

## Chapter 32 : A frozen conflict

*A compromise that pretends agreement is the defeat of both.*

### A. "HAVE THE LEGISLATOR LEFT THE HEAD OF STATE IN THE LURCH?"

The tasks of the Head of State were a subject of conflict already from the outset. Allan Hernelius (m) regretted that the discussions that were nevertheless being conducted were never made public:

"As regards the Head of State, I would like to point out that the explanatory memorandum does not record the discussions of a more general nature which have taken place within the constitutional drafting process. It also seems to be a shortcoming that the text of the constitution does not specify the tasks of the Head of State at all. In my opinion, the reasons for this should have been reflected in some way in the draft law, so much more so that the Head of State could be removed from office if he had not fulfilled his duties for a certain period."<sup>1</sup>

In 1997, constitutional lawyer Fredrik Sterzel described the royal house's legal situation as "Sweden, like Britain, long time lacked a constitution." Although there was a constitution, it was not updated. Instead, a literature of commentaries, a parallel legislation and a practice developed. As to the reason, he referred to the fragile political situation.<sup>2</sup> After his resignation, Marshal of the Realm Ingemar Eliasson made a similar criticism, in a lecture before the Academy of Letters (2012) and in his memoirs (2013):

According to the constitutional committee The Head of State receives substantially *representative tasks*. In his capacity as a unifying representative and symbol of the country as a whole, he performs an important function which places great demands on his person. ... The representative functions of the Head of State are largely determined by custom. Certain [diplomatic] functions he performs according to international law.<sup>3</sup>

Eliasson described the royal house's "freedom of action" in five points Hypothetically the business moves in the direction that is least criticized:

- To modernize the representation and the ceremonial.
- To actively inform oneself about government policies;
- In the context of government policy, to be a driving force in certain matters.
- To "shape and articulate the values upon which Swedish democracy is based".
- To highlight the importance of an event through his presence or otherwise;

Carl Gustaf's official duties, as far as they are documented, are reported in chapters 16-18. "The freedom of action" appears to be the greatest within the "industrial delegations". Carl Gustaf also devotes much time to the academies, "nature & environment" and "youth & leadership". However, below I restrict myself to his official role.

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<sup>1</sup> SOU 1972:15, s. 338.

<sup>2</sup> Sterzel 2009.

<sup>3</sup> Prop 1973:90, s. 173.

Since the constitutional changes did not come into force until Gustaf VI was dead & PM Tage Erlander had resigned, they did not suffer the consequences. These were born by the new generation - King Carl Gustaf & PMs Olof Palme (s), Ingvar Carlsson (s) & Göran Persson (s). The historiography is that the relationship between the Parliament, the Government & the Royal Family not was normalized until Fredrik Reinfeldt (m) (2006-2014) (see Appendix 1: Figure 3). The conflict of principles concerned the legal status of the royal house (Section B). The practical controversy centred on the Republican ideology of the Social Democrats (Section C). There was no discussion about the King's duties, but there was a debate about the monarchy's support & state utility (section D).

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## B. A PARALYZED PARLIAMENT

The constitutional inquiry contained legal analyses that were not found in the bill. This concerned the legal status of the royal house. Was the royal house like the government an authority, and therefore ultimately subordinate to the Parliament? I quote:

”The word 'authority' is used in the proposal in such a way that it does not include the Parliament or the municipal decision-making assemblies (county councils and municipal councils) but well other state and municipal bodies. The government is therefore an authority. The courts are also considered authorities in this broad sense of the word. Authorities other than the courts are designated as administrative agencies. Although the government manages the public administration and carries out its administrative tasks to some extent, the proposal does not, for technical reasons, describe it as a managing agency. In some respects, the courts also fulfil administrative tasks.

The drafting of the constitution does not intend to exclude from the concept of authority those bodies which exercise public power without being formally organized in a form governed by public law. In principle, any body exercising public authority is an authority. As far as drawing the line on the concept of authority is concerned, it should be possible to draw guidance from the concept of ‘the exercise of public authority’, which has been defined in §3.1 of the Administrative Code (1971:290) and the reasons for this provision (prop. 1971:30 part 2 p. 331). The rule on the exercise of official authority refers to the exercise of the power to determine for individuals the benefit, right, obligation, disciplinary penalty or other comparable relationship. The meaning of the term has also been discussed in the motives for a proposal for a damages law recently submitted to the Swedish Parliament (prop. 1972:5 pp. 311, 498, 622).

Thus, the proposal also provides that a body with a formal status under private law, but with one or other function of public authority, as defined in the proposal, may be regarded as an authority. *There is nothing to prevent a single body from being, in one respect, a public authority in that sense and otherwise a private body.* It must be emphasized that the limits here are unclear.

The meaning given here is natural, given that the form of government (RF) is a constitution. One of the constitutional tasks is to provide basic rules on the forms of exercise of state power. If it were possible to entrust the exercise of state power to bodies that were not considered to be public authorities, the guarantees and means of control provided for by the Constitution could be lost in scope. This can be compared

with the interpretation of the concept of authority in chapter 2 of the freedom of the press act (TF) on public access to documents (see e. g. RÅ 1968 No 42)."<sup>4</sup>

This interpretation of public law seems to be widely accepted. But: The fact that one and the same legal entity in one function may be public (thus an authority), in another function, private has caused considerable confusion. The legal status of the Royal Houses is usually summarized as "public when it suits them, private when it suits them better".

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Then the matter was put on the back burner. The situation was reminiscent of the Guadeloupe interest & the entailed estate legislation. Some legislation is obviously part of the national heritage:

- The 1974 Constitution defined the Order of H.R.H. as both public and private: Public because "some Orders are regarded as belonging to his position as head of state". Private because it was not regulated by the Constitution. This was interpreted as the Parliament by an administrative decision had delegated to the Order of H.R.M. the right to distribute Orders & that therefore this particular part of the royal court was a public corporation.<sup>5</sup> This line of reasoning has evidently been extended to everything that is not mentioned in the constitution is private business.
- In 1990, Prince Sigvard Bernadotte approached the lawyer Gunnar Bramstång for an investigation into the royal house's legal status to decide over his title as prince. Bramstång summarized the answer as:

Monarchic law is predominantly public law. The codified parts belong to a visible, so to speak external public law, whereas (at least some of) the unwritten monarchal law belongs to a less prominent internal public law. The latter should, as previously suggested, have a certain international character.<sup>6</sup>

- In 1997, lawyer Fredrik Sterzel published a supplementary analysis of the position of the Head of State under the 1974 Constitution:

From a constitutional point of view, it is essential to state that the government cannot derive from its task to govern the kingdom the claim to control the actions of the Head of State. Since it does not have the power to lay down rules, it does not have *a fortiori* right of directive ... There is no question of any government decision in a formal sense. Although the King should not hint at disagreements with the current government - he is not required to hint at agreement. Ultimately, he has the right to decide for himself in his field of activity.<sup>7</sup>

The Royal Court thus has tasks within the public administration (1:9 RF) and management tasks (11:6). However, there is no technical exercise of public authority. It would according to 11:6 last paragraph of RF assume law, and no

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<sup>4</sup> SOU 1972:15, s. 123.

<sup>5</sup> SOU 1972:15, s. 139; Prop 1973:91, s. 5.

<sup>6</sup> Bramstång 1990: s. 10.

<sup>7</sup> Sterzel 2009: s. 157.

such exists. The usual definition of government should be quoted for the sake of coherence. It concerns the exercise of the powers of an individual [to] decide on benefit, right, obligation, disciplinary penalty, dismissal or other comparable relationship. None of this occurs in the official sphere of the royal court. That it is brought to the fore in the private sphere as well as in any individual subject is immaterial.<sup>8</sup>

- In 1999, the legal status of the royal court was established. A person J.N. tried to obtain travel invoices from the Swedish Marshal's Office (RÄ) about Carl Gustaf's state visit to South Africa February 18-20, 1997. The Court of Appeal refused to rule on the matter. According to the ruling of the Supreme Court, RÄ was not an authority or part of an authority but the official organ of the Marshal of the Realm. The King and Queen were not obliged to submit to either the National Audit Office (RRV) or the principle of public access to official records (TF).

J.N. pursued his action, citing inter alia the following. The Head of State was a public authority, who used taxpayers' money to fund his work. A basic view in Sweden was that the people could examine how the public authorities used their money. The exclusion of the Head of State from the principle of public access to official records was contrary to the basis of Swedish democracy.<sup>9</sup>

2008 & 2011, attempts were made to reverse the decision.<sup>10</sup>

- 2002, when the bill to abolish nobility as a legal concept was submitted for consultation, prof emeritus of public law Gunnar Bramstång summarized his criticism as follows: For historical reasons there are intermediate forms of public-private, such as the insurance funds, the church, the nobility and the royal house, so-called public law corporations. The constitution not recognizing their unique characteristics creates problems in applying the law.<sup>11</sup> Bramstång seems to have shared this view of public law with the lawyers Jacob Sundberg (1927-), Håkan Strömberg (1917-2002), Fredrik Sterzel (1934-) and Nicklas Vabi (1972-).
- 2004, the government office stopped signing international agreements in the name of Carl Gustaf and instead wrote "The Government of the Kingdom of Sweden". According to lawyer Nicklas Vabi, this was due to the fact that the legislators had not anticipated EU law, which assumed that each country's head of state had at least this function under international law, but that the Foreign Ministry now knew better. He analysed the new legal situation:

In conclusion, on the position of the Head of State under the constitution, the Swedish system that the Head of State is completely cut off from the national government, the legislative power and the judiciary is unique in Europe and has, as has been shown, somewhat strange consequences when signing treaties within EU.<sup>12</sup>

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<sup>8</sup> Sterzel 2009: ss. 160-161.

<sup>9</sup> Regeringsrätten. Målnummer 6786-98. Avgörandedatum 1999-06-24.

<sup>10</sup> Motion 2007/08:K283 & motion 2010/11:K358.

<sup>11</sup> Bramstång 2002.

<sup>12</sup> Vabi 2003: s. 158.

- 2018 in connection with King Carl Gustaf's amendment of the Swedish Academy's statutes, the unclear legal position was once again discussed, without it leading to anything.<sup>13</sup>

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In 2000, the constitutional debate was so lame that the left-wing party (vpk) compiled its own list of monarchic arguments to have something to debate. The monarchists in their view strongest argument was that:

\* In a democracy, it is impossible to transfer political power to a king, but to a president. This is why the monarchy *ipso facto* strengthens the people's rule & parliamentary democracy.

- This is one of the most interesting arguments for monarchy and should be taken seriously if you are sceptical about power-sharing models with a politically strong Head of State. However, it cannot be given a decisive role. The fact that the monarchy is blocking a strong Head of State does not mean that the abolition of the monarchy necessitates such a development. Internationally, there are several examples of republics with politically weak presidents and the general trend, at least in countries comparable to Sweden, would rather be a weakening of the presidential power (see e.g. Finland). The strong parliamentary tradition in our country suggests that we will choose a model with a politically powerless president, appointed by the parliament (perhaps the easiest thing would be to simply give the Speaker the title of Head of State). Moreover, it is questionable from a democratic point of view that we have a system of government which prevents the introduction of a power-sharing model even if there is a majority for such a change.<sup>14</sup>

The monarchists' own arguments, especially the traditional ones, were dismissed as impossible to take a position on:

To date, no convincing positive arguments have been formulated for the monarchy as a form of government [=benefits]. The remaining arguments are those which argue that the disadvantages of the monarchy are so small that abolition does not offset the costs of abolition itself, and purely emotional arguments. Metaphysical and religious arguments should have a negligible number of adherents and, in any case, cannot be accepted in a democratic conversation. If we believe in democracy and rationality [=reason instead of feeling], everything suggests that the monarchy's chances of survival in the long term are limited.<sup>15</sup>

Which can be summed up as at least vpk considers that the legitimacy arguments in section D, the arguments supported by the Parliament & therefore obviously have the strongest impact, lack interest. Which may explain the apathetic debate. There is nothing left to debate.

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<sup>13</sup> Gustafsson 2018; Sunnqvist & Wenander 2018.

<sup>14</sup> Gudrun Schyman m fl (v). Motion 2000/01:K257. Införande av republikanskt statskick.

<sup>15</sup> Einarsson & Svensson 2012: s. 64.

## C. A REPUBLICAN GOVERNMENT

Prime Minister Olof Palme (s) was a special hate object of the bourgeoisie and also of the royal house. Palme's notorious statement that the monarchy - never mind its constitutional status - could be abolished whenever social democracy so desired set the agenda. I develop:

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The constitutional investigation (1954-1963) had no directives to investigate the position of the head of state, but analysed the practice. In the discussion and public debate<sup>16</sup> the analysis was criticized for continuing to give the king too large a role in the parliamentary system. Historian Nils Herlitz (1888-1978) pointed out, however, that the proposal was not as monarchic as one might think:

”The text is in fact so drafted that it does not take many strokes of the pen to replace the king with another ”Head of State”. It is also intended that the kingdom may be abolished against the will of the king by constitutional amendment. In the same way, it is possible to end the succession during the reign of a king; The investigation has been particularly keen to emphasize that it does not need the king's consent to the repeal of the succession order. This looks strange. The objections raised recall when the Norwegian Parliament claimed exclusive rights over the constitution and when this right was subsequently enshrined in the constitution : can one, it was said, call it a monarchy, when the kingdom can be abolished against the will of the monarch?”<sup>17</sup>

The 1965 responses to the remark reiterated Herlitz's fears that ”it was at least technically [very easy] to transition from a monarchy to a republic.”<sup>18</sup> The argument was also used by Olof Palme after the Torekov-compromise to reassure social democratic Republicans: ”It is an exaggeration to say . . . that the Head of State remains. There is only a plume left, a decoration, and it is easy to introduce a republic if you like so ... This completely new constitution enshrines the constitutionalization of parliamentarianism, which is a great step towards the establishment of a republic - then it is just a stroke of the pen.”<sup>19</sup>

Palme's analogy of plume is said to be taken from the final lines of the play *Cyrano de Bergerac*, in which the dying hero says he has now lost everything but his plume. (A perhaps not quite so well chosen analogy. The play refers to *panache*, which is synonymous with plume but rather associates with bravery, elegance and warrior glory.)

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Palme's republican pathos was low grade, but he was a member of the Republican Sailors' Association (RS; 1967-?). The RS has declared the National Day the Republic Day and conducts a regatta on that day. It also awards prizes to the year's Republican. During one of King Gustaf VI's summer councils at Sofiero, Palme wore the society's t-shirts, but with his own shirt over which was considered overly cowardly and to disqualify him from the prize. The change of PM on 14 October 1969 took place in a similar revolutionary popular spirit: The new ministers refused to wear tails, to put their fingers on the Bible when they swore

<sup>16</sup> Andersson m fl 1963; Tingsten 1964; Back & Fredriksson 1966.

<sup>17</sup> Herlitz 1963: ss. 31-32.

<sup>18</sup> SOU 1965:2, s. 52. [Remissyttrande av regeringsrådet Hjern.]

<sup>19</sup> Inlägg av statsminister Olof Palme på SAP:s 25:e kongress 1972-10-06. I: Einarsson & Svensson 2012: s. 5.

their oath, and to appear for the formal opening of the parliament, which they considered a joke. Much later, Carl Gustaf was interviewed about what he thought of the situation:

SM: Has the king ever experienced that the monarchy was seriously threatened?

CG: No, maybe not exactly. There was a certain... how should I say... sensitive period in connection with the transfer of the throne. I think so afterwards.

SM: Was the monarchy under political threat?

CG: Yes, you could say that. There were certain moods and discussions and feeling... Everything was up in the air...

SM: Did the king act to counter that?

CG: I couldn't do much. (In 1972, the Constitutional Commission proposed that the role of the King be fully representative. The demand for the abolition of the monarchy Olof Palme ruled out at the Social Democratic Party Congress by saying that it now only "took a stroke of the pen" to introduce a republic.)

SM: Did you ever raise the discussion privately with PM Olof Palme?

CG: We didn't talk about things like that, no.

SM: Never! Although the Social Democratic Party Congress called for: The royal house would be abolished...

CG: Yes, for many years.

SM: Surely you must have taken it up in private...

CG: (Silence)...No.

SM: I find that hard to imagine.

CG: Mmmm...

SM: Wasn't it tempting to just discuss it sometime...

CG: (Long pause) ...No, but I did say that I was very conscious that it was written into the Social Democratic Party program. Then I didn't have to say much more, I think...

SM: What did Olof Palme reply?

CG: It was not time to say so much then, but we know about his actions afterwards.

He removed the question at the party congress with the notorious pen mark. But it felt strange, I think.

SM: In what way?

CG: That it would just depend on a small pen line! In the new form of government there were no instructions about what a modern monarch would do - but I quickly learned about what I could not do!

SM: Was the king actively against the form of government?

CG: Yes! How can I say... in a situation where I took over a historic task it felt a little strange, if I put it mildly...

SM: Did it feel like a demotion?

CG: Yes, a certain form of mistrust. Of course.

SM: Did the King say so?

CG: No, that is not possible.

SM: You can't do that if you're king?

CG: No, you can't. But there was a debate, perhaps not in public. We discussed with people in the civil service and...

SM: Lobbying is what we call today.

CG: That is what you might call it. I could not appear in the debate.<sup>20</sup>

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<sup>20</sup> Stephan Mehr. Intervju med kung Carl XVI Gustaf. MånadsJournalen, 1996:5.

The tenth anniversary of the accession to the throne also took place in a revolutionary popular spirit. Carl Gustaf was to be celebrated, but not to exaggeration. The Palme government invited him to lunch in Rosenbad's canteen. Carl Gustaf had to choose between herring buns with corinthian sauce and steak Rydberg in the self-service. Carl Gustaf chose a Rydberg and a cake for the coffee. No speeches were made. The silence became so embarrassing that Marshal of the Realm Sten Rudholm took over, thanked Carl Gustaf for the 10 years that had been and expressed his and the others' respect and appreciation for him as a person.<sup>21</sup> Then it took until 2006 under Fredrik Reinfeldt before he was again invited.<sup>22</sup> Meanwhile, the monarchists collected a few minor successes: In 1980, a gender-neutral succession was introduced (see chapter 22). In 2005, the National Day became a public holiday (see chapter 6).

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#### D. A MONARCHIC PEOPLE

The Swedes are monarchic in the sense that the royal house is popular. Support for the monarchy has long time been around 66 percent. What has been discussed is whether this is due to the support of the Parliament, or whether the external activities of the royal house are a form of political campaigning. After all, the Royal House is not an anonymous institution. Everything they do is made public.

The variations in support can be attributed to media events & have been difficult for the Republicans to exploit. The personal attacks on Carl Gustaf may damage the monarchy's reputation, but at the same time violate Carl Gustaf's civil rights. The most likely effect of the writings, that Carl Gustaf is replaced by Crown Princess Victoria, has also not been in the Republican interest. A reformed royal house is more difficult to abolish.

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As long as it remains outside party politics, the monarchy has an ideological function sanctioned by the Parliament. Carl Gustaf is, no matter what people think of him, "king of all Swedes" & the monarchy is, no matter what people think about it, "the oldest institution in the country". This is well established. The Bernadotte have during their time in Sweden legitimized themselves in at least ten different ways: (1) Through their coronation and their Protestant beliefs they have a religious legitimacy. (2) As a father of the country, they have a patriarchal legitimacy. (3) Since Queen Josephine (albeit from a distance) was related to Gustav Vasa, they starting with Charles XV have a historical legitimacy. (4) By pledging their allegiance to the Constitution and thereby entering into a "contract" with the inhabitants of the country, they have legal legitimacy. (5) Through their organic conception of the state, they have a traditional legitimacy based on German national romantic beliefs. In Gustaf V's formulation: "From times so far, that they are shrouded in the mystery of the fairy tale, the building of this kingdom rests on the foundation of the firm and unshakable trust between king and people." (6) Through the opinion polls they have (according to Lennart Nilsson at the SOM institute) a democratic legitimacy. - The Bernadotte also legitimize themselves by their personal image (charisma), by the staging of their official role (ceremonial), by their supposed social utility & by publicity (where they are portrayed as central figures of the country - liked or despised, but impossible to ignore).

<sup>21</sup> Svenska Dagbladet, 1983-09-20, s. 8.

<sup>22</sup> Reinfeldt 2015: ss. 229-230.



The fact that the monarchy legitimizes itself through its traditions - that "the Royal House as the country's oldest institution symbolizes the nation" - is parlance for "monarchism". On the website of the royal court, the monarchy's ancestry is traced back to Erik Segersäll (c. 970 - c. 995). The meaning of symbolizing is unclear though. It has been interpreted as the Sovereign: (1) Incarnates Sweden. (2) Administrates "Swedishness". (3) Has a patriarchal role as "father of the country". (4) In official contexts represents Sweden and its interests.

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It is difficult to see any direct connection between the "monarchic tradition" as mentioned above & the "national identity" which is claimed to be its most important contribution. The National Day seems to be more important to the royal house than to the people. I describe the online debate on the subject according to the Flashback thread "Abandon the monarchy!" (2006-2019; 7755 posts of 805 people). 380 posts are about "the monarchic tradition". 44 posts are about "national identity":

The royal house as a national symbol appears in the posts as an emergency solution, conditioned by the fact that we have no equivalent to the Norwegians May 17 to gather around. All our key days are national disasters or so controversial that they are not usable. The alternative to the royal house as a national symbol is a rather diffuse "heimat" feeling based on a common origin & a (well) shared experience. Many groups do not even seem to have such a feeling. At least 15 percent of the population are Republicans who for ideological reasons reject the concept of the nation, 10 percent are new immigrants with ties to their old homeland & seven percent live abroad. Regardless of ideology, many people also pride themselves on being non-Swedish cosmopolitans & there are cultural minorities (Romani, Sami, etc.) who refuse to assimilate.

Carl Gustaf's own statements does not make things clearer: "Our patriotism must not be expressed by refusing entry to people based on their colour, nationality, creed or religion."<sup>23</sup> Remains their politics. ISIS-sympathizers need not apply.

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#### D. A PARALYZED DEBATE

The three "court historians" of the Republican association are Vilhelm Moberg, Bengt Hall and Thomas Lyrevik. The criticism of them has been that their arguments were old even when they were born. If it now has been impossible to get the message across, perhaps it should lead to a review, but no. Their books express the "soul" of the Republican movement. On the other hand, the number of arguments in their books makes them virtually unassailable. To paraphrase Groucho Marx: So you do not accept this argument? It's okay, because I have more.

The monarchic debating technique is hardly better. When in 2020 the former president of the Parliament's royalist network Cecilia Magnusson (m) participated in a debate with Republican

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<sup>23</sup> Kung Carl Gustaf. Tal på nationaldagen 1998. I: Ulf Lindblad & Lars Orup. Carl XVI Gustaf - 25 år på tronen. TV4, 1998-09-15.

Joar Forsell (lib)<sup>24</sup>, her only "argument" was that Forsell lacked respect for the royal house. It was reminiscent of a similarly sterile debate in 2004 between the royal court's CIO Elisabeth Tarras-Wahlberg & Birgitta Ohlsson (lib) debated the state visit to Brunei that resulted in her accusing Ohlsson of ignorance & malice.<sup>25</sup> Both parties smear campaigns have made the subject of monarchy vs republic impossible to discuss.

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<sup>24</sup> "Mötet". SVT, 2020-09-26.

<sup>25</sup> "Godmorgon Sverige". SVT, 2004-02-03.

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