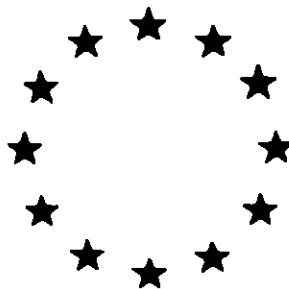


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EUROPEAN COMMISSION
OF HUMAN RIGHTS

Application No. 8582/79

Owe SKOOGSTRÖM
against
SWEDEN

Report of the Commission

(Adopted on 15 July 1983)

STRASBOURG

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I INTRODUCTION

1. The following is an outline of the case as submitted to the European Commission of Human Rights, and of the procedure before the Commission.

A. The substance of the application

2. The applicant, Mr Owe Skoogström, is a Swedish citizen, born in 1939 and resident at Ostavall. He is represented by Mr Peter Nobel, a lawyer practising in Uppsala.

3. On 10 January 1978 the Chief Public Prosecutor of Motala issued an order for provisional detention (anhållande) of the applicant on suspicion of having committed inter alia gross fraud. The applicant was arrested by the police four months later on 5 May 1978. He was brought to the police station in the nearest town, and the next day he was transferred to Stockholm.

On the day thereafter, 7 May, the applicant was transferred to Motala, where he was interrogated by a police inspector. The Public Prosecutor in charge was immediately informed about the interrogation over the telephone and decided that the applicant should remain in detention. On 8 May the Public Prosecutor appeared in person before the applicant and informed him that a request for his continued detention should be submitted to the Court.

On 12 May 1978 the District Court of Motala held a hearing following which it decided that the applicant should be remanded in custody.

The applicant was subsequently convicted and sentenced to eight months imprisonment.

4. The applicant has complained about the manner in which he was brought to trial. He alleges that the requirements of Art. 5 (3) of the Convention have not been complied with. The application raises the issue whether the applicant was "brought promptly before a judge or other officer authorised by law to exercise judicial power".

B. Proceedings before the Commission

5. The application was introduced on 20 October 1978 and registered on 4 April 1979. On 5 October 1981 the Commission decided, in accordance with Rule 42 (2) (b) of its Rules of Procedure, to bring it to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits. The Government's observations were dated 4 January 1982 and the applicant's observations in reply were dated 2 February and 23 April 1982.

6. Legal aid under the Addendum to the Commission's Rules of Procedure was granted to the applicant on 1 April 1982.

7. On 6 May 1982 the Commission decided to invite the parties to appear before it at a hearing on the admissibility and merits of the application. The hearing took place on 11 October 1982.

The applicant was represented by Mr Peter Nobel. The Government were represented by Mr Hans Danelius, Agent, Ministry for Foreign Affairs and Mr Magnus Åkerdahl, Legal Adviser, Ministry of Justice.

8. Following the hearing the Commission deliberated and decided on the same date, i.e. 11 October 1982 to declare the application admissible (1) insofar as the applicant complained that he was not upon arrest "brought promptly before a judge or other officer authorised by law to exercise judicial power" as provided for by Art. 5 (3) of the Convention. The Commission stated in its decision that the complaint raised several issues mainly as to whether to Public Prosecutor could be regarded as an "officer authorised by law to exercise judicial power".

9. Upon communication of the text of the above decision to the Parties under Rule 43 (1) of the Rules of Procedure, the Parties were given the opportunity to make additional submissions in writing on the merits of the application before 25 January 1983. No further submissions were received.

10. Following its decision on admissibility the Commission, acting in accordance with Art. 28 (b) of the Convention, placed itself at the disposal of the Parties with a view to securing a friendly settlement of the matter. In the light of the Parties' reactions the Commission now finds that there is no basis on which a friendly settlement can be effected.

1) See decision on admissibility, Appendix II

C. The present Report

11. The present Report has been drawn up by the Commission in pursuance of Art. 31 of the Convention and after deliberations and votes in plenary session, the following members being present;

MM. C. A. NØRGAARD, President of the Commission
J. A. FROWEIN
J. E. S. FAWCETT
L. KELLBERG
G. JORUNDSSON
S. TRECHSEL
B. KIERNAN
M. MELCHIOR
J. SAMPAIO
A. S. GOZUBYUYUK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS

The text of the Report was adopted by the Commission on 15 July 1983 and is now transmitted to the Committee of Ministers in accordance with Art. 31 (2) of the Convention.

12. A friendly settlement of the case not having been reached, the purpose of the present Report, is accordingly:

- (1) to establish the facts, and
- (2) to state an opinion as to whether the facts found disclose a breach by the Government of its obligations under the Convention.

13. A schedule setting out the history of the proceedings before the Commission is attached hereto as Appendix I and the Commission's decision on the admissibility of the application forms Appendix II.

14. The full text of the pleadings of the parties, together with the documents lodged as exhibits, are held in the archives of the Commission and are available to the Committee of Ministers, if required.

II ESTABLISHMENT OF FACTS

A. Introduction

15. The facts, as they appear from the parties' submissions, are outlined in the following paragraphs. The facts are in general not in dispute.

B. The particular facts of the case

16. On 10 January 1978, the Chief District Prosecutor (chefsåklagare) of Motala, Mr A, issued an order for the applicant's provisional detention (anhållande). The reason was that the applicant was suspected of having committed criminal offences in connection with book-keeping, dishonest acts against his creditors, gross fraud and offences against the Act of Tax Collection (Uppbördslagen). All these offences concerned acts that he had committed in a former hotel and restaurant business which he had operated together with his brother. In August 1977 the business was declared bankrupt.

Since the applicant's whereabouts were not known he could not immediately be apprehended. Therefore the applicant was posted as wanted by the police in the official Police Gazette (Polisunderrättelser) on 12 January 1978.

17. According to the work programme which at the time applied at the prosecution office at Motala, all cases were divided by drawing lots between the four public prosecutors at the office in accordance with certain principles. The case of the applicant had, through the drawing of lots, been assigned to the Chief District Prosecutor, who was the head of the office.

However, some decisions in the applicant's case had, as will be seen, to be taken when the Chief District Prosecutor was not on duty.

All the three prosecutors who were acting in the applicant's case were professional lawyers, civil servants, employed on a permanent basis and normally staying in their career until the retirement age.

18. Almost four months after the issuance of the detention order, on 5 May 1978 at 12.30 pm, the applicant was arrested by the police at his home. He was brought to the police station in the nearest town, Sundsvall, about 150 kilometres from his home.

19. Sundsvall is situated about 400 kilometres north of Stockholm and Motala about 250 kilometres south-west of Stockholm. The distance between Sundsvall and Motala is approximately 600 kilometres.

20. The applicant arrived at the police station in Sundsvall at 14.10 pm. The criminal inspector in charge at the police station in Motala was informed of the arrest of the applicant at 14.25 and he, in his turn, informed the Public Prosecutor then in charge, Mrs. M at 14.45. Mrs M. was a District Prosecutor stationed not in Motala, but in Linköping, which is the main town in the area where Motala is situated. On 5 - 7 May, Mrs M was in charge of the public prosecution office also at Motala.

The Public Prosecutor Mrs M. decided that the applicant should be transferred to Motala for interrogation and for a decision to be made as to his continued detention.

21. A message concerning this decision was sent to Sundsvall by way of data display and telex. It was sent, however, to a data display and telex unit which was not attended.

It was not until the morning of the next day (6 May), after a telephone call to the police station in Motala, that the police in Sundsvall discovered the message.

22. The applicant was transported from the police station in Sundsvall at 12.30 pm on 6 May. After transfer by aeroplane and police car, the applicant was taken into custody at the police station in Stockholm, where he spent the night.

On the following day (7 May) the applicant was brought to the police station in Motala, where he arrived at 14.00.

23. At 14.30 the applicant was interrogated by a police inspector. The Public Prosecutor in charge, Mrs M. was immediately informed over the telephone about the interrogation, and on the basis of this information she decided at 15.35 that the applicant's provisional detention should continue.

24. On 8 May, which was a Monday, the applicant was further, interrogated by a police officer.

On that day, and on the following day the Chief District Prosecutor Mr A was on sick leave. His substitute was District Prosecutor, Mr T. who in Mr A's absence acted as Chief District Prosecutor, and was thus in charge of the applicant's case.

After the interrogation which was conducted by the police officer, the Public Prosecutor Mr T. decided to make an application to the District Court (tingsrätt) of Motala for the applicant's detention on remand (häkningsframställning).

Later on the same day, following a request from the applicant, the Public Prosecutor Mr. T. appeared in person before the applicant and informed him that a request for his detention should be submitted to the Court. This meeting has been described as follows in a letter from Mr T to the Parliamentary Ombudsman:

"In the morning of 8 May I was informed that Mr Skoogström had been arrested and brought to Motala. After lunch I was informed by the criminal investigator about the interrogation which had taken place in the morning and I decided to apply to the Court for a decision that he should be remanded in custody. In the afternoon Mr Skoogström requested to speak to the Prosecutor in the case and I presented myself in the office of the criminal investigator in whose presence I declared to Mr Skoogström that an application for his remand in custody was to be lodged and in this connection he received oral information concerning the restrictions imposed."

25. The application was received by the Court on 9 May. On 12 May 1978 the District Court in Motala held a hearing following which it decided that the applicant should be remanded in custody (häktas). It was the Chief District Prosecutor, Mr A. who performed the prosecution in Court.

26. The trial was held on 29 and 30 May 1978 with Mr A as prosecutor and on 5 June 1978 the District Court convicted the applicant of falsification of documents, dishonest acts against his creditors in connection with falsification of documents and violations of the Act of Tax Collection. He was acquitted on two counts: gross fraud and offences in connection with book-keeping. He was given a sentence of six months' imprisonment.

27. On 8 June the applicant declared in writing to the manager of the common jail (allmänna häktet) in Norrköping that he renounced his right to appeal against the sentence and that he conceded to its execution. After that he appealed to the Court of Appeal (Göta hovrätt) in Jönköping urging that he should be acquitted. By a decision of 12 July 1978 the Court of Appeal, with reference to the above mentioned declaration, dismissed the appeal without dealing with it on the merits. In the decision it is indicated that Mr A was the prosecuting party. The applicant appealed against this decision to the Supreme Court (Högsta domstolen), which by a decision of 16 August 1978 refused to grant leave to appeal.

28. The Public Prosecutor also appealed to the Court of Appeal against the judgment of the District Court. By a judgment of 11 August 1978 the Court of Appeal found the applicant guilty also of gross fraud and increased the sentence to eight months' imprisonment. Here Mr T is indicated as the prosecuting party. The applicant appealed against this judgment to the Supreme Court (Högsta Domstolen) which by a decision of 28 September 1978 refused to grant leave to appeal.

29. On 3 July 1978 the applicant complained to the Parliamentary Ombudsman who delivered his decision on 15 December 1978. In his decision, the Parliamentary Ombudsman criticised the fact that the request for the applicant's transportation to Motala was sent to a telex terminal that was not attended, and the fact that the police officer in charge in Sundsvall did not investigate why the message had not arrived. The Parliamentary Ombudsman concluded that the requirement of promptness in the Code of Judicial Procedure (rättegångsbalken) was not complied with. However, he also concluded that he was doubtful as to whether it would have been possible to transport the applicant earlier, even if the message had been received in time, because of the limited resources of transportation during weekends.

30. The applicant was released from prison in February 1979.

C. Relevant Domestic Law and Practice

1. The organisation and general functions of Swedish Public Prosecutors

31. The prosecution authorities in Sweden are organised in a hierarchical system. Public prosecutors function at three levels, the local level, the county level and the national level.

At the local level, each prosecution district (åklagardistrikt) is headed by a chief district prosecutor (chefsåklagare). In each local district, there are also one or more district prosecutors (distriktsåklagare) and assistant prosecutors (assistentåklagare). In the Stockholm, Gothenburg and Malmö districts, the organisation is slightly different. In these districts, there is a first district prosecutor (överåklagare) as head of the prosecution authority which is divided into chambers, each one headed by a chief district prosecutor (chefsåklagare). In each chamber, there are also a certain number of chamber prosecutors (kammaråklagare).

At the county level, the organisation is as follows. In each county, a county prosecutor (länsåklagare) is responsible for the prosecution of serious criminal offences and has also a general duty to supervise the prosecutors at local level within the county. In some counties, there are several county prosecutors, one of whom is the head of the county prosecutions office. The three local prosecution authorities of Stockholm, Gothenburg and Malmö are not subordinate to any county prosecutor, but the first district prosecutors in these districts have the same tasks and responsibilities as a county prosecutor. The county prosecutors as well as the first district prosecutors of Stockholm, Gothenburg and Malmö are so-called state prosecutors (statsåklagare) which means, inter alia, that they have the right to take over a task which is normally incumbent upon a local prosecutor.

The central prosecution authority to which all other public prosecutors are subordinate is the Office of the Prosecutor-General (riksåklagaren).

The provisions regulating the functions of the Public Prosecutors are contained in the Code of Judicial Procedure (rättegångsbalken) and the Code of Instructions governing the responsibilities of Public Prosecutors (åklagarinstruktionen, hereinafter referred to as "the Instruction"). In the following reference is made to the provisions as they were in force in the spring of 1978, the relevant time in the present case.

32. The Prosecutor-General is the supreme prosecutor under the Government and is responsible for, and the leader of, the public prosecutors of the realm. Under the Prosecutor-General the state prosecutors, each within his sphere of jurisdiction, are responsible for, and the leaders of, the public prosecutors.

The Prosecutor-General and the state prosecutors are appointed by the Government. The appointment of other prosecutors is prescribed in the regulations governing their office (Chapter 7, Section 2 and 3 of the Code of Judicial Procedure).

33. The state prosecutors or the district prosecutors are the general prosecutors at the lower courts and the courts of appeal. The Prosecutor-General, however, is the general prosecutor at the lower courts and the courts of appeal in certain cases and the general prosecutor at the Supreme Court (Section 4).

34. The Prosecutor-General and the state prosecutors may take over a case from a subordinate prosecutor (Section 5).

35. The Prosecutor-General is responsible for supervising the activities of all prosecutors. By making inspections and by other means he shall keep himself informed of the state and requirements of the prosecution authorities, and of other conditions prevailing in his sphere of responsibility. He should pay special attention to the application of current provisions governing decisions to refrain from instituting criminal proceedings and those governing orders of summary punishment.

The Prosecutor-General lends prosecutors assistance in the form of advice and information and issues directions concerning the performance of their duties (Section 4 of the Instruction).

36. The Head of the County Prosecutions Office allocates the duties performed by the Office between himself and the other county prosecutors. He pays special attention to work concerned with the leadership and supervision of the activities of prosecutors within the area for which the Office is responsible. The Head of the County Prosecutions Office ensures that the prosecutors in his district

fulfil their obligations. He shall inspect the prosecution authorities under his jurisdiction.

The County Prosecutor seeks to ensure that the provisions governing decisions to refrain from instituting criminal proceedings and orders for summary punishment, are applied correctly and consistently.

The County Prosecutor lends assistance to the prosecutors within his district in the form of advice and information relevant to the performance of their duties.

The County Prosecutor should normally perform the duties of prosecutor in cases where these duties are particularly demanding or where such duties should be performed by a state prosecutor (Section 17 - 20 of the Instruction).

37. In accordance with principles laid down in work regulations for prosecutors, the Chief District Prosecutor shall allocate the duties of the prosecution authority between himself and the other prosecutors so that the workload is distributed as evenly as possible. He should deal with the cases where the duties of the prosecutor are most demanding or should for other reasons be carried out by the Chief District Prosecutor.

The Chief District Prosecutor may change the allocation of cases if the nature of a particular case or any other circumstance makes this necessary.

The Chief District Prosecutor lends assistance to the prosecutors at the District Prosecutions Office in the form of advice and information relevant to the performance of their duties.

The District Prosecutor has a duty to inform promptly the County Prosecutions Office of such cases concerning which there may be reason to assume that the County Prosecutor should perform the duties of prosecutor or cases of which the County Prosecutor should be made acquainted for the purpose of performing his directive and supervisory responsibilities (Section 35 and 36 of the Instruction).

38. A review procedure has developed, according to which a decision by a District Prosecutor to prosecute or not to prosecute, or to discontinue preliminary investigations may be re-examined by a state prosecutor or the Prosecutor-General. If the Prosecutor-General decides to prosecute, he usually at the same time orders a District Prosecutor to institute and carry out the prosecution. In such a case the District Prosecutor cannot refuse to prosecute.

39. Section 6 of the Code of Judicial Procedure provides that a circumstance that would disqualify a judge from hearing a particular case also disqualifies a public prosecutor from participating in the preliminary investigation or prosecution of a particular offence. Disqualification of a prosecutor, however, may not be grounded upon an action taken by him in the course of the performance of his duty, nor may he be disqualified due to a criminal offence committed against him in, or by reason of, his official capacity.

Although disqualified, a prosecutor may take any measure which cannot be postponed without risk.

The issue of disqualification of a public prosecutor is determined by his immediate superior. The Prosecutor-General determines himself the issue of his disqualification.

40. When dealing with a particular case the Public Prosecutor must take into account not only laws issued by Parliament, but also instructions of a general nature issued by the Government and the Prosecutor-General. In an individual case the prosecutor may ask the Prosecutor-General for advice but he shall not accept instructions from anyone. This independence is rooted in the Instrument of Government (regeringsformen) which provides as follows in Chapter 11 Section 7:

"No public authority, nor the Riksdag, nor the decision-making body of a municipality may determine how an administrative authority shall make its decision in a particular case concerning the exercise of public authority against a private subject or against a municipality, or concerning the application of law".

2. The tasks of Public Prosecutors

41. The tasks of a Public Prosecutor are to commence, govern and perform preliminary investigations of criminal offences, to decide whether or not prosecution shall be instituted, to draw up the indictment and to perform the prosecution in the courts.

A Public Prosecutor has power to order the provisional detention of a suspect. He has also power to issue a punishment order (strafföreläggande) concerning petty offences and misdemeanours.

42. When a case has been assigned to a prosecutor, he is normally in charge of the case from the beginning to the end, i.e. from starting preliminary investigations to the case is decided by the courts (cf. however para. 33). It happens frequently, however, that there is a change of prosecutor within the same prosecutions office, and sometimes a prosecutor may be in charge of more than one prosecution office.

43. The rules regulating preliminary criminal investigations are contained in Chapter 23 of the Code of Judicial Procedure and may be summarised as follows:

A preliminary investigation (förundersökning) shall be initiated as soon as there is cause to believe that an offence falling within the domain of public prosecution has been committed.

During the preliminary investigation, an inquiry shall be made concerning the person who reasonably may be suspected of the offence and concerning the existence of sufficient cause for his prosecution. The case shall be prepared so that the evidence can be brought forward at the main hearing in an uninterrupted sequence.

The preliminary investigation is initiated either by a police authority or by the prosecutor. If it is initiated by a police authority and the matter is not of a simple nature, the prosecutor shall take over its conduct as soon as someone can reasonably be suspected of the offence. For special cause the prosecutor shall also take over the direction of the investigation in other situations.

When the investigation is conducted by a police authority, the prosecutor may issue instructions concerning its development.

When the investigation is conducted by the prosecutor, he may invoke the assistance of a police authority or commission a policeman to take a special measure relating to the investigation.

44. At the preliminary investigation not only circumstances pointing to the guilt of the suspect, but also those favourable to him shall be considered, and any item of evidence beneficial to him shall be preserved (Chapter 23, Section 4).

Upon the conclusion of the preliminary investigation, a decision shall be taken as to whether or not to institute a prosecution.

A prosecutor who desires to institute a public prosecution shall file with the court a written application for a summons against the person to be charged, however, to the extent found appropriate, the court may authorise the prosecutor to issue a summons.

3. Detention on remand (häktning) and provisional detention (anhållande)

45. The general prerequisites for detention on remand are stated in Chapter 24 Section 1 of the Code of Judicial Procedure. This section reads as follows:

"Anyone suspected on probable cause of an offence punishable by imprisonment for a term of one year or more may be detained on remand if, in view of the nature of the offence, the behaviour of the suspect or any other circumstance, it may reasonably be expected that he will abscond or otherwise evade legal proceedings or punishment, or impede the investigation by suppression of evidence or by any other device, or if there is cause to believe that he will continue his criminal activity.

If the offence is less grave than stated in the first paragraph but is punishable by imprisonment, and the suspect has no permanent residence within the realm, he may be detained on remand if it may reasonably be expected that he will abscond.

If the offence is punishable by imprisonment for a term of at least two years, detention on remand shall occur unless it is evident that there is no cause for it.

If it may be assumed that the suspect will be sentenced only to a fine, detention on remand shall not occur."

46. Detention on remand is ordered by a court. However, before the question of detention on remand is submitted to the court, provisional detention may be ordered by the Public Prosecutor both of a person who is arrested and of a person who is absent and cannot be found at the time when the decision is taken.

Provisional detention is regulated in Chapter 24 Section 5 of the Code of Judicial Procedure, as follows:

"If there is cause for the detention on remand of a person, he may be provisionally detained while awaiting the court's order thereon.

Even if full cause for detention on remand does not exist, the suspect may be provisionally detained if it is found to be of extraordinary importance that he remains in custody pending further investigation.

Provisional detention is ordered by the investigating authority or the prosecutor."

47. Chapter 24 Section 6 provides that if the person whose provisional detention has been ordered has absconded, or is otherwise not present when the order is issued, notice of the execution of the order shall be reported as soon as it has occurred to the authority which ordered the provisional detention.

If a person suspected of an offence absconds, and there is cause for his provisional detention, he may be posted as wanted by the authority competent to order provisional detention.

48. When a person has been apprehended, a report thereof shall promptly be made to the authority competent to order provisional detention. After interrogation of the person the authority must decide immediately whether the apprehended person shall be provisionally detained or released (Section 7).

49. Anyone who has been provisionally detained pursuant to Section 6, or apprehended shall be brought before the authority competent to order provisional detention for interrogation as soon as possible, or before a policeman commissioned to hold the interrogation (Section 8).

As regards the practice concerning these interrogations, the following is quoted from the report of a Parliamentary Commission (SOU 1977:50) describing the current practice:

"The interrogation shall in principle be conducted by the prosecutor who is directing the preliminary investigation. He can, however, delegate to a police officer to conduct the interrogation. From the wording of this section of the law, it appears that such authorisation can not be made generally but has to be given for each singular case. The practice in connection with apprehension has, particularly in the large cities, established itself differently than what the law prescribes about the proceedings by detention interrogations. In practice it seems to occur rarely that the prosecutor himself conducts an interrogation. In Stockholm for example it has, for a long time, been the established practice that a police officer conducts an interrogation with the suspect prior to the report about the apprehension without having received instruction from the prosecutor to conduct the interrogation. The police officer thereafter presents the case in connection with reporting the apprehension for the prosecutor. The latter thereupon decides on the question of provisional detention on the basis of the presentation."

50. Chapter 24, Section 12 first paragraph reads as follows:

"Unless the provisionally detained person is released, the authority responsible for the provisional detention shall submit to the court an application for an order for detention on remand no later than the day after the issuance of the provisional detention order or after the appearance of the provisionally detained person for interrogation pursuant to Section 8. If disposition of the question of detention on remand requires additional investigation, the application may be postponed, however, it shall be submitted as soon as possible, and at the latest on the fifth day after the issuance of the provisional detention order, or after the appearance of the provisionally detained person for interrogation. When no application as stated in this paragraph is made, the provisionally detained person shall immediately be released."

51. Section 13 of the same chapter provides:

"When an application pursuant to Section 12 has been filed, the court shall hold a hearing on the issue of detention on remand as soon as possible and, if no extraordinary impediment exists, no later than four days after receipt of the application. If the main hearing is scheduled to occur within one week of the filing of the application, the matter may be postponed until the main hearing, unless the Court finds that a special hearing should be held."

52. After the conclusion of the hearing, the court shall immediately pronounce its determination on the issue of detention on remand. An order for detention on remand shall detail the offence for which the detained person is suspected and briefly state the cause for the detention on remand. When detention on remand is not ordered, the court shall direct the provisionally detained person to be immediately released.

III. SUBMISSIONS OF THE PARTIES

A. The Applicant

1. General remark

53. The applicant points out that the events in his case and the procedure followed was in conformity with, and typical for the normal Swedish practice. Only on one point was there an excessive delay and that was the lapse of time between the arrest on 5 May and the interrogation two days later by the police officer and the report made to the Public Prosecutor. This delay was also criticised by the Parliamentary Ombudsman.

Typical for the normal Swedish practice is the delay between apprehension and the presentation of the case to the Court, as well as the interchange of different prosecutors in dealing with a suspect's case.

2. "Brought before"

54. The applicant recalls that he was arrested on 5 May 1978 in the vicinity of Sundsvall. After having been brought to the police station at Motala, where he arrived on 7 May, he was interrogated by a police officer. He was however never brought before the Public Prosecutor Mrs. M., who decided that his provisional detention should continue. Mrs M., who happened at the time to be in charge for more than one prosecution office did not serve at Motala but at Linköping, where she made her decision after having received a telephone report from the Police Authority at Motala.

The applicant submits that the requirement in Art. 5 (3) of being "brought before" is fulfilled if the person is brought physically before the officer in question. The important thing is that arrangements are made to facilitate a two-way communication with questions and answers personally. It is submitted that direct communication, meaning that here is a possibility of speaking one person to the other, is necessary. It is thus not sufficient with a telephone report from a third person.

3. The procedure

55. The applicant submits that it is extremely rare that a prosecutor hears the suspect himself. It is even rare that he sees the suspect before the trial. The applicant refers to a report by a Parliamentary Commission released in 1977 (SOU 1977:50), in particular the part where Swedish practice is reported (see para. 49 above).

4. Independence

56. The applicant submits that very often it happens in the life of prosecutors that suddenly they have to go away and leave their office in order to appear at a court hearing, for example, of a case of detention on remand. It very frequently happens that there is an interchange between the prosecutors in a prosecution district. It is also not unusual that one prosecutor is responsible for the preliminary inquiry and for the decision on provisional detention during that period of time, that another appears for the prosecution before the court when the prosecutor has applied for an order for a prisoner to remain in detention, and that a third prosecutor may appear in the court for the prosecution during the trial. It is true that it could be the same prosecutor all the time, and it is also correct that everyone of them is at every moment fully responsible for the correct application of the law, but on the other side, the interchange leads to a situation where the suspect's opponent is not an individual prosecutor but a chamber of prosecutors.

The applicant submits that it is necessary in order to comply with the provision of Chapter 24, Section 7, paragraph 3 (prompt report), to arrange for a system of duty prosecutors at nights, during week-ends and holidays. It very frequently happens as in this case that a Public Prosecutor is on duty for more than one district.

Mrs M, who was an ordinary Public Prosecutor in the district of Linköping was on duty also for the district of Motala when the applicant was apprehended. She was thus obliged to be there so she could be reached on the telephone if anyone would be apprehended during that week-end. The applicant submits that it would be extremely impractical if Mrs M. had left her office, or her phone, or her home where she was obliged to be, and gone to Motala to hear the applicant, had he requested that. It is submitted that this never happens, and that if an apprehended person would make a request to that end he would certainly be informed that that would be impossible.

The applicant submits that in view of the general instructions given to prosecutors there is no absolute independence as there is for the courts.

As regards the independence of the parties it is recalled that the same prosecutor may perform the preliminary investigation, including provisional detention and the prosecution as such. But it may also be different prosecutors working within the same district or, when it comes to week-ends, a prosecutor on duty in another district. In such circumstances it can not be said that there is an independence of the parties. It is in fact identity. The prosecutor is the party.

The applicant recalls that in his case three public prosecutors were involved. Mrs M ordered provisional detention on 7 May, Mr T decided to make an application to the Court on 8 May for his remand in custody, Mr A performed the prosecution before the court on 12 May and on 30 May, and when the prosecution appealed to the Court of Appeal it was Mr T who was the prosecutor. This is a typical situation within a Swedish Prosecution Office.

5. The substantive requirement

57. The applicant refers to Chapter 24, Section 5, paragraph 2 of the Code of Judicial Procedure. He submits that it is true that the main rule is that if the requirements for remand in custody are fulfilled and such an order could be expected by the court, then the prosecutor is competent to decide on it provisionally. However paragraph 2 in Section 5 is wider. It is thus possible to order provisional detention, not only in cases where the legal requisites are at hand, but also if it is "of extraordinary importance that he remains in custody pending further investigation".

This power given to the prosecutor goes further than the power of the courts. This means that the prosecutor is not obliged to restrict himself to such grounds for detention, which are the grounds for detention by the court.

These facts should be compared to Section 12 in the same Chapter which describes the rule that on the day after the provisional detention, the prosecutor shall submit to the Court an application for an order for his remand in detention. However, it is also provided as follows:

"If disposition of the question of detention on remand requires additional investigation, the application may be postponed, however, it shall be submitted as soon as possible, and at the latest on the fifth day after the issuance of the provisional detention order, or after the appearance of the provisionally detained persons for interrogation".

It is submitted that these two Sections seen in relation to each other, imply that Swedish prosecutor has the power to decide provisional detention for a considerable period of time and on a legal ground that goes further than the prerequisites for remand in custody by the courts.

The applicant maintains that this is one of the areas which distinguishes the Swedish prosecutor in comparison with the Swiss prosecutor in the Schiesser Case, who was limited and restricted in his considerations of the case to the legal prerequisites for remand in custody according to Swiss law.

The applicant points out that the Public Prosecutor was not under an obligation to motivate his decisions. When an order for provisional detention was made, there was no obligation to indicate the ground for it. The applicant does not recall that any ground was given in his case, and therefore it is not certain what were the grounds for the decisions by the Public Prosecutors Mrs M and Mr T.

6. The meeting on 8 May

58. The applicant submits that, as the prosecutor is obliged either to release the detainee immediately or to submit an application to the Court for detention on remand, Mr T's decision to submit such an application implied at the same time a decision that the detainee should remain in detention. The applicant considers that the decision by Mr T was the materially most important decision since it followed upon a comprehensive interrogation of the applicant by a police officer who reported to the Public Prosecutor.

However, the applicant points out that Mr T had already decided to make an application for the applicant's continued detention, when he met the applicant. Mr T only informed the applicant about this decision and there was no interrogation of him by the Public Prosecutor.

7. Conclusion

59. The applicant submits that he was not until seven days after the arrest brought before a judge or any other officer authorised by law to exercise judicial power. This delay could not be considered to be "promptly" within the meaning of Art. 5 (3). Even if he should have been brought before Public Prosecutor Mrs. M, or Public Prosecutor Mr. T, none of them did satisfy any of the three conditions each of which according to the judgment in the Schiesser case constitutes a guarantee for the person arrested.

The applicant submits that he has been the victim of a breach of Art. 5 (3) of the Convention.

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B. The Government

1. "Authorised by law"

60. The Government point out that under Swedish law a Public Prosecutor is in certain circumstances competent to order the provisional detention of a person suspected of having committed an offence. The provisions regarding such detention are contained in Chapter 24 of the Code of Judicial Procedure.

Accordingly, the Government submit that in this respect no difficulty arises in the present case, since it is clear that the Public Prosecutor fulfills the condition of "authorised by law" in Art. 5 (3).

2. The independence of Public Prosecutors

61. The Government emphasise that, when deciding whether or not to detain a suspect, the Public Prosecutor acts in full independence of the executive and the parties. It is a fundamental constitutional principle in Sweden that neither the Government nor the Ministries are allowed to give the administrative authorities any instructions as to how they are to decide in a concrete case before them. The administrative authorities have to take their decision in concrete cases exclusively under their own responsibility and in accordance with the applicable laws or other regulations of a general character.

This principle also applies to cases where a Public Prosecutor has to decide whether or not to detain a suspect. The Public Prosecutor who is entrusted with such a case will have to decide according to his own best judgment whether or not the conditions for detention laid down in Chapter 24 of the Code of Judicial Procedure are fulfilled. When making this judgment the Public Prosecutor should take into account the applicable laws, and ordinances and instructions of a general character issued by the Government and by the Prosecutor-General. Such instructions must however be of a general character. In reaching a conclusion on this point the Public Prosecutor must not accept instructions from any other body, be it the Government, Parliament, a higher Public Prosecutor or any other authority. The Public Prosecutor shall decide in full independence and he is only bound by the law and other rules of a general nature. The Government refer to the Constitution; Chapter 11, Section 7 of the Instrument of Government.

The Government state that this means that no other authority, not even the Prosecutor-General or any other higher prosecutor, may give a Public Prosecutor instructions about the decisions he is to take in a specific case. This applies to a decision to prosecute or not to prosecute as well as to a decision regarding the provisional detention of a suspect.

62. The Government point out that it is another matter that the Prosecutor-General or a State Prosecutor has the right to take over a case from a subordinate prosecutor. If that happens, the full responsibility for further action in the case is transferred to the higher prosecutor. However, this does not restrict the independence of the subordinate prosecutor as long as he is in charge of the case.

It is submitted that the independence is neither affected by the fact that the Prosecutor-General or a State Prosecutor may, within their general competence of review, change a decision taken by a subordinate prosecutor. The Government point out that this competence of review is in practice exercised particularly in regard to decisions by prosecutors not to prosecute or not to pursue criminal investigations.

63. The Government recall that in the present case three different public prosecutors dealt with the applicant's case. They point out that each one of these three public prosecutors was fully responsible for the applicant's continued detention as long as he or she was in charge of the case.

The Government state that as far as they have been able to establish, neither Mrs M nor Mr T had any contact with Mr A before they took their respective decisions in the applicant's case.

The Government state that according to the Swedish practice the Public Prosecutor, who has been assigned a case is normally in charge of the case from the beginning to the end. Consequently, there is normally no change of prosecutors when the preliminary investigation has been completed and the case has been brought before the Court. Swedish law does not prevent a Public Prosecutor who has taken certain decisions during the preliminary investigation, for instance regarding the provisional detention of a suspect, from appearing as prosecutor against that person during the trial. The Government refer to Chapter 7, Section 6 of the Code of Judicial Procedure which provides that disqualification of a prosecutor may not be grounded upon an action taken by him in the course of the performance of his duty.

The Government recall that it so happened that the prosecutor who decided on provisional detention was not the same person as the prosecutor who appeared at the trial. This was however merely due to the fact the Mr A, who was in charge of the case throughout, was not on duty when the question on provisional detention had to be decided.

As regards the relation to the parties, the Government refer to the Schiesser Case in which one issue was whether the Public Prosecutor who orders detention has at the same time prosecuting functions in regard to the detained person. The Government point out that in the Schiesser case the District Attorney did not exercise concurrent investigating and prosecuting functions, and that the Court was accordingly not called upon to determine the converse situation.

64. The Government recall however that the normal situation in Swedish practice is that the same prosecutor is entrusted with the investigating functions, including the power to detain provisionally, and the prosecuting functions. The Government submit that such a system is not contrary to the Convention. They submit that the fact that the Public Prosecutor may later be in charge of the prosecution of a suspect does not under the Swedish system make him less impartial in examining whether the legal requirements for provisional detention are fulfilled. Reference is made to the fundamental principle of objectivity which all prosecutors have to observe and which is reflected in Chapter 23, Section 4 of the Code of Judicial Procedure. The whole investigation must be conducted in an impartial manner and the Public Prosecutor must never act as a party whose sole purpose is to obtain the conviction of the suspect. When deciding on provisional detention the Public Prosecutor must examine in an impartial manner whether the criteria for detention are fulfilled, and it would be contrary to the principle of objectivity to disregard elements which may speak in favour of the suspect. It is submitted that in principle there is no difference between the way the Public Prosecutor examines this question of detention and the way the Court examines the corresponding question of detention at a later stage of the procedure.

The Government submit, however, that the Commission's task is not to pass a judgment on the Swedish law as such, but to consider the specific circumstances of the present case.

They submit, therefore, that it is not necessary to examine this question in the present case, since the Public Prosecutor who decided on 7 May 1978 that the applicant should remain in custody was not identical with the Public Prosecutor who brought the criminal proceedings against him. It is submitted that in that respect, the situation in the present case is similar to the one prevailing in the Schiesser case.

3. The procedure

65. The Government recall that an order for the applicant's arrest was first issued by the Public Prosecutor of Motala on 10 January 1978. The applicant's whereabouts were unknown when the order was issued and the arrest could not be effected until 5 May 1978 in the area of Sundsvall. It is submitted that since the Public Prosecutor of Motala was in charge of the investigation, the applicant had to be transported from Sundsvall to Motala, the distance between those two towns being between 500 and 600 kilometres.

At Motala the Public Prosecutor Mrs M was in charge of the case, and it was her task to decide whether or not the applicant should be kept in custody. Before such a decision could be taken it was necessary, according to Chapter 24, Section 8, of the Code of Judicial Procedure, to interrogate the applicant. Such interrogation took place on 7 May 1978 at 14.30 hours, immediately after the applicant's arrival at Motala. The applicant was heard by a police inspector on behalf of Mrs M, and on the basis of this interrogation, Mrs M decided that the applicant should remain in custody.

The Government point out that Chapter 24, Section 8 provides for two alternatives in respect of the interrogation which is to precede the decision on provisional detention. The interrogation shall be conducted either by the Public Prosecutor who decides on the provisional detention or by a police officer commissioned to hold the interrogation.

The Swedish law regards these two alternatives as equivalent. In 1975, the Parliamentary Ombudsman stated his view on the interrogation provided for in Chapter 24, Section 8. He pointed out that the purpose of the interrogation is to ascertain whether the conditions for provisional detention are fulfilled. The Ombudsman considered that Chapter 24, Section 8, should be understood to mean that the authority which decides on provisional detention must ensure that as a result of the interrogation, it receives a sufficient basis for deciding whether to detain or to release the suspect. It is therefore important, the Ombudsman stated, that the authority which shall decide on the detention issue ensures that it gets sufficient material for this decision and that that authority, if previous interrogations do not suffice, either conducts the interrogation itself or commissions a police officer to conduct the interrogation.

The Government submit that consequently, Swedish law is based on the idea that the Public Prosecutor must ensure that he has sufficient material to decide on the matter of provisional detention in an impartial manner on the basis of the criteria laid down in the law. In many cases, such material can be obtained by way of an interrogation conducted by a police officer on the Public Prosecutor's instructions. If the Public Prosecutor considers it necessary for the understanding of the situation to conduct the interrogation himself, he shall do so.

66. The question therefore arises under Art. 5 (3) whether it is sufficient that the applicant is brought before a person who interrogates him on behalf, and upon the instructions of an officer who exercises judicial power. The Government submit that this is sufficient under a system such as the Swedish system which ensures effectively that the Public Prosecutor, when deciding on the detention issue, has sufficient material at his disposal as a basis for an impartial and well-founded decision.

The Government state that Mrs M. has informed them that if the applicant had said that he preferred to speak to the Public Prosecutor in person she would have felt obliged to have seen the applicant that day, or she would have asked Mr A to interrogate the applicant. This was not the normal procedure but on a specific request she would have granted him a meeting.

The Government submit that whatever view is taken of the interrogation which took place on 7 May and of the subsequent decision by Mrs M it should be observed that in any case the applicant did appear before the Public Prosecutor, Mr T on 8 May.

The Government observe that the interrogation on 7 May was a rather short one, its only purpose being to provide a basis for the decision regarding provisional detention. The interrogation which took place on 8 May was a much longer and complete interrogation which formed the basis for the decision to submit the application to the court for detention on remand.

4. The substantive requirement

67. The Government state that according to Swedish law, it is clearly the duty of the Public Prosecutor to examine the circumstances militating for or against detention, to decide whether or not the conditions for detention laid down in Chapter 24 of the Code of Judicial Procedure are fulfilled and to order the release of the suspect, if these conditions are not fulfilled. They submit that there is no reason to doubt that Mrs M considered the facts of the case along those lines before ordering the applicant's continued detention.

The Government submit that the basis for the detention in the present case is the normal grounds for detention, and not the grounds set out in the second paragraph of Section 5 in Chapter 24.

5. The meeting with the Public Prosecutor on 8 May

68. The Government admit that this meeting took place on the applicant's request and that Mr T. during the meeting informed the applicant that he had decided to make an application for his continued detention to the Court.

The Government submit however that under Art. 5 (3) it is of no significance that this meeting took place upon the applicant's request. It is sufficient that in fact the applicant was brought before Mr T.

The Government furthermore submit that during the meeting the applicant had the possibility of presenting arguments militating against his continued detention. And since the issue of provisional detention is, as a matter of law, subject to continuous review by the Public Prosecutor in charge, Mr T. would have been under an obligation to release the applicant if there had not been convincing arguments for keeping him in detention.

Accordingly, the Government submit that the applicant was on 8 May brought before the Public Prosecutor Mr T, and that this meeting fulfilled the requirements of Art. 5 (3).

6. The requirement of promptness

69. The Government do not express any firm opinion as to whether seven days would fulfill the requirement of "promptly". They do however recall that the applicant had to be transported about 600 kilometers.

7. Conclusion

In conclusion the Government submit that the application does not disclose any violation of Art. 5 (3) of the Convention.

IV OPINION OF THE COMMISSION

A. Points at issue

70. The following are the principal points at issue under the Convention:

- Whether the Public Prosecutor could be regarded as an "officer authorised by law to exercise judicial power" within the meaning of Art. 5 (3).
- Whether the applicant was "brought before" the Public Prosecutor as required by Art. 5 (3)
- Whether seven days could in the circumstances of the present case be considered as "promptly" within the meaning of Art. 5 (3).

B. Article 5 (3)

1. Introductory remarks

71. Art. 5 (3) of the Convention provides as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power"

Art. 5 is, as a whole, designed to ensure that no one should be arbitrarily deprived of his liberty, and to keep any deprivation of liberty as short as possible. Paras. 3 and 4 of the Article lay down procedural guarantees to ensure this safeguard. These procedures shall be of a judicial nature (cf Eur. Court of H. R., Schiesser Case, Judgment of 4 December 1979, Series A No 34, para 30 et seq).

Para (3) of Art. 5 forms a whole with para (1) (c), (cf Eur. Court of H. R., Lawless Case, judgment of 1 July 1961, Series A No 3, p. 52), and it obliges the Contracting States to bring the person deprived of his liberty automatically and promptly before a judge or other officer who is authorised by law to exercise judicial power, so that the latter may decide whether or not further to detain the person (cf the Commission's Report of 11 October 1982, De Jong, Baljet and Van Den Brink v. the Netherlands, para. 85).

72. In the present case, there is no dispute as to the applicability of Art. 5 (3), and the Commission concludes that the applicant's arrest on 5 May 1978 was a "lawful arrest effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence" as provided for in Art. 5 (1) (c).

Accordingly, the applicant was entitled to enjoy the guarantees prescribed in Art. 5 (3).

2. Could the Public Prosecutor be regarded as an "officer authorised by law to exercise judicial power" within the meaning of Art. 5 (3)?

73. The applicant contends that the Public Prosecutor in Sweden does not fulfil the requirements of an "officer authorised by law to exercise judicial power" (French text: "magistrat habilité par la loi à exercer des fonctions judiciaires") as laid down by the Court in the Schiesser Case.

The Government submit that the Public Prosecutor derives his power to decide on provisional detention from the provisions of the Code of Judicial Procedure, in particular Chapter 24. They thus submit that no issue arises as to whether the Public Prosecutor was "authorised by law".

The Government further contend that the Public Prosecutor who decided on 7 May 1978 to further detain the applicant fulfilled the requirements laid down in Art. 5 (3). If the Commission should find to the contrary, the Government submit that the meeting which took place on 8 May 1978 between the applicant and the Public Prosecutor, Mr T, who was under a duty to release the applicant if he had considered that further detention was not justified, would be sufficient for the purposes of Art. 5 (3).

74. In the Schiesser Case, the Court laid down criteria for the determination of whether a person can be regarded as such an "officer" as envisaged by Art. 5 (3). The Court's considerations may be summarised as follows (para 31 of the judgment):

The "officer" is not identical with a "judge" but must nevertheless have some of the latter's attributes, that is to say he must satisfy certain conditions each of which constitutes a guarantee for the person arrested.

The first condition is independence of the executive and of the parties. This does however not mean that the "officer" may not be to some extent subordinate to other judges or officers provided that they themselves enjoy similar independence.

Secondly, there is a procedural requirement which places the "officer" under the obligation of hearing himself the individual brought before him.

Thirdly, there is a substantive requirement which imposes on the "officer" the obligation of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there are reasons to justify detention and of ordering release if there are no such reasons.

75. The Commission agrees with the Government's contention that no issue arises as to whether the Public Prosecutor was "authorised by law" to order the applicant's provisional detention. This power of the Public Prosecutor is contained in Chapter 24 of the Code of Judicial Procedure.

The issues to be determined are thus whether the Public Prosecutor fulfilled the three conditions stated above.

(a) The requirement as to independence

76. The Commission observes that the public prosecution forms part of the Executive in the traditional sense of that concept. However, this fact alone does not mean that the Public Prosecutor is not independent for the purposes of Art 5 (3). It is true that the Swedish Public Prosecutors have a personal independence as they can never receive instructions from any public authority when deciding in a particular case. This follows from Chapter 11 Section 7 of the Instrument of Government.

77. However, in order to possess the necessary independence, the "officer" envisaged by Art. 5 (3) must also be independent of the parties.

In this respect, the Commission recalls that the tasks of the Public Prosecutor are inter alia to make preliminary criminal investigations; to decide whether or not prosecution should be instituted, to draw up the indictment and to perform the prosecution in the courts. In addition, the Public Prosecutor has power to provisionally detain a person who is reasonably suspected of having committed an offence. It is noted that in general all these tasks are performed by the same prosecutor, and in case a prosecutor is for some reasons substituted by another prosecutor, then the substitute takes full responsibility of the case. There is thus no question of a distinction between investigating and prosecuting authority.

Furthermore, the organisation of the prosecuting functions in Sweden is a hierarchical system, where a superior prosecutor may give general directives to lower prosecutors, take over their cases and review their decisions. It therefore appears that a prosecutor is subject to constant supervision by his superior, although the superior may not order the subordinate prosecutor to take a particular decision in an individual case.

78. In the present case the Chief District Prosecutor Mr A had been allotted the case of the applicant, but due to different reasons, several decisions concerning the applicant's case had to be taken by other prosecutors. When Mrs M had to take the decision on the applicant's continued detention she had replaced the Chief District Prosecutor completely, and had taken full command of the whole case of the applicant, which in principle thus included the continued preliminary investigation, the decision as to whether prosecution should be instituted against the applicant, and subsequently the task of performing the prosecution in court. However, in taking full charge of the applicant's case Mrs M did, as the Court put it in the Schiesser Case, "assume the mantle of prosecutor".

The Commission recalls that superior prosecutors have powers to take over a case from a subordinate prosecutor and to review their decisions. It is furthermore recalled that the detention decision is subject to constant review by the Public Prosecutor in charge.

In view of the above it appears that, although Mrs M decided on 7 May on her own responsibility, the situation was that the decision was subject to immediate review by the County Prosecutor and the Prosecutor General and subject to review as soon as some of the prosecutors at Motala were back on duty, and ultimately by Chief Public Prosecutor Mr A, who was normally responsible for the applicant's case. In addition, Mrs M's decision must have been taken in the light of the decision to provisionally detain the applicant which had already been taken on 10 January 1978 by Mr A.

In the opinion of the Commission the circumstances of the present case show that when taking the decision on the applicant's continued detention Mrs M was not independent of the parties. She was one of the parties, and could have been called upon to continue to perform tasks, which are undeniably tasks of a prosecutor.

The fact that Mrs M did not herself perform the subsequent prosecution in court, could not retroactively make her independent of the parties at the time when she took the detention decision. It was a mere coincidence that all the tasks were not performed by the same prosecutor. It just happened that during the weekend in question Mrs M was in charge of the Prosecution Office at Motala.

79. Accordingly, the Commission is of the opinion that the Public Prosecutor who decided that the applicant's provisional detention should continue, did not fulfil the requirement of independence.

(b) The procedural requirement

80. The Public Prosecutor Mrs M who decided on 7 May that the applicant's provisional detention should continue did not herself hear the applicant. The interrogation of the applicant, which preceded the decision, was performed by a police officer, who informed the Public Prosecutor of the interrogation over the telephone. And on the basis of this information the Public Prosecutor decided that the applicant's provisional detention should continue.

The Government have submitted that the police officer conducted the interrogation on behalf of the Public Prosecutor, and on his instructions. The Commission considers however that this fact could not dispense the Public Prosecutor from the obligation of hearing personally the detainee.

In fact, the essential character of the guarantees provided for in Art. 5 (3) requires that the powers envisaged by that provision must be exercised personally by the persons authorised by the Article to do it. There can accordingly not be any total or partial delegation of these powers.

The Commission is thus of the opinion that the events which took place prior to the detention decision, are not reconcilable with the condition that the "officer" must hear himself the detained person.

As regards the meeting with the Public Prosecutor Mr T on 8 May the Commission notes that this meeting was initiated by the applicant himself, and the Public Prosecutor did not hear the applicant, but only informed him of the intention of the prosecution to submit an application to the District Court for the applicant's detention on remand. Therefore this meeting is not relevant in this context.

81. Accordingly, the Commission is of the opinion that the Public Prosecutor did not fulfil the procedural requirement of hearing himself the detained person

(c) The substantive requirement

82. In view of the above findings the Commission does not find it necessary to decide whether the Public Prosecutor fulfilled the substantive requirement.

It points out however that doubts arise also in this respect. The conditions envisaged by the substantive requirement are

- (1) obligation to review circumstances militating for and against detention
- (2) to decide by reference to legal criteria
 - whether there are reasons justifying detention
 - order release if there are no such reasons.

No doubts arise in respect of (1), nor in respect of the Public Prosecutor's competence to order release. It is however open to argument whether the wide discretion to order provisional detention laid down in Chapter 24, Section 5 of the Code of Judicial Procedure, in particular the second paragraph, is sufficient to say that this would be a "reference to legal criteria" in the true sense of that expression. It is noted that the Public Prosecutor does not give any reasons for a decision to detain a person, nor does he communicate a written decision on the detention. In addition, in the present case it does not appear possible to ascertain the reasons for the decision of 7 May to provisionally detain the applicant (cf the Schiesser case para 37).

83. Accordingly, the Commission finds that in the circumstances of the present case the Public Prosecutor did not fulfil the requirements of an "officer authorised by law to exercise judicial power" within the meaning of Art. 5 (3).

3. Was the applicant "brought before" the Public Prosecutor as required by Art. 5 (3)?

84. Art. 5 (3) requires that the arrested or detained person should "be brought before" the judicial officer who determines whether or not the detention should continue. This requirement imposes a positive obligation upon the Contracting States to bring the arrested person automatically before such an officer.

The applicant contends that he was not brought before the Public Prosecutor who on 7 May 1978 decided that he should remain in custody. The Government admit that the applicant did not meet the Public Prosecutor in person on 7 May, but they submit that under Art 5 (3) it was sufficient that the applicant was heard by a police officer who was acting on the instructions of the Public Prosecutor.

85. It is established that the applicant did not personally see the Public Prosecutor who on 7 May 1978 decided to further detain him. The applicant was interrogated by a police inspector, who in turn informed the Public Prosecutor in charge over the telephone about the interrogation. Thereupon the Public Prosecutor, who was serving in another city, decided that the applicant should remain in custody.

It is true that on 8 May the applicant met the Public Prosecutor Mr T. However, this meeting which had nothing to do with the judicial procedure envisaged by Art. 5 (3), came about on the applicant's request. The applicant was accordingly not brought automatically before the Public Prosecutor.

86. Accordingly, the Commission finds that the applicant was not "brought before" the Public Prosecutor, as required by Art. 5 (3).

4. Could seven days in the circumstances of the present case be considered as "promptly" within the meaning of Art. 5 (3)?

87. The applicant was on 12 May brought before a Court, which decided that he should be remanded in custody. The procedure before that Court would satisfy the procedure envisaged by Art. 5 (3) if it intervened "promptly".

Since the applicant was arrested on 5 May, the Commission must now decide whether seven days in the present case is in conformity with the concept of "promptly".

88. The question whether or not the requirement of promptness laid down in Art. 5 (3) is satisfied must be assessed in the light of the legal provisions in force in the countries which have ratified the Convention. In an earlier application concerning the Netherlands (Application No. 2894/66, Yearbook 9, p. 564), the Commission considered a delay of four days in criminal proceedings to be acceptable. Later, in an application against Belgium, it also accepted five days, but that was in exceptional circumstances. (Application No. 4960/71, Coll. of Dec. 42, p. 49). In its Report of 11 October 1982 in De Jong, Baljet and Van Den Brink against the Netherlands, the Commission found that a period of seven days or more after the arrest could not be considered as being within the concept of "promptly" in the sense of Art. 5 (3) (see para 89 of the Report).

89. The Government have submitted that the applicant had to be transported a distance of 600 kilometres, from Sundsvall to Motala. However, the Commission is of the opinion that such a transport cannot justify the delay of seven days.

In view of the above, the Commission finds that the period of seven days is not reconcilable with the concept of "promptly".

Conclusion

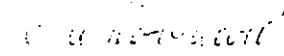
90. The Commission concludes unanimously that in the present case there has been a breach of Art. 5 (3) of the Convention.

Secretary to the Commission

President of the Commission



(H. C. KRUGER)



(C. A. NØRGAARD)

APPENDIX I

HISTORY OF PROCEEDINGS

<u>Item</u>	<u>Date</u>	<u>Note</u>
1 Introduction of the Application	20 October 1978	
Registration of the Application	4 April 1979	
<u>Examination of Admissibility</u>		
Commission's deliberations and decision to invite the Government to submit observations on the admissibility and merits of the application (Rule 42 (2) (b) of the Rules of Procedure)	5 October 1981	MM Nørgaard Frowein Busuttill Kellberg Opsahl Jörundsson Kiernan Melchior Sampaio Carrillo Gözübüyük Weitzel Soyer
Receipt of Government's observations	11 January 1982	
Receipt of applicant's reply	10 February and 27 April 1982	
Commission's deliberations and decision to invite the parties to a hearing on the admissibility and merits of the application.	6 May 1982	MM Nørgaard Sperduti Frowein Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Carrillo Weitzel Schermers

<u>Item</u>	<u>Date</u>	<u>Note</u>
Hearing on the admissibility and merits, and decision to declare the application partly admissible and partly inadmissible	11 October 1982	MM Nørgaard Frowein Fawcett Busuttil Kellberg Jörundsson Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Soyer Schermers
		<u>For the Government</u>
		MM Danelius Akerdahl
		<u>For the applicant</u>
		Mr Nobel
<u>Examination of the merits</u>		
Applicant's letter on friendly settlement	24 November 1982	
Commission's deliberations on future procedure	5 March 1983	MM Nørgaard Sperduti Ermacora Fawcett Triantafyllides Busuttil Jörundsson Tenekides Trechsel Kiernan Melchior Sampaio Carrillo Weitzel Soyer

<u>Item</u>	<u>Date</u>	<u>Note</u>
Commission's deliberations, and votes on the merits of the case, and adoption of the Report	13 and 15 July 1983	MM Nørgaard Frowein Fawcett Kellberg Jörundsson Trechsel Kiernan Melchior Sampaio Gözübüyük Weitzel Soyer Schermers