the flat, the tenant shall also in other respects do all that is necessary to keep the property sound, orderly and in good condition. ..."

Disturbances and failure to meet those requirements may result in the tenancy agreement being forfeited under section 42.

Special provisions and regulations can be included in the tenancy agreement. A tenant's refusal to abide by such provisions and regulations

may also constitute a failure to fulfil the requirements for keeping the flat sound, orderly and in good condition.

20. It follows from section 46 that if the landlord has given notice of cancellation of the tenancy agreement, the tenant may still be entitled to have the agreement extended. However, subsection 1 of section 46 lists a number of situations in which the tenant loses the right to renewal. The first situation, laid down in subsection 1(1), is the forfeiture of the tenancy. Section 42 stipulates the conditions in which a tenancy agreement is deemed to be forfeited, including residential disturbances and failure to keep the flat sound, orderly and in good condition. The second situation, regulated in subsection 1(2), was relied on by the landlord and applied by the Court of Appeal in the present case. It concerns the tenant's neglect of their obligations. If the obligations are neglected to such an extent that it is not reasonable for the tenancy agreement to be extended, the tenant may lose the right to such renewal.

The preparatory works to the latter provision state that the requirements of orderliness must be high in order to make it possible for the landlord to maintain the property in good order and condition (SOU 1961:47, pp. 84-85). The interests of the landlord shall be weighed against the reasonableness of the tenancy being terminated. Distressing personal circumstances may be taken into account. The possibility of another flat in the same area should also be considered (Government Bill 1968:91, Appendix A, p. 91).

Examples of negligence are, for example, failure to pay rent, subletting without permission, refusing to grant the landlord access to the flat, depositing rent without valid reasons, residential disturbances, a failure to keep the flat sound, orderly and in good condition, and a breach of clauses in the tenancy agreement.

B. Proceedings in tenancy disputes

21. A large number of tenancy disputes are examined by the eight regional rent review boards, whose task it is, under section 4 of the Lease Review Boards and Rent Review Boards Act (*Lagen om arrendenämnder och hyresnämnder*, 1973:1988), to examine disputes concerning, for example, the terms of a tenancy and disputes relating to the renewal of a tenancy agreement. A decision by a Rent Review Board in a renewal dispute, as in the present case, can be appealed to the Svea Court of Appeal, in accordance with the Land Code, Chapter 12, section 70 in conjunction with section 49. No appeal lies against the court's decision, as provided for in section 10 of the Svea Court of Appeal Rent Cases Judicial Procedure Act (*Lagen om rättegången i vissa hyresmål i Svea hovrätt*, 1994:831).

C. Constitutional provisions on freedom of expression and freedom of information

22. Chapter 1, section 3, subsection 3 of the Constitutional Law on Freedom of Expression (*Yttrandefrihetsgrundlagen*) states the following:

> "Subject to any contrary provision of this Constitutional Law neither public authorities nor other public bodies shall prohibit or prevent the possession or employment of such technical aids as are necessary to receive radio programmes or to view or hear the content of technical recordings on grounds of the content of a radio programme or technical recording,.The same shall apply to any ban on the construction of landline networks for the transmission of radio programmes."

23. Chapter 2, section 1, subsection 1 of the Instrument of Government (*Regeringsformen*) provides, *inter alia*, as follows:

> "Every citizen shall be guaranteed the following rights and freedoms in his relations with the public institutions:
>
> 1. freedom of expression: that is, the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing, or in any other way;
>
> 2. freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others;
>
> ..."

Section 12 provides that the enumerated rights and freedoms may be restricted only to satisfy a purpose acceptable in a democratic society. The restriction may never go beyond 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 fundaments of democracy. Furthermore, no restriction may be imposed solely on grounds of a political, religious, cultural or other such opinion. Under section 13, freedom of expression and information can only be restricted on grounds of national security, national provision of supplies, public order and safety, the good name of an individual, the sanctity of private life, and the prevention and prosecution of crime. Freedom of expression may also be restricted in commercial activities.

24. The Constitutional Law on Freedom of Expression and the Instrument of Government apply to the relationship between individuals and public bodies. They do not apply to relationships between individuals.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicants complained that their freedom to receive information had been breached because the restrictions imposed on them either had not been prescribed by law or had been more far-reaching than necessary in a democratic society. Moreover, they claimed that the consequences – the eviction from their flat and the move to another town – had been disproportionate to the aims pursued. They relied on Article 10 of the Convention, which reads as follows:

> "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."

A. The parties' submissions

26. The Government submitted that the complaint was incompatible *ratione materiae* or manifestly ill-founded. They argued that the dispute in the case had been limited to the question of the actual positioning of the satellite dish, having regard, primarily, to contractual obligations. The alleged interference had not arisen as an effect of a ruling by a public authority on the right to receive information or even the right to use or own a satellite dish. Instead, it had come about only as an effect of the Court of Appeal's interpretation and application of an obligation in a contract between two private parties within the framework of private litigation. In any event, the Swedish authorities would only be responsible to the extent that the State had a positive obligation to protect the rights of the applicants in a case of this nature. In this connection the Government were of the opinion that the Court of Appeal had struck a fair balance between the competing interests of the landlord and the applicants and that there did not exist a positive obligation to protect the applicants' right to receive information from the interference of others. There had therefore not been an interference by a public authority within the meaning of Article 10 of the Convention.

27. The Government argued that were the Court to find that Article 10 was applicable and had been infringed, the interference in question was prescribed by law, specifically Chapter 12 of the Land Code, and that it served the legitimate aim of protecting the rights of others, including those of the landlord, other tenants and third parties. As to the question whether the measure had been "necessary" within the meaning of Article 10, they claimed that a fair balance had been struck between the landlord's right to property and its interest in maintaining order and good conditions on the property, on the one hand, and the applicants' right to receive information by means of a private satellite dish, on the other. Moreover, the proceedings had been fair at every level, the two instances involved having given extensive and detailed reasons after holding hearings and inspecting the satellite installation in question. Thus, having regard also to the margin of appreciation, the alleged interference had been proportionate to the legitimate aim pursued and "necessary" in terms of Article 10 § 2.

28. The applicants submitted that the grounds for contesting the landlord's action had not been only their denial that the positioning of the satellite was in breach of the lease, but also that that action infringed their right to freedom of information under the Swedish Constitution and Article 10 of the Convention. They further claimed that the Court of Appeal had not balanced the various interests in any real or meaningful sense. It had not attached proper significance to the applicants' right to freedom of information and had failed to take into account that there had been no safety risks in the individual case, instead allowing the landlord to make general risk assessments. The applicants therefore claimed that there had been an interference with their rights under Article 10. This had occurred as a consequence of the Court of Appeal's application of the law and, accordingly, the State's exercise of judicial power in a civil-law dispute. Consequently, the State could not evade its responsibility in the matter.

29. The applicants further asserted that the Court of Appeal's decision lacked a basis in law, as their satellite installation, which had not been affixed to the structure of the building, had not violated Rule 13 of the tenancy agreement and so had not breached the Land Code. Furthermore, the interference in the case had not been "necessary", as a fair balance between the competing interests had not been struck. In this connection they reiterated that their rights under Article 10 had been disregarded and that no individual safety assessment had been made. Moreover, broadcasts from certain TV channels – of particular importance to them on account of their cultural background – were available exclusively via a satellite dish. This had not been disputed in the domestic proceedings. Finally, there had been no margin of appreciation, as no vital State interests had been at issue. Instead, the reasons given by the Court of Appeal related to the landlord's interests. In sum, the interference had not been proportionate or "necessary" within the meaning of Article 10 § 2.

B. The Court's assessment

1. Admissibility

30. The Government argued that the case concerned a dispute between two private parties over a contractual obligation and that there had not been intervention by a public authority such as to bring any positive obligation of the State into play.

31. The Court reiterates that, under Article 1 of the Convention, each Contracting State "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention". As the Court stated in *Marckx v. Belgium* (13 June 1979, § 31, Series A no. 31; see also *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 49, Series A no. 44), in addition to the primarily negative undertaking of a State to abstain from interference in Convention guarantees, "there may be positive obligations inherent" in such guarantees. The responsibility of a State may then be engaged as a result of not observing its obligation to enact domestic legislation.

32. The Court reiterates, further, that Article 10 applies to judicial decisions preventing a person from receiving transmissions from telecommunications satellites (see *Autronic AG v. Switzerland,* 22 May 1990, §§ 47-48, Series A no. 178). Moreover, the genuine and effective exercise of freedom of expression under Article 10 may require positive measures of protection, even in the sphere of relations between individuals (see *Özgür Gündem v. Turkey*, no. 23144/93, §§ 42-46, ECHR 2000-III; *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000; and *Appleby and Others v. the United Kingdom*, no. 44306/98, § 39, ECHR 2003-VI).

33. Admittedly, the Court is not in theory required to settle disputes of a purely private nature. That being said, in exercising the European supervision incumbent on it, it cannot remain passive where a national court's interpretation of a legal act, be it a testamentary disposition, a private contract, a public document, a statutory provision or an administrative practice appears unreasonable, arbitrary, discriminatory or, more broadly, inconsistent with the principles underlying the Convention (see *Pla and Puncernau v. Andorra*, 13 July 2004, § 59, ECHR 2004-VIII).

34. In the present case the Court notes that the Court of Appeal, in its decision of 20 December 2005, applied and interpreted not only the tenancy agreement concluded between the applicants and the landlord but also Chapter 12 of the Land Code. Further, it ruled on the applicants' right to freedom of information laid down in the Swedish Constitution and the Convention. Domestic law, as interpreted in the last resort by the Court of Appeal, therefore made lawful the treatment of which the applicants complained (see *Marckx* and *Young, James and Webster*, cited above, and *VgT Verein gegen Tierfabriken v. Switzerland*, 28 June 2001, § 47, ECHR 2001-VI). In effect, the applicants' eviction was the result of the court's

ruling. The Court finds that the responsibility of the respondent State within the meaning of Article 1 of the Convention for any resultant breach of Article 10 may be engaged on this basis.

35. Consequently, this complaint is not incompatible *ratione materiae*. Nor is it manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

(a) Whether there was an interference with the applicants' rights under Article 10 of the Convention

36. The responsibility of the respondent State having been established, the Court of Appeal's ruling that the applicants' tenancy agreement should be terminated because of their refusal to dismantle the satellite dish in question amounted to an "interference by a public authority" in the exercise of the rights guaranteed by Article 10.

(b) Whether the interference was "prescribed by law"

37. Whereas the Government claimed that the interference was prescribed by law, the applicants submitted that the Court of Appeal's decision lacked a basis in law, as their satellite installation had not been affixed to the wall and had therefore not been in breach of the tenancy agreement and the Land Code.

38. The Court observes that the Rent Review Board and the Court of Appeal came to different conclusions as to whether the satellite installation at issue constituted an "outdoor aerial" in breach of Rule 13 of the tenancy agreement and the obligations under Chapter 12, section 25 of the Land Code. It is of the opinion that both interpretations were viable and that the interference can therefore be considered as having been "prescribed by law" within the meaning of Article 10 § 2.

(c) Whether the interference pursued a legitimate aim

39. In finding against the applicants, the Court of Appeal had regard, *inter alia*, to the landlord's interest in upholding order and good practice. The decision could thus be said to have been aimed at the "protection of the ... rights of others" within the meaning of Article 10 § 2.

(d) Whether the interference was "necessary in a democratic society"

40. The Court reiterates that, as a consequence of the Court of Appeal's decision, the applicants were effectively restricted from receiving information disseminated in certain television programmes broadcast via satellite.

41. The right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him or her (see, among other authorities, *Leander v. Sweden*, 26 March 1987, § 74, Series A no. 116). In a case like the present one, where the desired information was available without the broadcasters' restrictions through the use of the technical equipment at issue, the general principles of freedom of expression become applicable, as appropriate.

42. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, whose extent will vary according to the case. Where, as in the instant case, there has been an interference with the exercise of the rights and freedoms guaranteed in Article 10 § 1, the supervision must be strict, because of the importance of the rights in question. The necessity for restricting them must be convincingly established (see, among other authorities, *Autronic AG*, cited above, § 61).

43. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation (see, *inter alia*, *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I). In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued". In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among other authorities, *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI).

44. In the instant case the Court observes that the applicants wished to receive television programmes in Arabic and Farsi from their native country or region. That information included, for instance, political and social news that could be of particular interest to the applicants as immigrants from Iraq. Moreover, while such news might be the most important information protected by Article 10, the freedom to receive information does not extend only to reports of events of public concern, but covers in principle also cultural expressions as well as pure entertainment. The importance of the latter types of information should not be underestimated, especially for an immigrant family with three children, who may wish to maintain contact with the culture and language of their country of origin. The right at issue was therefore of particular importance to the applicants.

45. It should be stressed that it has not been claimed that the applicants had any other means of receiving these or similar programmes at the time of the impugned decision than through the use of the satellite installation in question, nor that their satellite dish could be installed in a different location. They might have been able to obtain some news through foreign newspapers and radio programmes, but these sources of information only cover parts of what is available via television broadcasts and cannot in any way be equated with the latter. Moreover, it has not been shown that the landlord later installed broadband and internet access or other alternative means which gave the tenants in the building the possibility to receive these television programmes.

46. It is true that a satellite dish mounted on or extending outside the façade of a building may pose safety concerns, in particular since a landlord may be held responsible for damage caused by a falling dish. The Court of Appeal noted that this was the main reason for the landlord's refusal to allow the applicants' installation. However, in the instant case this aspect cannot carry much weight, as the evidence in the domestic case showed that the installation did not pose any real safety threat. It was examined by an engineer and both the Rent Review Board and the Court of Appeal inspected it before concluding that it was safe. While it might be convenient for a landlord to make general risk assessments without having to check individual installations, such considerations cannot carry much weight when set against the applicants' interests.

47. In the domestic proceedings the landlord also referred to physical and aesthetic damage, as well as obstruction of access to the flat, as reasons for banning the satellite installation. These concerns were not directly addressed by the Court of Appeal, but it did state that the landlord had a weighty and reasonable interest in upholding order and good practice. In any event, there is no indication that these additional concerns were of any practical significance in the applicants' case. In this connection it should be mentioned that the applicants' flat was located in one of the suburbs of Stockholm, in a tenement house with no particular aesthetic aspirations.

48. The Court further notes the Court of Appeal's finding that, while the applicants' interest in receiving the television broadcasts had to be taken into consideration, their right to freedom of information did not have such a bearing on the case that it could be considered to have any real importance. From this statement, the Court cannot but conclude that the appellate court, in weighing the interests involved, failed to apply standards in conformity with Article 10.

49. Particular importance must also be attached to the outcome of the instant case, namely, the applicants' eviction from the flat in which they had lived for more than six years. The applicants stated that, as a result, they had to move to another city, thus incurring negative consequences of a practical, economic and social nature. The Court considers that evicting the applicants

and their three children from their home was a measure which cannot be considered proportionate to the aim pursued.

50. Having regard to the above, the Court concludes that, even if a certain margin of appreciation is afforded to the national authorities, the interference with the applicants' right to freedom of information was not "necessary in a democratic society" and that the respondent State failed in their positive obligation to protect that right. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

51. For reasons similar to those relied on under Article 10 of the Convention, the applicants complained that the eviction from their flat gave rise to a violation of their right to respect for their home under Article 8.

52. The Government contested that argument.

53. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

54. However, having regard to the finding relating to Article 10 (see paragraph 50 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

56. The applicants claimed 66,000 Swedish kronor (SEK – approximately 6,500 euros (EUR)) in respect of pecuniary damage. Their claim concerned the increased costs of the first applicant's journeys to and from work for a two-year period following their move to Västerås. In respect of non-pecuniary damage, they claimed SEK 50,000 (about EUR 5,000) each or other amounts which the Court considered reasonable.

57. The Government contested the claim in respect of pecuniary damage, stating that the applicants could have avoided the additional travelling costs by accepting the landlord's offer to remain in the flat. As regards non-pecuniary damage, the Government left the matter to the Court's discretion.

58. The Court considers that the first applicant must have sustained pecuniary damage on account of the longer journeys to and from work and finds this claim reasonable. It therefore awards it in full. Further, the Court finds it appropriate to make an award for non-pecuniary damage. Ruling on an equitable basis, it awards the applicants EUR 5,000 jointly under that head.

B. Costs and expenses

59. The applicants also claimed SEK 229,774 (approximately EUR 22,500) for the costs and expenses incurred after the conclusion of the domestic proceedings. This amount included SEK 216,575 (EUR 21,000) in lawyers' fees for 158 hours of work; the remainder (SEK 12,131) consisting mainly of translation expenses.

60. The Government found the applicants' claims excessive. They maintained that reasonable compensation for costs should not exceed SEK 66,000 (EUR 6,500) exclusive of VAT. In addition, SEK 1,000 (EUR 100) was acceptable for expenses.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 10,000, inclusive of VAT, covering costs under all heads for the proceedings before the Court.

C. Default interest

62. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Swedish kronor at the rate applicable at the date of settlement:

(i) EUR 6,500 (six thousand five hundred euros) in respect of pecuniary damage;

(ii) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

(iii) EUR 10,000 (ten thousand euros) in respect of costs and expenses;

(iv) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President