



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

COURT (CHAMBER)

CASE OF ALLAN JACOBSSON v. SWEDEN (No. 1)

(Application no. 10842/84)

JUDGMENT

STRASBOURG

25 October 1989

In the Allan Jacobsson case*,

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

Mr R. RYSSDAL, *President*,

Mr F. GÖLCÜKLÜ,

Mr B. WALSH,

Mr R. BERNHARDT,

Mr J. DE MEYER,

Mr N. VALTICOS,

Mrs E. PALM,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 26 May and 25 September 1989,

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 18 December 1987, within the three-month period laid down in Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 10842/84) against the Kingdom of Sweden lodged with the Commission under Article 25 (art. 25) by Mr Allan Jacobsson, a Swedish citizen, on 11 January 1984.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) of the Convention and to the declaration whereby Sweden recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). It sought a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6, 13, 17 and 18 (art. 6, art. 13, art. 17, art. 18) of the Convention and Article 1 of Protocol No. 1 (P1-1) to the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in

* Note by the Registrar: This case is numbered 18/1987/141/195. 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.

the proceedings pending before the Court and designated the lawyer who would represent him (Article 30).

3. The Chamber to be constituted included ex officio Mr G. Lagergren, the elected judge of Swedish nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 30 January 1988, in the presence of the Registrar, the President drew by lot the names of the five other members, namely Mr F. Gölcüklü, Mr B. Walsh, Mr R. Bernhardt, Mr J. De Meyer and Mr N. Valticos (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mrs E. Palm, who had taken up her duties before the hearing, replaced Mr Lagergren who had resigned from the Court (Rule 2 para. 3).

4. Mr Ryssdal, who had assumed the office of President of the Chamber (Rule 21 para. 5), consulted - through the Registrar - the Agent of the Swedish Government ("the Government"), the Delegate of the Commission and the applicant on the need for a written procedure (Rule 37 para. 1). In accordance with his order, the Government's memorial and the applicant's memorial were received by the registry on 2 and 9 May 1988, respectively. On 6 March 1989 the Secretary to the Commission notified the Registrar that the Delegate would submit his observations at the hearing.

5. Having consulted - through the Registrar - those who would be appearing before the Court, the President directed on 21 February 1989 that the oral proceedings should commence on 24 May 1989 (Rule 38).

6. The hearing took place in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr H. CORELL, Ambassador,

Under-Secretary for Legal and Consular Affairs, Ministry
for Foreign Affairs, *Agent,*

Mr S. TELL, Legal Adviser,

Ministry of Housing and Planning,

Mr P. BOQVIST, Legal Adviser,

Ministry for Foreign Affairs, *Advisers;*

- for the Commission

Mr Gaukur JÖRUNDSSON, Delegate;

- for the applicant

Mr H.W. TULLBERG, Lawyer,

Counsel,

Mr U. BRUNFELTER, Lawyer,

Mr G. PETRÉN, former Justice

of the Supreme Administrative Court

Mr L. MAGNUSSON, Land Surveyor,

Advisers.

The Court heard addresses by Mr Corell for the Government and Mr Gaukur Jörundsson for the Commission and Mr Tullberg, Mr Petré and Mr

Magnusson for the applicant as well as their replies to its questions. At the hearing both the Agent of the Government and the representative of the applicant filed a number of documents.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. In 1974 the applicant bought a property of 2,644 m², 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, which lies about 400 metres north west of Rönninge railway station, there is a one-family house in which the applicant lives.

8. When the applicant bought the property it was covered by a subdivision plan (avstyckningsplan - see paragraph 31 below), adopted in 1938, according to which no building could be constructed on a plot of less than 1,500 m² until sufficient water and sewage facilities had been provided for (a water and sewage system had been built at the end of the 1960's). The property was also covered by an area plan (områdesplan - see paragraph 26 below), adopted in 1972, which described the property mainly as a public area containing green spaces, streets and car parking, and by a building prohibition pursuant to section 35 of the 1947 Building Act (byggnadslagen, "the 1947 Act" - see paragraph 35 below) issued on 26 August 1974 and lasting until 1 September 1976. The Government also claimed that the regulations for non-planned areas (utomplansbestämmelser) applied but the applicant contested this (see paragraph 33 below).

9. The first building prohibition under section 35 of the 1947 Act covering the applicant's property was issued by the County Administrative Board (länsstyrelsen, "the Board") of the Stockholm County on 21 September 1965 and was valid for one year. This prohibition has subsequently been prolonged by the Board for one or two years each time, leaving the property unaffected for only a few brief intermediate periods. 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 Plan and Building Act 1987 (Plan - och Bygglagen, "the 1987 Act"), the existing system for prohibitions on construction was abolished and replaced by a new one (see paragraphs 44-45 below).

10. On 1 January 1974 the municipality of Salem was merged with the municipality of Botkyrka, but on 1 January 1983 Salem again became a separate municipality.

11. On 28 January 1975 the Building Committee (byggnadsnämnden) 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. In its decision the Committee referred *inter alia* to the area plan adopted in 1972.

12. The applicant turned to the Board and requested that the municipality be ordered to adopt a town plan (stadsplan) for the central parts of Rönninge. In an opinion of 31 March 1976 the Board noted that only the Government were competent to make the order requested. It added that, in its opinion, the planning procedure was under way to such an extent that such an order was not necessary.

13. The applicant also complained to the Parliamentary Ombudsman (justitieombudsmannen, JO) who replied in a letter of 25 February 1976 that he was well aware of the problems which could arise as a result of lengthy building prohibitions. Referring to one of his earlier observations and to the preparatory works of the new building legislation, he concluded that there was no reason to take any other measures as a result of the applicant's complaint.

14. 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 supposed to be used for building blocks of flats of more than two storeys.

15. On 15 January 1980 the Building Committee stated, in reply to a request from the applicant, that it was not prepared to grant him 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 not valid. The Board rejected the appeal on 25 April 1980. It interpreted the Building Committee's decision as a refusal to grant an exemption from the prohibition and stated 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 and that there were no special reasons to go against the Building Committee's assessment.

16. In April 1983 the Building Committee requested the Board to revoke, pursuant to section 168 of the 1947 Act, the right to build according to the subdivision plan of 1938. The Board rejected the request on 23 March 1984, stating *inter alia* as follows:

"The long duration of the [building] prohibition depends to a large extent on changes in the objectives of the planning procedure as a result *inter alia* of the changes of municipal organisation which have occurred twice during the time of prohibition The Board considers that the prevailing building prohibition gives the municipality sufficient freedom of action for the purpose of the impending town planning. Against the objections from owners of certain properties [among whom the applicant], the Board finds that a revocation [of the subdivision plan] is not justified."

17. On 6 June 1983 the Board decided to prolong the building prohibition for the area in question. In this decision the Board stated *inter alia* that the newly created municipality (see paragraph 10 above) should have some time to determine its position in respect of the planning of Rönninge and that an application for a further building prohibition would have to be founded on a time-schedule for the amendments of the plan or on some other proposal for the termination of the prohibition. Challenging, *inter alia*, the lawfulness of the Board's decision, the applicant appealed to the Government which, however, rejected the appeal on 15 December 1983.

18. 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 houses 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.

19. On 11 July 1984 the Board decided to issue a further building prohibition for the area in question. In the decision it was noted that the Municipality planned to carry out certain work during 1984 for the purposes of establishing the necessary plans. The applicant appealed to the Government, which rejected the appeal on 8 November 1984, referring to the on-going planning work.

20. 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 appealed to the Board, arguing *inter alia* that the building prohibition covering his property had ceased to be effective on 6 June 1984. In a decision of 21 August 1984, the Building Committee conceded that a mistake had been made and quashed its decision of 12 June; however, it took a new decision of similar content since a new building prohibition was valid as from 11 July 1984.

Subsequently the Board decided to quash the Building Committee's decision of 21 August and to reject the appeal against the decision of 12 June: it referred to the fact that a building prohibition was in force when the Board examined the case. The applicant appealed against the Board's decision to the Administrative Court of Appeal (*kammarrätten*) of Stockholm and to the Government. On 24 April 1986 the Government quashed the Board's decision, holding that the Committee's opinion was not a binding decision and that, accordingly, it could not as such be subject to an appeal. On 16 March 1987 the Administrative Court of Appeal dismissed the appeal, referring to the Government's decision. The applicant's request to the Supreme Court for leave to appeal was rejected on 1 November 1988.

21. 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 house development.

According to the Government, this is the last step of the preparatory work in the making of a town plan. The validity of the subdivision plan (see paragraph 8 above) remained unaffected.

22. On 10 July 1987 the applicant again filed a request for a preliminary opinion regarding a building permit for his property (cf paragraph 9 above). The Building Committee decided however, pursuant to the rules laid down in the new 1987 Act, to defer its decision on the request for a period of two years (see paragraph 45 below).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The system under the Building Act 1947

1. Legislation on construction and urban planning

23. Until 1 July 1987 a property owner's rights to erect buildings on his property were regulated by the Building Act 1947 and the Building Ordinance 1959 (*byggnadsstadgan* - "the 1959 Ordinance") which was issued by the Government in accordance with powers conferred on them by the 1947 Act.

24. Section 1 of the 1947 Act provided that constructions on a property required a building permit to the extent laid down by the Government. Section 54 of the 1959 Ordinance specified that a permit was required for all new constructions (see paragraphs 37-39 below) except for the construction of certain buildings for public use, and small additions to existing residences and farms.

25. Before a building could be erected on a property, section 5 of the 1947 Act called for an examination of whether the property was suitable from a general point of view for this purpose. Such an examination was to be effected by planning procedure, except for non-urban areas where it could be made when an application for a building permit was under consideration.

2. Plans and regulations

26. A master plan (*generalplan*) was drawn up by the municipality concerned in so far as this was required in order to establish a framework for more detailed plans. Complete master plans were seldom deemed necessary. Instead, municipalities tended to meet their planning needs by using simpler, less detailed plans, usually described as area plans (*områdesplan*). Such plans were not governed by law.

27. Town plans (*stadsplan*) were prepared for those urban areas in which this was deemed necessary (section 24). A town plan was more

detailed than a master plan: it indicated the purposes for which the various areas could be utilised - housing, roads, squares, parks, etc. - and it also included specific provisions on their use (section 25).

28. Building plans (byggnadsplan) were established for areas which had become densely populated without, however, requiring the detailed regulations provided for in a town plan.

29. After adoption by the Municipal Assembly, town and building plans had to be approved by the County Administrative Board. In the course of this procedure, property owners had a number of opportunities to submit their views.

30. If a municipality failed to adopt a town or a building plan, the Government could order it to do so within a certain time-limit.

31. Subdivision plans (avstyckningsplan) were old plans which only set out the borders between land intended for building and land intended for public use. These plans did not regulate the details of building itself.

When the 1947 Act was introduced it was considered inappropriate to abolish existing subdivision plans before they had been replaced by other plans. According to the transitional provisions (section 168 of the 1947 Act and section 83 of the 1959 Ordinance), such plans were to be regarded as building plans in so far as construction was concerned, unless the County Administrative Board decided otherwise.

32. The 1947 Act also gave the municipalities a power, which was never exercised in the present case, to acquire property required for certain public purposes in accordance with a confirmed master or town plan: for example, areas reserved for public places according to a town plan could be redeemed by the municipality (section 41). The acquisition value was decided by the Real Estate Court (fastighetsdomstolen) and was to be assessed according to the rules laid down in the Expropriation Act 1972 (expropriationslagen - "the 1972 Act").

33. Regulations for non-planned areas (i.e. areas not covered by a town or a building plan) inter alia prohibited the construction of new buildings on properties which were not found to be suitable in the general interest for this purpose. The Government claimed that these regulations also applied in areas covered by subdivision plans whereas the applicant claimed that such areas were exempted therefrom.

3. Building prohibitions

34. Under section 56 of the 1959 Ordinance, the authorities could not grant permits for new constructions which would result in urban development (tätbebyggelse) within an area not covered by a town plan or a building plan. Areas governed by subdivision plans were exempted from this prohibition, although the Board could order, pursuant to section 168 of the 1947 Act, that they also be covered thereby.

35. If the question of adopting a town plan had been raised, the Board could, under section 35 of the 1947 Act, also issue a prohibition on all new constructions for the area concerned. Such a prohibition was valid for one year, but could be prolonged by two years at a time. Exemptions therefrom could be granted where the planning procedure would not be obstructed.

36. According to section 158 of the 1947 Act, provisions on new constructions extended "to such alterations to existing premises as could be classified as new constructions under rules laid down by the Government". Section 75 of the 1959 Ordinance specified:

"The expression 'new construction' shall mean:

- (a) the erection of entirely new premises;
- (b) the horizontal or vertical extension of existing premises;
- (c) any rebuilding of the exterior or interior of premises or any alteration thereto which, on account of its scale, may be equated to rebuilding;
- (d) the complete or partial conversion of premises for a use substantially different from their previous one;
- (e) such alteration to premises as results in their no longer being in conformity with the adopted master plan, town plan or building plan or the regulations on building activities in zones situated outside the areas covered by town plans or building plans; and
- (f) any other alteration to premises which, in their present state, are not in conformity with the above-mentioned plans or regulations, except in the case of residential premises comprising not more than two dwellings or of outbuildings belonging to such premises.

However, for the purposes of the present section, the expression 'new construction' shall not include the installation of central heating, water closets or other sanitary amenities in premises which, even if such installation has not been authorised, are expected to remain in their present state for a considerable length of time."

4. Applications for building permits

37. Applications for building permits were filed with the local building committee. If an application came under a building prohibitions, it was in practice considered as including also an application for exemption from the prohibition. The applicant could, however, choose to apply for an exemption only, in order to apply for a permit when the question of exemption had been resolved.

38. The examination of an application for a building permit involved ascertaining that the intended building would not run counter to any confirmed plan, to the regulations for non-planned areas, or to a building

prohibition, and that it satisfied technical demands on construction. In the absence of such obstacles, a permit should have been granted.

39. It was the practice among property owners to request preliminary opinions regarding their possibilities to build. Such opinions were not legally binding.

5. Appeals against decisions

40. Decisions by the Building Committee to refuse building permits or exemptions from building prohibitions could be appealed to the Board.

41. Appeals against the Board's decisions lay to the Government as regards exemptions from building prohibitions and to the Administrative Court of Appeal as regards building permits. In the latter case a further appeal to the Supreme Administrative Court could be lodged if leave to appeal was granted. If the Board decided both questions, appeals were to be lodged with the Administrative Court of Appeal. If this Court found that the construction did not require any exemption from a building prohibition, it would proceed to examine the permit question. Otherwise, the Court would transfer the case to the Government, together with an opinion on the permit issue.

42. There were no limits to the number of times a property owner could apply for building permits or exemptions from a building prohibition. The authorities were obliged to examine the matter each time they were seized of such applications.

43. A decision by the Board to issue a building prohibition or to refuse at first instance an exemption from such a prohibition could be appealed to the Government.

Moreover, questions concerning the approval of town and building plans by the Board could be appealed to the Government. However, the property owners concerned could not formally require the municipality or the Board, respectively, to adopt or approve a plan.

B. The Plan and Building Act 1987

44. Since 1 July 1987, the 1947 Act has been replaced by the 1987 Plan and Building Act.

45. The 1987 Act has abolished the possibility to prescribe the kind of building prohibitions which are at issue in the present case, replacing it by a possibility for the Building Committee to defer its decision on an application for a building permit or a preliminary opinion for a maximum period of two years. After the expiry of this period, the permit or a favourable preliminary opinion shall be granted unless they are incompatible with a detailed plan and provided that certain purely technical requirements are met.

C. Formation of property units

46. Divisions of property into units are made by the Property Formation Agencies (fastighetsbildningsmyndigheterna). New units are to be designed in such a way as to make all properties concerned permanently suitable for their purpose with regard to their location, size and other conditions. Within areas subject to town or subdivision plans, a division must be made in accordance with the plan. If other regulations apply, e.g. a building prohibition, divisions have to comply with these also.

47. Decisions by the Property Formation Agencies may be appealed to the ordinary courts.

D. 1972 Expropriation Act

48. Chapter 2, section 1 of the 1972 Act (see paragraph 32 above) gives the municipalities a right to expropriate for planning purposes. It provides:

"Within a densely developed area an expropriation may only take place if it can reasonably be assumed that the property will, within a foreseeable future, be required for a building or construction activity which is of significant public interest or if it is of importance for the purposes of a planned development or for another similar reason that the municipality takes control of the property".

Expropriations pursuant to this section are subject to the general provisions regarding compensation laid down in Chapter 4 of the 1972 Act.

PROCEEDINGS BEFORE THE COMMISSION

49. Mr Allan Jacobsson applied to the Commission on 11 January 1984 (application no. 10842/84). He alleged violations of Articles 6 para. 1 and 13 (art. 6-1, art. 13) of the Convention as a result of the lack of any court remedy to challenge the lawfulness and the compatibility with the Convention and its Protocol No. 1 (P1) of the building prohibitions imposed on his property. He also complained of breaches of Articles 17 and 18 (art. 17, art. 18) of the Convention and Article 1 of Protocol No. 1 (P1-1) because of the long period of time these building prohibitions had been kept in force.

50. By decision of 15 April 1986, the Commission declared the application admissible.

In its report adopted on 8 October 1987 (Article 31 of the Convention) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 6 para. 1 (art. 6-1), but not of Articles 17 or 18 (art. 17, art. 18), and that it was not necessary to examine separately the complaint under Article 13 (art. 13). It also reached the conclusion, by

seven votes to four, that there had been no violation of Article 1 of Protocol No. 1 (P1-1). The full text of the Commission's opinion and the dissenting opinions contained in the report is reproduced as an annex to this judgment.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

51. The applicant submitted that the protracted building prohibitions on his property violated Article 1 of Protocol No. 1 (P1-1), which reads:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Both the Government and the majority of the Commission contested this allegation.

52. There was undoubtedly - and the Government did not dispute this - an interference with Mr Jacobsson's right to peaceful enjoyment of his possessions. It has therefore to be ascertained whether this interference contravenes Article 1 of Protocol No. 1 (P1-1).

A. The Article 1 (P1-1) rule applicable to the case

53. According to the Court's case-law, this provision comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property; the second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions; and the third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not "distinct" in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, as the most

recent authority, the *Tre Traktörer AB* judgment of 7 July 1989, Series A no. 159, pp. 21-22, para. 54).

54. The applicant claimed that the situation of which he complained was similar to that obtaining in the *Sporrong and Lönnroth* case (judgment of 23 September 1982, Series A no. 52) in which case the Court found the first rule to be applicable: he maintained that also in his case the protracted building prohibitions were combined with a threat of expropriation, in particular as a result of the Municipality's powers under Chapter 2, section 1 of the 1972 Act (see paragraph 48 above).

The Court, however, agrees with the Commission and the Government that the interference at issue, being the result of a control of use of property, falls to be examined under the third rule, i.e. under the second paragraph of Article 1 of Protocol No. 1 (P1-1). Unlike the situation in the above-mentioned *Sporrong and Lönnroth* case, Mr Jacobsson's right of property was never rendered precarious by the issuing of any expropriation permit. Moreover, it does not emerge from the evidence before the Court that any other steps have been taken with the aim or the effect of depriving him of his right of property over Salem 23:1 during the relevant period; thus the municipality has not adopted any plan giving it the right to purchase the property compulsorily (see paragraph 32 above) and it does not appear from the file that the municipality's projects for the applicant's property were ever so firm that the applicant could reasonably have feared the application of Chapter 2, section 1 of the 1972 Act. The present case is thus clearly distinguishable from the *Sporrong and Lönnroth* case and is only concerned with the control of the use of the applicant's property pending the elaboration of a town plan (see paragraphs 8 and 35 above).

55. Under the second paragraph of Article 1 of Protocol No. 1 (P1-1), the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, as this provision is to be construed in the light of the general principle enunciated in the first sentence of the first paragraph, there must exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see, as the most recent authority, the above-mentioned *Tre Traktörer AB* judgment, Series A no. 159, p. 23, para. 59). In striking the fair balance thereby required between the general interest of the community and the requirements of the protection of the individual's fundamental rights, the authorities enjoy a wide margin of appreciation (see the *AGOSI* judgment of 24 October 1986, Series A no. 108, p. 18, para. 52).

B. Compliance with the requirements of the second paragraph

1. Lawfulness and purpose of the interference

56. The applicant alleged firstly that the Government's practice of confirming protracted building prohibitions constituted an abuse of power as a matter of Swedish law. He referred in particular to several observations by the Parliamentary Ombudsman criticising this practice (see paragraph 13 above). The Government, although admitting that they were not satisfied with the legal situation, denied that the impugned prohibitions had been issued contrary to Swedish law.

57. The Court, considering that its power to review compliance with domestic law is limited (see, *inter alia*, the above-mentioned *Tre Traktörer AB* judgment, Series A no. 159, p. 23, para. 58), sees, like the Commission, no reason to doubt that the interference complained of was in accordance with Swedish law since it had a clear basis in the 1947 Act, in particular section 35 thereof (see paragraphs 8 and 35 above). In addition, the Parliamentary Ombudsman's criticism referred to by the applicant did not relate to the legality of the protracted use of building prohibitions as a matter of Swedish law, but only questioned the acceptability of such use, without any provisions for the compensation of affected land-owners, in a State abiding by the rule of law (see the above-mentioned *Sporrong and Lönnroth* judgment, Series A no. 52, p. 17, para. 42). This aspect of the case will be dealt with below (see paragraphs 60-63 below).

Moreover, nothing suggests that the impugned prohibitions were not aimed at facilitating town planning, which purpose undoubtedly falls within the general interest as envisaged in Article 1 of Protocol No. 1 (P1-1).

58. In this connection the applicant alleged that the misuse of the prohibitions probably was due to the lack of any court control of the authorities' exercise of their powers under the 1947 Act. However, the question of safeguards against abuse is closely linked with matters which the Court will examine later, in particular the question of compliance with Article 6 (art. 6), if applicable (see, *mutatis mutandis*, the *Silver and Others* judgment of 25 March 1983, Series A no. 61, p. 34, para. 90 - paragraphs 65-77 below).

2. Proportionality of the interference

59. The applicant maintained secondly that the protracted use of these prohibitions had prevented him for a long time from exercising his right under the subdivision plan, as he understood it, to divide his property and erect a second building, without any attempt being made to strike a fair balance between the burden he was forced to carry and the authority's need to plan the area.

The Government contested that this was so, invoking the wide margin of appreciation enjoyed by the State when deciding matters falling under the second paragraph of Article 1 of Protocol No. 1 (P1-1).

60. It is true that the applicant was left in uncertainty for a very long time as to his possibilities to develop his property. However, the Court does not find it established that he had acquired any unconditional rights to build a second house. It has not been shown that during the relevant period the authorities would have been obliged to grant him the permit necessary for that purpose. Firstly, no absolute right to erect a second house could be deduced from the subdivision plan (see paragraph 8 above), although the plan did not rule out such a possibility. Furthermore, it does not appear from the evidence that the regulations for non-planned areas did not apply and that the applicant's property was exempted from the general requirement of suitability (see paragraphs 25, 33 and 38 above). In the Government's view this requirement made the granting of a second permit highly unlikely as a result of the ongoing planning procedure. This finds support in the preliminary results of the planning process available both at the time of purchase and subsequently (see paragraphs 8, 14, 18 and 21 above).

Neither can it be said to be established that the impugned prohibitions affected any acquired unconditional right to divide Salem 23:1 into two plots (see paragraph 46 above).

61. Like the Commission, the Court considers that the applicant cannot reasonably have been unaware of the state of the law when he bought the property. Furthermore, he has at all times been able to continue to live on the property on the same conditions as when he bought it. His allegation that the building prohibitions have prevented him from repairing his home has not been substantiated: minor repairs were permitted (see paragraph 36 above) and no application seems to have been made for any exemption to carry out major ones.

62. In addition, prohibitions were only valid for one year with the possibility of renewal for periods of two years each. The need to maintain them was thus examined at regular intervals. Again, exemptions could be granted where the planning procedure would not be obstructed (see paragraph 35 above). These procedures provided a possibility for weighing the public interest against that of the individual.

63. It has not been in dispute that the planning situation in the area where the applicant's property is located has been very complex (see paragraphs 8-10 above). Having regard to what has been set out above (paragraphs 60-62) and to the margin of appreciation enjoyed by the State under the second paragraph of Article 1 of Protocol No. 1 (P1-1), the Court concludes, albeit concerned like the Commission by the long duration of the impugned prohibitions, that they cannot be considered disproportionate to the requirements of the municipality's legitimate aim of planning the area.

64. To sum up, no violation of Article 1 of Protocol No. 1 (P1-1) has been established.

II. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1) OF THE CONVENTION

65. The applicant also complained that, under Swedish law, he did not have access to a court to challenge the decisions whereby the building prohibitions on his property were maintained in force on his property. He relied on Article 6 para. 1 (art. 6-1) according to which:

"1. In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing by [a] ... tribunal"

A. Applicability of Article 6 para. 1 (art. 6-1)

66. Before the Court, the Government challenged the applicability of Article 6 (art. 6). In order to decide this question, the Court has to ascertain whether there was a dispute over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, and, if so, whether this "right" was of a "civil" character within the meaning of Article 6 para. 1 (art. 6-1) (see, *inter alia*, the above-mentioned *Tre Traktörer AB* judgment, Series A no. 159, pp. 16-17, para. 36).

1. Existence of a dispute ("contestation") over a "right"

67. As to the first point, the Court refers to the principles enunciated in its case-law (see, *inter alia*, the *Pudas* judgment of 27 October 1987, Series A no. 125-A, p. 14, para. 31). In particular, the dispute ("contestation") must be genuine and serious, it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise and, finally, the result of the proceedings concerning the dispute at issue must be directly decisive for such a right.

68. The Government argued that no such dispute had arisen concerning a right.

The Court finds, however, that a real dispute existed in this case, in particular with regard to the lawfulness of the authorities' decisions: before both the Board and the Government, the applicant claimed *inter alia* that the prolongations of the building prohibitions were not in conformity with the 1947 Act and that the prohibitions constituted an abuse of power as no planning work had been carried out (see paragraphs 15-16 above).

69. In view of the wide discretion left by the Swedish Parliament to the administrative authorities in these matters, the Government further maintained that the applicant could not claim any "right" to build before a permit had been granted.

The Court considers however that, subject to meeting the requirements laid down in the 1947 Act and the 1959 Ordinance (see paragraph 38 above), he could arguably have claimed to have a "right" to such a permit. True, the issue of a permit under these circumstances would have involved the exercise of a certain discretion by the authorities, but their discretion would not have been unfettered: they would have been bound by generally recognised legal and administrative principles (see the above-mentioned Pudas judgment, Series A no. 125-A, p. 15, para. 34).

70. Pointing out that the prohibitions at issue affected the rights of a great number of other property owners, the Government alleged that the dispute in the applicant's case thus came to have connections with his "right" to build that were so remote and tenuous as to make Article 6 (art. 6) inapplicable.

There can, however, be no doubt that the prohibitions severely restricted the said "right" (see paragraph 69 above) and that the outcome of the proceedings whereby he challenged their lawfulness was directly decisive for his exercise thereof.

71. There was thus, as was also maintained by the Delegate of the Commission, a dispute over a "right".

2. "Civil" character of the right at issue

72. According to the Court's case-law, the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law. Article 6 para. 1 (art. 6-1) applies irrespective of the status of the parties, of the nature of the legislation which governs the manner in which the dispute is to be determined and of the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations (see, as the most recent authority, the above-mentioned *Tre Traktörer AB* judgment, Series A no. 159, p. 18, para. 41).

73. In the circumstances of the present case, the applicant's disputed "right" to build on his land is of a "civil nature" for the purposes of Article 6 para. 1 (art. 6-1) (see, *mutatis mutandis*, the above-mentioned *Sporrong and Lönnroth* judgment, Series A no. 52, p. 29, para. 79). This is not affected by the general character of the building prohibitions, nor by the facts that the planning procedure, as was submitted by the Government, is part of public law and that a building prohibition is a necessary element in urban planning.

3. Conclusion

74. In sum, Article 6 para. 1 (art. 6-1) is applicable.

B. Compliance with Article 6 para. 1 (art. 6-1)

75. The Government conceded that, should the Court find that the present case fell under Article 6 para. 1 (art. 6-1), the applicant was not afforded the safeguards set out therein. The Court nevertheless has to ascertain whether Mr Jacobsson enjoyed the "right to a court", as guaranteed to him under this provision (see, as the most recent authority, the above-mentioned *Tre Traktörer AB* Series A no. 159, p. 20, para. 47).

76. According to Swedish law, the dispute in question could be determined only by the Government as the final instance. The Government's decisions were not open to review as to their lawfulness by either the ordinary courts or the administrative courts, or by any other body which could be considered to be a "tribunal" for the purposes of Article 6 para. 1 (art. 6-1) (see paragraphs 41 and 43 above).

C. Conclusion

77. There was thus a violation of Article 6 para. 1 (art. 6-1).

III. ALLEGED BREACH OF ARTICLE 13 (art. 13) OF THE CONVENTION

78. The applicant claimed that he was deprived of any "effective remedy before a national authority" in respect of the matters of which he complained.

Having regard to its decision on Article 6 para. 1 (art. 6-1), the Court, like the Commission, does not find it necessary to consider the case also under Article 13 (art. 13); this is because its requirements are less strict than, and are here absorbed by, those of Article 6 para. 1 (art. 6-1) (see, as the most recent authority, the above-mentioned *Tre Traktörer AB* judgment, Series A no. 159, pp. 20-21, para. 51).

IV. ALLEGED BREACH OF ARTICLES 17 AND 18 (art. 17, art. 18) OF THE CONVENTION

79. The applicant originally also invoked Articles 17 and 18 (art. 17, art. 18) of the Convention. However, he did not rely upon them before the Court and there is no need to examine this matter *ex officio*.

V. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

80. Article 50 (art. 50) provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The applicant sought compensation for pecuniary damage and reimbursement of his costs and expenses.

A. Pecuniary damage

81. The applicant claimed that he should be granted, firstly, 800,000 Swedish crowns (SEK) in exchange for his property, secondly compensation for loss of revenues occasioned by the building prohibitions, calculated on the basis of 10% per year of the property's value, and finally 213,000 SEK to compensate for the alleged decline in his standard of living due to his inability, as a result of the prohibitions, to repair and to improve his property. He also claimed interest on these amounts.

82. The Court agrees, however, with the Government's contention that there is no causal link between the violation of Article 6 para. 1 (art. 6-1) found in this judgment and any of the alleged pecuniary damage. The maintenance in force of the building prohibitions admittedly had adverse effects on the applicant's possibilities to use and to develop his property. Nevertheless, the Court cannot speculate as to what the result of the applicant's challenge of these prohibitions might have been if he had been able to bring his complaints before a court.

No award can therefore be made under this heading.

B. Costs and expenses

83. The applicant claimed 581,183.35 SEK in respect of his costs and expenses on the domestic level and before the Convention organs.

84. The Government challenged a number of items and only found expenses totalling 39,301.80 SEK and 187,480 SEK of Mr Tullberg's fees to be reasonable for the whole of the case. In addition, they considered fees totalling 240,000 SEK charged by experts engaged by Mr Tullberg to be either unnecessary or excessive.

85. Taking into account all relevant circumstances, in particular the fact that the Court has found no violation on the main aspect of the case, i.e. the complaint under Article 1 of Protocol No. 1 (P1-1), and making an assessment on an equitable basis, as is required by Article 50 (art. 50) of the Convention, the Court considers that the applicant is entitled to be reimbursed, for costs and expenses, the sum of 80,000 SEK.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been no violation of Article 1 of Protocol No. 1 (P1-1);
2. Holds that Article 6 para. 1 (art. 6-1) of the Convention has been violated;
3. Holds that it is not necessary to examine the case under Articles 13, 17 and 18 (art. 13, art. 17, art. 18);
4. Holds that Sweden is to pay the applicant, for costs and expenses, 80,000 (eighty thousand) Swedish crowns;
5. Rejects the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg on 25 October 1989.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar

In accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 52 & 2 of the Rules of Court, a concurring opinion by Mr De Meyer is annexed to the present judgment.

R.R.
M.-A. E.

CONCURRING OPINION OF JUDGE DE MEYER

My reasons for deciding that Article 6 para. 1 (art. 6-1) of the Convention was applicable in the present case are less complex than those expounded in the judgment¹.

The applicant had raised "a matter relating to the determination of"² his property rights, as affected by construction and planning regulations and by the implementation thereof.

That is enough for me³, the more since the "right of property is without doubt a 'civil right'"⁴.

We had not to worry whether the alleged right could, or could not, "be said, at least on arguable grounds, to be recognised under domestic law"⁵, nor whether "the dispute" was, or was not, "genuine and serious"⁶. These questions had, if arising, to be decided at the national level. Under Article 6 para. 1 (art. 6-1) of the Convention we just have to see whether the alleged right could, or could not, be determined, at that level, in accordance with the principles recognised in that provision and, if it could, whether it was, or was not, so determined⁷.

¹ Paras. 66-74 of the judgment.

² See *H v. Belgium*, judgment of 30 November 1987, Series A no. 127-B, p. 31, para. 38.

³ See further part I of my separate opinion in *H v. Belgium*, (ibid., pp. 48-49).

⁴ *Sporrong and Lönnroth*, judgment of 23 September 1982, Series A no. 52, p. 29, para. 79. See also *Ringeisen*, judgment of 16 July 1971, Series A no. 13, p. 39, para. 94.

⁵ Para. 66 of the judgment.

⁶ Para. 67 of the judgment.

⁷ See further the separate opinion of Judge Lagergren in *Ashingdane*, Series A no. 93, p. 27, the separate opinion of six judges in *W v. the United Kingdom*, Series A no. 121, p. 39, my separate opinion in *Pudas*, Series A no. 125-A, p. 21, and part I, paras. 2 and 3, of my separate opinion in *H v. Belgium*, Series A no. 127-B, loc. cit.