

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45934/99
by Les Shawn SUGG and Eric DOBBS
against Sweden

The European Court of Human Rights (First Section), sitting on 28 August 2001 as a Chamber composed of

Mrs W. Thomassen, *President*,
Mrs E. Palm,
Mr Gaukur Jörundsson,
Mr R. Türmen,
Mr C. Bîrsan,
Mr J. Casadevall,
Mr R. Maruste, *judges*,
and Mr M. O'Boyle, *Section Registrar*,

Having regard to the above application introduced on 16 November 1998 and registered on 4 February 1999,

Having deliberated, decides as follows:

THE FACTS

The applicants are nationals of the United States of America, born in 1967 and 1974 respectively. They are represented before the Court by Mr L. Hane, a lawyer practising in Stockholm.

A. The circumstances of the case

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

On 3 January 1998 the applicants attended a public rock concert in Brottbby, Sweden. The first applicant is the singer of an American rock group that performed at the concert and the second applicant was a member of the audience. After three hours the police stopped the concert and arrested many of the participants, among them the two applicants. The reason for the arrests was that the participants had been doing so-called "Hitler salutes" with their arms and had been shouting the words "*Sieg heil*". The applicants were later indicted for agitation against a national or ethnic group (*hets mot folkgrupp*).

By a judgment of 19 January 1998 the District Court (*tingsrätten*) of Södra Roslag found the applicants guilty as charged and sentenced them to one month's imprisonment. The applicants appealed and also challenged one of the lay assessors participating in the District Court's judgment, claiming that he was not impartial as he

was a member of the Social Democratic Party in Sweden. This challenge was rejected by the Svea Court of Appeal (*Svea hovrätt*) on 27 January 1998.

On 17 February 1998 the Court of Appeal upheld the District Court's judgment. In applying the relevant provision – chapter 16, section 8 of the Penal Code (*Brottsbalken*) – the appellate court had regard to the *travaux préparatoires* to that provision and to a judgment by the Supreme Court (*Högsta domstolen*) of 17 October 1996 concerning the use of Nazi symbols and concluded that the “Hitler salute” and the words “*Sieg heil*” were clear manifestations of Nazism and racist ideology and expressed contempt for other persons on account of their race or colour.

On 25 May 1998 the Supreme Court refused leave to appeal.

B. Relevant domestic law

Chapter 16, section 8 of the Penal Code reads as follows:

“A person who, in a disseminated statement or communication, threatens or expresses contempt for a national, ethnic or other such group of persons with allusion to race, colour, national or ethnic origin or religious belief shall be sentenced for agitation against a national or ethnic group to imprisonment for no more than two years or, if it is a minor offence, to a fine.”

The above-mentioned judgment of the Supreme Court has been published in the Swedish law reports *Nytt juridiskt arkiv* (NJA 1996 p. 577). In that case, a person who had been wearing several symbols on his clothes in public was convicted of agitation against a national or ethnic group. The Supreme Court found that the symbols in question were clearly associated with symbols used in Nazi Germany and by National Socialist movements in the 1930's and 1940's. The symbols conveyed the ideas of racial supremacy and racial hatred. The Supreme Court concluded therefore that the accused, by wearing these symbols, had expressed contempt for other national or ethnic groups.

COMPLAINTS

1. The applicants complain under Article 7 of the Convention that they were convicted of a crime not clearly described by law. They argue that it was impossible for them to know from the wording of the relevant provision what acts could make them criminally liable. They point out also that they had been in Sweden for only 12 hours when they were arrested and they were thus not familiar with the values of Swedish society.
2. The applicants claim also that they have been deprived of their right to a fair trial under Article 6 of the Convention. In this respect, they argue that one lay assessor in the District Court was biased because he was nominated by the Social Democratic Party, a party of which he is also a member. Allegedly, within the Socialist movement, certain salutes and phrases are used which – if the reasoning of the Swedish courts in the applicants' case is accepted – must be considered as agitation against and expressions of contempt for other groups of people.

THE LAW

1. The applicants complain that they were convicted of a crime not clearly described by law. They invoke Article 7 of the Convention which provides the following:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

The condition that an offence must be defined in law is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions are criminally liable. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see the *Kokkinakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, p. 19, § 40). Criminal law provisions on racial agitation fall within this category.

The Court notes, at the outset, that the prohibition of racist speech is of fundamental importance in a democratic society.

The Court recalls that it is, in the first instance, for the national authorities and courts to interpret and apply domestic law. In the present case, the Court of Appeal had regard to the *travaux préparatoires* to the relevant legal provision and to Supreme Court case-law in finding that the applicants' conduct constituted a criminal offence. The case-law, which had been published and was accessible, supplemented the letter of the legal provision and was such as to sufficiently enable the applicants to regulate their conduct. The measure complained of was therefore “prescribed by law” within the meaning of Article 7 of the Convention. The fact that the applicants had been in Sweden for only 12 hours when they were arrested cannot constitute an excuse for not complying with Swedish law.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

2. The applicants claim also that they did not have a fair trial within the meaning of Article 6 of the Convention which, in relevant parts, provides:

“1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...“

The Court notes that the applicants claim that one lay assessor in the District Court was biased on account of his membership in the Social Democratic Party, as the Socialist movement uses symbols and phrases that must be considered as agitation against and expressions of contempt for other groups of people. Noting that the applicants do not challenge the lay assessor's personal conduct, either in the case in question or otherwise, the Court finds that the mere fact that he is a member of the Social Democratic Party gives no reason to question his impartiality in the case.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'Boyle
Registrar President

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