AS TO THE ADMISSIBILITY OF

Application No. 12356/86 by Jan Åke KARLSSON against Sweden

The European Commission of Human Rights sitting in private on 8 September 1988, the following members being present:

MM. C. A. NØRGAARD, President G. SPERDUTI E. BUSUTTIL G. JÖRUNDSSON A. S. GÖZÜBÜYÜK A. WEITZEL J. C. SOYER G. BATLINER H. VANDENBERGHE Mrs. G. H. THUNE Sir Basil HALL MM. F. MARTINEZ C. L. ROZAKIS Mrs. J. LIDDY Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 24 March 1986 by Jan Åke KARLSSON against Sweden and registered on 25 August 1986 under file No. 12356/86;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

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

The applicant is a Swedish citizen, born in 1953 and residing at Östra Hoby, Sweden. He is a priest in the Swedish State Church. Before the Commission he is represented by Mr. Göran Ravnsborg, Lund, Sweden.

The applicant graduated from the University of Lund in 1977 and has since held various posts in the State Church. In 1984 the post of vicar in the parish of Örkened in the Diocese of Lund was advertised. According to the Act on the Election of Priests (lagen om prästval), the diocesan chapter (domkapitlet) lists a number of qualified candidates, one of whom is chosen by the parishoners. The applicant put himself forward as a candidate together with three others.

The applicant is a supporter of certain religious views, so- called "gammal kyrklighet", for which reason he is opposed to the ordination of women. For this reason, and bearing in mind that the parish of Örkened has two priests of which the vicar is the superior, the Diocesan Chapter of Lund, before deciding whether the candidates could be considered qualified, asked the applicant whether he would be willing to co-operate with a woman clergyman as assistant priest.

In reply the applicant questioned the Diocesan Chapter's right to request answers to such hypothetical questions and submitted that he would carry out his task to the best of his ability.

On 22 May 1985 the Diocesan Chapter decided in a majority vote to declare the applicant unqualified as a candidate to the post of vicar. In its decision it stated the following:

"In summary, the Diocesan Chapter finds that, since (the applicant) has clearly shown through his actions up to now that he cannot be expected to co-operate with female colleagues, he does not possess the ability and the qualities deemed necessary for satisfactory work in a supervisory position in a parish with more than one priest; hence it finds (the applicant) unqualified for the office in question in accordance with Section 6 of the Act (1957:577) of the Election of Priests."

On 10 June 1985 the applicant appealed against this decision to the Swedish Government claiming that it be annulled, that he be declared qualified as a candidate for the post of vicar and that he be put on the list of qualified candidates.

On 23 January the Government rejected the appeal. They pointed out, however, that the applicant's views on women priests could not disqualify him for the post but found, as did the Diocesan Chapter, that the applicant would not co-operate with women priests in such a way that he could fulfil his duties as vicar.

COMPLAINTS

The applicant complains of the decision taken by the Diocesan Chapter of Lund and upheld by the Government that he was unqualified to obtain a post as vicar. This, in his opinion, amounts to a violation of his right to freedom of thought, conscience and religion and his right to freedom of expression as secured by Articles 9 and 10 of the Convention, read separately as well as in conjunction with Article 14 of the Convention.

The applicant also maintains that the refusal to allow him to apply for election to the office of vicar exclusively by means of a bureaucratic decision by the Government discloses a violation of Articles 11, 13 and 18 of the Convention.

Finally the applicant alleges that the decision to disqualify him is founded on an arbitrary and hypothetical reasoning which cannot be reconciled with the principles of Article 6 para. 2 of the Convention.

THE LAW

1. The applicant complains that the refusal to accept him as candidate for a post as vicar constitutes a violation of his right to freedom of thought, conscience and freedom as secured by Article 9 (Art. 9) of the Convention. The Commission notes that this complaint concerns the decision of a State Church, confirmed on the applicant's appeal by the Swedish Government.

Insofar as the applicant's complaint relates to the fact that he was not accepted as being qualified for a post as vicar, the Commission recalls the cases of Glasenapp and Kosiek (Eur. Court H.R., Glasenapp and Kosiek judgments of 28 August 1986, Series A, Nos. 104 and 105) where the Court expressed in distinct terms that access to the civil service is not a right guaranteed by the Convention. The Court futhermore stated that no interference of a right of the Convention was at hand when the heart of the complaint raised before the Convention organs was measures taken by the authority in order to satisfy itself that a person applying for a post possessed the necessary personal qualifiation for the post in question.

Nevertheless the Commission has considered the applicant's complaint under Article 9 (Art. 9) of the Convention as submitted by him.

Article 9 (Art. 9) provides:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls in this respect its constant case-law according to which Article 9 (Art. 9) does not oblige the High Contracting Parties to ensure that churches within their jurisdiction grant religious freedom to their members and servants (cf. for example No. 7374/76, Dec. 8.3.76, D.R. 5 p. 157). The freedom of religion thus does not include the right of a clergyman, within the framework of a church in which he is working or to which he applies for a post to practise a special religious conception. If the applicant's views on women priests and thus his intentions regarding co-operation with female colleagues is found to be incompatible with the view generally held by the church in question the latter is not obliged to accept the applicant as its servant.

On the other hand if the requirements imposed upon a person by the church should be in conflict with his convictions he should be free to leave his office, and the Commission regards this as an ultimate guarantee of his right to freedom of thought, conscience and religion.

In the present case the Commission recalls that the applicant holds a post in the Swedish State Church and there is nothing to show that the applicant should fear a dismissal from his present post. Furthermore, the applicant has not shown that he has been under any pressure to change his views or that the has been prevented from manifesting his religion or belief. On the contrary it appears clearly from the decision of the Government that the applicant's views on women priests were not held to disqualify him but that he did not possess the necessary qualifications for the post which, however, as set out above, is a question which falls outside the scope of Article 9 (Art. 9).

Consequently the Commission finds that the decisions complained of did not in any way interfere with the exercise of the applicant's rights under Article 9 (Art. 9) of the Convention and this part of the application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. As regards the applicant's complaint that there has been a breach of his right to freedom of expression as guaranteed by Article 10 (Art. 10) of the Convention, the Commission considers that the same reasoning applies mutatis mutandis to the applicant's complaint under this Article as to the complaint under Article 9 (Art. 9). It follows that there has been no interference with the applicant's right as guaranteed by Article 10 (Art. 10) and this aspect of the application is therefore also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant has also complained that his case discloses a violation of Article 13 (Art. 13) of the Convention in that he did not have at his disposal an effective remedy which could rectify the alleged violations of the Convention.

The Commission does not find it necessary in the present case to consider whether in the light of its above conclusions the applicant had an arguable claim necessitating a remedy under Article 13 (Art. 13) of the Convention but recalls that the applicant could and did bring his complaints before the Government for consideration. The Commission finds that this remedy for the purposes of the present case was sufficient to fulfil the requirements of Article 13 (Art. 13) of the Convention. The applicant's complaint under this provision is thus in any event manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant has furthermore alleged that the refusal to accept him as a candidate for the post in question was based on a reasoning which cannot be reconciled with the principles of Article 6 para. 2 (Art. 6-2) of the Convention.

The Commission recalls that the presumption of innocence laid down in Article 6 para. 2 (Art. 6-2) only applies in cases where an applicant has been charged with a criminal offence. This is not the case here. Consequently this part of the application must be rejected as being incompatible ratione materiae under Article 27 para. 2 (Art. 27-2) of the Convention.

5. The Commission has finally considered the remainder of the applicant's complaints as submitted by him. However, the documents and the information submitted by him do not disclose any substantiated facts which could justify a further examination of these complaints. It follows that the remainder of the applicant's complaints is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE

Deputy Secretary to the Commission President of the Commission

(J. RAYMOND) (C. A. NØRGAARD)