

COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

of Application No. 2550/65
by H C K
against Norway

The European Commission of Human Rights sitting in private on 6th February, 1968, under the presidency of Mr. M. SØRENSEN, and the following members being present:

Mr. C. Th. EUSTATHIADES
S. PETREN
F. CASTBERG
F. WELTER
T. BALTA
P.O. DELAHAYE
T.B. LINDAL
E. BUSUTTIL

Mr. A.B. McNULTY, Secretary to the Commission

Having regard to the Application lodged on-22nd May, 1965 by H C K against Norway and registered on 16th July, 1965, under file No. 2550/65;

Having regard to the report provided for in Rule 45, paragraph 1, of the Rules of Procedure of the Commission;

Having deliberated,

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THE FACTS

Whereas the facts as presented by the Applicant and appearing from the documents submitted by him may be summarised as follows:

The Applicant is a Norwegian citizen, born in 1909.

1. He states that in the years 1931 - 1939 he was the head of two firms called "Carr's School of Languages" and "Harold Carr & Co., Travel Agency".

As a result of the outbreak of the war he had to interrupt the activities of his two companies. In May, 1945, he re-opened the firm "Carr's School of Languages" and managed, in a short time, to make it a very prosperous enterprise. He also re-organised his second firm "Harold Carr & Co., Travel Agency".

In December, 1945, he was arrested in a brutal manner by the police and informed that he was charged with having used false licence plates on his car. Although he denied that he was guilty of any offence, he was detained for several months, and it was publicly announced that he had been arrested and was to be mentally examined. This had a fatal effect on his business. When he was finally released in the spring of 1946, his business was ruined and he had to leave Oslo. In his opinion his arrest and detention were acts of persecution by his enemies and were merely aimed at causing him damage.

Although he had been completely acquitted in respect of the charge of using false number plates, the Norwegian authorities refused to give him any compensation for the damage he had suffered. In 1948, the Supreme Court rejected his request for compensation on the ground that, despite his acquittal, it had not been established that he was not guilty. In view of this reasoning, he asked for a judicial examination of his guilt but received no reply.

2. In June, 1946, he became the owner of a grocery at a small place named Filtvet. After some months profitable business, he noticed that he was again being subject to persecution and he then decided to transfer his property at Filtvet including the building where the grocery was situated and where he also lived with his family to Mrs. M. K., then his wife (later they were divorced). In spite of this transfer of property, the persecution continued and resulted on 1st March, 1948, in the opening of bankruptcy proceedings against the Applicant's wife. The decision given by the competent Court (Skifterett) in this respect was upheld on appeal by the Supreme Court (Høyesteretts kjaeremålsutvalg) on 14th August, 1948. As a result Mrs. K. was deprived of property of considerable value, but not to the benefit of her lawful creditors; according to the Applicant the proceeds were divided among the persons who were responsible for the persecution against the Applicant. Finally, in February, 1954, the Applicant's wife and two small children were ordered to leave their home and had to seek temporary accommodation with a relative in Oslo.

The Applicant's wife also tried, in 1950, to obtain a court examination of the circumstances which were the background of the bankruptcy, but this was refused. She requested, also without success, that criminal proceedings should be instituted against certain persons responsible for the actions against her. In 1950, she further asked the Ministry of Justice for legal assistance in connection with her attempts to recover the property but her application was dismissed.

Because of the allegations made in this context by the Applicant and his wife in a petition of 5th May, 1950, for judicial investigation of the charges, criminal proceedings for false accusation were instituted against both of them. On 20th June, 1952, Mrs. K. then challenged the competent Public Prosecutor and the Attorney-General and requested the nomination of an attorney-general ad hoc in order to deal with the case. This request was rejected by the Ministry of Justice on 27th February, 1953.

On 12th May, 1953, Mrs. K. submitted to Parliament a request that criminal proceedings should be instituted against three members of the Supreme Court who had been dealing with the bankruptcy case, as well as against the Minister of Justice who had refused to give her legal assistance and to appoint an attorney-general. On 2nd July, 1953, this request was rejected by a parliamentary decision after the Ministry of Justice had stated its opinion in a report of 13th June, 1953.

3(a) In 1954, the Applicant had saved sufficient money to permit him to buy a house in Oslo on 22nd April, 1954. The previous owner of the house was an old lady, Mrs. G. H., whose children were opposed to the sale concluded with the Applicant and who, therefore, wished to have the sale annulled. For this purpose, they managed to obtain, on 9th October, 1954, a court decision by which their mother was placed under guardianship. The guardian, the head of the Price Control authority, Mr. Monn, who was appointed, informed the Police that the Applicant had defrauded the old lady of money and, as a result of this false accusation, the Applicant was arrested on 16th October, 1954 and detained on remand until 30th March, 1955. His wife, and children were evicted and his property was "confiscated". In the press, information about him was published in a conspicuous manner and he was described as an unscrupulous swindler.

Subsequently, both criminal and civil proceedings were held against the Applicant because of these transactions with Mrs. G. H. on 30th March, 1955.

(b) After 5 1/2 months detention, the Applicant was released. He states that the charge of fraud had been abandoned. On the other hand, he was put on trial for attempts of resisting arrest and for an offence under Articles 270 and 271 of the Penal Code. Although he pleaded not guilty and could, invoke important facts in his favour, he was convicted on 11th October, 1955, by the Oslo City Court and sentenced to five years and six months imprisonment, and subsequent preventive measures according to Article 39, No. 1, paras. a - d of the Penal Code for a period of five years. He appealed and at the new trial before the Mediating Regional Court (Lagsmánnarett) the conviction was confirmed and he was sentenced to 9 months imprisonment on 23rd November, 1955, and subsequent preventive measures according to Article 34, No. 1, paras. a - f. The period of detention on remand was to be deducted. With regard to the preventive measures, the Court observed that, although it is the normal practice first to apply the less severe measures it would not be justified to limit the choice of the prosecution authority by excluding para. f of Article 39, No. 1, which provides for the possibility of preventive detention. He points out that the judges who passed this sentence were the same as had already been involved in the previous incidents referred to above under 1 and 2.

(c) A further appeal lodged by the Applicant was rejected by the Supreme Court on 19th December, 1955. The Applicant immediately lodged a petition for retrial (Gjeropptagelselbegjaeringen) with regard to the conviction for the offence under Article 270/271 of the Penal Code, which, however, was rejected by the Regional Court and the Supreme Court on 29th December, 1955, and 28th January, 1956, respectively.

After the end of the Applicant's term of imprisonment the Public Prosecutor's Office ordered his preventive detention. On 20th August, 1956, the Applicant appealed to the Regional Court, alleging that this measure was contrary to the judgment which, in his opinion, had provided only for less severe measures. However, the Presiding Judge decided on 27th October, 1956, that the order for preventive detention was in fact in accordance with the judgment and that therefore no action was called for. An appeal against this decision was rejected by the Supreme Court on 8th February, 1957.

On 16th July, 1957, the Applicant lodged a new petition for retrial which was rejected both by the Regional Court and by the Appeals Committee of the Supreme Court on 19th August and 4th October, 1957, respectively. The Applicant complains that the presiding judge of the Regional Court had been prevented from acting in the case since the Applicant had brought against him and a number of other persons a private criminal action mentioned further below because of 24 previous activities in this case. He further complains that one judge participating in the Supreme Court decision was one of those against whom his wife had tried to bring an action before Parliament in 1933. It appears that the Applicant was detained for 5 years in preventive detention.

(d) In the meantime the guardian of Mrs. G II and her children had brought against the Applicant, on 4th November, 1954, an action for restitution of the estate as well as a mortgage and a car. Upon their request the Oslo City Court - Judge Bretteville - decided on 22nd April, 1955, that the claim concerning the house should be entered in the Court registry to prevent further prejudice for the plaintiffs. The Applicant made a number of counterclaims and also moved for an interlocutory order allowing Mrs. Kiaer and her children to live in one room of the house concerned. On 7th July, 1955, this motion was rejected by the Oslo City Court - Judge Østensen. In the further course of the proceedings the Applicant challenged this judge, but his challenge was rejected on 8th December, 1955.

When the hearing for the final decision was fixed he renewed his challenge and stated that he would not recognise a decision given by Judge Østensen. He stated that he had in the meantime brought the private criminal action described further below. The challenge was rejected on 14th February, 1957, and on 21st February, 1957, judgment by default was given by Judge Østensen against the Applicant who was, at that time, held in preventive detention.

Subsequently to the restitution of the house to Mrs. G. H., it was sold on 21st May, 1956, in a forced sale and acquired by her children for the amount of 60,000 Norwegian Crowns this amount being according to the decision of the price control authority the legal maximum price. On 1st February, 1958, however, the children sold the house to a third party for 90,000 Norwegian Crowns after the price control authority had come to the conclusion that the house was not covered by the price regulations. The guardianship over Mrs. G. H. was lifted on 14th November, 1957, and she was subsequently evicted.

(c) In the meantime, on 10th July (or June) 1955, the Applicant had brought a private criminal action against the responsible persons of two newspapers "Aftenposten" and "Verdens Gang" because of allegedly defamatory statements about his transactions with Mrs. G. H. and the ensuing criminal proceedings.

On 26th January, 1956, he requested to be granted free legal aid and stated that otherwise he would withdraw his action. The request for free legal aid was rejected by the courts of all three instances and the City Court then terminated the proceedings in view of the Applicant's declaration that he would withdraw the case if he should not be granted free legal aid. This decision was confirmed by the Regional Court but set aside by the Supreme Court on 21st March, 1956.

The Applicant then extended his action to a number of other persons including the judges who had acted in his case and allegedly were responsible for the press reports. On 9th June, 1955, he lodged with the Oslo Criminal Investigation Court (Forhørsrett) a request for a judicial investigation, and a trial of the case before the Regional Court instead of the City Court but his request was rejected on 29th June, 1956, by the Court on the ground that the relevant provisions were not applicable to private criminal actions but only to public prosecution cases. The decision was confirmed upon appeal by the Regional Court and by the Supreme Court on 1st October and 6th November, 1956, respectively.

On 5th February, 1957, the Applicant submitted to the City Court a "complaint and indictment" (Stevning w/ Tiltalebeslutning) against 28 persons, among them his wife and his sisters as well as judges, lawyers, who had acted in the case and official doctors who had expressed opinions on his mental state. On 21st February, 1957, the Court president (Justitiarius) decided that Judge Galtung Eskeland should

deal with the case. On the other hand the Applicant states that his "complaint and indictment" of 5th February, 1957, was seized in February or March by the prison administration - he was then still in preventive detention - and on 15th May, 1957, he requested the City Court to lift this seizure. This request was received by the City Court on 10th May, 1957, but it is not clear what further steps were taken in the matter. The Applicant states that the case was indefinitely adjourned because no judge wanted to deal with it. When enquiring in 1961, he was told by the Court Registrar that the matter had been "dropped long ago" but in spite of his request, the Applicant did not receive any written statement to this effect.

4. In 1962 two Italians who had worked for the Applicant L B and G B brought an action against him and H. C K A/S, the corporation set up by him, claiming that they had not been paid the wages due to them. On 14th May, 1963, the Applicant and the Corporation were sentenced by the Oslo City Court to pay to the plaintiffs the amounts claimed by them. In July 1964 the Applicant was declared bankrupt and the curator bonis joined in the proceedings. The judgment concerning the obligation to pay the wages was confirmed, upon appeal, by the Regional Court on 5th December, 1964, and by the Supreme Court on 5th May, 1965. On 30th June, 1965, the Applicant lodged a petition for retrial and for a provisional suspension of the force (Rettskraften) of the final judgment. On 23rd July, 1965, the Regional Court decided not to suspend the force of the final judgment. There is no indication on the further progress of the proceedings concerning the petition for retrial.

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5. On 9th December, 1963, the Applicant requested the Chairman, both of the Oslo City Court and of the Fidsivating Regional Court to stay all proceedings pending before these courts to which he was a party until the decision of Parliament on a petition which he had made on 15th November, 1963. In that petition he had requested Parliament to appoint an attorney-general *ad hoc* (Setteriksedvoket) who was to deal with the accusations made by the Applicant against various members of the judiciary.

On 18th December, 1963, the Chairman (Justitiarius) of the Oslo City Court replied that a general stay of all proceedings was not possible and that the Applicant would have to make special requests in respect of any particular case which he would wish to be stayed. The President of the Regional Court also gave a negative reply on 17th December, 1963, in which he pointed out that the only case pending at that time before the Regional Court was the case of B against K.

On 19th October, 1965, the Applicant made a similar request with regard to a different case pending before the Regional Court to which he was a party. He stated that he would in no circumstances recognise a decision of the Regional Court. When invited by the Regional Court to state in detail his reasons for this challenge, the Applicant referred, on 9th December, 1965, to his previous demand to stay all proceedings before the Court.

6. After having been convicted in 1962 of offences against the price regulations and sentenced to 45 days of imprisonment and a fine of 500 Norwegian crowns, the Applicant was again indicted for a number of similar offences and counts of fraud and tax evasion on 10th July, 1963, 6th September, 1963 and 8th April, 1964. The judge competent to deal with this case was Judge Bretteville who, in 1955, had also given a decision in the case of G against H. For this reason the Applicant challenged the judge and the Chairman of the Oslo City Court submitted the challenge to the Supreme Court which decided, on 25th February, 1964, that the challenge was unfounded. The Supreme Court pointed out that Judge Bretteville was not among the judges accused by K in his private criminal action nor had he dealt with that criminal action.

On 9th July, 1964, the trial took place at the Oslo City Court before Judge Bretteville. Twenty seven witnesses were heard. The Applicant was acquitted with the regard to the charge of fraud but convicted of tax evasion and most counts concerning offences against price regulations.

A new sentence, including the 1962 term of 45 days of imprisonment, was fixed and the Applicant was sentenced to 120 days of imprisonment without probation. Upon the demand of one of the persons against whom the Applicant had committed his offences, he was sentenced to pay damages in the amount of 1,500 Crowns, the demand by two further persons were rejected.

The Applicant's licence to exercise the profession of a painter which he had been granted by the Regional Court in 1954, although he had not passed the professional examination and which had not been withdrawn at the time of the 1962 conviction, was now withdrawn permanently. The Applicant was sentenced to pay the costs of the proceedings which were fixed at an amount of 1,500 Crowns and, in this respect, the Court pointed out that he had contributed considerably to the length of the proceedings.

The Applicant requested a new trial by the Regional Court with regard to the conviction for tax evasion in accordance with the code of criminal procedure which gives the accused a right to request such new trial with regard to a conviction for certain more serious offences.

With regard to the conviction for offences against price regulations, the Applicant petitioned for leave to appeal to the Supreme Court which, on 27th November, 1964, refused leave to appeal but suspended the decision regarding the sentence imposed because of the new trial which was going to be held on the count of tax evasion before the Regional Court.

In the new proceedings before the original court, the Applicant challenged one of the judges, Mr. Sverdrup-Thygeson who, as an official of the Justice Department, had countersigned in 1953 a decision of the judge concerning the petition of Mrs. N. K. for a prosecution of certain Supreme Court judges before the High Court of State. On 17th November, 1965, the Applicant extended his challenge to

all professional judges of the Regional Court since they were either defendants in the private criminal action brought by him in 1955 or at least colleagues and therefore closely connected with the defendants. The Applicant also referred to his application before the Commission and requested that no decision with regard to the criminal case pending against him should be taken before the decision of the Commission.

On 22nd November, 1965, the Regional Court rejected these challenges as being ill-founded. On 23rd November, 1965, judgment was given and the conviction as to tax evasion was confirmed but the amount of tax involved was now found to be less than previously assumed. The sentence imposed by the City Court was confirmed but, because of the correction with regard to the amount involved in the tax evasion, the Applicant was not sentenced to pay any costs for the appeal proceedings.

7. After this decision, the Applicant fled the country and went to Sweden but returned shortly before Christmas, 1966. He states that after an extensive search by members of "The Evil Circle", "the ring of criminals who control the police and courts", he was arrested on 3rd March, 1967. One week later on 10th March, 1967, he was given formal notice that a new criminal prosecution for offences against price regulations was to be opened against him. The outcome of these new proceedings is unknown.

8. On 15th November, 1963, he applied to Parliament for the appointment of an attorney-general ad hoc. This petition was referred to the government and it was decided on 15th May, 1964 by royal decree that no further action should be taken in this respect.

On 10th July, 1964, the Applicant requested a re-examination of his petition and this request was equally referred to the Government. On 15th June, 1965 the Applicant submitted to Parliament a proposal of "a law on special powers for the Norwegian citizen, P. C. ?" in which he requested to set up a special judicial system, including a constitutional court, which would deal with all cases in which he was involved. The judges were to be appointed by the Applicant himself. He repeated this proposal on 2nd September, 1965 but apparently no further action was taken. It seems that he was informed that any Parliamentary Bill had to be signed by a member of Parliament and he states that he has been unable to obtain the signature of any such Member. ./.

9. The Applicant alleges a violation of Articles 3, 5, 6, 7, 8, 10 and 13 of the Convention and Article 1 of the Protocol and he requests compensation of 1 1/2 million pounds sterling.

In particular, he invokes Articles 5, paragraph (5), and 13 of the Convention.

(a) In respect of Article 5, paragraph (5), he maintains that he is entitled to compensation since his detention on several occasions was not lawful as required by Article 5, paragraph (1) (c), of the Convention. The real reason for his detention was, in his opinion, the desire to ruin him.

(b) In respect of Article 13 the Applicant states that he has not managed to obtain any investigation by the Norwegian authorities of his allegations. As prominent members of the judiciary are involved, he has even been unable to find a lawyer to assist him. He has referred to a letter by which Professor Edvard Hambro advised him to make contact with the Oslo Municipal Bureau for free legal aid, but he states that he was informed by that office that they were in no position to act on his behalf. He also applied, apparently however, without success to the German Bar Association (Bundesrechtsanwaltskammer) in order to obtain the assistance of a German lawyer.

THE LAW

Whereas the Commission has examined all the separate complaints made by the Applicant; whereas certain of these complaints appear to be inadmissible for various reasons, such as incompatibility, ratione materiae, ratione personae, non-exhaustion of domestic remedies and non-observance of the six months rule under Article 26 of the Convention;

Whereas, however, in any event, an examination of the whole case as it has been submitted, including an examination made ex officio, does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular the Articles invoked by the Applicant; whereas it follows that the Application as a whole is manifestly ill-founded within the meaning of Article 27, paragraph (2) of the Convention;

Now therefore the Commission

DECLARES THIS APPLICATION INADMISSIBLE

Secretary to the Commission

President of the Commission

(A.B. McNULTY)

(H. SØRENSEN)