CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

AFFAIRE ALLAN JACOBSSON c. SUÈDE (n° 2)

CASE OF ALLAN JACOBSSON v. SWEDEN (No. 2)

(8/1997/792/993)

ARRÊT/ JUDGMENT

STRASBOURG

19 février/February 1998

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SUMMARY[1]

Judgment delivered by a Chamber

Sweden – refusal by Supreme Administrative Court to hold an oral hearing (section 1 of the Act on Judicial Review of Certain Administrative Decisions 1988; section 9 of the Administrative Procedure Act 1971)

ARTICLE 6 § 1 OF THE CONVENTION

A. Applicability

Dispute was a serious and genuine one and outcome of the proceedings was directly decisive for the civil rights claimed by applicant.

Conclusion: Article 6 § 1 applicable (unanimously).

B. Compliance

According to Court's case-law, in proceedings before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entailed an entitlement to an "oral hearing" unless there were exceptional circumstances that justified dispensing with such a hearing – evidence in case under consideration did not show that applicant's submissions to Supreme Administrative Court were capable of raising any issues of fact or of law pertaining to his building rights which were of such a nature as to require an oral hearing for their disposition – on the contrary, given limited nature of issues to be determined by it, Supreme Administrative Court, although it acted as first and only judicial instance in case, was dispensed from its normal obligation under Article 6 § 1 to hold an oral hearing.

Conclusion: no violation (unanimously).

COURT'S CASE-LAW REFERRED TO

23.9.1982, Sporrong and Lönnroth v. Sweden; 25.10.1989, Allan Jacobsson v. Sweden; 25.11.1993, Zander v. Sweden; 23.2.1994, Fredin v. Sweden (no. 2); 26.4.1995, Fischer v. Austria; 19.7.1995, Kerojärvi v. Finland; 23.4.1997, Stallinger and Kuso v. Austria

1. This summary by the registry does not bind the Court.

In the case of Allan Jacobsson v. Sweden (no. 2)[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mrs E. PALM,
Mr J.M. MORENILLA,
Mr P. JAMBREK,
Mr P. KŪRIS,
Mr U. LÕHMUS,
Mr J. CASADEVALL,
Mr P. VAN DIJK,
Mr T. PANTIRU,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 26 November 1997 and on 30 January 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 22 January 1997 and on 28 January 1997 by a Swedish citizen, Mr Allan Jacobsson, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 16970/90) against the Kingdom of Sweden lodged with the Commission under Article 25 by Mr Jacobsson on 21 July 1990.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 § 1 of the Convention.

Notes by the Registrar

1. The case is numbered 8/1997/792/993. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

2. In response to the enquiry made in accordance with Rule 35 § 3 (d) of Rules of Court B, the applicant stated that he wished to present his own case but the President did not grant him leave to do so. On 26 June 1997 the applicant designated the lawyers who would represent him (Rule 31).

3. The Chamber to be constituted included *ex officio* Mrs E. Palm, the elected judge of Swedish nationality (Article 43 of the Convention), and Mr R. Ryssdal, the President of the Court (Rule 21 § 4 (b)). On 21 February 1997, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr J.M. Morenilla, Mr P. Jambrek, Mr P. Kūris, Mr U. Lõhmus, Mr J. Casadevall, Mr P. van Dijk and Mr T. Pantiru (Article 43 *in fine* of the Convention and Rule 21 § 5). Subsequently, on 18 November 1997, Mr R. Bernhardt, the Vice-President of the Court, replaced Mr Ryssdal, who was unable to take part in the further consideration of the case (Rules 21 § 3 (b) and 24 § 1).

4. As President of the Chamber (Rule 21 § 6), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Swedish Government ("the Government"), the applicant's counsel and the Delegate of the Commission on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the orders made in consequence on 20 May 1997 and 1 October 1997, the Registrar received the applicant's memorial on 25 September 1997 and the Government's memorial on 8 October 1997. In a letter of 6 November 1997 the Secretary to the Commission informed the Registrar that the Delegate did not wish to reply in writing.

5. On 21 October and 5 November 1997 the Commission produced a number of documents, as requested by the Registrar on the President's instructions.

6. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 24 November 1997. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) *for the Government*
Mr C. H. EHRENKRONA, Director for Legal Affairs,
Ministry for Foreign Affairs, *Agent*,
Mr H. LAGERGREN, Legal Adviser, Ministry of the Interior,
Mrs I. KALMERBORN, Legal Adviser, Ministry of Justice,
Mr T. ZANDER, Legal Adviser,
Ministry for Foreign Affairs, *Advisers*;

(b) *for the Commission*
Mr L. LOUCAIDES, *Delegate*;

(c) *for the applicant*
Mr T. THALINSSON, *Advokat*, *Counsel*,
Mr U. BRUNFELTER, *Advokat*, *Adviser*.

The Court heard addresses by Mr Loucaides, Mr Thalinsson, Mr Brunfelter and Mr Ehrenkrona.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the present case

7. The applicant is a Swedish citizen, born in 1927, and living in Tullinge, Sweden.

In 1974 he bought a property of 2,644 sq. m, Salem 23:1, in the centre of Rönninge in the municipality of Salem, a suburb about 20 kilometres south-west of Stockholm. On the property there is a one-family house.

8. When the applicant bought the property it was covered by a so-called subdivision plan (*avstyckningsplan*), adopted in 1938. According to this plan no building could be constructed on a plot of less than 1,500 sq. m until sufficient water and sewerage facilities had been provided for. Such facilities appear to have been built at the end of the 1960s. The property was also covered by an area plan (*områdesplan*), adopted in 1972, which described the property mainly as a public area containing open spaces, streets and car parking, and by a building prohibition made pursuant to section 35 of the Building Act (*byggnadslagen*) 1947 and issued on 26 August 1974.

9. The first building prohibition under the Building Act 1947 was issued by the County Administrative Board (*länsstyrelsen* – "the Board") of the Stockholm County as far back as September 1965 and was valid for one year. This prohibition was subsequently prolonged by the Board for one or two years each time. The last decision was taken on 11 July 1985 and was valid until 11 July 1987. On 1 July 1987, with the entry into force of the Planning and Building Act 1987 (*Plan- och bygglagen* – "the 1987 Act") replacing the Building Act 1947, the existing system for prohibition on construction was abolished and replaced by a possibility for the Building Committee (*byggnadsnämnden*) to defer its decision on an application for a building permit, or a preliminary opinion on an application, for a maximum period of two years.

10. Ever since he bought the property in question the applicant has tried in vain to obtain from the competent authorities a permit to divide his plot and/or to build, in addition to the existing house, more houses on it. On 28 July 1975 the Building Committee of Botkyrka stated in a preliminary opinion, requested by the applicant, that it was not prepared to permit the division of his property into smaller plots, referring *inter alia* to the area plan adopted in 1972 (see paragraph 8 above).

11. On 28 June 1979 the Municipal Assembly (*kommunfullmäktige*) adopted a master plan (*generalplan*) relating to part of the municipality of Botkyrka, according to which the applicant's property was earmarked for blocks of flats of more than two storeys. On 15 January 1980 the Building Committee stated, in reply to a request from the applicant, that having regard to the master plan it was not prepared to grant him either an exemption from the building prohibition or a permit to build a one-family house and a garage on the property. The applicant appealed to the Board claiming that the building prohibition was invalid. The Board rejected the appeal on 25 April 1980, stating *inter alia* that in its opinion the proposed buildings could be contrary to the aim of the prevailing prohibition and hinder future town planning as indicated in the master plan of 1979.

12. On 13 February 1984 the Municipal Council (*kommunstyrelsen*) adopted an area programme according to which the area in which the applicant's property is situated should be used for the construction of multi-family housing in 1988. It also stated that the planning procedure should be given priority. On 23 February 1984 the Municipal Assembly adopted a building programme to the same effect.

13. On 12 June 1984 the Building Committee stated in a new preliminary opinion requested by the applicant that it would not be prepared to grant any building permit in view of the existing building prohibition. The applicant's appeals against this were, as before, unsuccessful.

14. On 20 March 1986 the Municipal Assembly adopted a new area plan covering *inter alia* the applicant's property. This plan mentioned the possibility of using the area for single or multi-family housing development.

15. The proceedings and the interference with the applicant's enjoyment of his possessions referred to above formed the subject matter of the Allan Jacobsson v. Sweden judgment of 25 October 1989 (Series A no. 163). In that case the Court concluded that there had been no violation of Article 1 of Protocol No. 1. On the other hand, it found that there had been a violation of Article 6 § 1 of the Convention in that the applicant did not enjoy a right to a court to enable him to challenge the decisions whereby the building prohibitions on his property were maintained in force.

B. Proceedings giving rise to the applicant's present complaint

16. On 9 July 1987, while the above case was pending before the Convention institutions, the applicant requested under the 1987 Act (which had entered into force on 1 July 1987) a preliminary opinion from the Building Committee on whether a permit to build a house on his property could be granted. On 13 October 1987 the Building Committee decided, however, pursuant to the rules laid down in the 1987 Act, to defer its decision on the request for a period of two years (see paragraph 26 below). It informed the applicant that a building permit could not be expected for the time being.

17. On 21 June 1989, before the expiry of the above two-year period the Salem Municipal Assembly revoked the detailed development plan (previously called a subdivision plan) which had been in force since 1938 (see paragraph 8 above).

18. Following this decision the Building Committee confirmed, on 11 September 1990, its preliminary opinion of 13 October 1987 rejecting the applicant's request for a building permit. In its reasons the Committee referred to the need for a new detailed development plan and to the Municipality's intention to earmark the land for single or multi-family housing development in accordance with the area plan adopted in 1986 (see paragraph 14 above). The applicant did not appeal against this decision.

19. In the meantime, however, the applicant had lodged an appeal with the Administrative Court of Appeal (*kammarrätten*) of Stockholm against the Municipal Assembly's decision of 21 June 1989 revoking the 1938 plan. On 6 July 1989 the Court declined to entertain the appeal on the grounds that, under the 1987 Act, the County Administrative Board was the competent body. Leave to appeal against this decision was refused by the Supreme Administrative Court (*regeringsrätten*) on 20 September 1989.

20. Subsequently the applicant lodged an appeal with the Board. He observed that under Chapter 8, section 23, of the 1987 Act, a decision (on building permission) could be postponed if work had been initiated to amend, revoke or adopt a plan. However, in the present case, such steps had only been taken nineteen days before the expiration of the two-year period within which the planning measure should be completed (see paragraph 26 below). Moreover, he maintained that the above-mentioned provision had only authorised alternative measures, not a combination of measures which, as here, consisted of a revocation of a plan in order to amend it or adopt a new plan. By proceeding in this manner, the Municipality had circumvented the legal time-limit for consideration of his request for a building permit. The applicant further pointed out that a revocation should comply with, *inter alia*, Chapter 1, section 5, of the 1987 Act which requires the authorities to take into consideration both private and public interests (see

paragraph 26 below). The applicant invited the Board to find that the revocation of the detailed development plan was to be considered as a real revocation, not as a method of prolonging the time-limit for deciding on his application for a building permit. In the alternative, he requested that his application be examined without undue delay.

21. On 7 September 1989 the Board rejected the appeal and upheld the revocation by the Municipal Assembly of the detailed development plan of 1938, giving the following reasons:

> "The area is covered by a detailed development plan, approved by the County Administrative Board on 16 September 1938. Pursuant to Chapter 17, section 4, of the 1987 Act the implementation period for the plan is to be considered as having elapsed.
>
> In such circumstances the municipality has a strong position in respect of the right to revoke a detailed development plan, something which has been exemplified by the fact that the revocation may be decided without the rights which derived from the plan being taken into consideration (Chapter 5, section 11, subsection 2, of the 1987 Act). This presupposes that public interests militate in favour of revocation. The existence of such interests has been expressed by the issuing of an area plan for *Östra Rönninge*.
>
> The review of issues under the 1987 Act must take into consideration both public and individual interests, unless otherwise has been specifically provided. The above provision is an example thereof. The meaning of this provision is that the person who has obtained a right according to the plan cannot rely on it during the examination of whether the plan should be repealed. However, when it comes to examining the contents of a new plan the main rule in Chapter 1, section 5, concerning the individual's interests must obviously be considered, but even in these circumstances it is not required that the rights under the old plan must be respected. As regards the adoption of a new plan, the 1987 Act does not constitute an obstacle to the adoption being preceded by a revocation of a detailed development plan. The possible result of an examination of a request for a building permit in respect of a new construction on Salem 2[3]:1 following revocation of the detailed development plan cannot be examined in this case. The applicant's submissions in support of his appeal do not provide a reason for refusing the implementation of the decision appealed against."

22. The applicant appealed against this decision to the Government, which, on 14 June 1990, rejected it on the grounds that they agreed with the assessment made by the County Administrative Board.

23. In accordance with the provisions of the 1988 Act on Judicial Review of Certain Administrative Decisions (*lag* 1988:205 *om rättsprövning av vissa förvaltningsbeslut* – "the 1988 Act") the applicant challenged the Government's decision in the Supreme Administrative Court. He also requested the court to examine a request for a building permit and to hold an oral hearing.

The applicant stressed that, according to Chapter 8, section 23, of the 1987 Act, where steps had been taken to draw up, amend or revoke a detailed development plan, the Building Committee could, pending the completion of the planning measure, postpone its decision on a request for a building permit. If the Municipality had not completed the measure within a period of two years, the request should be decided without delay. It

followed from this provision that a prolongation of the said period could not be made by means of revocation of the plan. Moreover, the Municipality had not been free to opt for both revocation and either amendment of the plan or adoption of a new plan. In the applicant's view, whilst the plan in question had been revoked with a view to adoption of a new plan, the measure fell to be considered as an amendment of the plan. Since the amendment had not been effected within the two-year time-limit, the Municipality had not been permitted both to amend and revoke the plan. Revocation of the plan was meaningless as Chapter 5, section 11, did not apply to a detailed development plan the completion of which had not been subjected to any time-limit. Contrary to what the Board and the Government had suggested, Chapter 1, Section 5, should apply in his case. In view of these considerations, the applicant requested that the Government's decision be quashed and that his application for a building permit be examined without further delay.

24. On 11 November 1990 the Supreme Administrative Court, without holding an oral hearing, rejected the applicant's complaints against the Government's decision. The Court held:

> "According to section 1 of the [1988 Act] the Supreme Administrative Court must, at the request of a private party in certain administrative matters dealt with by the Government or an administrative authority, examine whether the decision is contrary to any legal rule.
>
> In the present case the examination concerns the Government's decision of 14 June 1990. In this decision the Government rejected an appeal lodged by [the applicant] against a decision of the County Administrative Board of Stockholm to uphold a decision to revoke [the 1938 detailed development plan] concerning a land area within the Municipality of Salem. This means that the Supreme Administrative Court cannot in the present proceedings examine [the applicant's] request to be granted a building permit. The Supreme Administrative Court dismisses [*avvisar*] this request and rejects the request for a public oral hearing.
>
> As regards the question whether the revocation of [the 1938 plan] is contrary to any legal provision, it can be established that the plan, according to Chapter 17, section 4, of the 1987 Act, was to be regarded as a detailed development plan with regard to which the implementation period had elapsed. According to Chapter 5, section 11, of the 1987 Act such a plan may be amended or annulled without regard to the rights which may have accrued during the plan's existence. The latter provision constitutes an exception to the main rule in Chapter 1, section 5, of the 1987 Act that consideration must be given to both public and private interests when examining issues under the 1987 Act (see Government Bill 1985/86:1 pp. 175 and 464). The facts of the case do not indicate that the revocation of the plan is contrary to Chapter 5, section 11, or Chapter 1, section 5, of the 1987 Act or to any other provision in the law. The decision is upheld."

II. RELEVANT DOMESTIC LAW

A. Provisions of the 1987 Act

25. The Planning and Building Act which entered into force on 1 July 1987 contains provisions about the planning of land and water areas as well as building. Their purpose is to promote a development of society characterised by equal and good living conditions for people today and for future generations, whilst having due regard to the freedom of the individual (Chapter 1, section 1).

26. The provisions of the 1987 Act which have been invoked in the present case read as follows:

> "Chapter 1 – Introductory provisions
>
> …
>
> Section 5. When issues are examined in accordance with this Act, consideration shall be given to both public and private interests unless otherwise prescribed.
>
> …
>
> Chapter 5 – Detailed development plans and area regulations
>
> Section 1. The examination of the suitability of a site for development and the regulation of manner of design of the area of construction are to be carried out in accordance with a detailed development plan, which applies to
>
> 1. new continuous developments;
>
> 2. new individual buildings, the use of which will have significant impact on the surroundings or which are to be located in an area where there is considerable demand for building sites, or where the examination of the proposed building cannot be carried out in connection with the review of the application for a building permit or a provisional opinion.
>
> …
>
> Section 5. The detailed development plan shall contain a time-limit for development. This time-limit shall be fixed in such a way that there is a reasonable chance of the plan's implementation taking place within at least five and at most fifteen years. ... When the time-limit expires, the plan will continue to be valid until it is amended or annulled.
>
> …
>
> Section 11. Before the expiry of the implementation period a detailed development plan may only be amended or annulled contrary to the wishes of the property owners concerned when this is required as a result of new conditions of great public importance and which could not be foreseen when the plan was drawn up.
>
> When the implementation period has elapsed, the plan may be amended or annulled without regard to the rights which may have accrued during the plan's existence...
>
> …
>
> Chapter 8 – Building permit, demolition permit and site improvement permit

…

Section 23. If authorisation has been requested for the expropriation of a building or land in respect of which a permit has been sought, or if work has been initiated to adopt, amend or annul a detailed development plan, area regulations or property regulation covering the building or land, the Building Committee may postpone its decision regarding the permit until the expropriation issue has been solved or the planning work has been completed. If the municipality has not completed the planning work within two years from the Building Committee's receipt of the application of a permit, the application shall be dealt with without further delay.

…

Chapter 17 – Transitional provisions

…

Section 4. Town development plans and rural development plans adopted under the Building Act (1947:385) or the Town Planning Act (1931:142), older types of plans and regulations referred to in sections 79 and 83 of the latter act as well as subdivision plans, which are not covered by a directive issued in accordance with section 168 of the Building Act, shall be regarded as a detailed development plan in accordance with this Act. Subdivision plans, to the extent they are covered by the above-mentioned directives, will cease to be valid with the coming into force of this Act.

With regard to town development plans and rural development plans which have been adopted before the end of 1978, the implementation period will be considered, in accordance with section 5, subsection 5, to be five years from the date of their gaining legal force. For other plans and regulations, referred to in the first subsection, the implementation period will be regarded as having elapsed.

Unless otherwise prescribed in a plan or regulation which, according to the first subsection is to be regarded as a detailed development plan in accordance with this Act, section 39 in the Building Ordinance (1959:612) shall apply as a regulation in the plan."

B. Provisions on judicial review

27. The Act on Judicial Review of Certain Administrative Decisions 1988 was introduced as a result of the European Court of Human Rights' findings in several cases, notably against Sweden, that lack of judicial review of certain administrative decisions infringed Article 6 § 1 of the Convention. It was enacted as a temporary law to remain in force until 1991; its validity has subsequently been extended, as from 1 July 1996 without any limitation in time.

28. Pursuant to section 1 of this Act, a person who has been a party to administrative proceedings before the Government or another public authority may, in the absence of any other remedy, apply to the Supreme Administrative Court, as the first and only court, for review of any decisions in the case which involve the exercise of public authority *vis-à-vis* a private

individual. The kinds of administrative decisions covered by the Act are further defined in Chapter 8, sections 2 and 3, of the Instrument of Government (*regeringsformen*), to which section 1 of the 1988 Act refers. Section 2 of the Act specifies several types of decisions falling outside its scope, none of which is relevant in the instant case.

29. In proceedings brought under the 1988 Act, the Supreme Administrative Court examines whether the contested decision "conflicts with any legal rule" (section 1 of the 1988 Act). According to the preparatory work to the Act, as reproduced in Government Bill 1987/88:69 (pp. 23–24), its review of the merits of cases concerns essentially questions of law but may, in so far as relevant for the application of the law, extend also to factual issues; it must also consider whether there are any procedural errors which may have affected the outcome of the case.

30. If the Supreme Administrative Court finds that the impugned decision is unlawful, it must quash it and, where necessary, refer the case back to the relevant administrative authority.

31. The procedure before the Supreme Administrative Court is governed by the Administrative Procedure Act 1971 (*förvaltningsprocesslagen*). It is in principle a written procedure, but the Supreme Administrative Court could decide to hold an oral hearing on specific matters if this was likely to assist it in its examination of the case or to expedite the proceedings (section 9). As from 1 July 1996, section 3(a) of the 1988 Act provided that in matters of judicial review the Supreme Administrative Court should hold an oral hearing if this has been requested by the person seeking judicial review and it is not manifestly unnecessary.

PROCEEDINGS BEFORE THE COMMISSION

32. Mr Jacobsson lodged his application with the Commission on 21 July 1990. He complained of several breaches of Article 6 § 1 of the Convention: firstly, he could not have the revocation of the detailed development plan of 1938 determined by a court; secondly, the scope of review afforded by the Supreme Administrative Court was insufficient; and, thirdly, he had been refused an oral hearing in the proceedings before that court. The applicant further alleged that the revocation of the development plan gave rise to a violation of his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1.

33. On 16 October 1995 the Commission declared the application (no. 16970/90) partly admissible with respect to the applicant's complaint under Article 6 § 1 of the Convention of the lack of an oral hearing before the Supreme Administrative Court and declared the remainder of the application inadmissible. In its report of 26 November 1996 (Article 31), it expressed the opinion that there had been no violation of Article 6 § 1 of the Convention (nineteen votes to seven). The full text of the Commission's opinion and of the dissenting opinion contained in the report is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

34. At the hearing of 24 November 1997 the Government, as they had done in their memorial, invited the Court to hold that there had been no violation of Article 6 the Convention in the present case.

35. On the same occasion the applicant reiterated his request to the Court to find a violation of Article 6 and to make an award of just satisfaction under Article 50.

AS TO THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

36. The applicant maintained that the refusal by the Supreme Administrative Court to hold a hearing in his case constituted a violation of Article 6 § 1 of the Convention, which to the extent relevant reads:

> "In the determination of his civil rights and obligations …, everyone is entitled to a fair and public hearing … by [a] … tribunal…"

37. The Government disputed that this provision was applicable and submitted that, in any event, it had been complied with in the present case.

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

The Commission was of the view that Article 6 § 1 was applicable but had not been violated.

A. Applicability of Article 6 § 1

38. The Court must first examine whether Article 6 § 1 was applicable to the proceedings in issue. It recalls that, according to the principles laid down in its case-law (see the judgments of Zander v. Sweden, 25 November 1993, Series A no. 279-B, p. 38, § 22, and Kerojärvi v. Finland, 19 July 1995, Series A no. 322, p. 12, § 32), it must ascertain whether there was a dispute ("*contestation*") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings must be directly decisive for the right in question. Finally, the right must be civil in character.

39. As was acknowledged by those appearing before the Court, the disagreement between the applicant and the authorities as to his right to build on his property concerned his civil rights within the meaning of Article 6 § 1 (see the above-mentioned Allan Jacobsson judgment, pp. 19-21, §§ 67–74).

40. However, the Government disputed the applicability of Article 6 § 1 on the following grounds. While the rejection of the applicant's request for a building permit by the Building Committee on 11 September 1990 had involved the determination of a serious and genuine dispute pertaining to the applicant's civil rights, he had not availed himself of the possibility of challenging this decision before the County Administrative Board, the Government and, ultimately, the Supreme Administrative Court (see

paragraph 18 above). Instead he had challenged the Municipal Assembly's decision of 21 June 1989 revoking the 1938 detailed development plan in proceedings where the Supreme Administrative Court had lacked jurisdiction to examine the request for a building permit (see paragraphs 19-24 above). Nor had the Supreme Administrative Court's ruling on the revocation issue (see paragraph 24 above) decisively affected his right to build on the plot, as he was placed in no different position in this respect than he had been under the plan.

Therefore, in the view of the Government, it could not be said that the proceedings before the Supreme Administrative Court concerned a serious dispute about the applicant's building rights or that the outcome of those proceedings had been directly decisive for those rights.

41. In the Commission's opinion, the dispute concerning the revocation of the detailed development plan in effect had had repercussions on the applicant's conditional right under the plan to build on his property (see paragraphs 8 and 24 above). It involved the determination of his civil rights within the meaning of Article 6 § 1.

In this regard, the applicant shared the Commission's opinion.

42. The Court notes that the Supreme Administrative Court held that it lacked jurisdiction to review the refusal to grant the applicant a building permit and limited its examination to the legality of the revocation of the development plan in question (see paragraph 24 above). In this context, the Supreme Administrative Court addressed an issue which was closely connected to the former, namely whether such a plan may be amended or annulled without regard being had to any rights that may have accrued during the plan's existence. The Court is therefore satisfied not only that the dispute was a serious and genuine one but also that the outcome of the proceedings was directly decisive for the civil rights claimed by the applicant.

In short, Article 6 § 1 did apply to the proceedings before the Supreme Administrative Court in the applicant's case.

B. Compliance with Article 6 § 1

43. The applicant conceded that the Supreme Administrative Court had been justified in dismissing his request for a building permit without holding a hearing, as the request had mistakenly been submitted in the proceedings at issue (see paragraphs 23–24 above). On the other hand, he stressed, it had been required under Article 6 § 1 to hear oral submissions on his appeal against the planning decision – the revocation of the 1938 development plan – in order to enable him to develop arguments on the following matters.

In the applicant's view, it could by no means be excluded that the 1987 Act had to be applied in a manner which took public and individual interests into account (see paragraph 26 above). The failure of the authorities to take his interests into account when revoking the 1938 detailed development plan had been inconsistent with the proportionality test applied by the Court in comparable circumstances in the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982 (Series A no. 52). Although the Convention had not been incorporated into Swedish law at the time, Swedish courts had in practice sought to interpret national law in a manner not conflicting with the Convention.

Moreover, the applicant considered that he had been subjected to discrimination within the meaning of Article 14 of the Convention. The revocation of a plan was an exceptional measure and was a delicate matter when used as a tool for planning operations. The introduction of the 1987 Act had as a consequence the transformation of the old system of building bans into a new system of restriction depriving owners indefinitely of the right to build. Whilst the absence of a detailed development plan in a built-up area was in itself a sufficient ground for refusing the grant of a building permit (Chapter 5, section 1, of the 1987 Act), there was no time-limit or other requirement obliging the authorities to enact new plans. Thus, the revocation of the detailed development plan had entailed a loss of building rights on the applicant's land, decreasing its value by approximately 500,000 Swedish kronor. In view of this, the Supreme Administrative Court could have ordered an exemption in respect of the applicant's property.

In addition, the applicant pointed out that, following a 1996 amendment of the Swedish Constitution intended to clarify the relevance of the Convention principles to Swedish law, a public measure on the use of land which had caused considerable fall in its value could be regarded as tantamount to expropriation. It followed from this that the legal situation had changed so as to require the authorities to take the landowner's interests into account when deciding on the revocation of a detailed development plan.

Therefore, in the applicant's submission, before deciding on his appeal the Supreme Administrative Court had been required under Article 6 § 1 to hold an oral hearing, at which he could present arguments on complex questions of fact and of law and adduce evidence, including an assessment of the loss of value of his property.

44. In the view of the Commission, the Supreme Administrative Court, although it was the only judicial instance that had acted in the proceedings in issue, had not been under an obligation to hold an oral hearing. The applicant's main request to the court, to be granted a building permit, was dismissed because of lack of competence. The only issue to be determined

on its merits was whether the public authorities had been entitled to revoke the detailed development plan concerned and the court concluded that they had been empowered to do so irrespective of the rights that might have accrued during the plan's existence. The particular facts pertaining to the applicant's situation were therefore of no importance. His appeal had not raised any question of fact or of law that could not have been adequately dealt with on the case file. There had therefore been no violation of Article 6 § 1 of the Convention.

45. The Government, mainly agreeing with the Commission, stressed that the essence of the matter examined by the Supreme Administrative Court was whether the decision to annul the detailed development plan was contrary to the law. The relevant law had been clear and the facts undisputed, leaving little scope for judicial discretion. In addition, the outcome of the proceedings could hardly be said to have been important to the applicant. Extending the right to an oral hearing to cases such as the present one might have severe consequences for the expediency and efficiency of the administration of justice, in particular before the appellate courts where the workload is considerable. There were thus strong reasons justifying the refusal to hold a hearing.

46. The Court recalls that, according to its case-law, in proceedings, as here, before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see, for instance, the Fredin v. Sweden (no. 2) judgment of 23 February 1994, Series A no. 283-A, pp. 10–11, §§ 21–22; the Fischer v. Austria judgment of 26 April 1995, Series A no. 312, pp. 20–21, § 44; and the Stallinger and Kuso v. Austria judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-II, pp. 679–80, § 51).

47. As to the particular circumstances of the proceedings in the applicant's case, the Court notes that the Supreme Administrative Court did not consider that it had jurisdiction to deal with his request to be granted a building permit. It only had competence to deal with a collateral issue, namely the lawfulness of the revocation of the detailed development plan of 1938.

48. In rejecting the appeal on this point, the Supreme Administrative Court based its reasoning on a direct application of the pertinent provisions in Chapter 17, section 4, and Chapter 5, section 11, of the 1987 Act which were couched in precise and clear terms (see paragraphs 24 and 26 above). It held that, under these provisions, the plan in question was to be considered as one whose implementation period had expired and could thus be amended or annulled without regard to the rights that may have accrued during its existence. Moreover, this provision was an exception to the

general requirement in Chapter 1, section 5, that when taking planning decisions the authorities must have regard to individual interests, not only public interests (ibid.). Since the Supreme Administrative Court adopted this interpretation of the law, it did not need to determine any issue of fact as to the applicant's individual interests or, so it appears, any other factual point concerning his arguments against the revocation of the detailed development plan (see paragraph 23 above).

49. Thus, in view of the above considerations, the Court does not find on the evidence before it that the applicant's submissions to the Supreme Administrative Court were capable of raising any issues of fact or of law pertaining to his building rights which were of such a nature as to require an oral hearing for their disposition (see the above-mentioned Fredin (no. 2) judgment, p. 11, § 22). On the contrary, given the limited nature of the issues to be determined by it, the Supreme Administrative Court, although it acted as the first and only judicial instance in the case, was dispensed from its normal obligation under Article 6 § 1 to hold an oral hearing. Accordingly, there has been no violation of this provision.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that Article 6 § 1 of the Convention was applicable in the present case and that there has been no violation of this provision.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 19 February 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar